Reasonableness of Fees

Rule 4-1.5: Fees and Costs for Legal Services

(a) Illegal, Prohibited, or Clearly Excessive Fees and Costs. An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost, or a fee generated by employment that was obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar. A fee or cost is clearly excessive when:

(1) after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or the cost exceeds a reasonable fee or cost for services provided to such a degree as to constitute clear overreaching or an unconscionable demand by the attorney; or

(2) the fee or cost is sought or secured by the attorney by means of intentional misrepresentation or fraud upon the client, a nonclient party, or any court, as to either entitlement to, or amount of, the fee.

(b) Factors to Be Considered in Determining Reasonable Fees and Costs.

(1) Factors to be considered as guides in determining a reasonable fee include:

(A) the time and labor required, the novelty, complexity, and 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, and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation.

(2) Factors to be considered as guides in determining reasonable costs include:

(A) the nature and extent of the disclosure made to the client about the costs;

(B) whether a specific agreement exists between the lawyer and client as to the costs a client is expected to pay and how a cost is calculated that is charged to a client;

(C) the actual amount charged by third party providers of services to the attorney;

(D) whether specific costs can be identified and allocated to an individual client or a reasonable basis exists to estimate the costs charged;

(E) the reasonable charges for providing in-house service to a client if the cost is an in-house charge for services; and

(F) the relationship and past course of conduct between the lawyer and the client.

All costs are subject to the test of reasonableness set forth in subdivision (a) above. When the parties have a written contract in which the method is established for charging costs, the costs charged thereunder shall be presumed reasonable.

(c) Consideration of All Factors. In determining a reasonable fee, the time devoted to the representation and customary rate of fee need not be the sole or controlling factors. All factors set forth in this rule should be considered, and may be applied, in justification of a fee higher or lower than that which would result from application of only the time and rate factors.
(d) **Enforceability of Fee Contracts.** Contracts or agreements for attorney’s fees between attorney and client will ordinarily be enforceable according to the terms of such contracts or agreements, unless found to be illegal, obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar, prohibited by this rule, or clearly excessive as defined by this rule.

(e) **Duty to Communicate Basis or Rate of Fee or Costs to Client.** When the lawyer has not regularly represented the client, the basis or rate of the fee and costs shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation. A fee for legal services that is nonrefundable in any part shall be confirmed in writing and shall explain the intent of the parties as to the nature and amount of the nonrefundable fee. The test of reasonableness found in subdivision (b), above, applies to all fees for legal services without regard to their characterization by the parties.

**Excessive Fees**

*The Florida Bar v. Moriber*, 314 So. 2d 145, 148 (Fla. 1975):

Few, if any, areas of attorney discipline are as subject to differing interpretations as the matter of what constitutes an excessive attorney's fee. . . . The answer turns upon multiple factors including the difficulty of the case; the contingencies, if any, upon which the fee is based; the novelty of the legal issues presented; the experience of the attorney; the quality of his work product; and the amount of time spent in preparation and litigation. . . .

Examining the factors pertinent to the respondent in this case, it is clear that the case was not difficult, a fact of which the respondent was well aware. It frankly could have easily been performed by a layman since the major asset of over $23,000.00 in an investors' variable payment fund passed to the client by operation of law. This was not a novel legal issue requiring specialized legal knowledge or experience. The respondent devoted relatively little time thereto. The record reflects that he wrote approximately seven letters, completed a few forms, and made some telephone calls on behalf of his client, all this in little more than a month. He also undertook a one-day trip to New York for his client, charging him $550.00 (later reduced to $300.00) for ‘expenses.’

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The significant factors in determining a reasonable fee in this case include the amount involved and the benefit to the client, neither of which is disputed. Particularly important is the amount of time that should have been devoted to accomplish these particular tasks. We find that any prudent lawyer would find that the fees in this case were clearly excessive.
An excessive fee is a fee that . . . is secured by means of intentional misrepresentation as to either entitlement or amount.

Garland altered time records and his fee per hour to justify the unearned fees taken from the estate. He made intentional misrepresentations to a residual beneficiary of the estate as to the hours expended and the fee to be charged and gave the beneficiary a false accounting.

