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**IN THE DISTRICT COURT OF APPEAL
OF THE SECOND JUDICIAL DISTRICT
IN AND FOR THE STATE OF FLORIDA**

GORDON WAYNE WATTS,
Petitioner/Plaintiff/Appellant,

DCA NO.: 2D02-4061

vs.

Lower Tribunal
Case Number: 22-01590

FLORIDA COMMISSION
ON HUMAN RELATIONS,
Respondent/Defendant/Appellee.

_____ /

INITIAL BRIEF OF THE APPELLANT

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1975 Florida Statutes, section 59.041, the "harmless error statute"

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ii.

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PREFACE

For the purposes of this appeal, the following reference words and symbols will be used throughout this brief:

"Petitioner" will refer to Plaintiff / Petitioner / Appellant, Gordon Wayne Watts;

"Respondant" and "Lower Tribunal" will refer to Defendant / Respondant / Appellee, The Florida Commission on Human Relations; and,

"This Honorable Court" will refer to this Honorable District Court of Appeal, Florida's Second District

"FCHR" will refer to the Florida Commission on Human Relations.

"TPD" will refer to the Tallahassee Police Department.

"FSU" will refer to State University, The Florida State University.

"R" will refer to citations from the Record On Appeal, as compiled by the Clerk of the Lower Tribunal.

"F.S." will refer to Florida Statutes.

"Fla.R.App.P." will refer to Florida Rules of Appellate Procedure.

I, Petitioner Gordon Watts, formally apologize to this honorable court for the great time-delay in preparing this initial brief due to circumstances out of my control and hope upon the mercy of my error as some personal matters and difficulty of obtaining certain documenting paperwork have prevailed.

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ISSUE ON APPEAL

Whether the Lower Tribunal's decision to dismiss complaint and close file was based soundly on the laws governing timeliness of filing.

iv.

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STATEMENT OF THE CASE AND FACTS

On many occasions preceeding the 2000 Election Season, Petitioner attended varied political rallies and public events in the Tallahassee area while a student at The Florida State University. At various Republican events, Petitioner displayed Native American (Indian) attire for the purposes of convincing undecided voters that the Republican political party was inclusive for minorities (e.g., Blacks, Indians, Hispanics, Asians, etc.). Petitioner encountered no discrimination or prejudicial treatment with one exception, described following:

The late Marty Glickman of Tallahassee, Florida, invited the public to a public political rally via his "Republican Marty" call-in phone line. (R:000052 - "ITEM 2," which the clerk of Lower Tribunal did not include in record on appeal)

On 07 Novemver 2000, Petitioner was invited to and attended this event at 101 Adams Street in Tallahassee, Florida, while a college student at FSU. While attending this "election reception," at the Double Tree Motel Chain, owned by the Hilton Hotel chain, at that address, Petitioner displayed a small feather on the head (Record: 000003) as a "hat" or headdress "apperal" to indicate his Native American heritage and ethnic background. Contrary to the Police Report remarks (R:000001-000006) or incinuations, Petitioner did not have a "bow and arrow" or any other such questionable items in his possession. As indicated by the Police Report (R:000001-000006), un-notarized statements of witness testimony (R:000007), albeit second-hand, and statements of the Petitioner himself (in this statement of the case and facts), Petitioner did not cause a disturbance or otherwise provoke any person.

Petitioner was asked to leave the event by a Police Officer, who claimed to be working security.

On Monday, 20 November 2000, Petitioner obtained a statement from the secretary of the late Marty Glickman (R:000007), which was an unnotarized, second-hand testimony.

Petitioner was not aware of the proper channels for asking the Florida Commission for Human Relations (FCHR) to investigate at that time. In fact, Petitioner did not know the the FCHR existed, however, Petitioner, Gordon Watts, knew that the State of Florida had provided some adequate means to review this matter and made many attempts to ascertain the proper channels as outlined below:

Attempts to contact a police supervisor to resolve the conflict were futile, because the Officer's supervisor was not on duty at the time, as the Officer was apparently working off duty as security. After repeated requests by Petitioner to the Tallahassee, Florida Police Department to provide a written documentation by Police Report - and threats of lawsuit - TPD Captain Argatha Gilmore-Rigby eventually ordered the Officer in question to write a report. The report (R:000001-000006) was written on 12-14-2000, about 5 weeks after the incident, and the report finally became available to Petitioner January 22, 2001, about 5 weeks after that, a total of about 10 weeks, one day, after the incident in question.

