STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

STEPHEN J. WILLIAMS, AS A
TRUSTEE FOR THE SPARKHILL TRUST,

Petitioner,

vs. Case No. 17-2090F

FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, *AMENDED AS TO PAGE 2 ONLY

Respondent.
_____/

*AMENDED FINAL ORDER

This matter came before Cathy M. Sellers, a designated Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH"), on the Motion for Attorney's Fees and Costs filed by Petitioner, Stephen J. Williams, as a trustee for the Sparkhill Trust, on April 6, 2017, seeking an award of attorney's fees and costs against Respondent, Department of Highway Safety and Motor Vehicles, pursuant to section 120.595(4), Florida Statutes (2016).

APPEARANCES

For Petitioner: Stephen Williams
1019 Southeast 4th Place
Cape Coral, Florida 33990-1521

For Respondent: Jonathan P. Sanford, Esquire
Department of Highway Safety
and Motor Vehicles
2900 Apalachee Parkway, Room A-432
Tallahassee, Florida 32399

STATEMENT OF THE ISSUES

The issues in this case are whether Petitioner is entitled to an award of attorney's fees and/or costs, pursuant to section 120.595(4); and, if so, the amounts of attorney's fees and/or costs to which he is entitled.

PRELIMINARY STATEMENT

On March 3, 2017, the undersigned issued an Amended Final Order in Case No. 16-6127RU, determining that a portion of the Florida Department of Highway Safety and Motor Vehicles Procedure Manual TL-10, dated April 30, 2014, and Technical Advisory RS/TL 14-18, dated October 20, 2014, are unadopted rules that violate section 120.54(1)(a), Florida Statutes. The Amended Final Order retained jurisdiction to conduct further proceedings as necessary to award attorney's fees and costs, as applicable, pursuant to section 120.595(4), upon the timely filing of a motion, supported by necessary documentation, requesting an award of attorney's fees and costs. The Amended Final Order was not appealed.

On April 6, 2017, Petitioner filed a Motion for Attorney's Fees and Costs ("Motion"), seeking an award of $86,310.00 in attorney's fees and $119.73 in costs incurred in prosecuting Case No. 16-6127RU.

On April 10, 2017, the undersigned issued an Amended Order Regarding Filing Response in Opposition and Scheduling Final

Hearing ("Amended Order Regarding Response"). The Amended Order Regarding Response gave Respondent 21 days in which to file its response in opposition to the Motion, contesting Petitioner's legal entitlement to attorney's fees and costs and disputing the amounts of each sought by Petitioner. The Amended Order Regarding Response stated:

> Respondent's failure to file a response in opposition disputing either Petitioner's entitlement to an award of attorney's fees and costs or the amount of attorney's fees and costs sought by Petitioner, as set forth in the Motion, shall be deemed to constitute a waiver of Respondent's opportunity to challenge the same.

Amended Order Regarding Response, p. 2, ¶ 1.

On May 1, 2017, Respondent timely filed a Response to Petitioner's Motion for Attorney's Fees ("Response"). The Response challenges Petitioner's legal entitlement to an award of attorney's fees in this proceeding, asserting that Petitioner is not an "attorney" for purposes of section 120.595(4). The Response did not dispute any of the facts alleged in the Motion or supporting documentation regarding the amounts of attorney's fees sought in this proceeding. The Response also did not dispute Petitioner's legal entitlement[1/] to costs or the amount of those costs sought in this proceeding.

Upon reviewing the Motion and Response, the undersigned determined that there are no disputed issues of material fact in

this proceeding that need to be determined through an evidentiary hearing held under section 120.57(1). Petitioner requested, and was granted, leave to file a reply to Respondent's Response. On May 31, 2017, Petitioner filed his Reply to Respondent's [R]esponse to Petitioner's Motion for Attorney's Fees ("Reply").