Appellee’s counsel admitted at oral argument that his apparently silver-tongued efforts as trial counsel secured no equitable distribution, no lump sum alimony, and no permanent or rehabilitative alimony for the wife in this one and one-half year marriage; the sole result which he obtained was $10,000 in temporary support monies.

The amounts billed were excessive and . . . the [$20,000] fee awarded was unreasonable, particularly in view of the limited results obtained by counsel for the wife.


Costs

Rule 4-1.5 Comment: Basis or Rate of Fees and Costs:

General overhead should be accounted for in a lawyer’s fee, whether the lawyer charges hourly, flat, or contingent fees. Filing fees, transcription, and the like should be charged to the client at the actual amount paid by the lawyer. A lawyer may agree with the client to charge a reasonable amount for in-house costs or services. In-house costs include items such as copying, faxing, long distance telephone, and computerized research. In-house services include paralegal services, investigative services, accounting services, and courier services. The lawyer should
sufficiently communicate with the client regarding the costs charged to the client so that the client understands the amount of costs being charged or the method for calculation of those costs. Costs appearing in sufficient detail on closing statements and approved by the parties to the transaction should meet the requirements of this rule.

Fee Agreements

Contingent fee agreements are prohibited in any domestic relations matter.

Rule 4-1.5(f)(3):

A lawyer shall not enter into an arrangement for, charge, or collect:

(A) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof. . . .

A fee agreement that includes an unenforceable contingency provision is void. See Chandris, S.A. v. Yanakakis, 668 So. 2d 180, 185-86 (Fla. 1995). However, the attorney may be entitled to recover fees in quantum meruit. See id.; see also King v. Young, Berkman, Berman & Karpf, P.A., 709 So. 2d 572, 574 (Fla. 3d DCA 1998).

Non-Refundable Retainers

Rule 4-1.5 Comment: Terms of Payment:

A lawyer may require advance payment of a fee but is obliged to return any unearned portion. . . . A lawyer is not, however, required to return retainers that, pursuant to an agreement with a client, are not refundable.

A nonrefundable retainer differs from a prepaid fee, in that the nonrefundable retainer is understood as belonging to the lawyer and is not subject to refund whether or not the lawyer actually has to perform the legal services contemplated.

A lawyer, by designating a fee as a nonrefundable retainer, does not automatically insulate him- or herself from a claim that the fee is excessive. A substantial nonrefundable retainer that is to be applied toward the total legal fees may be excessive where the lawyer performs no services, obtains no benefit for the client, and loses no other employment opportunities to represent the client. A fact question exists as to whether a nonrefundable retainer is an excessive fee where the lawyer’s services are no longer needed before the lawyer has taken any steps in representing the client. If, however, the lawyer obtains a substantial benefit for the
client, such as where a lawyer with a towering reputation, just by agreeing to represent a client, causes a threatened lawsuit to vanish, the lawyer may be entitled to keep the fee, particularly if he or she lost or declined other employment in order to represent the client that paid the retainer.

**Florida Ethics Opinion 93-2 (Fla. Bar Comm. on Prof’l Ethics 1993):**

The Committee believes that there should exist a presumption that prepaid fees are an advance deposit against fees for work that is yet to be performed. Certainly, this is the assumption that the typical client would make. The attorney should bear the burden of rebutting this presumption.

**Flat Fees**

**Raza v. Deutsche Bank Nat’l Trust Co.,** 100 So. 3d 121, 125-26 (Fla. 2d DCA 2012):

We do not hold that the absence of time records is fatal to an effort to recover fees under a flat fee arrangement. Recently, the First District addressed this issue in **Grapski v. City of Alachua,** – So. 3d – (Fla. 1st DCA 2012). In that case, an attorney failed to keep accurate records of his hours, but presented an expert witness “who thoroughly reviewed [the] record and explicitly detailed the amount of hours which reasonably should have been incurred.” **Id.** The appellate court determined that although the party claiming fees failed to establish directly the hours spent and work performed, the expert testimony constituted competent, substantial evidence to uphold the fee award. **Id.; see also Smith v. Sch. Bd. of Palm Beach Cnty.,** 981 So. 2d 6, 9 (Fla. 4th DCA 2007) (“Evidence of rates may be adduced through direct evidence of charges by lawyers under similar circumstances or by opinion evidence.”). Thus, although a flat fee itself is not sufficient to satisfy **Florida Patient’s Compensation Fund,** the fee combined with expert testimony may be sufficient, if it accounts for all matters addressed in **Florida Patient’s Compensation Fund.**

