

ATTORNEY'S FEES IN ADMINISTRATIVE PROCEEDINGS

ALJs operate under Chapter 120, Florida Statutes, the Administrative Procedure Act (APA). APA contains its own provisions relating to the award of attorney's fees – Section 120.595, entitled – oddly enough -- “Attorney's Fees.”

120.595(1) – This section allows fees where non-prevailing party participated for an improper purpose (and is, in administrative proceedings, a tough burden to prove). Section specifically does not abrogate other statutes' provisions allowing fees and costs in administrative proceedings. See §§ 57.105, 57.111

120.595(2) – This section addresses challenges to proposed agency rule is - \$50K cap on fees

120.595(3) – challenges to an existing rule - \$50K cap

120.595(4) – challenges to unadopted rules, i.e., agency statements which are being used as rules but have not been promulgated as such. \$50K cap.

120.595(5) – relates to appeal of an administrative final order. If the agency's action precipitating the appeal is deemed a gross abuse of discretion, OR if the agency improperly rejected or modified the ALJ's findings of fact . . . fees are assessed. No cap.

120.569(2)(e) - allows for an award of fees if a pleading or other document is filed to harass or for another improper purpose. Fee can be assessed against the person who signed the document, the attorney, or the party.

120.569(2)(k) – if you have to go to Circuit Court to enforce a subpoena, allows for fees

57.105(5) – In chapter 120 proceedings, fees are awardable just as allowed in Circuit Court. However, any award against the agency is paid wholly by the agency, not the attorney. A voluntary dismissal does not protect the non-prevailing party.

57.111 – If the state agency initiates a proceeding against a small business, fees are allowed. The request for fees must be made within 60 days of the entry of the Final Order. \$50K cap

Relevant case: Proposed rule challenge – I upheld rule, P appealed to DCA who reversed. P moved for fees under 120.595(2), 120.595(5), and 120.569(2)(e) . . . DCA granted motion for fees, told parties to work out amount or go back to ALJ. They came back. Looked at case and determined only basis for fees was 120.595(2) and awarded pursuant to that section . . . with \$50K cap (which was less than 10% of fees being sought).

GB, ZL, et al v APD 1D13-4903, 1D15-1863 DOAH Case No. 14-4173