Based on the Motion, Response, and Reply, and having determined that there are no disputed issues of material fact that require an evidentiary hearing under section 120.57(1), the undersigned makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On March 3, 2017, DOAH entered an Amended Final Order in Case No. 16-6127RU, determining that a portion of the Florida Department of Highway Safety and Motor Vehicles Procedure Manual TL-10, dated April 30, 2014, and Technical Advisory RS/TL 14-18, dated October 20, 2014 (hereafter, the "Unadopted Rules"), are unadopted rules that violate section 120.54(1)(a).

2. "Stephen J. Williams, as a Trustee for the Sparkhill Trust," is Petitioner in this proceeding, and also was Petitioner in Case No. 16-6127RU. Petitioner appeared in Case No. 16-6127RU as a trustee of the Sparkhill Trust ("Trust"), which holds title to the motor vehicle for which a certificate of title was denied by Respondent and its agent, the Lee County Tax Collector, in

2014. As previously found in Case No. 16-6127RU, Petitioner also is the beneficiary of the Trust.

3. Petitioner is not licensed to practice law in Florida, and has neither alleged nor shown that he was licensed or otherwise authorized to practice law in Florida at any point during the pendency of Case No. 16-6127RU.[2/]

4. Petitioner received a law degree from the University of Connecticut School of Law and is licensed to practice law in Connecticut, New York, and the District of Columbia; however, he currently is suspended from practicing law in those jurisdictions. Petitioner also is a lawyer on the Roll of Solicitors in England and Wales, but is not currently authorized to practice in those jurisdictions because he does not hold a practicing certificate.

5. Petitioner asserts in the Motion that he is an attorney acting in a representative capacity as a trustee on behalf of the Trust.

6. Petitioner filed a document titled "Declaration of Stephen J. Williams in Support of Petitioner's Motion for Attorney's Fees and Costs" ("Declaration") in support of the Motion. Although the Declaration represents that it is made "under penalty of perjury," it does not constitute a legally sufficient oath or affidavit because it does not comply with the requirements of section 92.50(1), Florida Statutes.

Specifically, it does not contain a jurat or certificate of proof or acknowledgement authenticated by the signature and official seal of a judge, clerk or deputy clerk of court of record in this state, or a United States commissioner or notary public in this state, as required by the statute.[3/]

7. Petitioner attached an itemized timesheet to the Declaration. The timesheet lists, for each item for which attorney's fees are sought, the date and description of the legal services alleged to have been rendered for the particular item, and the amount of time alleged to have been spent per item. The timesheet represents that a total of 54.8 hours were spent in prosecuting Case No. 16-6127RU.

8. Petitioner asserts that he is entitled to a $350.00 per hour attorney's fee, multiplied by a 1.5 loadstar multiplier, and a contingency multiplier of three, for a total of $86,310.00 in attorney's fees.

9. Attached to the Declaration is email correspondence sent to Petitioner by Kiara Guzzo, Respondent's Public Records Coordinator, stating that Petitioner owed $119.73 for Respondent's response to Petitioner's public records request. In the Declaration, Petitioner states that "[t]he attached email of Guzzo email [sic] accurately indicates the out-of-pocket expenses which have been paid."

10. Pursuant to his statement in the Declaration, Petitioner is "exclusively engaged in the practice of law."

11. Pursuant to his statement in the Declaration, Petitioner undertook the prosecution of Case No. 16-6127RU on a contingency basis, with his attorney's fees being "limited to that approved by this tribunal."[4/]

12. Petitioner previously challenged the Unadopted Rules in two DOAH proceedings, Case Nos. 14-6005RU and 15-0484RU.[5/] Thus, as far back as 2014, Respondent was on notice that its statements (i.e., the Unadopted Rules) may constitute unadopted rules.

CONCLUSIONS OF LAW

13. DOAH has jurisdiction over the parties to and subject matter of this proceeding pursuant to sections 120.595(4), 120.569, and 120.57(1).

14. This proceeding concerns whether Petitioner is entitled to an award of attorney's fees and costs under section 120.595(4), for successfully challenging the Unadopted Rules under section 120.56(4) in Case No. 16-6127RU; and, if so, the amounts of those fees and costs to which he is entitled.

