STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PHILIP J. STODDARD, Petitioner, vs. DEPARTMENT OF STATE, DIVISION OF LICENSING, Respondent.	)	Case No. 00-4199RU

FINAL ORDER OF DISMISSAL

This matter came on for consideration of Respondent's Motion to Dismiss Petition or for Summary Final Order Dismissing Rule Challenge Petition for Failure to Constitute a Cause of Action and for Lack of Standing filed on October 20, 2000, before the Division of Administrative Hearings, by its Administrative Law Judge, Suzanne F. Hood.

APPEARANCES

For Petitioner: Philip J. Stoddard, pro se
288 St. George Street
St. Augustine, Florida 32084

For Respondent: H. Wayne Mitchell, Esquire
Department of State
Division of Licensing
The Capitol, Mail Station 4
Tallahassee, Florida 32399-0250

STATEMENT OF THE ISSUES

The issues are whether Petitioner's rule challenge petition should be dismissed for failure to present issues that meet the requirements of Sections 120.56(1), 120.56(3), and 120.56(4), Florida Statutes, and if so, whether Respondent is entitled to an award of costs and attorneys' fees pursuant to Sections 120.569(2)(e), 120.595(3), and 120.595(4), Florida Statutes.

PRELIMINARY STATEMENT

On October 10, 2000, Petitioner Philip J. Stoddard (Petitioner) filed a Request for Formal Administrative Hearing. Petitioner's request challenged one of Respondent Department of State, Division of Licensing's (Respondent) existing rules, Rule 1C-3.100(3)(a), Florida Administrative Code, as an invalid exercise of delegated legislative authority. Petitioner also alleged that certain of Respondent's statements were rules and that Respondent had not adopted them as required by Section 120.54, Florida Statutes.

On October 17, 2000, the Division of Administrative Hearings issued an Order of Assignment. This order advised the parties that the case was assigned to Administrative Law Judge Harry L. Hooper.

On October 20, 2000, Respondent filed a Motion to Dismiss Petition or for Summary Final Order Dismissing Rule Challenge

Petition for Failure to Constitute a Cause of Action and for Lack of Standing.

On October 23, 2000, the Division of Administrative Hearings transferred the case to the undersigned.

Petitioner filed a Motion for Leave to Amend on October 23, 2000. Petitioner simultaneously filed an Amended Request for Formal Administrative Hearing in the instant case.

On October 24, 2000, the undersigned issued a Notice of Hearing, scheduling the formal hearing for November 6, 2000. The hearing is hereby cancelled for the reasons set forth below. On October 25, 2000, Petitioner filed a Motion to Shorten Time for Discovery. That same day, Respondent filed a Motion to Abate Further Motion/Discovery Practice Pending Ruling on Dispositive Motion to Dismiss.

On October 25, 2000, Respondent filed its response in opposition to Petitioner's Motion for Leave to Amend. Petitioner's Motion for Leave to Amend is denied for the reasons set forth below in the Conclusions of Law.

On October 26, 2000, Petitioner filed an Amended Motion to Shorten Time for Discovery.

On October 27, 2000, Petitioner filed a Memorandum of Law in Opposition to Respondent's Motion to Dismiss or for Summary Final Order.

On October 27, 2000, the undersigned heard oral argument in a telephone conference on all pending motions. During that conference, the undersigned granted Respondent's Motion to Abate Further Motion/Discovery practice Pending Ruling on Dispositive Motion to Dismiss.

After the telephone conference on October 27, 2000, Petitioner filed a Notice of Withdrawal of: (1) Petitioner's Motion to Shorten Time for Discovery; and (2) Petitioner's Challenge to Rule 1-C3.100(3)(a), Florida Administrative Code.

FINDINGS OF FACT

1. Petitioner filed an application for a Class "C" private investigator license on or about May 15, 2000.

2. By letter dated September 5, 2000, Respondent advised Petitioner that his application for a Class "C" license as a private investigator was denied. The letter stated as follows in relevant part:

> Failure to qualify under Section 493.6203, Florida Statutes. You have not demonstrated the necessary lawfully gained, verifiable, full-time experience or appropriate training. Your application is therefore being denied.

