Constitution Proposal Analysis

PROPOSAL: 0006

SPONSOR: Martinez

SUBJECT: Require court or administrative law judge to interpret a state statute or rule de novo

REFERENCES:

Prepared by: Administrative Law Judge Gar Chisenhall

I. SUMMARY

This proposal by Roberto Martinez would create Section 21 within Article V of the State Constitution. The full proposal states that it would "require a state court or an administrative law judge to interpret a state statute or rule de novo in litigation between an administrative agency and a private party and not merely defer to the administrative agency's interpretation."

The term "de novo" generally applies when a court is considering a pure question of law. When a court engages in a "de novo" review, it decides the question of law without giving any deference to the interpretation applied by either party or a lower tribunal.

There is no indication that this proposal would have any fiscal impact.

II. CURRENT SITUATION

When a federal case concerns the proper interpretation of a statute administered by a particular agency, federal courts will defer to that agency's interpretation if: (1) the statute in question is silent or ambiguous with respect to the question at issue; and if (2) the agency's interpretation if that statue is a permissible one. That principle (commonly referred to as Chevron Deference) is based on Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984). Rather than being a law enacted by Congress, Chevron Deference is a judicially-created doctrine.

Because Chevron Deference concerns federal administrative law, it does not control in the state courts of Florida. Nevertheless, Florida has maintained its own judicially-created deference doctrine for many years, and that doctrine provides that an interpretation of a statute by the agency charged with its administration is entitled to great weight and will not be overturned unless it is clearly erroneous. See State ex rel. Biscayne Kennel Club v. Bd of Bus. Regulation, Dep't of Bus. Reg., 276 So. 2d 823, 828 (Fla. 1973). See also Wallace Corp. v. City of Miami Beach, 793 So. 2d 1134, 1140 (Fla. 1st DCA 2001)(noting that "[a]n agency construction of a statute which it is given the power to administer will not be overturned on appeal unless it is clearly erroneous."); Pershing Indus., Inc. v. Dep't of Banking & Fin., 591 So. 2d 991, 993 (Fla. 1st DCA 1991)(noting that "[i]f an agency's interpretation is one of several permissible interpretations, it must be upheld despite the existence of reasonable alternatives.").

Even though appellate courts in Florida have frequently cited the deference doctrine, exceptions to the deference doctrine have developed over the years and substantially limited its scope. For example, one exception provides that an agency's interpretation of a statute it administers will receive no deference unless it was relying on special expertise to interpret the statute in question. Therefore, if the agency is merely applying the canons of statutory construction (rather than some sort of expertise particular to that agency), then the agency's interpretation would not be entitled to any deference. See generally Doyle v. Dep't of Bus. Regulation & Public Employees Relations Comm'n, 794 So. 2d 686, 690 (Fla. 1st DCA 2001)(noting "a court need not defer to an agency's construction or application of a statute if special agency expertise is not required . . ." and holding "[i]nterpretation of the fee statute at issue in this case does not require expertise in the field of labor organizations."); Bd. of Trustees of the Northwest Fla. Community Hosp. v. Dep't of Mgmt. Serv., 651 So. 2d 170, 173 (Fla. 1st DCA 1995)(stating "[w]e find that the determination of whether a person performs services as an employee or an independent contractor is not within that class of decisions requiring such agency expertise as to compel the court to defer to the Division's construction."); Bd. of Podiatric Med. v. Fla. Medical Ass'n, 779 So. 2d 658, 660 (Fla. 1st DCA 2001)(noting "the broad discretion and deference which is accorded an agency in the interpretation of a statute which it administers" and holding the administrative law judge should not have rejected the Board's definition of "human leg."); Schoettle v. State, Dep't of Admin., Div. of Retirement, 513 So. 2d 1299, 1301 (Fla. 1st DCA 1987)(stating that "[w]hen an agency urges a construction based on common, ordinary meanings, this mitigates, if it does not entirely eliminate, the rule calling upon the court to accord great deference to the agency's interpretation of the statute" and stating that "[s]tatutory construction is ultimately the province of the judiciary.")(internal citations omitted).

