

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FILED

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DIVISION OF  
ADMINISTRATIVE  
HEARINGS

FLORIDA PRISONERS' LEGAL  
AID ORGANIZATION, INC., and  
TERESA BURNS POSEY,

Petitioners,

vs.

CASE NO.: 05-0622RP

FLORIDA DEPARTMENT OF  
CORRECTIONS and DIVISION  
OF ADMINISTRATIVE HEARINGS,

Respondents.

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FINAL ORDER

This cause came on for consideration by this tribunal pursuant to Respondents' Motions to Disqualify Qualified Representative, for Final Order of Dismissal and for Attorney Fees and Costs. Having reviewed the motion, the case file, and being otherwise fully apprised in the premises:

FINDINGS OF FACT

1. This case arose subsequent to the Dismissal of Florida Prisoners Legal Aid Organization, Inc. v. Department of Corrections, (DOAH Case No. 04-004094) which challenged the Department of Corrections (DOC) proposed rule 33-210.101(22). That case, in turn, had been consolidated from three additional cases: Teresa Burns Posey v. DOC, DOAH Case No. 00-4286; Teresa Burns Posey, Eric Burns and Janet Knight v. DOC, DOAH Case No.

01-0610; and Teresa Burns Posey v. DOC, DOAH Case No. 00-5130.

2. Three issues are raised in this case. First, is a challenge against DOC proposed rule 33-210.101(22). Second, is a challenge to existing DOC rule 33-102.202, F.A.C. Third, is a charge that DOC and the Department of Administrative Hearings (DOAH) have acted in concert to deprive Petitioners of due process.

3. Rule challenges are handled like 120.569 and 120.57 proceedings. The Administrative Law Judge's (ALJ) order is Final Agency Action.

4. Bob Posey is an inmate within the Florida Prison System.

5. Bob Posey is secretary of Florida Prisoners Legal Aid Organization, Inc., (FPLAO) a Not for Profit Corporation.

6. Teresa Burns Posey is the wife of Bob Posey and chairman of FPLAO.

7. The DOC is a Governmental Agency of the State of Florida.

8. The DOAH is an Agency of the State of Florida.

9. Teresa Burns Posey, a Petitioner, and DOAH, a Respondent, were not parties to the earlier challenge to proposed rule 33-210.101(22).

10. The challenge to the proposed rule 33-210.101(22), set forth in the Petition of the previously dismissed case FPLAO v DOC (numbered 04-004094 DOAH January 28, 2005) is nearly

identical to that set forth in the petition of the current case, FPLAO & Teresa Burns Posey v DOC and DOAH, (Case No. 05-0622RP, DOAH). The pleadings are word-for-word identical except for inserting Teresa Burns Posey's name from time to time and except for paragraphs 30-40, where the Petitioners attempt to state the basis for a cause of action against DOAH.

#### The 2004 Case

11. The merits of the case were never heard, because once Bob Posey was disqualified from representing FPLAO, FPLAO never appeared to press its case.

12. The only issue addressed was the threshold question of the qualification of Bob Posey to represent FPLAO.

13. Arrangements were made for Bob Posey to attend the hearing on his qualification, and he presented the case for his approval as qualified or authorized representative.

14. He relied upon Magnolias Nursing and Convalescent Center, Inc. v DHRS, 428 So.2d 256 (Fla 1<sup>st</sup> DCA 1982) rev. den. 449 So.2d 265 (Fla. 1984) to qualify him as an "authorized representative".

15. Bob Posey was found unqualified.

16. Upon being disqualified, Bob Posey told ALJ Harrell that she might as well dismiss the case as Mrs. Theresa Burns Posey was not qualified to represent FPLAO. He stated that there would be no other appearance on behalf of FPLAO and no responses

filed, and that is what happened: no one appeared for FPLAO at the Final Hearing.

### The Current Case

17. Petitioner filed the case at bar against DOC challenging proposed rule 33-210.101(22). In addition, Petitioner alleged that DOAH had acted in concert with DOC to deprive petitioner of due process.

18. In light of DOAH being named as a Respondent, on September 27<sup>th</sup>, 2005 the Administrative commission appointed Jonathan A. Glogau, Esquire as the ALJ in this matter.

19. On August 14<sup>th</sup>, 2006 Jonathan A. Glogau recused himself in this matter. On August 24<sup>th</sup>, 2006 the Administrative Commission appointed William W. Large, Esquire as the ALJ in this matter.

20. On October 17<sup>th</sup>, 2006 ALJ Large sent out a Notice of Case Management Conference for Monday October 23, 2006 at 3:00 p.m. The Notice was sent to Petitioner Teresa Burns Posey. The Case Management Conference was set by phone with a toll free call in number. The Case Management Conference Order specifically stated: "Failure to appear at this hearing may be grounds for entry of a recommended order of dismissal."

21. Teresa Burns Posey sent a letter to ALJ Large in which she demanded that he proceed as she directed. She demanded that he enter orders she directed, reach conclusions of law and

interpret cases as she demanded, disqualify Respondent's attorney, and if he did all this, the FPLAO and she might permit him to continue as ALJ in this case.

22. On October 23, 2006 a Case Management Conference was commenced at 3:11 p.m. No representative from the FPLAO was present.

23. On January 8<sup>th</sup>, 2007 ALJ Large sent out a Second Notice of Case Management Conference for Tuesday, January 30, 2007 at 10:00 a.m. The Case Management Conference was set by phone with a toll free call in number. The Case Management Conference Order specifically stated: "Failure to appear at this hearing may be grounds for entry of a recommended order of dismissal." The Notice of Hearing was sent by certified mail.