For a comprehensive analysis of the ethical propriety of advance fee payments, especially flat fees, see Alec Rothrock, “The Forgotten Flat Fee: Whose Money Is It And Where Should It Be Deposited?” **Fla. Coastal L.J.** 293 (Spring/Summer 1999).
Compliance with Trust Accounting Rules

Rule 4-1.15(a): Safekeeping Property

Rule 5-1.1: Trust Accounts

Florida Ethics Opinion 93-2 (Fla. Bar Comm. on Prof'l Ethics 1993):

A “true retainer.”

A “true retainer” is akin to an option contract: the client pays the attorney a fee for the right to employ the attorney. The “true retainer” is therefore earned upon receipt and should not be deposited in the trust account.

In today’s practice, however, the term “retainer” is used in a variety of ways – often as a synonym for “fee.” Thus, . . . trust accounting questions should be analyzed not by the application of labels, but by considering the purpose of the subject funds in light of the facts and circumstances attending their payment.

Prepaid costs and fees for services to be performed.

[M]oney entrusted to an attorney for a specific purpose, including advances for costs and expenses, is held in trust and must be applied only to that purpose. . . . [A]dvances for costs and expenses must be deposited in the attorney’s trust account and withdrawn and applied against such expenses as they are incurred and paid.

As to prepaid fees, the key issue can be stated thusly: Is the money earned at the time it is received by the attorney? . . . A prepaid fee which the attorney and client have expressly agreed is nonrefundable is . . . earned upon receipt and so should not be held in trust but should be deposited into the attorney’s general account. Nonetheless, the lawyer may later be obligated to refund part, or possibly all of it, if the legal services are not performed, in which case the fee may be found to be excessive, but the money is the lawyer’s upon receipt of it.

On the other hand, the prepaid fee may be given to the attorney with the understanding that it is a deposit securing a fee that is yet to be earned. Such money does not belong to the lawyer, and should be held in trust until it has been earned by performance of the agreed-upon services.

**Unit Billing**

*Browne v. Costales*, 579 So. 2d 161, 162 (Fla. 3d DCA 1991):

[Unit billing is a practice where the attorney bills a predetermined number of minutes for a given task. In this case, the attorney billed 24 minutes for each task of: notices of hearing, re-notices of hearing, and notices of taking deposition. He billed 15 minutes for each task of: a note of transmittal, and for transmitting a proposed order to the court.

The attorney’s practice of unit billing was, in our view, unacceptable, and serves to fuel the opprobrium felt for the legal profession.

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Rule 4-1.5, Rules Regulating the Florida Bar, provides the factors upon which a reasonable fee can be based. It does not provide for flat rates per task.

*Nickerson v. Nickerson*, 608 So. 2d 835 (Fla. 3d DCA 1992):

This court has disapproved of “the practice of unreasonable ‘unit billing’ without regard for the actual time spent on true legal work.” *Browne v. Costales*, 579 So. 2d 161, 162 (Fla. 3d DCA), *review denied*, 593 So. 2d 1051 (Fla.1991). The billing system used by wife's counsel in the present case is substantially similar to that disapproved of in *Browne*.

*The Florida Bar v. Richardson*, 574 So. 2d 60, 63 (Fla. 1990):

[ABSolutely no justification exists to bill for twenty minutes for every phone call or for a minimum of forty-five minutes to prepare a page of a document without regard to the amount of time actually spent. Nor is it proper to bill clients for pro bono services to be rendered to others.*


Withdrawing - When is it Appropriate?

Fla. R. Prof. Conduct Rule 4-1.16(a) sets out several situations where withdrawal is mandatory, to-wit:

1. The representation will result in violation of the Rules of Professional Conduct or law;
2. The lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client;
3. The lawyer is discharged;
4. The client persists in a course of action involving the lawyer’s services that the lawyer reasonably believes is criminal or fraudulent, unless the client agrees to disclose and rectify the crime or fraud; or
5. The client has used the lawyer’s services to perpetrate a crime or fraud, unless the client agrees to disclose and rectify the crime or fraud.