At that time, Petitioner determined that the partial treatment was based on racial / ethnic heritage.

Petitioner still neither knew that FCHR existed nor any time-limits for filing, but understood the urgency for resolving this issue - and attempted to contact the proper agency as follows:

Many phone calls were made to State offices in phone records submitted to the Clerk of the Lower Tribunal. (R:000052-000055) Some of these phone records were included in the Record on Appeal. Some were not.

Petitioner began contacting the Governor's office and other state agencies immediately after the incident in attempts to locate the proper agency to address this matter.

After obtaining a copy of the police report on Monday, 22 January 2001, Petitioner personally visited the Governor's mansion to seek agency assistance, on Thursday 25 January 2001, as Petitioner resided in college dorms a few blocks away. Very close to 5 pm that day, closing time, Petitioner Gordon Watts gave a copy of report to a middle aged receptionist named "Georgia," and urgently asked for direction to the proper agency. On Friday, 26 January 2001, Petitioner personally visited the Insurance Commissioner's office, gave them a copy of Police Report, and spoke to a blond-haired woman named "Dolly," and asked for referral to the proper office. Petitioner also asked her to look into claims by this officer that he was working for the Insurance Commissioner's office at the political rally open to the public. That Friday the 26th, Petitioner also spoke to an Elsie Borden who worked across the hall at the Education Commissioner's office and asked for referral to the proper agency. That day, Petitioner asked Allison Long of the Tallahassee Democrat newspaper for news coverage to put pressure on the government agencies responsible to address this matter. Petitioner also spoke by telephone to a Fred Graham in the Insurance Commissioner's office, who claimed this this event was "semi-public" or words to that effect. Petitioner also spoke that day with Dennis Morgan, General Manager of the Double Tree Motel, in attempts to resolve the conflict.

Citations documenting when Petitioner contacted specific offices shall be made in the Argument section of this brief.

After repeated attempts to retain a lawyer or resolve the conflict, Petitioner was advised that there was a "seven-year" statute of limitations on bringing this type of complaint by a "Pre-Paid" Legal Services lawyer. Petitioner became very busy with school work and temporarily postponed attempts to resolve this matter, confident time existed to resolve this matter.

On Sunday, August 12, 2001, Petitioner returned home from college with a degree. After some time off and after the interruption of the 09/11 terrorist attacks on daily routine, Petitioner again made attempts to resolve this matter.

One attempt was in a phone call to Respondent, FCHR, slightly less than a year after Petitioner discovered evidence of racial mistreatment.

Respondent responded many months later (R:000021) and claimed complaint wasn't timely filed and rejected complaint and closed file.

Petitioner eventually sought the relief of This Honorable Court and does so to this day.

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SUMMARY OF ARGUMENT

Petitioner acted in good faith and attempted on many occasions to contact the proper state agency that handled this type of situation in a timely fashion. This satisfies the "strict" Florida State Statutes involved, and the more "lenient" rules of the Lower Tribunal, which allow one year from either the time of the incident or the time Petitioner found out about the discriminatory nature of the incident, which could extend the deadline a little bit, as this argument alleges.

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ARGUMENT

The Lower Tribunal's decision to dismiss complaint and close file was not based soundly on the laws governing timeliness of filing.

STANDARD OF REVIEW

Pursuant to Fla.R.App.P.9.210(b)(5), Petitioner states the following standards of review on which appeal is based:

- *** Constitution of the State of Florida ARTICLE V, Section 4, vests original authority in the DCA; and,
- *** Florida Rule of Appellate Procedure 9.030 Jurisdiction of the Courts (b) Jurisdiction of the District Courts of Appeal (1) *Appeal Jurisdiction*. District courts of appeal shall review, by appeal (C) administrative action if provided by general law, which appears to be /statute/ 120.68, Florida Statute, which allows for review by appeal to the District courts this type of decision.

