



agency” is a rule and must be adopted through rulemaking and published in the Florida Administrative Code.<sup>iii</sup> If an agency interpretation of a statute amounts to a rule, based on the previous definition, but has not been adopted through rulemaking, then an administrative law judge (ALJ) and an agency cannot base agency action on that rule. Section 120.57(1)(e), F.S., states that “[a]n agency or an administrative law judge may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority.”

More recently the court has shown even greater deference to an agency’s interpretation stating, “an agency’s interpretation of a statute it is charged with enforcing is entitled great deference and will be approved by this court if it is not clearly erroneous”<sup>iv</sup>. One exception provides that an agency’s interpretation of a statute it administers will not receive deference unless the agency is relying on its particular expertise on the subject matter of the statute in question.<sup>v</sup> Another exception to the deference doctrine arises when there is a dispute over how to interpret statute that imposes discipline on a person or entity. In those situations, the case law provides that the statute imposing discipline shall be strictly construed against the agency.<sup>vi</sup> Additionally, courts in Florida do not show deference to agency interpretation of a taxation statute with a disciplinary or penalty provision.<sup>vii</sup> The ALJs at the Division of Administrative Hearings (DOAH) have generally followed the precedent established by appellate case law.<sup>viii</sup>

## **B. EFFECT OF PROPOSED CHANGES:**

This proposal eliminates the deference of the courts to an agency’s interpretation and requires the courts to examine and determine, on their, own whether specific interpretations by the agency comply with the statute or rule in question. Deference shown to agency interpretations of state statute or rule would no longer apply in any situation.

## **C. FISCAL IMPACT:**

The fiscal impact is indeterminant at this juncture.

## **III. Additional Information:**

### **A. Statement of Changes:**

(Summarizing differences between the current version and the prior version of the proposal.)

None.

### **B. Amendments:**

None.

### **C. Technical Deficiencies:**

None.

**D. Related Issues:**

None.

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<sup>i</sup> Tallahassee v. Mann, 411 So. 2d 162 (Fla. 1982)

<sup>ii</sup> Fla. Cable TV Ass'n v. Deason, 635 So. 2d 14 (Fla. 1994)

<sup>iii</sup> §120.52(8), Florida Statutes

<sup>iv</sup> Fla. Interexchange Carriers Ass'n v. Clark, 678 So. 2d 1267 (Fla. 1996)

<sup>v</sup> Bd. of Trustees of the Northwest Fla. Community Hosp. v. Dep't of Mgmt. Serv., 651 So. 2d 170, (Fla. 1st DCA 1995)

<sup>vi</sup> Jonas v. Dep't of Bus. & Prof'l Regulation, 746 So. 2d 1261 (Fla. 3rd DCA 2000)

<sup>vii</sup> Gulf American Land Corp. v. Green, 149 So. 2d 396 (Fla. 1st DCA 1962)

<sup>viii</sup> Administrative Law Section Analysis on Prop 6, pg 3, 2017 (on file with Commission staff)