

**Advanced
Strategies &
Procedures
for Litigating
Claims for
Attorneys'
Fees & Costs**

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Best Billing Practices

- Adequate description
- Contemporaneous entry
- Multiple attorneys
- No charges
- Discounts

Factors: Rule 4-1.5(b)(1)

- (A) the time and labor required, the novelty, complexity, difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (B) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
- (C) the fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature;
- (D) the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained;
- (E) the time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client;
- (F) the nature and length of the professional relationship with the client;
- (G) the experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services; and
- (H) whether the fee is fixed or contingent
[Irrelevant in DOM cases]

Statutory Authority

Chapter 61

- §61.16, Fla. Stat.
 - ✓ *Rosen* factors
- §61.13, Fla. Stat.
- §61.17, Fla. Stat.
- §61.13001, Fla. Stat.

Chapter 742

- §742.045, Fla. Stat.
- §742.031, Fla. Stat.

Inherent Authority

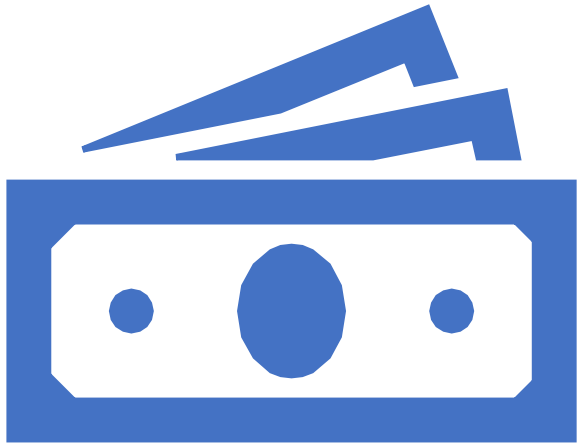
Inequitable Conduct Doctrine

- *Moakley v. Smallwood*, 826 So. 2d 221 (Fla. 2002)
- Rarely applicable; requires egregious or bad faith misconduct (*Bitterman*)
- Finding of ability to pay not required (*Myrick*)
- Must quantify amount of increased litigation resulting from the misconduct (*Heiny*)

Additional Basis for Fees

- **Discovery Violations:** Fla. Fam. L. R. P. 12.380
- **Civil Contempt:** Fla. Fam. L. R. P. 12.615(d)(2)
- **Meritless Claim or Defense:** §57.105, Fla. Stat.

Entitlement to Fees



- Request for Fees
- Motion for Fees
- Determination of Entitlement
 - ✓ Actual or relative need?
 - ✓ Timeframe?
- Reservations

Fees for Related Claims

- Available under Chapter 61 if: “**intertwined** with the dissolution litigation” and “**part and parcel** of the domestic strife”
 - ✓ *Bane v. Bane*, 775 So. 2d 938 (Fla. 2000)
 - ✓ *Kass v. Kass*, 560 So. 2d 293 (Fla. 4th DCA 1990)
 - ✓ *Stein v. Stein*, 254 So. 3d 1025 (Fla. 4th DCA 2018)

Fee Discovery

- Time Period?
- Request for Judicial Notice
- Notice of Intent to Use:
 - ✓ Business Records
 - ✓ Charts and Summaries
- Requests for Admissions

Discovery of Other Party's Fees

- Amount of payments
- Source of payments
- Opposing party's invoices



Privilege, Work Product, and Redactions

- How much to redact?
- Can you prove reasonableness with redacted invoices?
- Is the privilege obviated at some point?

Ability to Pay

- All assets within payor's control
 - ✓ Marital AND Non-Marital
 - ✓ Imputation for regular & continuous gifts that will continue in the future
- But, cumulative effect of all awards?
 - ✓ Equal footing?



Defenses

- Unreasonable rates
- Unreasonable hours expended
- Inadequate description
- Duplicative work
- Meritless work
- Block billing
- Administrative/Clerical/Ministerial work (see §57.104, Fla. Stat.)
- Handholding
- Travel time
- Unclean Hands

Settlement Offers

- *Diaz v. Diaz*, 826 So. 2d 229 (Fla. 2002)
 - ✓ Bad result does not, by itself, warrant assessment of fees
 - ✓ Trial courts have inherent authority to assess attorney's fees for bad faith litigation
 - ✓ Long shot position does not necessarily = bad faith
- *Hallac v. Hallac*, 88 So. 3d 253 (Fla. 4th DCA 2012)
 - ✓ Settlement offers are relevant

Use of Experts

- Are experts necessary?
- How to select an expert?
- What should an expert do to prepare?
- How to cross-examine the fee expert?

Temporary Fee Awards

- Same standard as final fee award (*Nichols v. Nichols*)
- Evidentiary hearing required (*Jones v. Jones*)
- Party seeking fees has burden of proving reasonableness and necessity (*Addie v. Coale*)
- Trial court has broad discretion (*Young v. Young*; *Berg-Perlow v. Perlow*)
- Does not create vested rights (*Baker v. Baker*)
- Payor may be entitled to credit (*Derrevere v. Derrevere*)



Final Fee Awards

Written findings required!

- 1) Need;
- 2) Ability to pay;
- 3) Hourly rate;
- 4) Number of hours reasonably expended; and
- 5) Enhancement or reductions.

Enforcement of Fee Awards

- Income Withholding Orders
- Contempt Proceedings
- Money Judgments

Fees for Fees

Wight v. Wight, 880 So. 2d 692 (Fla. 2d DCA 2004)

- Permissible to award attorney's fees for litigating entitlement to fees; impermissible to award fees for time spent litigating amount of fees

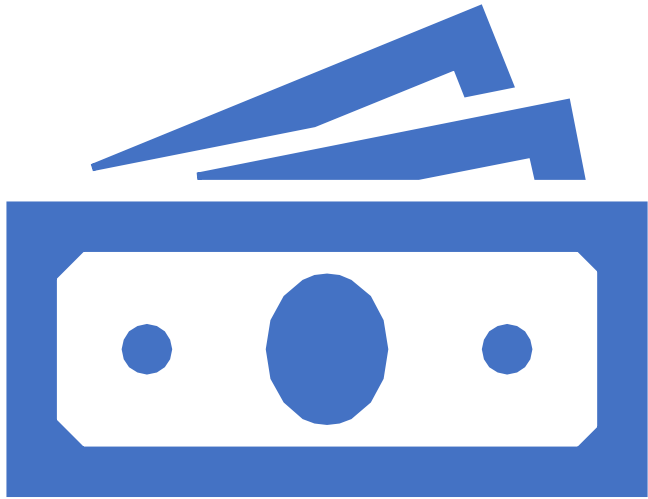
Schneider v. Schneider, 32 So. 3d 151 (Fla. 4th DCA 2010)

- Conflicts with *Wight*
- Party can recover fees for litigating the amount of fees

Appellate Attorneys' Fees

- **Chapter 61** – appellate court may award attorney's fees for appeals arising from FJDOM's
 - *Bryan v. Bryan*, (Fla. 2d DCA 1977)
 - *Gieseke v. Gieseke*, 499 So. 2d 839 (Fla. 4th DCA 1986)
- **Chapter 742**
 - *McNulty v. Bowser*, 233 So. 3d 1277 (Fla. 5th DCA 2018) (affirming award of appellate attorney's fees in a paternity proceeding)





**"Do you promise to pay the bill,
the whole bill and nothing but the bill?"**