

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: MARCH 8, 2019, PETITION Case No. 19-1774DS
FOR DECLARATORY STATEMENT

ELIAS MAKERE,

Petitioner.

FINAL ORDER DECLINING PETITION FOR DECLARATORY STATEMENT

On March 8, 2019, Petitioner, Elias Makere, filed a Petition for Declaratory Statement (Petition) with the Florida Division of Administrative Hearings (Division or DOAH). Notice of the Petition was published in the Florida Administrative Register, Volume 45, Number 49, on March 12, 2019. The Division has not received a petition to intervene in this action from any other person. No hearing on the Petition was requested and none was held.

ALLEGATIONS OF THE PETITION

Petitioner alleges that on June 30, 2017, he filed an employment discrimination complaint with the Florida Commission on Human Relations (Commission) against Allstate Insurance Company. He "sued" Allstate on January 19, 2018, and the case was referred to the Division, where it is docketed as Makere v. Allstate Insurance Co., DOAH Case No. 18-0373. Mr. Makere asserts that the hearing in Case No. 18-0373 has concluded, and that following the entry of the recommended order, the Division will relinquish jurisdiction back to the Commission, and the Commission will enter a final order. Petitioner asserts that without definitive guidance, he has doubts as to what constitutes "the entire record" that will be considered in the Commission's review of the DOAH recommended order.

On these facts, Petitioner asks that the following question be answered in a declaratory statement: Petitioner respectfully requests a declaration on what DOAH defines to be the "entire record" of Petitioner's case.

COMMENTS

The Division received no comments within the period prescribed by Florida Administrative Code Rule 28-105.002.

CONCLUSIONS OF LAW

Section 120.565(1), Florida Statutes (2018), provides: "Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances." Rule 28-105.001 specifies that a declaratory statement "is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority." (Emphasis added). There are limitations on the use of declaratory statements, and those limitations control here.

Declaratory statements are intended to allow someone to select a proper course of action in advance and to avoid costly administrative litigation. Chiles v. Dep't of State, Div. of Elec., 711 So. 2d 151 (Fla. 1st DCA 1998). It is not appropriate to issue a declaratory statement regarding rights that are being "actively litigated either before it in another docket or elsewhere." Citizens v. Fla. Pub. Serv. Comm'n, 164 So. 3d 58, 62 (Fla. 1st DCA 2015); Gopman v. Dep't of Educ., 908 So. 2d 1118, 1123 (Fla. 1st DCA 2005) ("[t]he rule is that 'declaratory statement proceedings are not properly filed on issues simultaneously litigated in judicial or other administrative proceedings . . .'" "[and is] not an appropriate remedy where there is related pending litigation."); see also Padilla v. Liberty Mut. Ins. Co., 832 So. 2d 916, 919-20 (Fla. 1st DCA 2003); Novick v. Dep't of Health, 816 So. 2d 1237, 1240 (Fla. 5th DCA 2002).

As Petitioner readily states, he is seeking an interpretation of a statute as it applies to pending litigation in his proceeding against Allstate. What constitutes the record in a section 120.57(1) proceeding is already defined by statute. § 120.57(1)(f), Fla. Stat. This definition applies to all litigants, not just Petitioner in his particular set of circumstances. Moreover, Petitioner is requesting the Division to interpret a statute as it will be applied by a different agency. In other words, he is seeking an interpretation from one agency in an attempt to bind another. For the Division to

provide such an interpretation would be inconsistent with the purpose for declaratory statements.

CONCLUSION

The Petition requests a declaratory statement on issues that are being litigated in an administrative proceeding. Moreover, the Petition requests an interpretation from one agency regarding the parameters of what can be considered by another agency in the separate administrative proceeding and because this question is beyond the scope of a declaratory statement, Petitioner's request for Declaratory Statement is denied.

DONE AND ORDERED this 3rd day of April, 2019, in Tallahassee, Leon County, Florida.



ROBERT S. COHEN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of April, 2019.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

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 the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.