



# **THE MICHAEL R. N. MCDONNELL INN OF COURT COLLIER COUNTY**

## **TEAM 5**

Hon. Hugh D. Hayes  
Magistrate David Friedman  
Sonia Diaz (co-captain)  
Rick Weldon (co-captain)  
David Lupo  
Keith Upson  
Thomas Rinaldi  
Sara White  
Ashely Sykes  
Gary Goggin

## **ATTORNEY'S FEE JEOPARDY!**



	<u>Category</u>	<u>Clues, Answers &amp; Explanations</u>	<u>Points</u>
1.	Potpourri	<p><b><u>Clue:</u></b> The circumstances under which a Title VII Defendant may recover attorneys' fees from the Plaintiff/EEOC.</p> <p><b><u>Answer:</u></b> What is at any point when litigation was resolved in Defendant's favor, if Plaintiff's claim was frivolous, unreasonable, or groundless?</p> <p><b><u>Explanation:</u></b> A favorable judgment on the merits is not required to be considered a prevailing party under the attorney's fee provision of Title VII.</p> <p>Title VII of the Civil Rights Act of 1964 provides, in relevant part, that “[i]n any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the [Equal Employment Opportunity] Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.” Generally, when the plaintiff has obtained an “enforceable judgment on the merits” or a “court-ordered consent decree,” the plaintiff is the prevailing party because it has received a “judicially sanctioned change in the legal relationship of the parties.” However, standards had not been established to guide courts on when, exactly, a defendant prevails.</p> <p>In <u>CRST Van Expedited, Inc. v. EEOC</u>, 136 S. Ct. 1642 (2016), the court recognized that a purpose of the fee-shifting provision is "to deter the bringing of lawsuits without foundation." See <u>Christianburg Garment Co. v. EEOC</u>, 434 U.S. 412, 421-422 (1978). The court recognized that many Title VII claims were dismissed for non-merits reasons, yet significant attorney time and expenditure may have gone into contesting the claim. Thus, Congress "could not have intended to bar defendants from obtaining attorney's fees" on the basis that, although litigation was resolved in their favor, they were nonetheless not prevailing parties. <u>CRST</u>, 136 S. Ct. at 1653.</p>	400
2.	Show me the Money	<p><b><u>Clue:</u></b> This subsection of 57.105, states that monetary sanctions cannot be awarded against a represented party under paragraph (1)(b).</p> <p><b><u>Answer:</u></b> What is 57.105(3)(c)?</p> <p><b><u>Explanation:</u></b> Pursuant to Fla. Stat. 57.105(1)(b), upon the court’s initiative or motion of any party, the court shall award a reasonable attorney’s fee to be paid to the prevailing party in equal amounts by the losing party and the losing party’s attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party’s attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial would not be supported by the application of then-existing law to those material facts. However, under 57.105(3)(c), monetary sanctions cannot be awarded</p>	500

