

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PARRISH MANAGEMENT, INC.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. 95-3334RX
	)	
FLORIDA COMMISSION ON HUMAN	)	
RELATIONS,	)	
	)	
Respondent.	)	
_____	)	

FINAL ORDER

Following notice to all parties, Don W. Davis, a Hearing Officer for the Division of Administrative Hearings, held a final hearing in the above-styled case on August 7, 1995, in Tallahassee, Florida.

APPEARANCES

For Petitioner: W. Douglas Moody, Jr., Esquire  
Bateman Graham  
300 East Park Avenue  
Tallahassee, Florida 32301

For Respondent: Dana Baird, Esquire  
325 John Knox Road, Suite 240  
Tallahassee, Florida 32303-4149  
and  
Gregory A. Chaires, Esquire  
Allen R. Grossman, Esquire  
Assistant Attorneys General  
Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

The issue is whether Rule 60Y-2.004(2)(e) and Rule 60Y-5.004, Florida Administrative Code, delegating to the Executive Director of the Florida Human Relations Commission the authority to make reasonable cause determinations pursuant to Section 760.11(3), Florida Statutes, constitute an invalid exercise of delegated legislative authority?

PRELIMINARY STATEMENT

This matter began on June 30, 1995, when Petitioner, Parrish Management, Inc., filed its petition seeking an administrative determination pursuant to Section 120.56, Florida Statutes, of the validity of Rule 60Y-2.004(2)(e) and Rule 60Y-5.004, Florida Administrative Code.

On July 24, 1995, counsel for Respondent filed a Motion For Summary Final Order pursuant to Rule 60Q-2.030, Florida Administrative Code. Argument was heard August 7, 1995, and the motion was denied.

At the final hearing, Respondent presented three (3) exhibits and testimony of two (2) witnesses. Petitioner presented no testimony or exhibits in accordance with the agreement of the parties that the asserted standing of Petitioner to bring this action was uncontested.

The transcript of the final hearing was filed with the Division of Administrative Hearings on September 7, 1995. The parties requested and were granted leave to file proposed final orders on September 22, 1995. The proposed findings of fact submitted by the parties are addressed in the appendix to this final order.

#### FINDINGS OF FACT

1. Respondent is the Florida Human Relations Commission (Commission) created by Chapter 760, Florida Statutes, and is an agency within the meaning of Section 20.03(11), Florida Statutes (1993). The Commission consists of twelve (12) members appointed by the Governor. The Commission is charged with the administration of the Florida Civil Rights Act of 1992.

2. Petitioner is Parrish Management, Inc. Petitioner is an "employer" within the meaning of Section 760.02(7), Florida Statutes, and, in accordance with stipulation of the parties, has standing to bring this proceeding. Evidence in this record of Petitioner's involvement as a participating party in another administrative proceeding convened pursuant to provisions of Section 120.57, Florida Statutes, as the result of a determination of reasonable cause, further serves to underscore Petitioner's qualification as a substantially affected party for purposes of this proceeding.

3. Respondent enacted Rule 60Y-2.004(2)(e) and Rule 60Y-5.004, Florida Administrative Code, ostensibly pursuant to authority contained in Subsections 760.06(6) and (12), Florida Statutes. Those statutory provisions read as follows:

Powers of the commission.--Within the limitations provided by law, the commission shall have the following powers:

\* \* \*

(6) To issue subpoenas for, administer oaths or affirmations to and compel the attendance and testimony of witnesses or to issue subpoenas for and compel the production of books, papers, records, documents and other evidence pertaining to any investigation or hearing convened pursuant to the powers of the commission. In conducting an investigation, the commission and its investigators shall have access at all reasonable times to premises, records, documents, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. The authority to issue subpoenas and administer oaths may be

delegated by the commission, for investigations or hearings, to a commissioner or the executive director. In the case of a refusal to obey a subpoena issued to any person, the commission may make application to any circuit court in this state, which shall have jurisdiction to order the witness to appear before the commission to give testimony and to produce evidence concerning the matter in question. Failure to obey the court's order may be punished by the court as contempt. If the court enters an order holding a person in contempt or compelling the person to comply with the commission's order or subpoena, the court shall order the person to pay the commission reasonable expenses, including reasonable attorneys' fees, accrued by the commission in obtaining the order from the court.

\* \* \*

(12) To adopt, promulgate, amend, and rescind rules to effectuate the purposes and policies of the Florida Civil Rights Act of 1992 and govern the proceedings of the commission in accordance with chapter 120. (emphasis supplied.)