15. Section 120.595(4) states:

> (a) If the appellate court or administrative law judge determines that all or part of an agency statement violates s. 120.54(1)(a), or that the agency must immediately discontinue reliance on the statement and any substantially similar statement pursuant to s. 120.56(4)(e), a judgment or order shall be

> entered against the agency for reasonable costs and reasonable attorney's fees unless the agency demonstrates that the statement is required by the Federal Government to implement or retain a delegated or approved program or to meet a condition to receipt of federal funds.
>
> (b) Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3)(a), such notice shall automatically operate as a stay of proceedings pending rulemaking. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings under this paragraph remains in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule. The administrative law judge shall award reasonable costs and reasonable attorney's fees accrued by the petitioner prior to the date the notice was published, unless the agency proves to the administrative law judge that it did not know and should not have known that the statement was an unadopted rule. Attorneys' fees and costs under this paragraph and paragraph (a) shall be awarded only upon a finding that the agency received notice that the statement may constitute an unadopted rule at least 30 days before a petition under s. 120.56(4) was filed and that the agency failed to publish the required notice of rulemaking pursuant to s. 120.54(3) that addresses the statement within that 30-day period. Notice to the agency may be satisfied by its receipt of a copy of the s. 120.56(4) petition, a notice or other paper containing substantially the same information, or a petition filed pursuant to s. 120.54(7). An award of attorney's fees as provided by this paragraph may not exceed $50,000.

16. Here, Petitioner asserts that he is entitled to an award of attorney's fees and costs. Because he is asserting the

affirmative of the issue——that is, that he is entitled to attorney's fees and costs——he bears the burden to demonstrate that entitlement. Young v. Dep't of Cmty. Aff., 625 So. 2d 831, 833-34 (Fla. 1993); Balino v. Dep't of HRS, 348 So. 2d 349, 350 (Fla. 1st DCA 1977); see Envtl. Trust v. Dep't of Envtl. Prot., 714 So. 2d 493, 497 (Fla. 1st DCA 1998)(party who asserts a disputed claim before an administrative agency bears the burden of establishing the basis for the claim).

17. For the reasons discussed below, it is concluded that Petitioner is not entitled to an award of attorney's fees in this proceeding for having prevailed in Case No. 16-6127RU.

18. For the reasons discussed below, it is concluded that Petitioner is entitled to recover $119.73 in costs incurred in prosecuting Case No. 16-6127RU.

Petitioner is not Entitled to an Award of Attorney's Fees

19. Florida courts strictly construe statutes allowing attorney's fees; this is because under Florida law, statutes awarding attorney's fees are viewed as in derogation of common law. Ag. for Health Care Admin. v. HHCI Ltd. P'ship, 865 So. 2d 593, 595 (Fla. 1st DCA 2004).

20. The term "attorney" is not defined in chapter 120. Therefore, it is necessary to turn to other applicable legal authority addressing what it means to be an "attorney" under Florida law.

21. Chapter 454, Florida Statutes, addresses attorneys at law practicing in Florida. Section 454.021(1) states: "[a]dmissions of attorneys and counselors to practice law in the state is hereby declared to be a judicial function." Section 454.021(2), in pertinent part, states: "[t]he Supreme Court of Florida [(hereafter "Florida Supreme Court")], being the highest court of said state, is the proper court to govern and regulate admissions of attorneys and counselors to practice law in said state."

22. Additionally, article V, section 15 of the Florida Constitution, vests the Florida Supreme Court with the exclusive jurisdiction to regulate the admission of persons to the practice of law in Florida.

23. To implement its exclusive constitutionally-conferred (and legislatively-recognized) jurisdiction over the practice of law in Florida, the Florida Supreme Court has adopted The Rules Regulating the Florida Bar ("Bar Rules"). These rules govern both the licensed and unlicensed practice of law in Florida.[6/]

24. Rule 10-2.1(c) of the Bar Rules states in pertinent part: "[A] non[-]lawyer or non[-]attorney is an individual <u>who is not a member of the Florida Bar</u>. This includes, but is not limited to <u>lawyers admitted in other jurisdictions</u>." R. Regulating Fla. Bar 10-2.1(c) (emphasis added).

