

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

OKALOOSA COUNTY, FLORIDA, AND
NASSAU COUNTY, FLORIDA,

Petitioners,

vs.

Case No. 12-2795F

DEPARTMENT OF JUVENILE JUSTICE,

Respondent.

_____ /

FINAL ORDER

This came before the undersigned on Petitioners' Motion for Award of Attorneys' Fees and Costs, and renewed motion for attorneys' fees and costs as set forth in Petitioners' Response to Order Continuing Case in Abeyance and Requiring Status Report. Based upon the affidavits filed by Petitioners and the pleadings of record which reflect a lack of any genuine dispute as to the appropriate amount of fees and costs to be awarded, no hearing of the matter is necessary.

APPEARANCES

For Petitioners: Gregory T. Stewart, Esquire
Carly J. Schrader, Esquire
Lynn M. Hoshihara, Esquire
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308

For Respondent: Michael J. Wheeler, Esquire
Department of Juvenile Justice
2737 Centerview Drive
Tallahassee, Florida 32399-3100

STATEMENT OF THE ISSUE

The issue to be determined is the amount of attorneys' fees and costs to be awarded to Petitioners pursuant to section 120.595(3), Florida Statutes (2012).

PRELIMINARY STATEMENT

This is an action for attorneys' fees and costs following a successful challenge by Petitioners to existing rules (Challenged Rules) of the Department of Juvenile Justice (Department) pursuant to section 120.56, Florida Statutes, on the basis that the Challenged Rules conflicted with section 985.686, Florida Statutes, the law implemented.

In Case No. 12-0891RX, a Final Order was issued on July 17, 2012, invalidating the Challenged Rules and determining that an award of attorneys' fees and costs was appropriate based upon section 120.595(3), Florida Statutes. The Final Order retained jurisdiction to determine the amount of attorneys' fees and costs to be awarded to Petitioners.

On August 15, 2012, Petitioners filed their Motion for Award of Attorneys' Fees and Costs, and the case was assigned Case No. 12-2795F. Shortly thereafter, Respondent filed its Notice of Appeal of the underlying Final Order invalidating the

Challenged Rules. The Department sought a stay of the Motion for Attorneys' Fees and Costs. As a result, on September 24, 2012, the undersigned entered an Order placing the matter in abeyance for 60 days to give the parties ample opportunity to attempt to reach agreement on the appropriate amount of fees and costs to be awarded. Subsequently, on December 6, 2012, another Order was entered continuing the abeyance of this matter until entry of a Mandate by the First District Court of Appeal in Case No. 12-0891RX.

On June 5, 2013, the First District Court of Appeal affirmed by written opinion the Final Order in DOAH Case No. 12-0891RX. Dep't of Juv. Just. v. Okaloosa Cnty., Case No. 1D12-3929, 38 Fla. L. Weekly D 1249 (Fla. 1st DCA June 5, 2013). The Court's Mandate followed on June 21, 2013.

On June 28, 2013, Petitioners filed a status report in this case, and requested that attorneys' fees and costs be awarded to Petitioners and against the Department in the amount of \$50,000.00. In response, the Department filed a Motion to Deny the Awarding of Attorneys' Fees, but subsequently requested, and was granted, leave to withdraw its motion in opposition to the award of fees.

Based upon the pleadings and other matters of record, the following findings of fact are made:

FINDINGS OF FACT

1. Petitioners, Okaloosa County and Nassau County, filed a challenge to existing rules of the Department of Juvenile Justice pursuant to section 120.56, Florida Statutes, on the basis that the rules conflicted with section 985.686, Florida Statutes, the law implemented. Okaloosa Cnty. & Nassau Cnty. v. Dep't of Juv. Just., DOAH Case No. 12-0891RX (Fla. DOAH July 17, 2012).

2. The Petition specifically alleged that "Petitioners are obligated to pay their attorneys a reasonable fee and are entitled to recover their reasonable costs and attorneys' fees under section 120.595(3), Florida Statutes," and requested an award of attorneys' fees and costs pursuant to the same.

3. On July 17, 2012, after a final hearing, the undersigned entered a Final Order invalidating the Challenged Rules and determining that an award of attorneys' fees and costs was appropriate based on section 120.595(3), Florida Statutes. Jurisdiction was retained to determine the appropriate amount of fees and costs.

4. The Department appealed the Final Order in DOAH Case No. 12-0891RX, and on June 5, 2013, the First District Court of Appeal affirmed by written opinion the Final Order. Dep't of Juv. Just. v. Okaloosa Cnty., Case No. 1D12-3929, 38 Fla. L. Weekly D 1249 (Fla. 1st DCA June 5, 2013).

