

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LEE LIGHTSEY,

Petitioner,

vs.

Case No. 19-5210F

FLORIDA FISH AND WILDLIFE  
CONSERVATION COMMISSION,

Respondent.

\_\_\_\_\_ /

FINAL ORDER

This cause comes before the undersigned on a motion for award of attorney's fees and costs filed by Petitioner, Lee Lightsey.

APPEARANCES

For Petitioner: Bert J. Harris, Esquire  
Swaine, Harris & Wohl, P.A.  
401 Dal Hall Boulevard  
Lake Placid, Florida 33852

For Respondent: Bridget Kelly McDonnell, Esquire  
Florida Fish and Wildlife Conservation Commission  
620 South Meridian Street  
Tallahassee, Florida 32399-1600

Joseph Yauger Whealdon, Esquire  
Florida Fish and Wildlife Conservation Commission  
620 South Meridian Street  
Tallahassee, Florida 32399-1600

Sharmin Royette Hibbert, Esquire  
Florida Fish and Wildlife Conservation Commission  
620 South Meridian Street  
Tallahassee, Florida 32399-1600

## STATEMENT OF THE ISSUE

Is an Agency's notice of its intended decision a pleading or a paper filed in a proceeding conducted pursuant to section 120.569(2)(e), Florida Statutes(2019)?<sup>1</sup>

## PRELIMINARY STATEMENT

This attorney's fees<sup>2</sup> matter began with three petitions of Mr. Lightsey, each requesting a formal administrative hearing to challenge the denial by Respondent, Florida Fish and Wildlife Conservation Commission (Commission), of three license applications. The disputes were about the Commission's denial of a Hunt Preserve License (DOAH Case No. 18-5428), a Game Farm License (DOAH Case No. 19-3187), and a Blanket Hunt Reserve License (DOAH Case No. 19-1298). On joint motions of the parties, jurisdiction of Case numbers 19-3187 and 19-1298 was relinquished to the Commission. Consequently, this matter involves only the fees motion filed in Case number 18-5428.

The parties eventually settled the licensing dispute. They agreed to sever the attorney's fees and costs dispute for resolution by the Division of Administrative Hearings (Division), if necessary. The facts material to the initial legal issues that the fees motion presents are not in dispute.

Mr. Lightsey seeks fees under section 120.569(2)(e).<sup>3</sup> The undersigned rendered an Order requiring the parties to file memoranda relevant to specific threshold issues. The Order required each party to file a memorandum that, among other things:

- (a) identifies each document Petitioner maintains is a basis for granting relief under section 120.569(2)(e), Florida Statutes (2018);

---

<sup>1</sup> All citations are to the 2019 codification of the Florida Statutes unless otherwise noted. The 2018 statutes are identical.

<sup>2</sup> This Order will sometimes refer to attorney's fees and costs collectively as fees or attorney's fees.

<sup>3</sup> His motion also seeks fees under section 120.595(1). A separate order disposes of that claim.

(b) addresses the question of whether each document identified as required by (a) is a pleading, motion, or other paper filed in this "proceeding" as used in section 120.569(2)(e);

(c) analyzes the meaning of "filed in the proceeding" as used in section 120.569(2)(e), including whether Respondent's Notice of Denial is a document filed in this proceeding[.].

The parties timely filed memoranda. They have been considered in the preparation of this Final Order. Mr. Lightsey's memorandum did not specifically identify any document that he maintained was a basis for granting relief under section 120.569(2)(e), other than Respondent's Amended Notice of Denial.<sup>4</sup>

#### FINDINGS OF FACT

1. The Commission denied an application by Mr. Lightsey for issuance of a Hunt Preserve License. A letter titled "Amended Notice of Denial" (Amended Notice), signed by Major Rob Beaton, Division of Law Enforcement, advised Mr. Lightsey that the Commission intended to deny his application.

2. The Amended Notice included this dispositive paragraph: "Due to the facts stated above, pursuant to 68-1.010, F.A.C, your application for a HPL has been denied. We are processing your application fee for a refund, and you should receive it within 21 days." The Amended Notice also advised Mr. Lightsey of his right to request a hearing to challenge the intended decision.

3. Mr. Lightsey challenged the proposed denial and requested a formal administrative hearing. Mr. Lightsey brought his challenge under section 120.57(1), which creates a right to a formal hearing to dispute a proposed agency action. The Commission referred the matter to the Division for

---

<sup>4</sup> Any claims based on papers other than the Amended Notice are deemed abandoned since the memorandum does not specifically identify any other papers.

assignment of an Administrative Law Judge and conduct of the hearing.

