

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2008

ALEXANDER J. MILANICK,

Appellant/Cross-Appellee,

v.

Case No. 5D08-605

CHARLES OSBORNE,

Appellee/Cross-Appellant.

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Opinion filed December 24, 2008.

Administrative Appeal from the
State Commission on Ethics.

Michael R. D'Lugo and Kasia Pabis of
Wicker, Smith, O'Hara, McCoy & Ford,
P.A., Orlando, for Appellant/Cross-
Appellee.

Robert J. Riggio of Law Offices of
Robert J. Riggio, P.A., Daytona Beach,
for Appellee/Cross-Appellant.

C. Christopher Anderson, III, and
Philip C. Claypool, Tallahassee, for
Commission on Ethics.

PER CURIAM.

Dr. Alexander J. Milanick appeals a final order awarding Charles Osborne,
former mayor of Beverly Beach, \$77,234.43 in attorney's fees and costs he incurred to

defend against an ethics complaint Dr. Milanick filed against him.¹ Dr. Milanick argues that the Administrative Law Judge ("ALJ") abused its discretion in denying his motion for continuance to retain counsel. Mayor Osborne cross-appeals the Commission's order denying him an award of fees and costs for the administrative hearing to determine the amount of the award and Dr. Milanick's attempt to obtain discretionary review by the Florida Supreme Court.

A motion for continuance is addressed to the sound judicial discretion of the trial court and absent abuse of that discretion its decision will not be reversed on appeal. Fleming v. Fleming, 710 So. 2d 601, 603 (Fla. 4th DCA 1998). The same discretion is vested in the ALJ. Fla. Admin. Code R. 28-106.210. Finding the ALJ did not abuse its discretion, we affirm the denial of Dr. Milanick's motion for continuance.

On cross-appeal, Mayor Osborne challenges the Commission's denial of attorney's fees and costs incurred in connection with the administrative hearing held September 28, 2007, and Dr. Milanick's attempt to seek discretionary review with the Florida Supreme Court of this court's decision in Osborne v. Commission on Ethics, 951 So. 2d 25 (Fla. 5th DCA 2007). Section 112.317(7), Florida Statutes (2007), entitles Mayor Osborne to an award of reasonable attorney's fees and costs incurred in defending against the ethics complaint. This includes proving entitlement to and the amount of those costs and fees, including fees and expenses incurred after the

¹ In Osborne v. Commission on Ethics, 951 So. 2d 25 (Fla. 5th DCA 2007), review dismissed, 962 So. 2d 337 (table) (Fla. 2007), we reversed a final order denying an award of attorney's fees and costs in favor of Mayor Osborne and remanded for further proceedings to establish the amount. The ensuing administrative hearing is the subject of this appeal.

administrative hearing. Kaminsky v. Lieberman, 675 So. 2d 261, 262 (Fla. 4th DCA 1996).

Mayor Osborne's invoices for legal fees in exhibits 6 and 7 reflect services rendered in connection with the supreme court proceeding and the administrative hearing. We hold that Mayor Osborne was entitled to an award of attorney's fees and costs incurred in connection with the September 28, 2007 hearing, including services rendered both during and after the hearing. Mayor Osborne is not entitled, however, to any fees or costs for services rendered in connection with the supreme court proceeding. Even where a fee award is mandatory, absent a mandate or determination by the appellate court that fees are appropriate, the lower tribunal has no jurisdiction to award the fees. Respiratory Care Servs., Inc. v. Murray D. Shear, P.A., 715 So. 2d 1054, 1056 (Fla. 5th DCA 1998). Mayor Osborne did not request an award of fees incurred with respect to the supreme court proceedings. Accordingly, we reverse the Commission's order to the extent it denied an award of fees and costs related to the administrative proceeding and affirm the denial of such fees for the supreme court proceeding.

AFFIRMED in part, REVERSED in part.

MONACO, COHEN, JJ., and KEST, S., Associate Judge, concur.