		against this party.	
3.	Show Me the Money	<p><b>Clue:</b> Generally in Florida, a party seeking a judgment taxing costs, attorneys' fees or both are required to serve a motion for fees 30 days after a dismissal has been entered. However, a party moving for attorneys' fees under this Florida Statute must file the motion before the voluntary dismissal is entered, or the Court will lack jurisdiction to hear the motion</p> <p><b>Answer:</b> What is section 57.105(4)?</p>	200
4.	Appeals to Me	<p><b>Clue:</b> Where a party's motion for entitlement to attorney's fees has been denied, and the opposing party's motion for entitlement to attorney's fees has been granted but the amount of attorney's fees has not yet been decided, according to Hauser's "Attorney's Fees In Florida" this is still the proper method of seeking review.</p> <p><b>Answer:</b> What is a petition for writ of certiorari? (Not direct appeal.)</p> <p><b>Explanation:</b> <u>O.A.G Corp v. Britamco Underwriters, Inc.</u> 707 So. 2d 785 (Fla. 3d DCA 1998)</p>	400
5.	Appeals to Me	<p><b>Clue:</b> Where Plaintiff files a nine-count complaint, and the trial court rules for Defendant on all nine counts, and Plaintiff appeals and then prevails on one of the nine counts on appeal, Plaintiff is entitled to an award of these appellate fees.</p> <p><b>Answer:</b> What is the time spent on the count on which Plaintiff prevailed on appeal?</p> <p><b>Explanation:</b> Not the entire appeal, and not just one ninth of the appeal time. <u>Zaremba Florida Co. v. Klinger</u>, 550 So. 2d 1131 (Fla. 3d DCA 1989).</p>	300
6.	Show me the Money	<p><b>Clue:</b> Where an expert has testified as to the amount of attorney's fees, and no evidence has been presented to the contrary, the trial court may not do this.</p> <p><b>Answer:</b> What is ignore or disregard the expert's testimony?</p> <p><b>Explanation:</b> <u>Fitterman v. Fitterman</u>, 502 So. 2d 8 (Fla. 4<sup>th</sup> DCA 1986).</p>	100
7.	Show Me the Money	<p><b>Clue:</b> Where an attorney testified at an attorney's fees hearing as to the amount of time spent, but did not introduce time records into evidence, the Second DCA in <u>Braswell</u> did this on appeal in 2009.</p> <p><b>Answer:</b> What is reverse the award <i>without remand</i>?</p> <p><b>Explanation:</b> <u>Braswell v. Braswell</u>, 4 So. 3d 4, 5 (Fla. 2d DCA 2009)</p>	400
8.	Potpourri	<p><b>Clue:</b> While parties are often able to negotiate a resolution to this issue</p>	200

		<p>without a hearing, where contested, a trial court abuses its discretion by not permitting a hearing on this often underappreciated issue.</p> <p><b><u>Answer</u></b> : What are Costs?</p> <p><b><u>Explanation</u></b>: <u>Allstate Ins. Co. v. Tucker</u>, 574 So. 2d 1202, 1202 (Fla. 2d DCA 1991)</p>	
9.	Show Me the Money	<p><b><u>Clue</u></b> : There need not be a separate hearing on an expert witness fee, but rather, according to the First DCA, a court may rely on this.</p> <p><b><u>Answer</u></b> : What is the Court’s experience and observation?</p> <p><b><u>Explanation</u></b>: <u>Thursby v. Reynolds Metals Company</u>, 466 So.2d 245 at 252 (Fla. 1st DCA 1984) <u>Manuel v. Manuel</u>, 498 So. 2d 1369, 1370 (Fla. 1st DCA 1986).</p>	300
10.	Appeals to Me	<p><b><u>Clue</u></b>: This is the one type of case where temporary appellate attorney’s fees could be awarded.</p> <p><b><u>Answer</u></b>: What is family law?</p> <p><b><u>Explanation</u></b>: Florida Rule of Appellate Procedure 9.600(c); Fla.Stat. 61.16; Genny Castellanos and Benjamin Goodman, <i>Funding Your Appeal: Temporary Appellate Fees in Dissolution Cases</i>, FLA. B.J., FEB. 2017, at 38.</p>	100
11.	Appeals to Me	<p><b><u>Clue</u></b>: The motion for entitlement to appellate attorney’s fees you filed the day before oral argument will be denied because of this.</p> <p><b><u>Answer</u></b>: What is lack of jurisdiction?</p> <p><b><u>Explanation</u></b>: Florida Rule of Appellate Procedure 9.400(b) states that a motion to establish attorney’s fees must be served by the reply brief’s due date.</p>	200
12.	Appeals to Me	<p><b><u>Clue</u></b>: <i>This</i> Florida District Court of Appeals ‘went rogue’ in 2012 when it held that in original appellate proceedings, requests for attorney’s fees had to be included in the petition, response, or reply.</p> <p><b><u>Answer</u></b>: What is the Fourth District Court of Appeals.</p> <p><b><u>Explanation</u></b>: <u>Advanced Chiropractic &amp; Rehab. Ctr. Corp. v. United Auto. Ins. Co.</u>, 103 So.3d 869 (Fla. 4th DCA 2012). As to this specific point, the Florida Supreme Court upheld the Fourth’s conclusion that Florida Rule of Appellate Procedure 9.400(b) does not apply to original proceedings. <u>Advanced Chiropractic &amp; rehab. Ctr. Corp. v. United Auto. Ins. Co.</u>, 140 So.3d 529 (Fla. 2014).</p>	400