4. The parties settled the licensing dispute before the hearing. Their settlement agreement provided for the Commission issuing each of the denied licenses. The parties' agreement also provided for severing the attorney's fees and costs claim and leaving it pending for the Division to resolve if the parties could not agree. The order closing the file in this case severed the fees and costs claim and reserved jurisdiction over it. The parties could not agree. The division re-opened the fees case as DOAH Case No. 19-5210F. This proceeding followed.

### CONCLUSIONS OF LAW

#### Jurisdiction

5. Sections 120.569 and 120.57 grant the Division jurisdiction over the issues in and parties to this proceeding.

#### Section 120.569(2)(e)

6. Section 120.569(2)(e) provides for sanctions to be imposed during proceedings at the Division for filings made for improper purposes. It states:

All pleadings, motions, or other papers filed in the proceeding must be signed by the party, the party's attorney, or the party's qualified representative. The signature constitutes a certificate that the person has read the pleading, motion, or other paper and that, based upon reasonable inquiry, it is not interposed for any improper purposes, such as to harass or to cause unnecessary delay, or for frivolous purpose or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of these requirements, the presiding officer shall impose upon the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

7. The statute requires the presiding officer to impose an appropriate sanction which may include payment of expenses incurred because of the pleading, including reasonable attorney's fees. This means that an order resolving a claim under section 120.569(2)(e) is a final order, not a recommended order.

8. Mr. Lightsey maintains that the Commission's notice advising that it was denying his license application is a pleading, motion, or other paper filed in this proceeding and that the Commission filed it for an improper purpose. Determining whether the statute permits Mr. Lightsey's claim for fees and costs requires determining what is "the proceeding." If the proceeding means the entire licensure process starting with Mr. Lightsey's application, the statute may authorize him to seek fees and costs before the Commission. It is worth noting that the Administrative Law Judge would not be the presiding officer authorized to impose sanctions for events that occurred at the Commission, including the Amended Notice. If "the proceeding" means the case litigated before the Division after the Commission referred the dispute to the Division, the statute does not authorize Mr. Lightsey to recover fees based upon claims about the Amended Notice.

9. Mr. Lightsey cites no cases to support his claim to fees under this section. He relies upon two arguments. The first is that, "If the nature of the papers and other documents served by the Commission pertaining to the DOAH proceedings do not constitute the type of paper described in section 120.569(2)(e), Florida Statutes, then no proceeding under 120.569 or 120.57 will qualify." The argument is flawed. Parties file many pleadings, motions, or papers in the course of litigating administrative disputes at the Division. Discovery motions, motions to dismiss, motions in limine, and proposed recommended orders are a few examples. The docket in Case No. 18-5428 reflects many filings by both parties in the proceeding while it was pending at the Division.

10. Issuance of the Amended Notice is only a statement of an agency's

proposed action. The notice is issued by and filed at the agency. It is one of many steps possible in an agency's investigation or review process. Other steps, many of which generate documents, include requests for additional information, requests for clarification, and rejection of documents. The disagreement only becomes a "proceeding" at the Division if an affected citizen or business requests a hearing. Accepting Mr. Lightsey's argument that the Amended Notice is a paper filed in a proceeding would mean that every other paper an agency generates in the process of reviewing a license or permit application is a paper filed in a proceeding that may give rise someday to a right to recover attorney's fees and costs from the agency at the Division.

11. Mr. Lightsey's argument is inconsistent with the statute's recitation of the sorts of papers that give rise to a claim for fees. The statute provides: "The signature constitutes a certificate that the person has read the pleading, motion, or other paper and that, based upon reasonable inquiry, it is not interposed for any improper purposes, such as to harass or to cause unnecessary delay, or for frivolous purpose or needless increase in the cost of litigation." These are factors that manifest in litigation, not in the preceding administrative review and formulation of proposed action. For example, there can be no "needless increase in the cost of litigation" until there is litigation. And there is no litigation until a party seeks an administrative hearing. Similarly, the statute, taken as a whole, plainly creates a means to manage conduct during litigation, not to punish conduct preceding it.

12. Chapter 120 does not define "proceeding." Consequently, the dictionary definition is persuasive. *Sch. Bd. v. Survivors Charter Sch., Inc.*, 3 So. 3d 1220, 1233 (Fla. 2009). The Merriam-Webster Dictionary defines "proceeding" as a legal action. <https://www.merriam-webster.com/dictionary/proceeding> (last viewed March 24, 2020). This is consistent with the statement in Florida Administrative Code Rule 28-106.101 that the rules for decisions determining substantial interests apply in "proceedings." The administrative review and decision on an application

does not become a legal action until the affected party invokes the procedural rights created by chapter 120 and requests a hearing. A notice of intended decision is the last step in the administrative review, not a step in the Division "proceeding."