3. Petitioner filed a request for an administrative hearing with Respondent on or about September 13, 2000. He filed an amended request for hearing with Respondent on or about September 15, 2000.

4. On September 27, 2000, Respondent issued an Order Dismissing Petition with Leave to Amend. This order referenced Rule 28-106.201(2), Florida Administrative Code, and found that Petitioner's hearing request was substantially deficient because it did not contain the following:

> (a) An explanation of how the petitioner's substantial interest will be affected by the agency determination;
> (b) A statement of disputed issues of material fact. The Petitioner has not disputed the material facts at issue in this case; which is whether the Petitioner provided the Division with information which the Division could then verify. Verification is achieved by actually speaking with the persons provided by an applicant to obtain information as to what duties were performed and to obtain a percentage of the time worked which involved investigative work. Petitioner provided information concerning former employers in the Affidavit of Experience section of the application. After submitting the application, Petitioner submitted an affidavit from an investigator, however that investigator was not Petitioner's employer and therefore not in the position to verify Petitioner's experience. For the first time, in Petitioner's requests for a hearing, Petitioner submits information concerning a former career in executive recruiting consisting of an affidavit, notarized in Maryland, of a former co-worker. This information was never provided to the Division and is not listed anywhere on the application submitted by Petitioner nor is there any way to verify any of the information in that affidavit as the affiant's address and telephone number are not provided. In his petitions for hearing Petitioner has raised only legal issues

which are not legally the forum of a formal administrative hearing. Section 120.569(1), Florida Statutes . . . .
(c) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
(d) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action . . . . (Emphasis added)

5. Respondent's Order Dismissing Petition with Leave to Amend also determined that: (a) Petitioner's hearing requests improperly mixed rule validity challenge arguments for Section 120.56, Florida Statutes, proceedings with disputed material fact arguments for proceedings under Sections 120.569 and 120.57, Florida Statutes; (b) Petitioner's argument that his Juris Doctorate training and related legal work experience met the statutory requirements of Section 493.6203(4), Florida Statutes, was a statutory construction/legal argument presented in the guise of factual issues; (c) The Division of Administrative Hearings does not have jurisdiction to decide constitutional validity arguments in a Section 120.57(1), Florida Statutes, proceeding; and (d) Petitioner's argument that he is entitled to licensure by default due to the failure of the agency to meet the 90-day time requirement of Section 120.60, Florida Statutes, is a legal issue in light of the tolling provision of Section 493.6108, Florida Statutes.

6. In a footnote to the Order Dismissing Petition with Leave to Amend, Respondent referred to two documents that Respondent attached as a courtesy to Petitioner. The first document was Respondent's Opinion Letter No. 92-50. This letter responded to a specific inquiry, determining that an attorney, who was not a member of the Florida Bar and who wanted to perform sub-contract investigative work for a licensed private investigation agency, was not exempt under Section 493.6102(6), Florida Statutes, from having to separately qualify for "C" licensure requirements.

7. The second document was Respondent's internal memorandum, identified herein as Opinion No. 92-4. This memorandum determined that legal training and work experience of attorneys do not automatically qualify them for a Class "C" license. Instead, each application should be considered on a case-by-case basis.

8. On October 10, 2000, Petitioner filed his Request for Formal Administrative Hearing, citing Section 120.54, Florida Statutes, as authority to challenge certain of Respondent's rules and statements defined as rules. Petitioner claims that Respondent routinely applies heightened scrutiny to applications submitted by attorneys, persons who are qualified to be attorneys, or others who have research and investigative skills but no actual police or criminal justice experience.

9. Petitioner's hearing request first argues that Respondent's Order Dismissing Petition with Leave to Amend, together with its attachments, all of which are referenced above, set forth policies having the effect of rules.

10. In Petitioner's "First Rule Challenge," he argues that Respondent's interpretation of the time limitations for processing license applications in Section 120.60, Florida Statutes, together with Respondent's interpretation of the tolling provisions of Section 493.6108(1), Florida Statutes, constitute a rule. Petitioner concludes that Respondent is without delegated legislative authority to extend the 90-day application processing time of Section 120.60, Florida Statutes, unless Respondent does not receive the fingerprint investigation report required by Section 493.6108(1), Florida Statutes, prior to the expiration of the 90-day processing period.