Fla. R. Prof. Conduct Rule 4-1.16(b) sets forth the situations where withdrawal is allowed:

1. Withdrawal can be accomplished without material adverse effect on the interests of the client;
2. The client insists upon taking action that the lawyer considers repugnant, imprudent, or with which the lawyer has a fundamental disagreement;
3. The client fails substantially to fulfill an obligation to the lawyer regarding the lawyer’s services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
4. The representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
5. Other good cause for withdrawal exists.

In Calley v. Thomas M. Woodruff, P.A., 751 So. 2d 599 (Fla. 2d DCA 1998), the court held that an attorney who withdrew based on his asserted belief that his client would not testify truthfully at trial forfeited the right to attorney fees. The attorney had a mere suspicion, which he had failed to confirm, that the client would not testify truthfully and had not taken any action to dissuade the client.

In Florida Bar v. Rue, 643 So. 2d 1080 (Fla. 1994), an attorney was suspended where the attorney’s contract with the client called for a penalty upon termination of the attorney’s services and provided for a fee for collection of insurance benefits that did not require any legal work.

In Florida Bar v. Hollander, 607 So. 2d 412 (Fla. 1992), an attorney received probation and a public reprimand for entering a contract with his client providing that the client would immediately pay the attorney for all services rendered in the event of discharge or withdrawal, and also providing that the attorney would remain entitled to a share of any recovery by the client. The court found that this agreement on its face would permit
the attorney to collect twice for the same work, and thus that the agreement had the effect of intimidating the client from exercising the right to terminate the representation.

How and When to Appropriately Withdraw

Fla. R. Prof. Conduct Rule 4-1.16(c): A lawyer must comply with applicable law requiring notice or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

Fla. R. Jud. Admin. 2.505(f) (formerly known as 2.060(i)):

The appearance of an attorney for a party in a proceeding shall terminate only in one following ways:

(1) **Withdrawal of Attorney.** By order of court, where the proceeding is continuing, upon motion and hearing, on notice to all parties and the client, such motion setting forth the reasons for withdrawal and the client’s last known address, telephone number, including area code, and email address.

(2) Substitution of Attorney. By order of court, under the procedure set forth in subdivision (e)(2) of this rule.

(3) Termination of Proceeding. Automatically, without order of court, upon the termination of a proceeding, whether by final order of dismissal, by final adjudication, or otherwise, and following the expiration of any applicable time for appeal, where no appeal is taken.

(4) Filing of Notice of Completion. For limited representation proceedings under Florida Family Law Rule of Procedure 12.040, automatically, by the filing of a notice of completion titled “Termination of Limited Appearance” pursuant to rule 12.040(c).

*Garden v. Garden*, 834 So.2d 190 (Fla. 2d DCA 2002):

(1) Granting the motion is within the discretion of the judge.

(2) “The notice requirement implicates due process . . . and opportunity to be heard; obviously, then the notice and motion must be timely and must afford the client an opportunity to respond.”

(3) Counsel must establish competent proof the alleged basis for withdrawal.

The question as to “[w]hen and under what circumstances may an attorney of record in a civil proceeding be allowed to withdraw in a case?” was answered in the Supreme Court case of *Fisher v. State*, 248 So. 2d 479 (Fla. 1971), to-wit: in civil matters, an attorney of record has the right to terminate the attorney-client relationship and to withdraw as an attorney of record upon due notice to his client and approval of the trial court, and that approval by the trial court should be rarely withheld and then only upon a determination that to grant such request would interfere with the efficient and proper functioning of the court. *See Fisher v. State*, 248 So. 2d 479, 486 (Fla. 1971). The Supreme Court in *Fisher* cited the Supreme Court of North Carolina’s decision in *Smith v. Bryant*, 264 N.C. 208, 141 S.E. 2d 303, 305 (1965):
“Whether an attorney is justified in withdrawing from a case will depend upon the particular circumstances, and no all-embracing rule can be formularized. It is generally held, however, ‘that the client’s failure to pay or to secure the payment of proper fees upon reasonable demand will justify the attorney in refusing to proceed with the case.’ . . . Nevertheless, this does not mean that an attorney of record can walk out of the case by announcing to the court on the day of the trial that he has withdrawn because he has not been paid. An attorney not only is an employee of his client but also is an officer of the court. This dual relation imposes a dual obligation. . . . To the court, which cannot cope with the ever-increasing volume of litigation unless lawyers are as concerned as is a conscientious judge to utilize completely the time of the term, the lawyer owes the duty to perfect his withdrawal in time to prevent the necessity of a continuance of the case. . . .”