The matter being appealed is the timeliness issue of the Petitioner's complaint filing, not the actual merits of the case. Therefore, this argument will be restricted to that matter alone.

THE STRICT TIME LIMIT

The incident in question occurred on 07 November 2000. Petitioner was aggrieved by racial discrimination, covered by /s/ 509.092, F.S., which prohibit establishments for public food and lodging from discriminating based on, among other things, race or national origin. This starts the one-year time-clock outlined in /s/760.11(1) to file with the FCHR. "In lieu of filing the complaint with the commission, a complaint under this section may be filed with ... any unit of government of the state which is a fair-employment practice agency under 29 C.F.R. cc. 1601.70-1601.80. If the date the complaint is filed is clearly stamped on the face of the complaint, that date is the date of filing." [/s/ 760.11(1)] The Police Department must of necessity be an employer of fair-employment practices, and the date of "Jan 22 2001" stamped on the back of each page of the police report (R:000002) is within this one-year deadline. [/s/761.02(1), F.S., Religious Freedom, defines "government" as any entity acting under the color of law; and /s/761.05(1), F.S. makes this definition apply to all state law, whether enacted before or after this Statute.]

That should end the "Argument" section, but Petitioner was careful to contact the Governor's office on Jan 25 and 26, immediately after receiving a copy of Police Report.

While these offices did not provide receipts for his visit (Petitioner did not know to ask), Petitioner was careful to document a follow-up phone call to the Governor's Office about this matter: Call number "121 01/29 10:53AM TALLAHASSEE, FL 850-488-4441." (R:000024) This was within the strict time limit mentioned above. Other timely phone calls attempting to contact the proper State Agency were submitted to the Lower Tribunal clerk (R:000052-000055), but a few of the items were not submitted into the record. Attempts have been made to obtain a receipt for Petitioner's visit to Insurance Commissioner's office (R:000053, "ITEMS 20. and 21.) It is hoped that this item will be forthcoming (for a supplement to the record), and in fact, it was this delay and lack of "smoking-gun" evidence that may have made Petitioner afraid to file

Initial Brief of the Appellant, but one can not "make" an agency comply with a "public records" request. In an undocumented phone call to this office (850-413-3100), Justin Glover has told Petitioner that he is convinced that Petitioner contacted his state office in January of 2001 and spoke to "Dolly," who is no longer employed there, to which Petitioner frustratingly replied that it is the DCA, not Mr. Glover, who must be convinced that Petitioner made such timely contact. ~~~***~~~ Defendant amply fell within the "strict" one-year time deadlines and wishes the case to be heard on its merits, not dismissed on a technicality.

THE "MORE LENIENT" TIME LIMIT

Respondent, FCHR, states on their official website (R:000014-000016) the following: "Q. When may a person file a complaint of discrimination? A. If you feel you have been a victim of discrimination, you should file immediately, but no later than 365 days from the date of discrimination, or the date upon which you learned that a discriminatory action was taken. Housing complaints must be filed within one year of the alleged discrimination." (R:000015, emphasis mine on the word "or")

Petitioner did not have a housing complaint, but instead one regarding public accommodations. Petitioner found out of a certainty that discrimination (not simple Police abuse) was the culprit when receiving the Official Police report on "Jan 22 2001" (R:000002). Considering the difficulty in getting the Police to admit to some type of wrong-doing, This Honorable Court is respectfully given appeal over this matter.

Petitioner called Respondent, FCHR as shown by ALLTEL phone detail bill of January 14, 2002 (R:000008), which shows phone calls 104-106 placed by Petitioner on December 19, 2001, to 850-488-7082, the official phone number of FCHR, the Respondent. ~~~ FCHR's employee, Alto Thomas, told Petitioner at that time that FCHR handled only housing and employment, but not public accommodations, claims, and directed Petitioner to call the Equal Employment Opportunity Commission (R:000008, calls 108 and 109, December 20, to phone number 813-228-2310). Petitioner made a complaint to Lower Tribunal about its refusal to address this timely complaint (R:000017), and they replied (R:000025), claiming that Mr. Thomas determined that the complaint was late, that is, not timely. Petitioner does not recall such a statement being made, however, complaint (Dec 19, 2001) was made *less* than one year from Jan 22, 2001, when it was officially determined that ethnic discrimination was involved.