11. Petitioner's "Second Rule Challenge" argues that Respondent's Opinion No. 92-4, a memorandum dated January 23, 1992, constitutes a rule because: (a) Respondent uses the opinion to define the "practice of law"; and (b) Respondent relies on the opinion in refusing to recognize experience gained by lawyers in the practice of their profession unless the lawyer was engaged in "full-time investigative work." However, Respondent concludes by acknowledging that the opinion recommends a case-by-case analysis of each attorney's

application to determine whether the attorney has the experience and training required by Section 493.6203(4), Florida Statutes.

12. Petitioner's "Third Rule Challenge" also argues that Respondent's Opinion No. 92-4 constitutes a rule. According to Petitioner, Respondent relies on the opinion to find that an attorney, even if a member of the Florida Bar, lacks creditable "college coursework related to criminal justice, criminology, or law enforcement administration." See Section 493.6203(4)(b), Florida Statutes. Petitioner concludes that Respondent does not have authority to interpret the meaning of the statutory term, "related to," so narrowly.

13. Petitioner's hearing request did not include a "Fourth Rule Challenge."

14. Petitioner's "Fifth Rule Challenge" states that Respondent's Opinion Letter No. 92-50, dated October 20, 1992, is an unpromulgated rule. Petitioner claims that Respondent relies on this opinion to set broad policy concerning the agency's treatment of the experience and educational qualification of unlicensed attorneys. Petitioner states that the opinion infringes on the regulatory jurisdiction of the Florida Bar. Petitioner asserts that he is substantially affected because he is an unlicensed attorney.

15. Petitioner's "Sixth Rule Challenge" states that Respondent's Order Dismissing Petition with Leave to Amend is an

unpromulgated rule. Specifically, Petitioner claims Respondent created a rule by refusing to credit applicants with work experience that is not "verifiable by actually speaking with the persons provided by an applicant to obtain information as to what duties were performed and to obtain a percentage of the time worked which involved investigative work." According to Petitioner, Respondent has no authority to establish such an agency specific meaning of the common term, "verifiable experience."

16. Petitioner's "Seventh Rule Challenge" argues that Respondent has adopted a special meaning for the term "private investigation" which contravenes the statute. Petitioner takes issue with Respondent's interpretation of "private investigation" as defined in Section 493.6101(17), Florida Statutes. Petitioner also challenges Respondent's interpretation of the experience requirement of Section 493.6203(4), Florida Statutes.

17. Petitioner has withdrawn his "Eighth Rule challenge" regarding the validity of Rule 1C-3.100(3)(a), Florida Administrative.

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the subject matter and parties to this proceeding. Sections 120.54 and 120.56, Florida Statutes.

19. Petitioner's request for hearing pursuant to Section 120.56(4)(b), Florida Statutes, must show that he is substantially affected by agency statements meeting the definition of a rule and that Respondent has not adopted the statements as rules. Petitioner has not met this burden in his Request for Formal Administrative Hearing filed with the Division of Administrative Hearings on October 10, 2000, or his proposed Amended Request for Formal Administrative Hearing filed with the Division of Administrative Hearings on October 23, 2000.

20. Section 120.52(15), Florida Statutes, defines a "rule" as follows in pertinent part:

> (15) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirement of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule. The term does not include:
> (a) Internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public and which have no application outside the agency issuing the memorandum.
> (b) Legal memoranda or opinions issued to an agency by the Attorney General or agency legal opinions prior to their use in connection with an agency action.

21. Section 120.54, Florida Statutes, provides as follows in relevant part:

> 120.54 Rulemaking
> (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN EMERGENCY RULES.--
> (a) Rulemaking is not a matter of agency discretion. Each agency statement defined as a ruled by s. 120.52 shall be adopted by the rulemaking procedure provided by this section as soon as feasible and practicable.
>
> * * *
>
> (e) No agency has inherent rulemaking authority . . . .
>
> * * *
>
> (5) UNIFORM RULES.--
> (a)1. By July 1, 1997, the Administration Commission shall adopt one or more sets of uniform rules of procedure which shall be reviewed by the committee and filed with the Department of State. Agencies must comply with the uniform rules by July 1, 1998. The uniform rules shall establish procedures that comply with the requirement of this chapter. . . .
>
> * * *
>
> (b) The uniform rules of procedure adopted by the commission pursuant to this subsection shall include, but not be limited to:
>
> * * *
>
> 4. Uniform rules of procedure for the filing of petitions for administrative hearings pursuant to s. 120.569 or s. 120.57. Such rules shall include:
> a. The identification of the petitioner.