4. Rule 60Y-2.004(2)(e) and Rule 60Y-5.004, Florida Administrative Code, read as follows:

60Y-2.004 General Description of Organization and Functions of Commission Staff.

(2) The Executive Director is the chief administrative officer of the Commission and is responsible for implementing policy of the Commission. The Executive Director is appointed by the Commission and may be removed by the Commission for cause. The Executive Director has the following duties:

(e) make determinations as provided by Rule 60Y-5.004;

\* \* \*

60Y-5.004 Executive Director's Investigatory Determination; Notice.

(1) Upon completion of an investigation, if a complaint has not been settled or withdrawn, the Office of Employment Investigations shall report the investigation, with recommendation, to the Office of General Counsel. The Office of General Counsel shall review the report and shall make a recommendation to the Executive Director as to whether there is reasonable cause to believe that an unlawful employment practice has occurred.

(2) If the recommendation is based upon lack of jurisdiction over the respondent or subject matter of the complaint or upon untimely filing of the complaint, the Executive Director may dismiss the complaint pursuant to Subsection 60Y-5.006(3) or (11), provided that the investigation does not reveal any disputed issues of material fact. The Executive Director shall issue a

determination on the foregoing bases of lack of jurisdiction or untimeliness where disputed issues of material fact appear to exist.

(3) After a determination has been made by the Executive Director, the Clerk shall serve a Notice of Determination, with copies of the determination, upon the complainant and the respondent.

(4) A Notice of Determination of Reasonable Cause shall include an invitation to participate in conciliation.

(5) A Notice of Determination of No Reasonable Cause, No Jurisdiction or Untimeliness shall advise the complainant of the right to file a Petition for Relief, pursuant to Rule 60Y-5.008, within 30 days of service of the notice. A form, Petition for Relief, hereby incorporated by reference, in blank, shall be provided to the complainant at the time of service of the notice.

(6) A Notice of Determination shall further advise the parties of the right to request redetermination, pursuant to Rule 60Y-5.007, within 20 days of service of the notice. If the complainant requests redetermination, the 30-day period for filing a Petition for Relief shall be tolled until service of a Notice of Redetermination.

(7) After service of a Notice of Determination, the parties named in the determination may inspect the records and documents, in the custody of the Commission, which pertain to the determination. The Executive Director may direct that a particular record, document or portion thereof be withheld from inspection by a party only when necessary for the protection of a witness or third party, or for the preservation of a trade secret.

5. Helpful to an understanding of the legal authority of the Commission and consideration of whether the subject rules are an appropriate result of legislatively delegated authority, is Section 760.11(4), Florida Statutes, which provides that:

In the event that the Commission determines that there is reasonable cause to believe that a discriminatory practice has occurred in violation of the Florida Civil Rights Act of 1992, the aggrieved person may either:

(a) Bring a civil action against the person named in the complaint in any court of competent jurisdiction; or

(b) Request an administrative hearing under s. 120.57.

The election by the aggrieved person of filing civil action or requesting an administrative hearing under this subsection is the exclusive procedure available to the aggrieved person pursuant to this act. (emphasis supplied.)

6. Further, Section 760.11(3), Florida Statutes, provides in pertinent part that, "Within 180 days of the filing of the complaint, the Commission shall determine if there is reasonable cause to believe that discriminatory practice has occurred in violation of the Florida Civil Rights Act of 1992." (emphasis supplied.)

7. As noted, Section 760.11(4), Florida Statutes, provides two separate avenues of relief, one administrative and one judicial. Additionally, as set forth in Section 760.11(5), Florida Statutes, the judicial remedy permits the recovery of back pay, and allows damages for mental anguish, loss of dignity, any other intangible injuries, and punitive damages.

8. The Commission's determination of reasonable cause pursuant to Section 760.11(4), Florida Statutes, is a condition or restriction upon the exercise by a complainant of a substantive right, i.e. the right to judicial remedy. Accordingly, provisions of Section 760.11(4), Florida Statutes, which authorize the Commission's determination constitute a substantive, as opposed to a procedural, law.

9. In those instances of the Commission's determination of no reasonable cause, Section 760.11(7), Florida Statutes, provides:

If the Commission determines that there is not reasonable cause to believe that a violation of the Florida Civil Rights Act of 1992 has occurred, the commission shall dismiss the complaint. The aggrieved person may request an administrative hearing under s.120.57, but any such request must be made within 35 days of the date of determination of reasonable cause any such hearing shall be heard by a hearing officer and not by the commission or a commissioner. If the aggrieved person does not request an administrative hearing within the 35 days, the claim will be barred. . . .