Petitioner contacted State Senator John F. Laurent's office by phone on Jan 07, 2002, slightly *less* than one year from "date upon which [Petitioner] learned that a discriminatory action was taken," (R:000015) according to an official memo, in which the date (R:000022) is shown as "January 7, 2002 @ 2:15pm."

These records were hard to get, and Petitioner continued to seek assistance from various other entities as the record on appeal will show. The Governor will attest that, in his recent "office hours" visit to Lakeland, when Petitioner asked to give him paperwork and seek his office's help, The Governor responded that Petitioner had emailed him about it already, which is quite incredible in memory, however The Governor has not intervened in this matter other than to refer it to The Florida Commission on Human Relations, the Respondent.

Florida Law states that "The Florida Civil Rights Act of 1992...shall be liberally construed to further the general purposes...and the special purposes involved, [/s/ 760.01(3)], which supports this argument that the "more lenient" time limit alleged in the second half of the "Argument" section and supported by Lower Tribunal's own guidelines is also correct, and that this State Statute should not be struck down and declared invalid.

The Court has generally found that "[w]hen facts are to be considered and determined in administration of statutes [such as the Civil Rights laws], there must be provisions prescribed for due notice to interested parties as to time and place of hearings with appropriate opportunity to be heard in orderly procedure sufficient to afford due process and equal protection of the laws in any official action taken under the delegated authority..." (Fla. 1942 / Declaration of Rights, §§ 1, 12. *McRae v. Robins*, 9 So.2d 284, 151 Fla. 109)

Although time requirements apparently were met, the fact that the FCHR is not as well known as the Equal Opportunity Employment Commission might indicate that Petitioner did not have "due notice" to interested parties. This argument seems possibly valid based on the lack of knowledge by the general public of FCHR as indicated by recent, unscientific polls taken by the Petitioner.

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CONCLUSION

Fla.R.App.9.040 (General Provisions) (d) (Amendment) allow that the court, in the interest of justice, may allow any portion of the proceedings to be amended so it may be judged on its merits, not on a technicality - and also that, absent any amendment, the court may ignore any error or defect that does not adversely affect substantial rights of parties to justice - as hinted by the concept of the 1975 Florida Statutes, section 59.041, of the "harmless error statute," as described in Committee Notes for this section of the Florida Rules of Appellate Procedure, 2002.

Petitioner, without any assistance of any lawyer, and through much hard research to communicate a brief, therefore respectfully seeks the assistance of This Honorable Court with the hopes that any unintentional errors may be mercifully overlooked and the complaints before Lower Tribunal be judged on their merits and not dismissed.

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Pursuant to Fla.R.App.P.9.210(a), Plaintiff hereby certifies that standards were met by using the following in typeset: Font Size = 14 ; Font Type = "Times New Roman" ; Margins = 1 inch in top, bottom, left, and right.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent to the following parties this ____ day of _____, 2003:

Denise Crawford, Clerk of the Commission, c/o Fla. Comm. on Human Relations
2009 Apalachee Parkway, Suite 100, Tallahassee, FL 32301-4857
(Sent in duplicate by First Class U.S. Postal Mail - from two separate locations to ensure delivery, and with one copy Certified with return receipts)

Second District Court of Appeal, State of Florida
Post Office Box 327 ~~~ 1005 East Memorial Boulevard, Lakeland, FL 33801
(Sent by hand-delivery, in duplicate as requested by clerk's office and possibly required by the appropriate Fla.R.App.P.)

Respectfully submitted,

GORDON W. WATTS, Petitioner / Plaintiff / Appellant
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Acting Attorney for the Appellant:
Gordon W. Watts, PRO SE

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