25. Consonant with this rule, Florida courts consistently held that attorneys who are not licensed to practice law in Florida——even if admitted to practice law in other jurisdictions ——are considered "non-attorneys" under Florida law, and, as such, are not entitled to attorney's fees awards.

26. In Chandris, S.A. v. Yanakakis, 668 So. 2d 180 (Fla. 1995), the Florida Supreme Court determined that a lawyer who was admitted to practice law in Massachusetts, but not in Florida, was not an "attorney" under Florida law. Therefore, he was not entitled to recover attorney's fees under a contingency fee agreement for legal services he had provided in Florida.[7/] Similarly, in Morrison v. West, 30 So. 3d 561 (Fla. 4th DCA 2010), and Vista Design, Inc. v. Silverman, 774 So. 2d 884 (Fla. 4th DCA 2001), the court determined that attorneys licensed to practice law in other jurisdictions but who were not licensed in Florida were not "attorneys" under Florida law, so were not entitled to attorney's fees.

27. The decision in Department of Insurance v. Florida Bankers Association, 764 So. 2d 660 (Fla. 1st DCA 2000), controls in this proceeding. In that case, a non-attorney successfully represented a party in a proposed rule challenge proceeding under section 120.56(2). In denying an award of attorney's fees under section 120.595(2), the court held that a party represented by a non-attorney[8/] in an administrative proceeding before DOAH was not

entitled to an award of attorney's fees under section 120.595(2). In so holding, the court interpreted the statute to exclude non-attorneys from those entitled to attorney's fees under section 120.595. The court stated: "[n]othing in section 120.595(2)[9/] authorizes the award of attorney's fees to non-attorneys." Id. at 663 (quoting Nicoll v. Baker, 668 So. 2d 989, 990-91 (Fla. 1996)). In this case, even though Petitioner is licensed to practice law in jurisdictions other than in Florida, pursuant to the above-cited authority, he is a non-attorney under Florida law, so is in the same position as the non-attorney representative in Florida Bankers Association to whom an award of fees was denied. Under Florida Bankers Association, Petitioner is not entitled to an award of attorney's fees in this proceeding.

28. DOAH precedent also supports the denial of attorney's fees to Petitioner in this proceeding. In Galloway v. G-Force/Wackenhut Corp., Case No. 11-4558 (Fla. DOAH May 22, 2013; FCHR Aug. 19, 2013), an attorney licensed in Alabama, but not in Florida, appeared as a qualified representative on behalf of the petitioner in an employment discrimination case. After prevailing on the merits in the discrimination case, the petitioner sought an award of attorney's fees for the legal services rendered by his attorney in the proceeding. The ALJ concluded that the petitioner was not entitled to an award of

attorney's fees because his attorney, even though licensed in another state, was not licensed or otherwise authorized to practice law in Florida.[10/]

29. The key point gleaned from the case law discussed above is that under Florida law, attorneys who are not licensed or otherwise authorized to practice law in Florida are considered "non-attorneys" who are not entitled to awards of attorney's fees.

30. Here, Petitioner asserts that he is entitled to an award of attorney's fees because he is licensed to practice law in other jurisdictions. Motion, pp. 3-4. He further contends that Respondent confuses "'attorneys' fees' with [']attorneys[']" and that "attorneys' fees" is a "legal term of art" that "does not contain any of the limits, geographic or otherwise, proffered by Respondent." Reply, p. 4. He thus argues that he is not subject to Florida's "court and bar" rules. Notably, he does not cite any legal authority that supports these contentions.