> b. A statement of when and how the petitioner received notice of the agency's action.
> c. An explanation of how the petitioner's substantial interests are or will be affected by the action or proposed action.
> d. A statement of all material facts disputed by the petitioner or a statement of the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action.
> f. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action.
> g. A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the proposed action.

22. Section 120.56, Florida Statutes, states as follows in pertinent part:

> 120.56 Challenges to rules.--
> (1) GENERAL PROCEDURES FOR CHALLENGING THE VALIDITY OF A RULE OR A PROPOSED RULE.--
> (a) Any person substantially affected by a rule or a proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.
> (b) The petition seeking an administrative determination must state with particularity the provisions alleged to be invalid with sufficient explanation of the facts or grounds for the alleged invalidity and facts sufficient to show that the person challenging a rule is substantially affected by it, or that the person challenging a proposed rule would be substantially affected by it.
> (c) The petition shall be filed with the division . . .

* * *

> (e) Hearings held under this section shall be conducted in the same manner as provided by ss. 120.569 and 120.57, except that the administrative law judge's order shall be final agency action. . . .
>
> * * *
>
> (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES; SPECIAL PROVISIONS.--
> (a) Any person substantially affected by an agency statement may seek an administrative determination that the statement violates s. 120.54(1)(a). The petitioner shall include the text of the statement or a description of the statement and shall state with particularity facts sufficient to show that the statement constitutes a rule under s. 120.52 and that the agency has not adopted the statement by the rulemaking procedure provided by s. 120.54.

23. Section 120.569, Florida Statutes, states as follows in relevant part:

> 120.569 Decisions which affect substantial interests.--
> (1) The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under s. 120.573 or s. 120.574. Unless waived by all parties, s. 120.57(1) applies whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, s. 120.57(2) applies in all other cases. . . .
> (2)(a) Except for any proceeding conducted as prescribed in s. 120.56, a petition or request for a hearing under this section shall be filed with the agency. If the agency requests an administrative law judge from the division, it shall so notify the division within 15 days after receipt of the petition or request. . . . .
>
> * * *

> (c) Unless otherwise provided by law, a petition or request for hearing shall include those items required by the uniform rules adopted pursuant to s. 120.54(5)(b)4. Upon the receipt of a petition or request for hearing, the agency shall carefully review the petition to determine if it contains all of the required information. A petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to the petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reason if the petition is not granted, and shall state the deadline for filing an amended petition if applicable.
> (d) The agency may refer a petition to the division for the assignment of an administrative law judge only if the petition is in substantial compliance with the requirement of paragraph (c).

24. Section 120.60, Florida Statutes, states as follows in relevant part:

> 120.60 Licensing.--
> (1) Upon receipt of an application for a license, an agency shall examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require. An agency shall not deny a license for failure to correct an error or omission or to supply additional information unless the agency timely notified the applicant within this 30 day period. An application shall be considered complete upon receipt of all

> requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired. Every application for a license shall be approved or denied within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. The 90-day time period shall be tolled by the initiation of a proceeding under ss. 120.569 and 120.57. An application for a license must be approved or denied within the 90-day or shorter time period, within 15 days after the conclusion of a public hearing hold on the application, or within 45 days after a recommended order is submitted to the agency and the parties, whichever is later. The agency must approve any application for a license or for an examination required for licensure if the agency has not approved or denied the application within the time periods prescribed by this subsection.

