

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF ECONOMIC
OPPORTUNITY,

Petitioner,

vs.

Case No. 15-4332FC

MARTIN COUNTY CONSERVATION
ALLIANCE AND 1000 FRIENDS OF
FLORIDA, INC.,

Respondents.

FINAL ORDER

The final hearing in this case was held November 10, 2015,
by video teleconference at sites in Tallahassee and West Palm
Beach, Florida, before Bram D.E. Canter, Administrative Law Judge
of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Christina Arzillo Shideler, Esquire
Department of Economic Opportunity
107 East Madison Street, MSC 110
Tallahassee, Florida 32399

For Respondent: Richard Grosso, Esquire
Shepard Broad Law Center
Nova Southeastern University
3305 College Avenue
Fort Lauderdale, Florida 33314

STATEMENT OF THE ISSUE

The issue to be determined in this case is the amount of reasonable attorney's fees to be paid to the Department of Economic Opportunity ("DEO") by Respondents.

PRELIMINARY STATEMENT

On November 4, 2011, the First District Court of Appeal issued an order awarding attorney's fees to the appellees in Martin County Conservation Alliance v. Martin County, 73 So. 3d 856 (Fla. 1st DCA 2011). DEO is the successor agency to the Department of Community Affairs, which was one of the appellees in the case. Respondents were the appellants and the losing parties on appeal.

The parties were not able to reach agreement on the amount of attorney's fees that should be paid. On July 28, 2015, DEO requested that an Administrative Law Judge be assigned to determine the amount.

At the final hearing, DEO presented the testimony of Joseph Goldstein, L. Mary Thomas, and Richard Shine. DEO Exhibits 1-3 and 6-7 were admitted into evidence. Respondents called no witnesses. Respondents' Exhibits 1-4 were admitted into evidence.

The Transcript of the final hearing was filed with DOAH and the parties submitted Proposed Final Orders that were considered in the preparation of this Final Order.

FINDINGS OF FACT

1. Ms. Thomas and Mr. Shine were the agency attorneys who worked on the appeal.

2. Ms. Thomas reviewed the record on appeal, reviewed the papers filed in the appellate court, filed a notice of appearance, researched legal issues associated with the agency's Notice of Limited Joinder in Answer Brief, and discussed the case with other attorneys. Ms. Thomas spent seven hours working on the case.

3. Mr. Shine reviewed the record on appeal, reviewed the papers filed in the appellate court, filed a notice of appearance, researched legal issues associated with the agency's answer brief, and discussed the case with other attorneys. Mr. Shine spent six hours working on the case.

4. Ms. Thomas and Mr. Shine did not file a brief or participate in oral argument.

5. DEO is demanding payment of \$3,900 as the total of its reasonable attorney's fees, which was computed by multiplying 13 hours by an hourly rate of \$300.

6. As discussed in the Conclusions of Law, the criteria listed in Rule 4-1.5 of the Rules Regulating the Florida Bar must be used to determine the reasonable attorney's fees in this case.

Rule 4-1.5(b)(1)A

7. The criterion in Rule 4-1.5(b)(1)A is "the time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill requisite to perform the legal service properly." The legal work was not complex, but it required specialized skill in land use law.

8. DEO claims the standing issue in the case on appeal was complex. To the contrary, the First District Court of Appeal awarded attorney's fees to the appellees because the court determined that appellants and their counsel knew or should have known that no material facts provided a basis for Respondent's standing. Likewise, the agency's counsel knew or should have known.

9. The evidence presented did not show that the labor of both Ms. Thomas and Mr. Shine was required. Their work was, in large part, redundant. Furthermore, Ms. Thomas had only a vague recollection of much of her work. The work of Mr. Shine, alone, would have been sufficient to accomplish the agency's purposes and efforts in the appeal.

Rule 4-1.5(b)(1)B

10. The criterion in Rule 4-1.5(b)(1)B is "the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer." There was no evidence presented

regarding this criterion to be considered in determining reasonable fees.

