

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TERESA A. BURNS,)	
)	
Petitioner,)	
)	
vs.)	Case Nos. 00-1687RU
)	00-4316RU
DEPARTMENT OF CORRECTIONS,)	
)	
Respondent.)	
_____)	

ORDER GRANTING MOTION FOR FINAL SUMMARY JUDGEMENT
AND DENYING MOTION FOR SANCTIONS

Respondent moved for final summary judgement in this cause. Petitioner moved for sanctions based upon denial of access for Petitioner to the hearing site at Lake Correctional Institution. Testimony was taken on Respondent's motion. A record of the circumstances surrounding Petitioner's exclusion from hearing are contained in the transcript of the first day's proceeding.

I find that the policies being challenged were being applied as unpromulgated rules, and are now in the process of being adopted as duly promulgated rules.

Respondent's motion for summary judgement was based upon the Secretary of the Department of Corrections having withdrawn the policies which were challenged by Petitioner, and initiating the rule-making process with regard to them. The record reveals that some of these policies have been

withdrawn and others of the policies have been incorporated in Institutional Operating Procedures (IOP) developed at the individual institutions. Therefore, the challenge to the policies which the Department has withdrawn is moot, and the portions of the challenged policies which are retained in IOPs, are valid pursuant to the authority contained in the existing rules¹ authorizing warden's to adopt local policies. Pursuant to Rule 120.54(1)(a)1.C., Florida Statutes, the adoption of these policies by the wardens, who are authorized to adopt procedures locally, would not be an impediment to their adoption as a duly promulgated rule. Respondent's motion for summary judgement is granted.

Petitioner's Motion for Sanctions was based upon the denial of access to the proceedings on the first day of the scheduled hearing. Petitioner's motion is denied because the costs incurred by the Petitioner were related to the actual proceeding, not discovery. While sanctions maybe imposed upon proper motion for violation of the discovery rules, imposition of costs in actual proceedings is limited to those cases in which the Petitioner is the prevailing party. However, Petitioner's motion will be treated as a motion for taxing costs, for although inartfully phrases, Petitioner seeks relief for her expenses.

Notwithstanding the withdrawal of these policies voluntarily, I conclude that Petitioner successfully challenged policies causing them to be withdrawn until properly adopted.²

Although attorneys' fees and lost wages are not applicable, Petitioner may recover the costs of copying and service of process and subpoenas. Petitioner may present these costs by affidavit to be filed within 30 days. Petitioner's petition is dismissed; jurisdiction to award costs as outlined above is retained; and all other relief is denied.

DONE AND ORDERED this 27th day of February, 2001, in Tallahassee, Leon County, Florida.

STEPHEN F. DEAN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of February, 2001.

ENDNOTES

^{1/} Chapter 33-601.701 Visiting--Authority of the Secretary
(1) The Secretary has authorized each warden to adopt policies stating the conditions and circumstances under which visits may be conducted, including:

- (a) The regular visiting hours of the institution;
- (b) The items which visitors may take in or out of an institution, and what items are contraband;
- (c) What persons or groups may visit, and in what numbers; and
- (d) The specific standards of conduct which shall prevail during such visits.

(2) Wardens are authorized to make exceptions to any provision of this rule on an individual, case-by-case basis, based on the vested interests of the inmate, the security and welfare of the Department or both. The exceptions shall not be more restrictive than the provisions of these rules.

(3) All visiting policies promulgated by the wardens shall be subject to approval by the Secretary or designee.

^{2/} One of the issues of concern to Petitioner is the future effect of disciplinary actions taken under the challenged procedures prior to their withdrawal. Although these are properly the subject of a formal hearing pursuant to Section 120.57, Florida Statutes, if they become an issue, counsel for the Department of Corrections represented at hearing that those actions had been set aside, and would not be considered a past violation in any future proceedings.

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 one copy of a 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 in 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.