25. Section 493.6101, Florida Statutes, states as follows in relevant part:

> (16) "Private investigator" means any individual who, for consideration, advertises as providing or performs private investigation. . . .
> (17) "Private investigation" means the investigation by a person or persons for the purpose of obtaining information with reference to any of the following matters:
> (a) Crime or wrongs done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation.
> (b) The identity, habits, conduct, movements, whereabouts, affiliations,

associations, transactions, reputation, or character of any society, person, or group of persons.
(c) The credibility of witnesses or other persons.
(d) The whereabouts of missing persons, owners of abandoned property or escheated property, or heirs to estates.
(e) The location or recovery of lost or stolen property.

26. Section 493.6102, Florida Statutes, states as follows in pertinent part:

493.6102 Inapplicability of parts I through IV of this chapter.--This chapter shall not apply to:

* * *

(6) Any attorney in the regular practice of her or his profession.

Rule 1C-3.100(3)(c), Florida Administrative Code, which was not challenged by Petitioner, states that "[t]he term 'attorney' means a member of the Florida Bar engaged in the practice of law in this state."

27. Section 493.6203(4), Florida Statutes, states as follows in relevant part:

(4) An applicant for a Class "C" license shall have 2 years of lawfully gained, verifiable, full-time experience, or training in one, or a combination of more than one, of the following:
(a) Private investigative work or related fields of work that provided equivalent experience or training.
(b) College coursework related to criminal justice, criminology, or law enforcement administration, or successful completion of

any law enforcement-related training received from any federal, state, county, or municipal agency, except that no more than 1 year may be used from this category.

28. Section 493.6105, Florida Statutes, provides as follows in pertinent part:

> 493.6105 Initial application for license.--
> (1) Each individual, partner, or principal officer in a corporation, shall file with the department of a complete application . . . .
>
> * * *
>
> (3) The application shall contain the following information concerning the individual signing same:
>
> * * *
>
> (j) A full set of fingerprints on a card provided by the department and a fingerprint fee to be established by rule of the department based upon costs determined by state and federal agency charges and department processing costs. . . .

29. Section 493.6108, Florida Statutes, provides as follows in relevant part:

> 493.6108 Investigation of applicants by Department of State.--
> (1) Except as otherwise provided, prior to the issuance of a license under this chapter, the department shall make an investigation of the applicant for a license. The investigation shall include:
> (a)1. An examination of fingerprint records and police records. When a criminal history analysis of any applicant under this chapter is performed by means of fingerprint card identification, the time limitations prescribed by s. 120.60(1) shall be tolled

> during the time the applicant's fingerprint card is under review by the Department of Law Enforcement or the United States Department of Justice, Federal Bureau of Investigation.

Petitioner's Motion for Leave to Amend

30. Petitioner's amended hearing request refers to Respondent's October 17, 2000, Order Denying Formal Hearing and Referring to Informal Hearing. In this order, Respondent denied Petitioner's request for a formal hearing pursuant to Section 120.57(1), Florida Statutes, relative to the denial of Petitioner's private investigator license application, and determined that Petitioner could only challenge the denial of licensure in an informal proceeding under Section 120.57(2), Florida Statutes.

31. The amended hearing request also adds a "Ninth Rule Challenge," asserting that Respondent has no authority to determine whether allegations in a request for a hearing pursuant to Section 120.57(1), Florida Statutes, present disputed issues of material fact or whether the issues raised by a party should be heard as issues of law pursuant to Section 120.57(2), Florida Statutes.

32. Petitioner's Motion for Leave to Amend is denied for two reasons. First, Respondent has jurisdiction to determine whether a request for hearing presents disputed issues of material fact, and if not, to offer the requesting party an

opportunity for an informal proceeding. Sections 120.569 and 120.57, Florida Statutes. An agency may retain jurisdiction and proceed with an informal hearing, when the agency concludes that no disputed material issues of fact have been demonstrated. Village Salon, Inc. v. Division of Alcoholic Beverage and Tobacco, 463 So. 2d 278 (Fla. 1st DCA 1984). Any alleged errors from such a ruling, and any alleged errors in the conduct of informal proceedings in lieu of a requested formal proceeding, are matters that are subject to appeal following the issuance of a final order in that proceeding. Nicolitz v. Division of Opticianry, 609 So. 2d 92 (Fla. 1st DCA 1992). On the other hand, the Division of Administrative Hearings has no jurisdiction to require Respondent to refer cases for formal hearing pursuant to Section 120.57(1), Florida Statutes.

