

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

THE JUSTICE
ADMINISTRATIVE
COMMISSION,

Petitioner,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D11-0232

v.

OFFICIAL REPORTERS, INC.,

Respondent.

/

Opinion filed May 27, 2011.

Petition for Writ of Certiorari – Original Jurisdiction.

Christian D. Lake, Assistant General Counsel, The Justice Administrative Commission, Tallahassee, for Petitioner.

Henry M. Coxe, III, and Ashley W. Greene of Bedell, Dittmar, DeVault, Pillans & Coxe, P.A., Jacksonville, for Respondent.

PER CURIAM.

The Justice Administrative Commission petitions for a writ of certiorari, arguing that the trial court departed from the essential requirements of the law in directing it to pay respondent, Official Reporters, Inc., for court reporting services

in the Fourth Judicial Circuit pursuant to the rates set forth in respondent's contract with the Circuit rather than the rates set forth by statute. We reject this argument and find no departure from the essential requirements of the law.

In its order, the trial court noted that the issue was the appropriate amount of compensation to be awarded to respondent for preparation of appellate transcripts in each of the cases before it during the remaining first term of respondent's contract with the Circuit, "to June 30, 2011." Finding that acceptance of the Commission's argument would result in a virtual absence of reporting services in the Circuit due to the fact that respondent was the sole bidder for the Circuit's contract and the fact that respondent would not provide its services at the lower statutory rates, the court ordered the Commission to compensate respondent in the cases at issue at the contractual rates "until the contract terms ends on June 30, 2011." The court also ordered the Commission to pay at the contractual rates in other cases until such time as the Commission secures an official court reporter willing and able to provide the services in the Circuit at the statutory rates. We interpret this latter directive as applying only to services performed within the contractual period through June 30, 2011. To order payment at the contractual rate after that date would constitute a departure from the essential requirements of the law. See Justice Admin. Comm'n v. Neighbors, 927 So. 2d 218, 219 (Fla. 1st DCA 2006) (vacating the order requiring the Commission to pay costs other than those enumerated in the pertinent statute); see also Justice Admin. Comm'n v.

Lenamon, 19 So. 3d 1158, 1165 (Fla. 2d DCA 2009) (quashing the order requiring the Commission to pay more for attorney's fees than the rate provided by statute); Justice Admin. Comm'n v. Peterson, 989 So. 2d 663, 665-66 (Fla. 2d DCA 2008) (quashing the order requiring the Commission to pay attorney's fees because the applicable statute did not create a right to publicly-funded counsel).

The certiorari petition is DENIED on the merits.

DAVIS and LEWIS, JJ., CONCUR; WETHERELL, J., CONCURS WITH OPINION.

WETHERELL, J., concurring.

I concur in the per curiam opinion because it limits the scope of the trial court's order to these specific cases and only until the end of the initial term of the contract on June 30, 2011. I write separately to make two additional points.

First, I understand the conundrum faced by the trial court because it has an obligation to ensure that its proceedings are properly recorded and that transcripts are prepared in a timely manner to facilitate appellate review by this court, but Respondent was apparently the only provider that responded to the chief judge's solicitation for bids for an official court reporter and it is unwilling to provide these services at the uniform statewide rates. However, I find it hard to believe that there are no court reporters in the Fourth Judicial Circuit willing to provide court reporting services at the uniform statewide rates, and based on the Commission's representation that “[o]ther than the Fourth Judicial Circuit with its single provider model, there is no other circuit in which [the Commission] has been required to pay for all hearing and appellate transcripts at a rate in excess of the rates established by law,” it seems to me that the chief judge may have to reconsider having Respondent provide court reporting services in cases funded by the Commission or the chief judge may have to fund the costs in excess of the statutory rates in those cases. See §§ 29.007 (requiring the state to pay the “[r]easonable court reporting and transcription services necessary to meet

constitutional or statutory requirements” from state revenues) and 29.018, Fla. Stat. (2010) (authorizing cost-sharing agreements between the state court system and Commission for court reporting and other due process services funded by the state). Moreover, while I see no reason that the Commission could not assist the chief judge in identifying other court reporters willing to provide services at the statutory rates, I am unaware of any authority that would permit the Commission to secure an “official reporter” for the circuit court as implicitly required by the order under review.

Second, it seems to me that the Florida Supreme Court may need to revise Florida Rule of Judicial Administration 2.535 based on the recent amendments to Chapter 27, Florida Statutes. The rule requires the chief judge of each circuit to develop and implement a plan for court reporting services of all proceedings required to be reported at public expense and it also authorizes the chief judge “to adopt an administrative order establishing maximum fees for court reporting services.” Fla. R. Jud. Admin. 2.535(e), (h)(2). However, this language pre-dates the significant statutory changes made in 2007 and 2010 that make clear that the Legislature is responsible for setting the maximum rates for court reporting services. See Ch. 2007-62, Laws of Fla. (abolishing the local indigent services committees that had been responsible for establishing the fee schedule for court reporting and other due process services, but authorizing the chief judge of each circuit to recommend compensation rates for court reporting and other due process

services to be included in the court system's budget request) and Ch. 2010-162, Laws of Fla. (eliminating the language in section 27.425 authorizing the chief judge to recommend compensation rates and instead providing in that section and section 27.5305(3) that the maximum compensation rates will be established in the General Appropriations Act). These statutory changes call into question the chief judge's authority under the rule to unilaterally select an official court reporter and agree to pay the reporter more than the uniform statewide rates established by the Legislature.