24. On January 11<sup>th</sup>, 2007, a Debbie Cantrell signed the Notice of delivery acknowledging the receipt of the case management order.

25. On January 30<sup>th</sup>, 2007 a Case Management Conference was commenced at 10:11 a.m. No representative from the FPLAO was present.

26. On July 20<sup>th</sup>, 2007 ALJ Large sent out a third Notice of Case Management Conference for Thursday, August 2, 2007 at 11:00 a.m. The Case Management Conference was set by phone with a toll free call in number. The Case Management Conference Order specifically stated: "Failure to appear at this hearing may be

grounds for entry of a recommended order of dismissal." The Notice of Hearing was sent by certified mail.

27. Teresa Burns signed the notice of delivery acknowledging the receipt of the Case Management Order.

28. On August 2, 2007 a Case Management Conference was commenced at 11:00 a.m. No representative from the FPLAO was present. During this hearing, the Court read into the record all the attempts to ensure that Teresa Burns Posey had Notice of the Case Management conferences and ample opportunity to attend.

29. On December 7th, 2007 ALJ Large sent out a Notice of Hearing on Respondents' Motions to Disqualify Bob Posey, for Final Order of Dismissal and for Attorneys Fees and Costs for Monday, January 7<sup>th</sup>, 2008 at 2:00 p.m. The hearing was set by phone with a toll free call in number. The Notice of Hearing specifically stated: "Failure to appear at this hearing may be grounds for entry of a recommended order of dismissal." The Notice of Hearing was sent by certified mail.

30. On January 7th, 2008 the hearing on Respondents' Motions to Disqualify Bob Posey, for Final Order of Dismissal and for Attorneys Fees and Costs Case Management Conference was commenced at 2:10 p.m. No representative from the FPLAO was present.

31. The threshold issue is again, Bob Posey's qualification to represent FPLAO and is based upon the same argument and case.

32. Teresa Burns Posey has asserted in her letter that if Bob Posey were not permitted to appear on behalf of FPLAO, she would not appear. Presumably she would not appear on her own behalf, and would also not appear on behalf of FPLAO.

33. The clear purpose of the 2005 suit is not to litigate the merits of the rule challenges or the due process claim, but to collaterally attack the Order on Bob Posey's representation of FPLAO entered by Judge Harrell.

34. In this case, FPLAO and Teresa Burns Posey have failed to appear at Case Management Conferences scheduled for October 23, 2006; January 30, 2007; and August 2, 2007. In addition, FPLAO and Teresa Burns Posey failed to attend the January 7<sup>th</sup>, 2008 hearing on Respondent's Motions to Disqualify Bob Posey, for Final Order of Dismissal and for Attorneys Fees and Costs. As in the prior case, FPLAO and Teresa Burns Posey have failed to appear for scheduled hearings and conferences, establishing a pattern of behavior when Bob Posey was not determined to be qualified to represent FPLAO.

35. In a challenge to a proposed rule the Burden is on the Petitioner to go forward with evidence.

36. In a challenge to an existing rule, the Burden is on the Petitioner to prove by a preponderance of the evidence that the existing rule is an invalid exercise of delegated legislative authority.

37. Petitioners have abandoned both the rule challenges and the due process claims. It appears that petitioners had no interest in those claims. It appears that Petitioners were interested only in finding an avenue for Inmate Bob Posey to appear as a representative in an administrative case.

#### CONCLUSIONS OF LAW

38. Bob Posey is disqualified from appearing as a qualified representative. FPLAO v DOC (Case No. 04-004094, DOAH, January 28, 2005) Order of January 21, 2005.

39. Magnolias Nursing and Convalescent Center, Inc. v DHRS, 428 So.2d 256 (Fla 1<sup>st</sup> DCA 1982) rev. den. (Fla. 1984) 449 So.2d 265, does not provide Bob Posey authorization to represent FPLAO.

40. The only issue raised and actually litigated in FPLAO v DOC, (No. 04-004094 DOAH January 28, 2005) is the same issue litigated in the current case -- whether Bob Posey can be a representative of FPLAO in an administrative proceeding. This venue is not a proper venue for appeal of issues previously litigated by the same parties in prior cases.

41. Failure of FPLAO and Teresa Burns Posey to appear in furtherance of the case is grounds to dismiss this case. Petitioners have failed to carry their burdens.

42. There is no legal justification for serial filing of cases purporting to challenge the same rule on the same basis, but in reality filed as a cover for litigating and re-litigating



an identical threshold issue with identical legal arguments. No one has standing to appeal the 2004 Order of Judge Harrell.

43. There is no legal justification for this action. There is no legal justification for the letter sent by Teresa Burns Posey.

44. This action was filed for an improper purpose. Wherefore, it is ORDERED and ADJUDGED:

1. Bob Posey may not appear as a "qualified representative" for FPLAO.

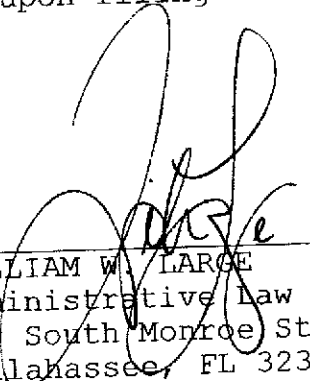
2. This case is dismissed for failure of Petitioners to appear in support of their causes.

3. Fees and costs are assessed against FPLAO and Teresa Burns Posey.

4. Jurisdiction is reserved to determine the amount of fees and costs to be assessed. Respondent shall file documentation in justification of the amount sought within 30 days of the effective date of this order.

5. This Order is effective upon filing with the Division of Administrative Hearings.

January 22, 2008



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