10. As established by evidence presented at the final hearing, members of the Commission meet formally on a quarterly basis throughout the year to consider policy issues but have no formal knowledge or involvement in any pending case prior to presentment of recommended orders rendered by Hearing Officers of the Division of Administrative Hearings.

11. As established through official recognition of provisions of Section 760.11, Florida Statutes, the Commission is an adjudicative body with the quasi-judicial authority to determine the substantive rights of the parties, award back pay, prohibit specified discriminatory employment practices and provide affirmative relief from the effects of those practices.

#### CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over this matter. Section 120.56, Florida Statutes.

13. In accordance with provisions of Section 120.56, Florida Statutes, Petitioner has standing, as a substantially affected person, to bring this proceeding.

14. As noted in Section 760.06(6), Florida Statutes, the Commission may delegate the authority to "issue subpoenas and administer oaths" to either "a commissioner or the Executive Director" for investigations or hearings. The plain meaning of the statute is clear. The Commission's delegation authority in this regard is limited solely to issuance of subpoenas and administration of oaths and is not reasonably susceptible to another definition, i.e, authority to empower the Commission's Executive Director to hold an administrative hearing or make determinations of reasonable cause.

15. Challenged Rule 60Y-2.004(2), Florida Administrative Code, clearly supports the concept that statutory authority for substantive decision-making is lodged in the Commission by the rule's declaration that the Executive Director "is the chief administrative officer of the Commission and is responsible for implementing policy of the Commission." Unfortunately, the rule concludes with an internal inconsistency by assignment to the Executive Director of the duty to "make determinations as provided in Rule 60Y-5.004, Florida Administrative Code. See, Rule 60Y-2.004(2)(e), Florida Administrative Code.

16. Pursuant to Rule 60Y-5.004, Florida Administrative Code, the Commission's Executive Director is clearly delegated authority by the Commission to make a formal determination of the existence of reasonable cause that an illegal employment practice exists with regard to a particular complaint.

17. Clearly, Rule 60Y-5.004, Florida Administrative Code, expands and contravenes the statutory authority contained in Section 760.11(4), Florida Statutes, which grants to the Commission, not the Executive Director, the authority to make the substantive, non ministerial decisions known as reasonable cause determinations.

18. Rule 60Y-5.004, Florida Administrative Code, further expands and contravenes the statutory authority contained in Section 760.11(4), Florida Statutes, by attempting to delegate to the Executive Director authority to make determinations of no reasonable cause. Such attempted delegation by the Commission of substantive decision making to the Executive Director is also without statutory support.

19. As noted above, the Commission is an adjudicative body with the quasi-judicial authority to determine the substantive rights of the parties in accordance with statutory requirements and must be viewed as vested with more than the mere authority to promulgate procedural rules. Each decision the Commission makes has significant implications as to what rights a complainant or an employer may exercise. Illustrative of the point is that a determination of no reasonable cause impacts a complainant's substantive right, pursuant to Section 760.11(4), Florida Statutes, to pursue a judicial remedy. That right to that remedy is either extinguished or substantially impacted inasmuch as the complainant is then forced to follow the long and winding path of a formal administrative proceeding before the Division of Administrative Hearings with the end hope of a favorable recommended order which will be adopted by the Commission in a final order. Statutory procedures which impose conditions or restrictions upon the exercise of a substantive right are substantive laws. See, *Smith v. Dept. of Insurance*, 507 So. 2d 1080 (Fla. 1987).

20. Respondent maintains that legislation establishing the Commission is a rescript of the federal legislation creating the EEOC and, accordingly, must be granted the interpretations given the federal act by federal courts.

21. Not only does Respondent's argument ignore substantive differences in the purpose and the functions of the Commission, the EEOC and the remedies available to affected parties under the respective statutes governing these two bodies, nothing in the federal experience is instructive in determining whether the Florida legislature has delegated authority to the Commission to authorize the Executive Director to make reasonable cause determinations.

22. Accordingly, a decision by the Commission that no reasonable cause exists is a substantive decision which defines or effects the exercise of a substantive right since that decision forecloses or impairs the exercise of a civil action in a state court. Foreclosing or impairing the substantive right to pursue a complaint of discrimination by imposing substantial impediments to its free exercise in the form of presuit administrative proofs is a substantive decision which the Executive Director is not statutorily empowered to make.

