

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

NATIONAL FOUNDATION TO PREVENT)	
CHILD SEXUAL ABUSE, INC.,)	
)	
Petitioner,)	
)	
vs.)	Case No. 07-4614RX
)	
FLORIDA DEPARTMENT OF LAW)	
ENFORCEMENT,)	
)	
Respondent.)	
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FINAL ORDER

On October 9, 2007, a Petition Seeking an Administrative Determination of the Invalidity of an Existing Rule was filed at the Division of Administrative Hearings and the hearing was scheduled for October 29, 2007. Petitioner is challenging the existing Florida Administrative Code Rule 11C-6.004(3)(b) which prescribes fees for the Florida Department of Law Enforcement to charge for requested criminal records.

Florida Administrative Code Rule 11C-6.004(3)(b)states:

(b) As provided in subsection 943.053(3), F.S., a processing fee of \$23 shall be charged for each subject inquired upon under paragraphs (2)(d) through (f), except that a fee of \$8 shall be charged for each subject inquired upon for vendors of the Department of Children and Family Services, the Department of Juvenile Justice, and the Department of Elderly Affairs; a fee of \$15 shall be charged for each subject inquired upon pursuant to a state criminal history record check required by law to be performed

by the Department of Agriculture and Consumer Services; a fee of \$18 shall be charged for each volunteer subject inquired upon under the National Child Protection Act of 1993, as amended; and no fee shall be charged for Florida criminal history information or wanted person information requested by the state offices of the Public Defender. If the Executive Director of the Department determines that conducting the record check would be in the interest of law enforcement or criminal justice or that good cause otherwise exists, the prescribed fee may be waived or reduced, as provided in subsection 943.053(3), F.S.

In the Petition, Petitioner identifies the following portion of the rule that is being specifically challenged: "a processing fee of \$23 shall be charged for each subject inquired upon" and additionally specifies that "a fee of \$18 shall be charged for each volunteer subject inquired upon under the National Child Protection Act of 1993, as amended."

Respondent filed a Motion for Summary Final Order or to Dismiss Petition Seeking an Administrative Determination of the Invalidity of an Existing Rule (Motion) on October 17, 2007. Petitioner filed a Response to Respondent's Motion on October 18, 2007. Respondent filed a Reply to Petitioner's Response to the Motion on October 19, 2007. Petitioner filed Petitioner's Response to Respondent's Reply to the Motion on October 22, 2007.

This cause having come before the undersigned on October 22, 2007, for motion hearing in the matter of the

Respondent's Motion for Summary Final Order or To Dismiss Petition Seeking an Administrative Determination of the Invalidity of an Existing Rule. The parties argued their positions at the Motion hearing.

After the Motion hearing, each party filed additional pleadings. On October 22, 2007, Respondent filed Respondent's Response to and Rebuttal of Petitioner's Allegation that Respondent has Misrepresented the Truth in this Proceeding. On October 23, 2007, Petitioner filed Petitioner's Response to Respondent's Response to and Rebuttal of Petitioner's Allegation that Respondent has Misrepresented the Truth in this Proceeding.

Section 943.053(3)(b), Florida Statutes (2007), states:

(b) The fee per record for criminal history information provided pursuant to this subsection is \$23 per name submitted, except that the fee for vendors of the Department of Children and Family Services, the Department of Juvenile Justice, and the Department of Elderly Affairs shall be \$8 for each name submitted; the fee for a state criminal history provided for application processing as required by law to be performed by the Department of Agriculture and Consumer Services shall be \$15 for each name submitted; and the fee for requests under the National Child Protection Act shall be \$18 for each volunteer name submitted. The state offices of the Public Defender shall not be assessed a fee for Florida criminal history information or wanted person information.

Florida Administrative Rule 11C-6.004(3)(b) is a reiteration of what is in Section 943.053, Florida Statutes, and the wording of both the rule and statute are almost identical.

Upon consideration and the undersigned being fully advised, the undersigned concludes that no genuine issue as to any material fact exists. Petitioner's assertions that the matters of whether a state criminal record check is required, how costly it is to produce the records, how the amount of the cost is determined, the inflation of the fees and surplus of monies are immaterial since the fees are prescribed by law. Mandates by law, such as fees in this matter, are only within the legislature's purview and any change in law must be addressed by the legislature. Section 943.053, Florida Statutes (2007), sets forth specific fees that must be charged for records regardless of the cost to the agency.

It is, therefore,

ORDERED that:

1. The motion is hereby granted, and the final hearing in this cause scheduled for October 29, 2007, is hereby canceled.

2. The file of the Division of Administrative Hearings in the above-captioned matter is hereby closed and the case is dismissed.

DONE AND ORDERED this 23rd day of October, 2007, in
Tallahassee, Leon County, Florida.

June C. McKinney

JUNE C. MCKINNEY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of October, 2007.

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 appeal with the Clerk of the Division of Administrative Hearings and a 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.