13. Mr. Lightsey argues that the notice of proposed action triggers every proceeding under chapter 120. That is incorrect. It is the affected party's request for a hearing under section 120.569 that triggers the proceeding. Absent a request for hearing, the proposed action becomes final agency action without any proceeding involving litigation.

14. Accepting Mr. Lightsey's argument gives rise to the absurd result that a regulated citizen or business may recover fees from an agency for any document generated during any investigation or review. Mr. Lightsey's argument would apply in decision-making processes that do not have a "presiding officer," which the statute relies upon to impose sanctions. A "presiding officer" is an agency head, administrative law judge, or other person authorized to conduct administrative hearings or proceedings. Fla. Admin. Code R. 28-106.102. This interpretation conflicts with the well-established principle that tribunals should avoid interpretations of statutes that lead to absurd results. *Murray v. Mariner Health*, 994 So. 2d 1051 (Fla. 2008).

15. Mr. Lightsey's argument for a broad interpretation of "proceeding" would also result in an interpretation of the statute that directly conflicts with the principle that statutes permitting the recovery of attorney's fees should be strictly construed because they are in derogation of the common law. *Pepper's Steel & Alloys, Inc. v. United States*, 850 So. 2d 462 (Fla. 2003).

16. Mr. Lightsey's memorandum subliminally reveals what the "proceeding" means, by referring to his requests for a formal *proceeding*. These are requests made after the Amended Notice issued. Thus, his memorandum acknowledges that his Election of Rights requesting a formal hearing commenced the proceeding.

17. Mr. Lightsey's second argument is that the provisions of section 57.111, Florida Statutes, providing for an award of costs and fees against an agency should be incorporated into section 120.569(2). His argument is about what sorts of pleadings and papers would justify a fees award. It does not address the dispositive issue of what is a "proceeding." Section 57.111 provides for fee claims by small business parties against agencies required to provide a "clear point of entry [to request an administrative hearing]." The statute implements the Legislature's judgment that certain persons are at a disadvantage in disputes with an agency because of a disparity in resources. It applies in proceedings "initiated by a state agency" and limits the right to recover fees to entities fitting the definition of "small business party." Section 57.111 is a plain statement by the Legislature about when and why parties may recover fees and costs in actions "initiated," as defined by statute for purposes of that statute, by a state agency. But that is not the statute that Mr. Lightsey's motion advances.<sup>5</sup>

18. Section 120.569(2)(e) does not authorize Mr. Lightsey to recover attorney's fees and costs.

#### DISPOSITION

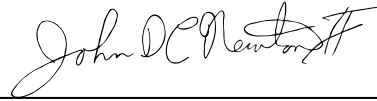
Based upon the foregoing Findings of Fact and Conclusions of Law, Petitioner's Motion for Fees and Costs under section 120.569(2)(e), Florida Statutes, is DENIED.

---

<sup>5</sup> That statute limits the amount of fees and costs to \$50,000.00.



DONE AND ORDERED this 31st day of March, 2020, in Tallahassee, Leon  
County, Florida.



---

JOHN D. C. NEWTON, II  
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](http://www.doah.state.fl.us)

Filed with the Clerk of the  
Division of Administrative Hearings  
this 31st day of March, 2020.

COPIES FURNISHED:

Bert J. Harris, Esquire  
Swaine, Harris & Wohl, P.A.  
401 Dal Hall Boulevard  
Lake Placid, Florida 33852  
(eServed)

Bridget Kelly McDonnell, Esquire  
Florida Fish and Wildlife Conservation Commission  
620 South Meridian Street  
Tallahassee, Florida 32399-1600  
(eServed)

Joseph Yauger Whealdon, Esquire  
Florida Fish and Wildlife Conservation Commission  
620 South Meridian Street  
Tallahassee, Florida 32399-1600  
(eServed)

Sharmin Royette Hibbert, Esquire  
Florida Fish and Wildlife Conservation Commission  
620 South Meridian Street  
Tallahassee, Florida 32399  
(eServed)

Eric Sutton, Executive Director  
Florida Fish and Wildlife Conservation Commission  
Farris Bryant Building  
620 South Meridian Street  
Tallahassee, Florida 32399-1600  
(eServed)

Emily Norton, General Counsel  
Florida Fish and Wildlife Conservation Commission  
Farris Bryant Building  
620 South Meridian Street  
Tallahassee, Florida 32399-1600  
(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.