23. Finally, while agency heads are granted the general authority to delegate certain functions assigned them pursuant to Section 20.05(1)(b), Florida Statutes, that authority is subject to limitation. Absent statutory authority, only ministerial acts and not substantive powers vested specifically in the agency head may be delegated. Attorney General Opinion 74-116.

#### CONCLUSION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ordered that Rules 60Y-2.004(2)(e) and 60Y-5.004, Florida Administrative Code, constitute an invalid exercise of delegated legislative authority and expressly contravene the requirements of Chapter 760, Florida Statutes, in an attempt to delegate nondelegable powers to the Executive Director of the Commission.

DONE and ORDERED in Tallahassee, Florida, this 13th day of October, 1995.

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DON W. DAVIS, Hearing Officer  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-1550  
(904) 488-9675

Filed with the Clerk of the  
Division of Administrative Hearings  
this 13th day of October, 1995.

#### APPENDIX

In accordance with provisions of Section 120.59, Florida Statutes, the following rulings are made on the proposed findings of fact submitted on behalf of the parties.

Petitioner's Proposed Findings

- 1.-3. Accepted.
- 4. Adopted, by reference.
- 5.-6. Accepted.
- 7.-9. Rejected, subordinate.
- 10. Rejected, relevance.

Respondent's Proposed Findings

- 1.-7. Accepted.
- 8.-10. Rejected, unnecessary to result reached.
- 11.-13. Rejected, subordinate to HO findings.
- 14.-17. Accepted, not verbatim.

COPIES FURNISHED:

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APPELLATE RIGHTS

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF THE NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DIVISION OF ADMINISTRATIVE HEARINGS AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

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DISTRICT COURT OPINION

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IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

FLORIDA COMMISSION ON HUMAN  
RELATIONS,

Appellant,

PARRISH MANAGEMENT, INC.,

Appellee.

\_\_\_\_\_ /

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED.

CASE NO. 95-3880  
DOAH CASE NO. 95-3334RX

Opinion filed August 15, 1996.

An appeal from an order of the Division of Administrative Hearings.

Dana Baird, General Counsel; Harden King, Assistant General Counsel, Florida Commission on Human Relations, Tallahassee, for appellant.

W. Douglas Moody, Jr., of Bateman Graham, P.A., Tallahassee, for appellee.

PER CURIAM

The Florida Commission on Human Relations challenges an order of the Division of Administrative Hearings (DOAH) which holds Florida Administrative Code Rules 60Y-2.004(2)(e) and 60Y-5.004 constitute invalid exercises of delegated legislative authority and expressly contravene the requirements of Chapter 760, Florida Statutes. We reverse because the Commission did not exceed its delegated authority by enacting the challenged rules.

The Florida Commission on Human Relations is established by section 760.03, Florida Statutes (1993), and is charged with the administration of the Florida Civil Rights Act of 1992. A complaint of discrimination was filed with the Commission naming appellee Parrish Management, Inc. as the respondent-employer. After an investigation on the merits, the Executive Director of the Commission issued an investigatory determination of reasonable cause to believe that an unlawful employment practice had occurred.

In June 1995, Parrish Management filed a rule challenge proceeding on Rules 60Y-2.004(2)(e) and 60Y-5.004, Florida Administrative Code. Rule 60Y-2.004(2)(e) provides:

60Y-2.004 General Description of Organization and functions of Commission Staff

(2) The Executive Director is the chief administrative officer of the Commission and is responsible for implementing policy of the Commission. The Executive Director is appointed by the Commission and may be removed by the Commission for cause. The Executive Director has the following duties:

(e) make determinations as provided by Rule 60Y-5.004  
Rule 60Y-5.004 provides in pertinent part:

60Y-5.004 Executive Director's Investigatory Determination; Notice.

(1) Upon completion of an investigation, if a complaint has not been settled or withdrawn, the Office of Employment Investigations shall report the investigation, with recommendation, to the Office of General Counsel. The Office of General Counsel shall review the report and shall make a recommendation to the Executive Director as to whether there is reasonable cause to believe that an unlawful employment practice has occurred.

(2) If the recommendation is based upon lack of jurisdiction over the respondent or subject matter of the complaint or upon untimely filing of the complaint, the Executive Director may dismiss the complaint pursuant to Subsection 60-5.006(3) or (11), provided that the investigation does not reveal any disputed issues of material fact. The Executive Director shall issue a determination on the foregoing bases of lack of jurisdiction or untimeliness where disputed issues of material fact appear to exist.