33. Second, the additional facts presented and new issues raised in Petitioner's amended hearing request are not appropriate for resolution in a proceeding brought pursuant to Sections 120.56(3) and 120.56(4), Florida Statutes. Petitioner's argument that Respondent's October 17, 2000, order constitutes a rule merely reflects Petitioner's disagreement with Respondent's exercise of discretion under Sections 120.569 and 120.57, Florida Statutes. Petitioner is attempting to present an improper legal argument on a procedural issue within Respondent's jurisdiction.

Motion to Dismiss or for Summary Final Order

34. For purposes of the pending Motion to Dismiss Petition or for Summary Final Order Dismissing Rule Challenge Petition, all of Petitioner's factual allegations have been taken as true. It conclusively appears from the face of the petition that the defects in the petition cannot be cured.

35. Respondent's September 27, 2000, Order Dismissing Petition with Leave to Amend pursuant to Rule 28-106.201, Florida Administrative Code, is not a "rule" as defined in Section 120.52(15), Florida Statutes. Sections 120.54(5)(a)1., 120.54(5)(b)4., and 120.569(2)(c), Florida Statutes, required Respondent to apply the procedural rule to determine whether Petitioner's initial hearing requests contained all the required information. Finding that the petitions were not in substantial compliance with the rule, Respondent stated its reasons with particularity and gave Petitioner a deadline for filing an amended petition. See Section 120.569(2)(c), Florida Statutes.

36. Respondent's Order Dismissing Petition with Leave to Amend essentially determined that Petitioner's initial hearing requests presented only legal arguments involving matters of statutory interpretation. As stated above, Petitioner's only recourse to challenge this determination is by appeal from the final order to be issued in the case pending before Respondent.

37. Respondent attached an agency opinion letter and an interoffice memorandum to its September 27, 2000, Order Dismissing Petition with Leave to Amend. Respondent did not rely on these opinions in making its decision about Petitioner's initial hearing requests. They were furnished to Petitioner as a courtesy, illustrating Respondent's direct application of the licensing criteria under Section 493.6203(4), Florida Statutes, in response to other inquiries. Moreover, Section 120.52(15), Florida Statutes, specifically exempts these documents from the definition of a rule.

38. Respondent denied Petitioner's license application based solely on his failure to meet the requirements of Section 493.6203(4), Florida Statutes. Respondent's interpretation of that statute in this case simply followed the plain language of the law. Respondent's interpretation of the statutory terms was reasonable and not unduly restrictive. It did not create any additional requirements or depart from the common understanding of the terms used in the statute. An agency's interpretation of the law that it is required to interpret and enforce is entitled to great weight and deference. P.W. Ventures Inc. v. Nicols, 533 So. 2d 281, 283 (Fla. 1988).

39. Section 493.6108(1), Florida Statutes, clearly states that the 90-day time period for processing license applications set forth in Section 120.60(1), Florida Statutes, is tolled

during the time fingerprint cards are being analyzed by law enforcement agencies. Respondent did not create a rule by interpreting these statutes to mean that the 90-day time period for processing Petitioner's application was suspended or temporarily stopped while his fingerprint card was being analyzed. The agency is not required to accept Petitioner's interpretation that the tolling provisions of Section 493.6109(1), Florida Statutes, do not apply if the fingerprint card is received by Respondent within the 90-day time frame. Consequently, there is no merit to Petitioner's first rule challenge.

40. Opinion 92-4 is not an unpromulgated rule that defines the "practice of law to exclude experience gained by lawyers in the practice of their profession unless the lawyer proves he was engaged in full-time investigative work." Additionally, Opinion 92-4 is not an unadopted rule that prevents an attorney from receiving credit for "college coursework related to criminal justice, criminology, or law enforcement administration." Likewise, Opinion Letter 92-50 does not constitute a rule that has not been adopted by concluding that "[a]n attorney who is not licensed to practice law within the state . . . and who is working as an investigator for various law firms is not exempt from the licensure requirements for a private investigator under Chapter 493, Florida Statutes." To the contrary, both opinions

specifically track the legislative intent of Sections 493.6102(6) and 493.6203(4), Florida Statutes, read in pari materia, in concluding that an attorney is entitled, on a case-by-case basis, to credit for verified full-time investigative experience or for a combination of that full-time work and any credible college coursework, but not entitled to credit for experience in the practice of law as that term is commonly understood or based solely on training as an attorney. Accordingly, Petitioner's second, third and fifth rule challenges are without merit.