5. Petitioners established by affidavit (attached to their Motion for Award of Attorneys' Fees and Costs) that they were billed a total of \$89,580.00 in attorneys' fees for services directly related to prosecuting DOAH Case No. 12-0891RX. The hourly rates charged for the work of the attorneys involved in the case, as well as the amount of time expended on each task, are reasonable.

6. Since Petitioners incurred attorneys' fees and costs well in excess of \$50,000.00, they are seeking the maximum attorneys' fees and costs award allowable pursuant to section 120.595(3), which is \$50,000.00.

7. While no formal written stipulation as to the appropriate amount of attorneys' fees and costs has been filed in this case, there is no indication in this record that the Department disputes the reasonableness of the \$50,000.00 award being sought by Petitioners. To the contrary, Petitioners filed a series of e-mail communications between counsel for Petitioners and the Department reflecting that the Department "does not dispute the 50K figure and will pay it" after the appeal is resolved if the Department does not prevail. In addition, the Department's Motion to Deny the Awarding of Attorneys' Fees contains the statement that "Respondent stipulated to awarding Petitioners \$50,000.00 in attorneys' fees"

8. Petitioners have established that the requested award of \$50,000.00 in attorneys' fees and costs is reasonable.

CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with sections 120.569 and 120.57(1), Florida Statutes (2012).

10. Section 120.595(3) provides in pertinent part:

(3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION 120.56(3) AND (5).—If the appellate court or administrative law judge declares a rule or portion of a rule invalid pursuant to s. 120.56(3) or (5), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorneys' fees, unless the agency demonstrates that its actions were substantially justified or special circumstances exist which would make the award unjust. An agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency. If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorneys' fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(e). No award of attorneys' fees as provided by this subsection shall exceed \$50,000.

11. For the reasons set forth in the Final Order in Case No. 12-0891RX, an award of fees and costs to Petitioners based upon section 120.595(3) is appropriate.

12. There does not appear to be any genuine dispute that Petitioners are entitled to an award of \$50,000.00, the maximum amount allowed pursuant to section 120.595(3). Moreover, the undersigned concludes that the amount of the award sought by Petitioners is reasonable.

Accordingly, it is

ORDERED that Petitioners, Okaloosa County and Nassau County, are hereby awarded the sum total of \$50,000.00 in attorneys' fees and costs. The above sum is to be paid by Respondent on or before the 60th day following the entry of this Final Order.

DONE AND ORDERED this 15th day of July, 2013, in Tallahassee, Leon County, Florida.



W. DAVID WATKINS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of July, 2013.

COPIES FURNISHED:

Terrell K. Arline, Esquire
Bay County Attorneys' Office
840 West 11th Street
Panama City, Florida 32401-2336

Brian Berkowitz, Esquire
Department of Juvenile Justice
Knight Building, Room 312V
2737 Centerview Drive
Tallahassee, Florida 32399

Michael J. Wheeler, Esquire
Department of Juvenile Justice
2737 Centerview Drive
Tallahassee, Florida 32399-3100

Linda Brehmer Lanosa, Esquire
Orange County Attorney's Office
Litigation Section
201 South Rosalind Avenue, 3rd Floor
Post Office Box 1393
Orlando, Florida 32802-1393

John R. Dowd, Esquire
Okaloosa County Attorney's Office
Post Office Box 404
901 Eglin Parkway
Shalimar, Florida 32579-0404

David Allen Hallman, Esquire
Nassau County Attorney
Suite 6
96135 Nassau Place
Yulee, Florida 32097-8635

Gregory T. Stewart, Esquire
Carly J. Schrader, Esquire
Lynn M. Hoshihara, Esquire
Nabors, Giblin and Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308

Carl Edward Brody, Esquire
Pinellas County Attorneys' Office
6th Floor
315 Court Street
Clearwater, Florida 33756

Robert A. Cuevas, Esquire
Miami-Dade County Attorney
Suite 2810
111 Northwest 1st Street
Miami, Florida 33128-1930

Wansley H. Walters, Secretary
Department of Juvenile Justice
Knight Building
2737 Centerview Drive
Tallahassee, Florida 32399-3100

Brian Berkowitz, General Counsel
Department of Juvenile Justice
Knight Building
2737 Centerview Drive
Tallahassee, Florida 32399-3100

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 administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.