(3) After a determination has been made by the Executive Director, the Clerk shall serve a Notice of Determination, with copies of the determination, upon the complainant and the respondent.

Parrish Management argued, and DOAH found, that an investigatory determination of no reasonable cause impacts a complainant's substantive right to pursue a judicial remedy pursuant to section 760.11(4), Florida Statutes (1993). 1/ DOAH further found that the Commission may not delegate substantive powers vested specifically with the agency head to the executive director. DOAH reasoned that because section 760.06, which sets forth the powers of the Commission, expressly allows delegation by the Commission to a commissioner or

the executive director of authority to issue subpoenas and administer oaths, the Commission is limited to that delegation and may not delegate its other powers and duties to the executive director.

Section 760.03, which creates the "Florida Commission on Human Relations", provides that [t]he commission shall appoint, and may remove, an executive director who, with the consent of the commission, may employ a deputy, attorneys, investigators, clerks, and such other personnel as may be necessary adequately to perform the functions of the commission within budgetary limitations." s 760.03(7), Fla. Stat. Clearly the legislative intent is to allow the Commission to delegate to the executive director the authority necessary to adequately "perform the functions of the commission." Appellee contends that section 760.06(6) restricts the delegation of the Commission's power to those activities specifically mentioned; however, when read in pari materia with section 760.03(7), that section cannot be so limited. If the term "commission" as used in the statute is restricted solely to the panel of commissioners and involved functions which the commissioners could not delegate, there would be no need for a staff.

By statute, "the commission shall determine if there is reasonable cause to believe that discriminatory practice has occurred in violation of the Florida Civil Rights Act of 1992." s 760.11(3), Fla. Stat. The same statute also provides, however, that the commission shall clearly stamp on the face of the complaint the date the complaint was filed with the commission; shall within 5 days of the complaint being filed, send a copy of the complaint to the person who allegedly committed the violation; shall investigate the allegations in the complaint; and shall promptly notify the aggrieved person and the respondent of the reasonable cause determination, the date of such determination, and the options available under this section. s760.11, Fla. Stat. The term "Commission" cannot be reasonably limited to signify only the panel of commissioners acting collegially.

REVERSED.

BARFIELD, C.J. and KAHN, J., CONCUR; DAVIS, J. DISSENTS W/ WRITTEN OPINION

DAVIS, J., DISSENTING.

I respectfully dissent. In Chapter 760, Florida Statutes, the Legislature conferred the responsibility for making the determination of reasonable cause on the Commission. Section 760.11(3), Florida Statutes (1993). The challenged rules, delegating that responsibility to the Executive Director, are an invalid exercise of delegated legislative authority. The determination of reasonable cause is a significant decision, which affords or precludes the right to bring a civil action. Section 760.11(4), Florida Statutes (1993). This is not a delegable ministerial act comparable to stamping a filing date on a complaint, and therefore, is not delegable under section 20.05, Florida Statutes (1993). I would affirm the well-reasoned order of the Hearing Officer.

#### ENDNOTE

1/ Section 760.11(4) provides:

In the event that the commission determines that there is reasonable cause to believe that a discriminatory practice has occurred in violation of the Florida Civil

Rights Act of 1992, the aggrieved person may either:  
(a) Bring a civil action against the person named in the complaint in any court of competent jurisdiction or  
(b) Request an administrative hearing under s. 120.57.

MANDATE  
From  
DISTRICT COURT OF APPEAL OF FLORIDA  
FIRST DISTRICT

To the Honorable DON W. DAVIS, Hearing Officer  
Division of Administrative Hearings

WHEREAS, in that certain cause filed in this Court styled:

PARRISH MANAGEMENT, INC.

vs. CASE NO. 95-3880  
YOUR CASE NO. 95-3334RX  
FLORIDA COMMISSION ON HUMAN  
RELATIONS

The attached opinion was rendered on August 15, 1996.

YOU ARE HEREBY COMMANDED that further proceedings be had in accordance with said opinion, the rules of this Court and the laws of the State of Florida.

WITNESS the Honorable Edward T. Barfield

Chief Judge of the District Court of Appeal of Florida, First District and the Seal of said court at Tallahassee, the Capitol, on this 6th day of December, 1996.

(seal) \_\_\_\_\_  
Karen Roberts  
Deputy Clerk, District Court of Appeal of Florida,  
First District