31. Petitioner's position is rejected. The applicable statutory and case law discussed above makes clear that under Florida law, attorneys who are not admitted or otherwise authorized to practice law in Florida are considered non-attorneys who are not entitled to attorney's fees awards. Stated another way, an attorney is only engaged in the authorized practice of law in Florida, for purposes of being entitled to

attorney's fees under Florida law, if he or she is a member of the Florida Bar or is otherwise authorized to do so under the applicable exceptions to the Florida Bar licensure requirement. As previously discussed, Petitioner is not licensed to practice law in Florida and has not established that he is otherwise authorized to practice law in Florida under any applicable exception to Florida Bar licensure.[11/] Accordingly, he is not an "attorney" under Florida law, so is not entitled to an award of attorney's fees in this proceeding.

32. Based on the foregoing, it is concluded that Petitioner is not entitled to an award of attorney's fees in this proceeding.

Petitioner is Entitled to an Award of Costs

33. Petitioner submitted, as part of the documentary support for the Motion, email correspondence from Respondent's agency clerk informing Petitioner that it would cost approximately $119.73 to respond to Petitioner's public records request filed with Respondent in connection with Case No. 16-6127RU. The email provided an address to which a check or money order for that amount should be sent.

34. Petitioner did not provide a receipt, copy of a cancelled check, image of a money order, or any other document to show that he did, in fact, pay that amount to Respondent for the records requested. However, he alleged in the Motion that he

incurred $119.73 in costs, and he stated in the Declaration that "the attached email of Guzzo email accurately indicates out-of-pocket expenses which have been paid." As noted above, Respondent did not dispute Petitioner's legal entitlement to, or the amount of, the costs Petitioner seeks in this proceeding.

35. Because Respondent did not dispute any of the facts alleged in the Motion or Declaration regarding Petitioner's entitlement to costs or the amount of those costs, those costs are not in dispute in this proceeding.

36. Therefore, it is concluded that Petitioner is entitled to an award of $119.73 in costs incurred for public records obtained from Respondent in connection with prosecuting Case No. 16-6127RU.

DOAH Lacks Jurisdiction to Enforce the Amended Final Order

37. As noted above, section 120.56(4) states in part: "[i]f an administrative law judge enters a final order that all or part of an unadopted rule violates s. 120.54(1)(a), the agency must immediately discontinue all reliance upon the unadopted rule or any substantially similar statement as a basis for agency action." § 120.56(4)(e), Fla. Stat. (emphasis added).

38. Petitioner alleges in his Reply that Respondent continues to enforce the Unadopted Rules, notwithstanding that the Amended Final Order issued in Case No. 16-6127RU determined that the challenged statements were unadopted rules that violated

section 120.54(1)(a), and that section 120.56(4)(e) mandates that Respondent immediately discontinue all reliance on them. Petitioner contends that as a result of its noncompliance with this statutory directive, Respondent has "forfeited its right to be heard in this tribunal;" as a remedy, Petitioner requests that the Response filed in this proceeding be stricken.

39. The undersigned declines to strike the Response because chapter 120 does not authorize DOAH to impose sanctions on an agency to enforce a DOAH final order. Rather, jurisdiction to enforce agency action lies in the circuit courts of this state, pursuant to section 120.69.

40. Section 120.69, titled "Enforcement of agency action," authorizes the circuit courts in this state to enforce "any agency action"——which would include the Amended Final Order issued in Case No. 16-6127RU. This remedy is available through an action brought in circuit court by "any substantially interested person who is a resident of the state." § 120.69(1)(b), Fla. Stat. Sections 120.69(1) and (2) address the procedural and substantive requirements of, as well as the relief available under, actions brought under section 120.69.

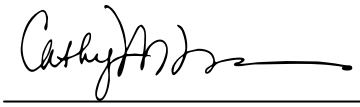
ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that:

1. Petitioner is not entitled to an award of attorney's fees pursuant to section 120.595(4).

2. Petitioner is entitled to an award of $119.73 in costs incurred in prosecuting Case No. 16-6127RU.

DONE AND ORDERED this 11th day of August, 2017, in Tallahassee, Leon County, Florida.