13.	Terminology 101	<p><b>Clue:</b> This Latin term for a method that makes predictions about biological features using only a computational model without extrinsic comparison to existing data is also the standard of review used by the appellate court when determining a party’s entitlement to attorney’s fees.</p> <p><b>Answer:</b> What is De Novo?</p> <p><b>Explanation:</b> <u>Newman v. Guerra</u>, 2017 Fla. App. LEXIS 54, 42 Fla. L. Weekly D 127 (Fla. 4th DCA Jan. 4, 2017).</p>	100
14.	Terminology 101	<p><b>Clue:</b> Oh no, you forgot to put your demand for attorney’s fees in your client’s answer. Call your malpractice insurer. Oh wait, never mind, you’re going to be ok if you requested fees in this two word document that Judge Brodie Orders you to complete “prior to trial”.</p> <p><b>Answer:</b> What is the Pre-trial Statement?</p> <p><b>Explanation:</b> <u>Boswell v. Shirley's Pers. Care Servs. of Okeechobee, Inc.</u>, 2017 Fla. App. LEXIS 46, 42 Fla. L. Weekly D 123 (Fla. 4th DCA Jan. 4, 2017).</p>	200
15.	Terminology	<p><b>Clue:</b> President Trump may be quick to say that our Courts do not follow principles governing conduct from Russia or Mexico, but this two-word principle provides that parties are to bear their own attorney fees unless provided otherwise by contract or statute.</p> <p><b>Answer:</b> What is the American Rule?</p>	400
16.	Potpourri	<p><b>Clue:</b> The Judge will do this to a defendant’s timely-filed attorney fee claim when the lender allows a short sale and neither party is the prevailing party under 57.105(7)?</p> <p><b>Answer:</b> What is Deny it?</p> <p><b>Explanation:</b> While the defendant is the happy recipient of a voluntary dismissal by the plaintiff who assisted in the facilitation of the short sale, the defendant is unhappily <u>not</u> entitled to attorney fees under 57.105(7). <u>Kelly v. BankUnited, FSB</u>, 159 So.3d 403, 407 (Fla. 4th DCA 2015) (“[I]n a situation where both Appellant and Appellee compromised in effectively agreeing to a settlement to end their litigation, we will not hold Appellee responsible for payment of Appellant's attorneys' fees, as Appellee's dismissal of the pending complaint following the settlement was the obvious and appropriate course of action.”).</p>	100
17.	Terminology 101	<p><b>Clue:</b> If no live testimony is offered, and the Court is not asked to take judicial notice that the attorney fee affidavit and corroborating fee affidavit are in the court file, an award of attorneys’ fees cannot stand for lack of this three-word legal standard.</p>	500