**Practice Tip:** Remember the case may continue after your representation is over and you must serve your client’s best interest even in your effort to withdraw. Therefore, be careful not to convey confidential information or disparage the client in the eyes of the judge. Fla. R. Prof. Conduct 4-1.16(d).

**Liens**

**Charging Liens**

**Fla. R. Prof. Conduct Rule 4-1.5(d):** Enforceability of Fee Contracts - Contracts or agreements for attorney’s fees between attorney and client will ordinarily be enforceable according to the terms of such contracts or agreements, unless found to be illegal, obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar, prohibited by this rule, or clearly excessive as defined by this rule.

If the attorney is requesting a charging lien or may decide to do so at a later date, the best practice is to specifically state a reason for withdrawing which tracks the language of one of the subsections of Rule 4-1.16, especially if a *contingency contract* is involved. In *Faro v. Romani*, 641 So. 2d 69, 71 (Fla. 1994), the Florida Supreme Court found that when an “attorney withdraws from representation on his own volition, and the contingency has not occurred, the attorney forfeits all rights to compensation,” but if the client’s conduct makes the attorney’s continued performance of the contract legally impossible or would cause the attorney to violate an ethical rule, the withdrawing attorney may still be entitled to a fee.

*Daniel Mones, P.A. v. Smith*, 486 So. 2d 559 (Fla. 1986), discusses the requirements of a charging lien. In order to prevail, an attorney must prove:

1. An express or implied contract between attorney and client;
2. An express or implied understanding for payment of attorney’s fees out of the recovery;
3. Either an avoidance of payment or a dispute as to the amount of fees; and
4. Timely notice.
Timely notice:

(1) File a notice of lien or otherwise pursue the lien in the original action. See Daniel Mones, P.A. v. Smith, 486 So. 2d 559, 561 (Fla. 1986).

(2) Should be filed before entry of a final judgment, unless the court specifically reserves jurisdiction on attorney’s fees. See Naftzger v. Elam, 41 So. 3d 944, 946 (Fla. 2d DCA 2010); Weiland v. Weiland, 814 So. 2d 1252, 1253 (Fla. 2d DCA 2002)).

Applicability:

(1) “Likewise, in dissolution actions, property awarded as an equitable distribution of property rights is a ‘proceed’ to which a lien can attach, see Conroy v. Conroy, 392 So. 2d 934 (Fla. 2d DCA 1980), but an alimony award designed to provide ‘daily sustenance and the minimal necessities of life,’ Dyer v. Dyer, 438 So. 2d 954, 955 (Fla. 4th DCA 1983); Zimmerman v. Livnat, 507 So. 2d 1205 (Fla. 4th DCA 1987), and child support payments, Brake v. Sanchez-Lopez, 452 So. 2d 1071 (Fla. 3d DCA 1984), are not awards against which the lien can be enforced. In a paternity action, however, a lien against an award for medical and other expenses may, if the mother is not impecunious, be proper.” Litman, v. Fine, Jacobson, Schwartz, Nash, Block, & England, P.A., 517 So. 2d 88, 92, n.5 (Fla. 3d DCA 1987).

(2) “It is not enough . . . to support the imposition of a charging lien that an attorney has provided his services; the services must, in addition, produce a positive judgment or settlement for the client, since the lien will attach only to the tangible fruits of the services.” Litman, v. Fine, Jacobson, Schwartz, Nash, Block, & England, P.A., 517 So. 2d 88, 92 (Fla. 3d DCA 1987).

(3) A charging lien many not be used to secure fees incurred by the attorney in enforcing his lien. Cole v. Kehoe, 710 So. 2d 705, 706 (Fla. 4th DCA 1998).