Another exception to the deference doctrine arises when there is a dispute over how to interpret a disciplinary statute. In those situations, the case law provides that the disciplinary statute must be strictly construed against the agency. See Jonas v. Dep't of Bus. & Prof'l Regulation, 746 So. 2d 1261, 1262 (Fla. 3rd DCA 2000)(acknowledging that "[s]tatutes such as those at issue authorizing the imposition of discipline upon licensed contractors are in the nature of penal statutes, which should be strictly construed [against the agency].").

Courts in Florida also withhold deference when the statute at issue is a taxing statute with a penal provision. See Gulf American Land Corp. v. Green, 149 So. 2d 396, 398 (Fla. 1st DCA 1962)(stating "[w]e recognize that Section 201.08, Florida Statutes, is a taxing statute with a penal provision, and that the well-established rule is that such statutes should be construed strictly and all doubts or ambiguities resolved in favor of the taxpayer.").

The paragraphs set forth above describe how Florida courts have applied the deference doctrine. The administrative law judges ("ALJs") at the Division of Administrative Hearings ("DOAH") have generally followed the precedent established by appellate case law.

III. EFFECT OF PROPOSED CHANGES

Proponents of the proposal could argue that deference to an agency's interpretation of a statute raises separation of powers concerns and that the proposal eliminates those concerns. Article II, Section 3 of the Florida Constitution provides that "[n]o person belonging to one branch [of the state government] shall exercise any power appertaining to either of the other branches unless expressly provided herein." Because statutory interpretation is a judicial function, proponents could argue that the proposal reinforces Article II, Section 3 by prohibiting judges from outsourcing statutory interpretation to agencies. In addition, proponents of the proposal could argue that a judge would still be free to agree with an agency's statutory interpretation if that judge found the agency's interpretation to be more persuasive.

Deference to an agency's statutory interpretation by an ALJ raises a separate concern. The law governing administrative proceedings provides that hearings at DOAH are intended to help formulate agency action. In light of that requirement, one ALJ recently gave his opinion as to why ALJs should impose a de novo review rather than deferring to an agency's statutory interpretation:

> Unlike the judiciary, ALJs are participants in the decision-making processes that lead to administrative interpretations of statutes and rules – the very administrative interpretations to which courts defer. The ALJ's duty is to provide the parties an independent and impartial analysis of the law with a view towards helping the agency make the correct decision. In

> fulfilling this duty, the ALJ should not defer to the agency's interpretation of a statute or rule, as a court would, rather, the ALJ should make independent legal conclusions based upon his or her best interpretation of the controlling law, with the agency's legal interpretations being considered as the positions of a party litigant, entitled to no more or less weight than those of the private party. Otherwise, whenever a private litigant is up against a state agency and the outcome depends upon the meaning of an ambiguous statute or rule administered by that agency, the agency's thumb would *always* be on the scale, even during the putatively de novo administrative hearing, and the non-agency party's interpretative arguments would *never* be heard by a judge who could be completely neutral in deciding such questions of construction.

The Public Health Trust of Miami-Dade County, Fla. d/b/a Jackson South Community Hospital, v. Dep't of Health and Kendall Healthcare Group, Ltd., d/b/a Kendall Regional Med. Ctr., Case No. 15-3171, ¶119 (Fla. DOAH Feb. 29, 2016).

An ALJ's deference to an agency's interpretation of a statute raises another concern if that interpretation has not been adopted as a rule through the rulemaking process set forth in section 120.54 of the Florida Statutes. Any agency statement of general applicability that "implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency" must be adopted through rulemaking and published in the Florida Administrative Code. See §120.52(8), Fla. Stat. (providing that an invalid exercise of legislative authority exists if an agency applies a rule that has not been adopted through the rulemaking process); §120.52(16), Fla. Stat. (defining a "rule"). If an agency interpretation of a statute amounts to a "rule" but has not been adopted through rulemaking, then an ALJ and an agency are precluded from basing agency action on that rule. See §120.57(1)(e), Fla. Stat. (mandating 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.").

Opponents of the proposal could argue that it is unnecessary given the current state of the law. In light of the significant exceptions discussed above, a court should only apply the deference doctrine when an agency is utilizing special expertise in order to interpret a statute. Furthermore, because proceedings at DOAH are designed to formulate agency action, ALJs should not be deferring to an agency's statutory interpretation.

IV. FISCAL IMPACT

A. Tax/Fee Issues

None.

B. Private Sector Impact

None.

C. Government Sector Impact

None.