

*Robert J. Barnas v. Sharon L. Yeago*  
FEC 13-125  
DOAH 13-4759F

**Review of Recommended Order from DOAH on Petition for Attorney's Fees**

**Procedure for Review**

The purpose of this proceeding is to consider the Recommended Order issued by the Administrative Law Judge (ALJ) in this cause and to enter a Final Order on this matter. This is not an evidentiary hearing. Consideration must be confined to the record.

The Commission may adopt the Recommended Order as its Final Order or it may reject the ALJ's findings of fact or conclusions of law and interpretation of administrative rules over which the Commission has substantive jurisdiction. However, the Commission **may not reject or modify the factual findings unless it determines from a review of the complete record that the factual findings were not based on competent, substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law.**

The Commission **may not reject or modify the conclusions of law unless it states with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law is as or more reasonable than that which was rejected or modified.** Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact.

The Commission **may not alter the recommended penalty** without a review of the complete record, and **without stating with particularity the reasons for doing so, citing to the record to justify the action.**

Since exceptions have been filed, the procedure will be that each party will be allowed a brief opening statement and then the Commission will consider the exceptions. Arguments will be made by the parties only upon request by the Commission. Once the exceptions have been

considered, the Commission will make the appropriate motion to deal with the remaining findings of fact and conclusions of law in the recommended order. Finally, the Commission will consider and resolve the issue of what penalty, if any, is appropriate.

### **Applicable Statutes and Rules**

#### **106.265(6), Florida Statutes:**

In any case in which the commission determines that a person has filed a complaint against another person with a malicious intent to injure the reputation of the person complained against by filing the complaint with knowledge that the complaint contains one or more **false allegations or with reckless disregard for whether the complaint contains false allegations** of fact material to a violation of this chapter or chapter 104, **the complainant shall be liable for costs and reasonable attorney's fees incurred in the defense of the person complained against, including the costs and reasonable attorney's fees incurred in proving entitlement to and the amount of costs and fees.** If the complainant fails to pay such costs and fees voluntarily within 30 days following such finding by the commission, the commission shall forward such information to the Department of Legal Affairs, which shall bring a civil action in a court of competent jurisdiction to recover the amount of such costs and fees awarded by the commission.

#### **Rule 2B-1.0045 Award of Attorney's Fees:**

(1) To claim costs and attorney's fees, the respondent shall file a petition with the Commission clerk no later than 30 days following disposition of the complaint. The petition shall state with particularity the facts and grounds that demonstrate that the respondent is entitled to an award of costs and attorney's fees from the complainant. The Commission clerk shall forward a

copy of the petition to the complainant at the most recent address on file with the Commission.

(2) At its next regularly scheduled meeting, the Commission shall determine whether the petition states a prima facie case for costs and attorney's fees. If the Commission finds that the petition does not state a prima facie case for costs and attorney's fees, the Commission shall dismiss the petition. If the Commission finds that the petition states a prima facie case for costs and attorney's fees, the Commission shall enter an order setting the petition for a hearing involving disputed issues of material fact be held before the Commission or before one or more Commissioners appointed by the Chairman, or before the Division of Administrative Hearings for the entry of a final order<sup>1</sup> determining whether respondent is entitled to an award of attorneys fees and costs and, if so, what amount is due.

*Rulemaking Authority 106.24(5), 106.26 FS. Law Implemented 106.265(6) FS. History--New 4-24-05, Amended 8-13-14.*

**120.57(1), Florida Statutes:**

(k) The presiding officer shall complete and submit to the agency and all parties a recommended order consisting of findings of fact, conclusions of law, and recommended disposition or penalty, if applicable, and any other information required by law to be contained in the final order. All proceedings conducted under this subsection shall be *de novo*. The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by

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<sup>1</sup> Pursuant to Section 106.265(6), Florida Statutes, the Commission has final order authority in this type of case. The statute provides, in relevant part, "In any case **in which the commission determines** . . . the complainant shall be liable . . ." The rule is inconsistent with the statute and requires amendment. The statute rather than the rule governs while amendment is pending.

page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

(1) The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.