(4) Client cannot waive homestead exception in a retainer contract. See Chames v. DeMayo, 972 So. 2d 850 (Fla. 2007). (The Supreme Court of Florida holds that a waiver of the homestead exemption of Art. X, §4(a), Fla. Const. in an unsecured agreement is unenforceable.)

Retaining Liens

Fla. R. Prof. Conduct 4-1.16(d): Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers or other property relating to or belonging to the client to the extent permitted by law.
Retaining Liens versus Charging Liens:

(1) A retaining lien is passive and rests entirely upon the right of an attorney to retain possession of his client’s papers, money, securities, and files as security for payment of the fees and costs earned by the law firm to that point. Brickell Place Condo Ass’n v. Joseph H. Ganguzza & Assocs., P.A., 31 So. 3d 287, 289 (Fla. 3d DCA 2010).

(2) “In Florida an attorney has a right to a retaining lien upon all of the client’s property in the attorney’s possession, including money collected for the client. Unlike a charging lien, a retaining lien covers the balance due for all legal work done on behalf of the client regardless of whether the property is related to the matter for which the money is owned to the attorney.” Daniel Mones, P.A. v. Smith, 486 So. 2d 559, 561 (Fla. 1986) (citing Conroy v. Conroy, 392 So. 2d 934 (Fla. 2d DCA 1980), review denied, 399 So. 2d 1141 (Fla. 1981)).


Advising Client To Avoid Unnecessary Costs of Litigation

Previously, it was not unusual for impecunious (having little or no money) spouses to take extortionist positions in settlement discussions, effectively taking the stance: “Settle for my demands or experience the pain of paying both your lawyer and mine to go further.”

The Fourth District Court of Appeal has been sending the message by its mandates that an impecunious spouse entitled to attorney fees under section 61.16, Florida Statutes, can be limited, or even eliminated, when reasonable settlements are rejected and unnecessary or unrealistic litigation ensues. The spouse leaving a marriage with exceptionally higher income or assets was usually required to pay for their spouse’s lawyer unless egregious conduct occurred during the divorce. However, in the Fourth DCA case of Hallac v. Hallac, the appellate court concluded the wife had no reason to continue to litigate after the husband’s last settlement offer and therefore denied her request for attorney fees incurred after receiving the offer. The appellate court found that the trial judge did not abuse her discretion in denying the wife attorney fees because the results the wife obtained at trial fell far short of her husband’s reasonable offer. 88 So. 3d 253, 256-58 (Fla. 4th DCA 2012).

It may not be long before the other appellate courts follow suit.

The Florida Supreme Court in Rosen v. Rosen, 696 So. 2d 697 (Fla. 1997), held that although need and ability to pay are still the primary elements in determining entitlement to and the amount of any attorneys’ fees and costs award in Florida, all relevant circumstances are to be considered by the trial court in awarding fees and costs, inclusive of the scope and history of the litigation, the duration of the litigation, the merits of the respective positions, whether the litigation is brought or maintained primarily to harass (or whether a defense is raised mainly to frustrate or stall), and the existence and course of prior or pending litigation.
Per *Rosen*, the trial court is to determine the reasonable number of hours times the reasonable hourly rate as a starting point in determining a reasonable fee. The case, therefore, should be quickly assessed, settlement offers should be made quickly, and the efficacy of discovery should be considered at the onset, with this standard in mind. The party with the greater financial resources should be even more mindful of this standard and seek to minimize the client’s exposure to fees by streamlining the litigation and searching for methods to resolve the case without undue expense.

In *Wrona v. Wrona*, 592 So. 2d 694 (Fla. 2d DCA 1991), the appellate court found that “trial courts should understand that they have authority to take steps designed to avoid needless expense during a divorce proceeding.” The *Wrona* court ruled that one method trial courts can use to punish the party causing avoidable litigation expenses is to take such expenses into account in awarding attorney fees and costs at the conclusion of the matter.

Under the traditional rule, neither attorney fees, nor costs may be awarded as punishment; however, an exception arises where the misconduct rises to the level of bad faith contributing to unnecessary legal expenses, costs and delay, and the trial court makes specific detailed findings to support the sanction. *Bitterman v. Weidenbenner*, 714 So. 2d 356 (Fla. 1998); *see also Sumlar v. Sumlar*, 827 So. 2d 1079, 1084 (Fla. 1st DCA 2002).