

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MARION COUNTY, POLK COUNTY,
AND SEMINOLE COUNTY,

Petitioners,

vs.

Case No. 17-2678FC

DEPARTMENT OF JUVENILE JUSTICE,

Respondent.

_____ /

FINAL ORDER ENTERING AN AWARD
FOR APPELLATE ATTORNEYS' FEES AND COSTS

After a final hearing was scheduled to be heard in this case before James H. Peterson III, Administrative Law Judge with the Division of Administrative Hearings, the parties, on June 1, 2017, filed a Stipulation for Entry of Agreed Final Order for Appellate Attorneys' Fees and Costs.

APPEARANCES
(as set forth in the Stipulation)

For Petitioners Marion County, Polk County, and Seminole County:

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

Matthew G. Minter, Esquire
Marion County Attorney's Office
601 Southeast 25th Avenue
Ocala, Florida 34471

Michael S. Craig, Esquire
Polk County Attorney's Office
Drawer AT01, Post Office Box 9005
Bartow, Florida 33831-9005

A. Bryant Applegate, Esquire
Lynn P. Porter-Carlton, Esquire
Seminole County Attorney's Office
1101 East 1st Street
Sanford, Florida 32771

For Respondent Department of Juvenile Justice:

Brian D. Berkowitz, General Counsel
Michael J. Wheeler, Esquire
John L. Milla, Esquire
Department of Juvenile Justice
2737 Centerview Drive
Tallahassee, Florida 32399-3100

STATEMENT OF THE ISSUE

Determination, after remand, of an appropriate award for reasonable attorneys' fees and costs incurred by Petitioners in consolidated appeals.

PRELIMINARY STATEMENT

Petitioners, along with other Florida counties, challenged the annual reconciliations of the Department of Juvenile Justice (the Department or Respondent) for fiscal years (FY) 2009-10, 2010-11, and 2011-12, determining each county's share of detention costs under section 985.686, Florida Statutes, and reconciling the counties' estimated costs to their actual costs.

These cases were styled Bay County, et al. v. Department of Juvenile Justice, DOAH Case No. 11-0995 (consolidated); Okaloosa County, Florida v. Department of Juvenile Justice, DOAH Case No. 11-5894; and Volusia County, et al. v. Department of Juvenile Justice, DOAH Case No. 13-1442 (consolidated). Final hearings were scheduled in each of these cases. Before final hearings were held, certain of the Department's rules relating to detention cost share were invalidated in a separate proceeding. Okaloosa Cnty., et al. v. Dep't of Juv. Just., Case No. 12-0891RX (Fla. DOAH July 17, 2012), aff'd Dep't of Juv. Just. v. Okaloosa Cnty., Case No. 1D12-3929, 113 So. 3d 1074 (Fla. 1st DCA 2013) (the Rule Challenge). As a result of the decision reached in the Rule Challenge, the Department and the counties entered into Joint Stipulations agreeing to the amounts overcharged to the counties for detention cost share for the fiscal years at issue.

Thereafter, jurisdiction was relinquished to the Department. The Department entered Final Orders which failed to adopt the Joint Stipulations, and also determined that Petitioners were not entitled to any remedy for their overcharges for detention cost share. Thereafter, 20 counties, including Petitioners, appealed these Final Orders to the First District Court of Appeal (the First District). The three separate appeals were consolidated before the First District,

as Marion County, et al. v. Department of Juvenile Justice,
Case Nos. 1D15-0589, 1D15-590 and 1D15-592 (consolidated).

After consolidation, the case was briefed and argued, but before a decision was rendered, the Legislature passed section 985.6865, Florida Statutes, creating a new cost sharing system to apply prospectively. Ch. 2016-152, Laws of Fla. This legislation created a system where, in exchange for dismissing all pending litigation, the counties would be responsible for detention cost share under a new 50/50 split of the costs between the counties and the State. Seventeen of the counties filed notices of voluntary dismissal. Petitioners Marion County, Polk County, and Seminole County, however, are unique in that these counties had previously opted out of the detention cost share system, as permitted by section 985.686(10) and determined not to dismiss their appeals.

The First District requested further briefing after the passage of the 2016 legislation. Petitioners, as the only remaining Appellants, submitted supplemental briefing continuing to maintain their position on appeal that the Department erred by rejecting the Joint Stipulations, and by determining that no refunds would be provided for the overpayments made by Petitioners. Petitioners also argued that the 2016 legislation did not compel dismissal of their appeals.

Ultimately, the First District agreed with Petitioners on all issues. Marion Cnty., et al. v. Dep't of Juv. Just., Case Nos. 1D15-0589, 1D15-590 and 1D15-592, 42 Fla. L. Weekly D 765 (Fla. 1st DCA April 4, 2017). First, the Court determined that Petitioners were not compelled to dismiss their appeals. The First District also determined that the Department is bound by the Joint Stipulations, and that it has a duty to provide a reconciliation to Petitioners that constitutes more than simply a reconciliation on paper.

The First District also awarded Petitioners' motion for attorneys' fees under section 120.595(5), Florida Statutes, and determined that the Department's action in rejecting the Joint Stipulations and unilaterally correcting the counties' overpayment amounts constituted a gross abuse of discretion warranting appellate fees. The Court remanded (the Remand) for further proceedings, and the Mandates were issued on April 20, 2017.

Following the Mandates, the above-styled case was initiated by a Consolidated Notice of Filing (Notice) and a Consolidated Motion for Award of Appellate Attorneys' Fees and Costs filed by Petitioners on May 9, 2017 (Motion). Attached to the Motion were affidavits of Petitioners' counsel of record, Carly J. Schrader, and counsel's accounting manager, Carol Lamb, along with the actual invoices presented to Marion

County, Polk County, and Seminole County, setting forth the attorneys' fees incurred on appeal. Such fees, at the standard hourly rates charged collectively to Petitioners, total \$35,658.03.