		<p><b><u>Answer:</u></b> What is “substantial competent evidence?” (to establish the reasonableness of attorney fees)</p> <p><b><u>Explanation:</u></b> <u>Petrovsky v. HSBC Bank, USA</u>, 185 So.3d 700 (Fla. 4th DCA 2016) (finding that mere reference to attorney’s fee affidavits filed before trial, without more, was insufficient to support award of attorneys’ fees); <u>Amanzimtoti Properties, LLC v. Ocwen Loan Servicing, LLC</u>, 204 So.3d 468 (Fla. 4th DCA 2016) (award of attorney’s fees must be supported by competent substantial evidence to establish the reasonableness of the fees).</p>	
18.	Terminology 101	<p><b><u>Clue:</u></b> This doctrine is a narrow exception to the rule that attorney’s fees are recoverable only when authorized by statute or contract.</p> <p><b><u>Answer:</u></b> What is the wrongful act doctrine?</p> <p><b><u>Explanation:</u></b> The wrongful act doctrine allows for the recovery of reasonable attorney’s fees as an element of damages when the defendant’s wrongful act has involved the claimant in litigation with others, necessitating the expenses. <i>Reiterer v. Monteil</i>, 98 So. 3d 586, 588 (Fla. 2d DCA 2012).</p> <p>The doctrine is not limited to wrongful acts done in bad faith. <i>Wegge v. Wells Fargo Bank, N.A.</i>, 1:14-CV-20766-UU, 2014 WL 11906621, at *2 (S.D. Fla. Apr. 28, 2014) citing to <i>Tibbetts v. Nichols</i>, 578 So. 2d 17, 19 (Fla. 1st DCA 1991) (applying the doctrine to a claim of breach of covenant).</p>	300
19.	I have a Proposal	<p><b><u>Clue:</u></b> This standard of appellate review is used to determine if a proposal for settlement complies with Rule 1.442 and Florida Statutes §768.79.</p> <p><b><u>Answer:</u></b> What is De Novo?</p> <p><b><u>Explanation:</u></b> <u>Tran v. Anvil Iron Works, Inc.</u>, 110 So. 3d 923, 925 (Fla. 2d DCA 2013) (citing <u>Jamieson v. Kurland</u>, 819 So. 2d 267, 268 (Fla. 2d DCA 2002)).</p>	100
20.	I have a Proposal	<p><b><u>Clue :</u></b> This Florida District Court of Appeal has held that the filing of a Motion for Enlargement of Time to Accept a Proposal for Settlement does <u>not</u> automatically toll the thirty-day acceptance period, certifying conflict with the 5th DCA.</p> <p><b><u>Answer :</u></b> What is the 2nd DCA?</p> <p><b><u>Explanation:</u></b> <u>Ochoa v. Koppel</u>, 197 So. 3d 77 (Fla. 2d DCA 2016) (holding that the filing of a motion to enlarge time to respond to a proposal for settlement does not automatically toll that time pending a decision on the motion).</p> <p>However, the Second DCA certified a conflict with the Fifth DCA which has held that it does toll the 30 day period <u>Goldy v. Corbett Cranes Services</u>,</p>	300

		<u>Inc.</u> , 692 So. 2d 225 (Fla. 5th DCA 1997).	
21.	I have a Proposal	<p><b>Clue:</b> This 2016 Florida Supreme Court case held that where attorney fees are not sought in the pleadings, a Proposal for Settlement is not invalid for failing to state whether the Proposal includes attorney fees and whether attorney fees are part of the legal claim.</p> <p><b>Answer:</b> What is <u>Kuhajda</u>?</p> <p><b>Explanation:</b> <u>Kuhajda v. Borden Dairy Co. of Alabama, LLC</u>, 202 So. 3d 391, 393 (Fla. 2016) ("[i]t would make no sense to require a defendant to state in its offer of judgment that the offer does not include attorney's fees, when plaintiff did not claim an entitlement to them and could not recover them because of failure to plead" and "there [is] no ambiguity in the proposal.") (citing to <u>Bennett v. American Learning Systems of Boca Delray, Inc.</u>, 857 So.2d 986 (Fla. 4th DCA 2003)).</p>	500
22.	I have a Proposal	<p><b>Clue:</b> When a nominal Proposal for Settlement is made, this party has the burden of demonstrating the Proposal was made in good faith if a demand for attorney's fees is made.</p> <p><b>Answer:</b> Who is the Offeree?</p> <p><b>Explanation:</b> "The offeree bears the burden of proving the offeror's proposal was not made in good faith." <u>Liggett Group, Inc. v. Davis</u>, 975 So. 2d 1281, 1285 (Fla. 4th DCA 2008). In determining whether the offer was made in good faith, the trial court must determine "whether the offeror had a reasonable foundation upon which to make the offer." <u>Id.</u> (quoting <u>Hall v. Lexington Ins. Co.</u>, 895 So. 2d 1161, 1166 (Fla. 4th DCA 2005)); see <u>Gurney v. State Farm Mut. Auto. Ins. Co.</u>, 889 So. 2d 97, 99 (Fla. 5th DCA 2004) (holding that the "good faith inquiry requires a trial court to review the facts and circumstances known to the offeror at the time it made the offer"); <u>Fox v. McCaw Cellular Commc'ns of Fla., Inc.</u>, 745 So. 2d 330, 333 (Fla. 4th DCA 1998) ("Whether an offer was made in bad faith involves a matter of discretion reposed in the trial judge to be determined from the facts and circumstances surrounding the offer.").</p>	200
23.	Potpourri	<p><b>Clue:</b> In most FL state court cases, prejudgment interest on an award of attorney's fees begins running from this date.</p> <p><b>Answer:</b> The date entitlement to attorneys' fees is fixed, even if the amount of the award hasn't been determined yet.</p> <p><b>Explanation:</b> <u>Butler v. Yusem</u>, 3 So. 3d 1185 (Fla. 2009); <u>Quality Engineered Installation v. Higley</u>, 670 So.2d 929, 929 (Fla.1996) (holding that interest on attorney fee award accrues from date entitlement to attorney fees is fixed through agreement, arbitration award, or court determination, even though amount of award has not yet been determined).</p>	300