CATHY M. SELLERS
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 11th day of August, 2017.

ENDNOTES

[1/] In its Response, Respondent requests the undersigned to deny "any entitlement Petitioner has to attorney's fees as well as any amount associated with those fees." To the extent that this statement could be read to request denial of costs——which is not at all clear——Respondent's entire argument is devoted to arguing that Petitioner is not legally entitled to attorney's fees; the Response simply does not address Petitioner's legal entitlement to costs. Furthermore, as discussed below, Respondent has not disputed the amounts of the attorney's fees and costs sought by Petitioner——only Petitioner's legal entitlement thereto. As discussed above, Respondent was advised in the Amended Order Regarding Response issued in this proceeding on April 10, 2017, that failure to dispute Petitioner's entitlement to an award of attorney's fees and costs, or the amounts of attorney's fees and

costs, would constitute a waiver of Respondent's opportunity to challenge the same.

[2/] Petitioner was not admitted pro hac vice as an attorney in Case No. 16-6127RU. See note 11, infra.

[3/] The Declaration states that "under penalty of perjury" the statements therein are "true." However, there is no indication that the Declaration——which apparently is intended to suffice as an affidavit——was taken or administered by or before any judge, clerk or deputy clerk of court of record within Florida, or before any United States commissioner or notary public in Florida, and it did not contain a jurat or certificate of proof or acknowledgement authenticated by a signature and official seal of such officer or person, as required by section 92.50(1). Accordingly, the Declaration does not constitute an affidavit under Florida law. However, as previously noted, Respondent did not dispute any of the facts alleged in the Motion or the Declaration; therefore, the facts alleged in the Motion and the Declaration are undisputed in this proceeding.

[4/] Petitioner asserts that the trustees of the Trust "jointly agreed" to the contingency fee arrangement. However, a written copy of such contingency fee agreement was not included in the documents filed in support of the Motion. Rule 4-1.5(f)(1) of the Rules Regulating the Florida Bar Rules states in pertinent part: "[a] contingent fee agreement shall be in writing." Although neither the validity nor the enforcement of the contingency agreement is at issue in this proceeding, it is noted that to the extent a contingency fee agreement between Petitioner and the Trust exists, no information was provided to show that it meets this requirement.

[5/] Both cases ultimately were dismissed on grounds that did not reach the substantive merits of Petitioner's challenges to the Unadopted Rules under section 120.56(4).

[6/] In The Florida Bar v. Sperry, 140 So. 2d 587 (Fla. 1962), vacated on other grounds, Sperry v. Florida, 373 U.S. 379 (1963), the Florida Supreme Court concluded that the court's constitutional authority to regulate the practice of law in Florida "also carries with it the power to prevent the practice of law by those who are not admitted to the practice." Id. at 588. To that end, Rule 10-2.1(a) defines the "unlicensed practice of law" as "the practice of law, as prohibited by statute, court rule, and case law of the state of Florida."

[7/] In Chandris, the court observed that Florida has a unified bar, the purpose of which is to protect the public, and that by statute, the rendition of legal services by an attorney not admitted to practice law in Florida is illegal. See § 454.23, Fla. Stat. ("any person not licensed or otherwise authorized to practice law in this state who practices law in this state . . . commits a felony in the third degree.") Thus, the court reasoned that awarding attorney's fees would reward illegal activities, in violation of public policy. Id. at 185. The court noted that there are limited exceptions to the requirement that persons engaged in the practice of law in Florida must be licensed in Florida. Those exceptions are: (1) that the lawyer participate as co-counsel in litigation before state and federal courts in Florida only to the extent permitted by applicable rules of temporary admission; (2) transitory professional activities "incidental" to essentially out-of-state transactions; (3) and professional activities that constitute "coordinating-supervisory" activities in essentially multistate transactions in which matters of Florida law are being handled by members of the Florida Bar. Id. at 184 (citing Florida Bar v. Savitt, 363 So. 2d 559 (Fla. 1978)). Here, Petitioner has not alleged or shown that any of these exceptions apply to his representation of the Trust in Case No. 16-6127RU. Furthermore, as noted above, Petitioner was not admitted pro hac vice in this proceeding.

