

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JOANN KINARD, as Personal )  
Representative of the Estate of )  
ESTHER STRONG, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 11-2585F  
 )  
DEPARTMENT OF CHILDREN AND )  
FAMILIES, )  
 )  
Respondent. )  
\_\_\_\_\_ )

FINAL ORDER AWARDING ATTORNEY'S FEES AND COSTS

This case is before Administrative Law Judge W. David Watkins on the parties' Stipulation for Entry of Agreed Final Order ("Stipulation") as to Attorney's Fees and Costs, which was filed on October 5, 2011.

APPEARANCES

For Petitioner: Jack M. Rosenkranz, Esquire  
Rosenkranz Law Firm  
Post Office Box 1999  
Tampa, Florida 33601

For Respondent: Herschel C. Minnis, Esquire  
Department of Children and Families  
1317 Winewood Boulevard  
Building 2, Room 204-N  
Tallahassee, Florida 32399

### STATEMENT OF THE ISSUE

The issue for determination concerns the amount of reasonable attorney's fees and costs to be awarded to Petitioner pursuant to section 120.595(4), Florida Statutes (2010).

### PRELIMINARY STATEMENT

This is an action for attorneys' fees and costs following a successful challenge by Petitioner to four of Respondent's statements defined as rules but not adopted as such, in violation of section 120.54, Florida Statutes. That proceeding was assigned DOAH Case No. 11-0535RU.

By Final Order dated March 22, 2011, the undersigned found that the four challenged statements each constitute a "rule," as defined in section 120.52(16), and they have not been adopted in accordance with the rulemaking procedures set forth in section 120.54. The Final Order also determined that Petitioner is entitled, pursuant to section 120.595(4)(a), to recover a reasonable sum for the attorneys' fees and costs incurred in the prosecution of this action. Jurisdiction was reserved to determine, if necessary, the amount of attorneys' fees and costs Petitioner should be awarded pursuant to section 120.595(4).

FINDINGS OF FACT

1. The Final Order in DOAH Case No. 11-0535RU determined that Petitioner was entitled to an award of attorneys' fees and costs pursuant to section 120.595(4), Florida Statutes.

2. The Stipulation filed by the parties states that \$45,000 is a reasonable sum to be awarded for attorneys' fees, and that the sum of \$3,462.43 is a reasonable amount for costs incurred by Petitioner in the underlying proceeding. These stipulated amounts are deemed by the undersigned to be reasonable.

CONCLUSIONS OF LAW

3. DOAH has personal and subject matter jurisdiction in this proceeding pursuant to sections 120.56, and 120.595, Florida Statutes. The Administrative Law Judge has final order authority in this matter. § 120.569(4) (a), Fla. Stat.

4. An award of attorneys' fees pursuant to section 120.595(4) may not exceed \$50,000.00

5. The terms and conditions for payment of the above amounts as set forth in the Stipulation are reasonable. The terms and conditions for payment as set forth in the Stipulation are incorporated and adopted as if fully set forth herein.

Accordingly, it is

ORDERED that Petitioner, Joann Kinard, Personal Representative of the Estate of Esther Strong, is hereby awarded

the sum of \$48,462.43 for attorney's fees and costs, which the undersigned finds and concludes is a reasonable amount. The above sum is to be paid by Respondent in the manner set forth in the Stipulation.

DONE AND ORDERED this 10th day of October, 2011, in Tallahassee, Leon County, Florida.



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W. DAVID WATKINS  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 10th day of October, 2011.

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 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.