41. Respondent has not created an unpromulgated rule by interpreting the term "verifiable" in Section 493.6203(4), Florida Statutes, as meaning capable of being verified by speaking with persons provided by an applicant to obtain that information. Instead, Respondent's statutory interpretation of "verifiable" is consistent with the obvious legislative intent for Respondent to confirm or substantiate the accuracy of any sworn statement about an applicant's experience and training. Therefore, Petitioner's sixth rule challenge is without merit.

42. Similarly, Respondent did not rely on an unadopted rule in interpreting the term private investigation as defined in Section 493.6101(17), Florida Statutes. Respondent does not have a policy that excludes applicants who do not have law enforcement experience unless they prove that they have full-

time experience in "investigative activity," which is the equivalent of police experience.

43. Under Section 493.6203(4), Florida Statutes, Respondent may evaluate an applicant's private investigative work or related fields of work that provide equivalent experience or training. Rule 1C-3.100(3)(3), Florida Administrative Code, defines equivalent experience and specifically states that equivalent experience includes, but is not limited to, detectives, law enforcement officers, insurance investigators or adjustors, etc. Petitioner withdrew his challenge to this existing rule because he was not adversely affected by it.

44. Respondent is not required to accept Petitioner's interpretation of Sections 493.6101(17) and 493.6203(4), Florida Statutes, as providing nothing more than a guide for the agency. For these reasons, there is no merit to Petitioner's seventh rule challenge.

45. Petitioner admits that he is an unlicensed attorney. He also admits that he seeks a license as a private investigator as defined in Section 493.6101(16), Florida Statutes, in order to perform private investigations under Section 493.6101(17), Florida Statutes, and to file claims for abandoned property claimants under Chapter 717, Florida Statutes, Disposition of Unclaimed Property.

46. Petitioner's hearing request does not show that Respondent applied unpromulgated rules in denying his license application. Rather, it shows that Petitioner does not agree with Respondent's direct application of the law it is required to enforce.

47. Respondent's Motion to Dismiss or for Summary Final Order seeks attorney fees and cost under Sections 120.569(2)(e), 120.595(3), and 120.595(4), Florida Statutes. Section 120.595(3), Florida Statutes, no longer applies because Petitioner withdrew his challenge under Section 120.56(3), Florida Statutes. Section 120.595(4), Florida Statutes, does not provide authority for an award of fees and cost where, as here, the agency is the prevailing party in a challenge to agency action pursuant to Section 120.56(4), Florida Statutes. Finally, Respondent is not entitled to fees and costs under Section 120.569, Florida Statutes, because Petitioner did not file his hearing request for any "improper purposes, such as to harass or to cause unnecessary delay, or for frivolous purpose or needless increase in the cost of litigation."

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED:

That Petitioner's Request for Formal Administrative Hearing is dismissed.

DONE AND ORDERED this 2nd day of November, 2000, in Tallahassee, Leon County, Florida.

____
SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of November, 2000.

COPIES FURNISHED:

Philip J. Stoddard
288 St. George Street
St. Augustine, Florida 32084

H. Wayne Mitchell, Esquire
Department of State
Division of Licensing
The Capitol, Mail Station 4
Tallahassee, Florida 32399-0250

Deborah K. Kearney, General Counsel
Department of State
The Capitol, Lower Level 10
Tallahassee, Florida 32399-0250

Honorable Katherine Harris
Secretary of State
Department of State
The Capitol, Plaza Level 02
Tallahassee, Florida 32399-0250

Liz Cloud, Chief
Bureau of Administrative Code
The Elliott Building
Tallahassee, Florida 32399-0250

Carroll Webb, Executive Director
Joint Administrative Procedure Committee
120 Holland Building
Tallahassee, Florida 32399-1300

NOTICE OF RIGHT TO APPEAL

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.