[8/] In Florida Bankers Association, the non-attorney representative was not admitted to practice law in Florida or in any other jurisdiction, and had appeared as a qualified representative in the rule challenge proceeding, pursuant to Florida Administrative Code Rule 28-106.106(1), which states: "[a]ny party who appears in any agency proceeding has the right, at his or her own expense, to be represented by counsel or a qualified representative. Counsel means a member of the Florida Bar or law students certified pursuant to chapter 11 of the [Bar Rules]."

[9/] Although Florida Bankers Association involved a fees award under section 120.595(2) rather than under 120.595(4), the term "attorney's fees," as used in section 120.595, has the same meaning regardless of which subsection in which it appears. See Nat'l Auto Servs. Ctrs. v. F/R 550, LLC, 192 So. 3d 498 (Fla. 2d DCA 2016)(the same meaning should be given to the same term within subsections of the same statute); see State v. Hearns, 961 So. 2d 211, 217 (Fla. 2007)(where the Legislature uses the exact same word in different statutory provisions, it is assumed that the same meaning is intended to apply). As discussed, the court in Florida Bankers Association interpreted the statute to exclude

non-attorneys from those entitled to attorney's fees under section 120.595.

[10/] In Galloway, the ALJ noted that the petitioner's attorney had not been admitted pro hac vice in that proceeding.

[11/] In Case No. 16-6127RU, Petitioner did not seek, and was not required by the undersigned, to appear as a qualified representative. This is because he appeared as a party representing himself rather than as an attorney representing the Trust. To that point, he was a named party to that proceeding appearing as a trustee on behalf of the Trust. See § 120.52(13), Fla. Stat. ("party" means: "(a) specifically named persons whose substantial interests are being determined in the proceeding" (emphasis added)). Had Petitioner intended to appear as an attorney representing the Trust in Case No. 16-6127RU, he was required to have filed a notice of appearance pursuant to rule 28-106.105 for purposes of being deemed counsel or a qualified representative of the Trust. However, he did not do so. Further, had he entered a notice of appearance, he could not have been designated "counsel" for the Trust because that term is expressly limited, under rule 28-106.106(1), to only members of the Florida Bar and designated law students. Presumably, Petitioner could have sought authorization to be admitted pro hac vice in Case No. 16-6127RU under Rule 4-5.5 and Florida Rule of Judicial Administration Rule 2.505. However, as noted above, he did not do so. Moreover, in any event, he would not have been eligible to appear pro hac vice in Case No. 16-6127RU because he is suspended from the practice of law in other jurisdictions. See Fla. R. Jud. Admin. 2.510.

COPIES FURNISHED:

Joseph R. Gillespie, Agency Clerk
Department of Highway Safety
and Motor Vehicles
Room A432, MS02
2900 Apalachee Parkway
Tallahassee, Florida 32399
(eServed)

Jonathan P. Sanford, Esquire
Department of Highway Safety
and Motor Vehicles
2900 Apalachee Parkway, Room A-432
Tallahassee, Florida 32399
(eServed)

Stephen Williams
1019 Southeast 4th Place
Cape Coral, Florida 33990-1521
(eServed)

Ken Plante, Coordinator
Joint Administrative Procedures Committee
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
(eServed)

Ernest Reddick, Chief
Anya Grosenbaugh
Department of State
R. A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399-0250
(eServed)

Christie S. Utt, General Counsel
Department of Highway Safety
  and Motor Vehicles
Neil Kirkman Building, Room A-432
2900 Apalachee Parkway
Tallahassee, Florida 32399-0500
(eServed)

Terry L. Rhodes, Executive Director
Department of Highway Safety
  and Motor Vehicles
Neil Kirkman Building, Room B-443
2900 Apalachee Parkway
Tallahassee, Florida 32399-0500
(eServed)

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.