		HOWEVER, there is an exception for fee awards under the workers' compensation statutes, because § 440.34(1), Fla. Stat. provides that an attorneys' fee cannot be paid until it is that an attorney fee cannot be paid until it is approved as reasonable by the JCC or court having jurisdiction over the proceeding. <u>Lee v. Wells Fargo Armored Services</u> , 707 So. 2d 700, 702 (Fla. 1998).	
24.	Potpourri	<p><b><u>Clue:</u></b> In the case of <u>Kay v. Ehrler</u>, this is the reason that the U.S. Supreme Court gave for refusing to award reasonable attorney's fees and costs to the petitioner under the Civil Rights Attorney's Fee Awards Act of 1976, even though the petitioner prevailed on the merits.</p> <p><b><u>Answer:</u></b> What is the petitioner represented himself.</p> <p><b><u>Explanation:</u></b> Even though Mr. Kay was a licensed attorney who handled his professional responsibilities in the case in a competent manner, the Court held that a pro se litigant who is also a lawyer may not be awarded attorney's fees under § 1988. <u>Kay v. Ehrler</u>, 499 U.S. 432 (1991).</p> <p>In doing so, the Court explained that § 1988's overriding concern is with obtaining independent counsel for victims of civil rights violations, a goal that would be best served by a rule that creates an incentive to retain counsel in every case rather than a disincentive to employ counsel whenever a plaintiff considers himself competent to litigate on his own behalf. The court went on to note that even a skilled lawyer who represents himself is at a disadvantage in contested litigation because ethical considerations may make it inappropriate for him to appear as a witness, and because he is deprived of the judgment of an independent third party during the litigation. <u>Kay</u>, 499 U.S. at 437.</p>	500
25.	I have a Proposal	<p><b><u>Clue:</u></b> An attorney who enters into an agreement with their client stating that if they go to trial and are unsuccessful, and client becomes liable for the opposing party's attorney's fees and costs pursuant to a Proposal for Settlement, the attorney agrees to pay the attorney's fees and costs assessed against the client, violates these two ethics Rules.</p> <p><b><u>Answer:</u></b> What is Rule 4-8.4(d) - Prejudicial to Administration of Justice and Rule 4-1.8(e) - Prohibited Financial Assistance</p> <p><b><u>Explanation:</u></b> Florida Bar Ethics OPINION 96-3</p>	400
26.	Final Jeopardy!	<p><b><u>Clue:</u></b> In what can only be seen as a miracle, the Judge has determined that the Defendant's defenses were not supported by the application of then-existing law to the material facts of the case and that both Defendant and his counsel knew or should have known that the defenses were not supported. You properly requested sanctions pursuant to Florida Statutes § 57.105. Who can you recover attorney's fees from: a) Defendant; b) Defendant's</p>	

	<p>counsel; or c) both Defendant and Defendant's counsel in equal amounts.</p> <p><b><u>Answer:</u></b> You can only recover fees against the Defendant's counsel.</p> <p><b><u>Explanation:</u></b> When attorney's fees are awarded pursuant to Florida Statutes § 57.105(1)(b) [claims/defenses not supported by the application of then-existing law to those material facts], monetary sanctions can only be awarded counsel in accordance with Florida Statutes § 57.105(3)(c). Florida Statutes § 57.105(3)(c) prohibits the award of sanctions against a represented party when sanctions are awarded pursuant to 57.105(1)(b).</p>	
--	---	--