In addition, attached to the Motion were the affidavits of Carly J. Schrader and Carol Lamb, and attachments setting forth the costs sought by Petitioners pursuant to Florida Rule of Appellate Procedure 9.400, for the filing fees for the three notices of appeal in the total amount of \$192.87.

Because the three separate appeals were consolidated before the First District and only one award of fees and costs was sought as to all three appeals, the Motion was filed as a Consolidated Motion for Award of Attorneys' Fees and Costs in the previously closed DOAH Case Nos. 11-0995, 11-5894, and 13-1442. In addition, Marion County, Polk County, and Seminole County are the only parties remaining from the prior proceedings before the Division. Therefore, at Petitioners' request, this case was restyled as set forth above.

FINDINGS OF FACT

1. As the First District has determined Petitioners' entitlement to an award of fees, the only issue remaining to be determined at the time the above-styled case was opened after remand was the amount of fees and costs.

2. After a telephonic status conference and the scheduling of this case for a final hearing, on June 1, 2017, the parties to this case filed a Stipulation for Entry of Agreed Final Order for Appellate Attorneys' Fees and Costs (Stipulation).

3. In the Stipulation, the parties agreed to the entry of a final order for the award of \$35,658.03 as reasonable attorneys' fees and \$192.87, for taxation of costs incurred, in the consolidated appeals, to be paid within 30 days from the entry of a final order thereon.

4. The amounts for fees and costs set forth in the Stipulation are consistent with the attachments to the Motion.

CONCLUSIONS OF LAW

5. The Division of Administrative Hearings has jurisdiction of this case pursuant to the Remand and section 120.595(5), Florida Statutes.

6. Section 120.595(5) sets forth the statutory basis for the award of attorney's fees and costs for administrative appeals, and provides as follows:

(5) Appeals. — When there is an appeal, the court in its discretion may award reasonable attorney's fees and reasonable costs to the prevailing party if the court finds that the appeal was frivolous, meritless, or an abuse of the appellate process, or that the agency action which precipitated the appeal was a gross abuse of the agency's discretion. Upon review of agency action that precipitates an appeal, if the court finds that the agency improperly rejected or

modified findings of fact in a recommended order, the court shall award reasonable attorney's fees and reasonable costs to a prevailing appellant for the administrative proceeding and the appellate proceeding.

7. In addition, Florida Rule of Appellate Procedure 9.400 provides that costs shall be taxed in favor of the prevailing party by the lower tribunal on a motion served no later than 45 days after rendition of the Court's order.

8. Under the facts and law, an award of attorneys' fees and costs in the amount stipulated by the parties as reasonable is appropriate.

ORDER

In accordance with the above findings and conclusions, the Remand, section 120.595(5), Florida Rule of Appellate Procedure 9.400, and the Stipulation, it is hereby

ORDERED:

1. Petitioners Marion County, Polk County, and Seminole County (Petitioners) are hereby jointly awarded \$35,658.03 as reasonable attorneys' fees, and \$192.87 in costs, against Department of Juvenile Justice in the consolidated appeal before the First District Court of Appeal, Case Nos. 1D15-0589, 1D5-0590, and 1D15-0592.

2. Payment of the amounts set forth in paragraph 1, above, shall be made by or on behalf of the Department of Juvenile

Justice to the "Trust Account of Nabors, Giblin, & Nickerson, P.A." within 30 days from the entry of this Final Order.

3. Upon entry of this Final Order, the final hearing scheduled in this case before the Division of Administrative Hearings for July 6, 2017, shall be cancelled, and the file in this case shall be closed.

DONE AND ORDERED this 6th day of June, 2017, in Tallahassee, Leon County, Florida.



JAMES H. PETERSON, III
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 6th day of June, 2017.

COPIES FURNISHED:

Michael S. Craig, Esquire
Polk County Attorney's Office
Drawer AT01, Post Office Box 9005
Bartow, Florida 33831-9005

Matthew G. Minter, Esquire
Marion County Attorney's Office
601 Southeast 25th Avenue
Ocala, Florida 34471
(eServed)

Brian D. Berkowitz, General Counsel
Department of Juvenile Justice
Knight Building, Room 312V
2737 Centerview Drive
Tallahassee, Florida 32399-3100
(eServed)

Michael J. Wheeler, Esquire
Department of Juvenile Justice
2737 Centerview Drive
Tallahassee, Florida 32399
(eServed)

John L. Milla, Esquire
Department of Juvenile Justice
2737 Centerview Drive, Suite 3200
Tallahassee, Florida 32399
(eServed)

Gregory Stewart, Esquire
Nabors, Giblin and Nickerson, P.A.
Suite 200
1500 Mahan Drive
Tallahassee, Florida 32308
(eServed)

Lynn M. Hoshihara, Esquire
Nabors, Giblin and Nickerson, P.A.
Suite 200
1500 Mahan Drive
Tallahassee, Florida 32308
(eServed)

Carley J. Schrader, Esquire
Nabors, Giblin and Nickerson, P.A.
Suite 200
1500 Mahan Drive
Tallahassee, Florida 32308
(eServed)

A. Bryant Applegate, Esquire
Seminole County Attorney's Office
1101 East 1st Street
Sanford, Florida 32771

Lynn P. Porter-Carlton, Esquire
Seminole County Attorney's Office
1101 East 1st Street
Sanford, Florida 32771
(eServed)

Christina K. Daly, Secretary
Department of Juvenile Justice
Knight Building
2737 Centerview Drive
Tallahassee, Florida 32399-3100
(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.