Rule 4-1.5(b)(1)C

11. The criterion in Rule 4-1.5(b)(1)C is "the fee, or rate of fee, customarily charged in the locality for legal services of similar nature." DEO presented the testimony of Joseph Goldstein, a land use lawyer who practices in the Miami offices of the law firm of Holland and Knight. It was Mr. Goldstein's opinion that the customary hourly rate in the Tallahassee area at the relevant time was \$300.^{1/}

12. Respondents did not present expert testimony to refute Mr. Goldstein's opinion. There is no other evidence in the record regarding a reasonable hourly rate.

Rule 4-1.5(b)(1)D

13. The criterion in Rule 4-1.5(b)(1)D is "the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained." The case on appeal had moderate significance and the responsibility involved was moderate. The results obtained were not unusual.

14. The novelty in the appellate case was the award of attorney's fees, but the agency attorneys had nothing to do with the award. In fact, they opposed the award.

Rule 4-1.5(b)(1)E

15. The criterion in Rule 4-1.5(b)(1)E is "the time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional time demands or requests of the attorney by the client." There was no evidence presented regarding this criterion that should be considered in determining reasonable fees.

Rule 4-1.5(b)(1)F

16. The criterion in Rule 4-1.5(b)(1)F is "the nature and length of the professional relationship with the client." There was no evidence presented regarding this criterion to be considered in determining reasonable fees.

Rule 4-1.5(b)(1)G

17. The criterion in Rule 4-1.5(b)(1)G is "the experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of the effort reflected in the actual providing of such service." The agency lawyers had specialized skill in land use law, but the case did not require unusual diligence or effort.

Rule 4-1.5(b)(1)H

18. The criterion in Rule 4-1.5(b)(1)H is "whether the fee is fixed or contingent, and, if fixed as to amount or rate, whether the client's ability to pay rested to any significant degree on the outcome of the representation." The fee was fixed

because it was based on fixed salaries, but it did not rest on the outcome of the appeal.

CONCLUSIONS OF LAW

19. DEO has the burden to prove the amount of reasonable attorney's fees it is due. See Fla. Patient's Compensation Fund v. Rowe, 472 So. 2d 1145 (Fla. 1985).

20. Findings of fact must be based on a preponderance of the evidence. See § 120.57(1)(j), Fla. Stat. (2015)

21. In Rowe, supra, it was held that the criteria listed in Rule 4-1.5 of the Rules Regulating the Florida Bar should be used to determine reasonable attorney's fees. Id. at 1151.

22. In determining the hours reasonably expended in providing legal service, the court must look to the time that ordinarily would be spent to resolve the particular type of dispute, which is not necessarily the number of hours actually expended by counsel in the case. See In re Estate of Platt, 586 So. 2d 328, 333-34 (Fla. 1991).

23. Based on the evidence presented, six hours is a reasonable amount of time for the agency's participation in the appeal.

24. Respondents argue that reasonable attorney's fees cannot be determined in this case because DEO did not produce billing records. They cite cases regarding the sufficiency of billing records of private sector attorneys who billed by the

hour and sent out invoices to their clients. The agency lawyers in this case did not bill by the hour, keep billing records, or send out invoices. Their testimony about the hours expended and the nature of the case was sufficient to determine that six hours is a reasonable amount of time.

25. Multiplying six hours of attorney time by a rate of \$300 per hour produces a total of \$1,800 in attorney's fees.

DISPOSITION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that the Department of Economic Opportunity's reasonable attorney's fees are determined to be \$1,800.

DONE AND ORDERED this 17th day of February, 2016, in Tallahassee, Leon County, Florida.



BRAM D. E. CANTER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of February, 2016.

ENDNOTE

^{1/} No party addressed the propriety of applying private sector hourly rates to public sector attorneys.

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 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.