

The 24th Annual Nuts & Bolts of Family Law Seminar

**Presented by Dade County Bar
Association Family Courts Committee,
Dade Legal Aid & Young Lawyers
Section**

Attorney's Fees & Costs

By: Anastasia M. Garcia Esq.

Anastasia Garica practices out of Coral Gables Florida at Law offices of Anastasia M. Garcia. **She** obtained her undergraduate degree from Florida International University in 1989 and her Juris Doctor degree from George Washington University National Law Center (1992). Since her admission to the Florida Bar in 1992, she has concentrated in the areas of marital and family law and family mediation. Mrs. Garcia has served as a Guardian Ad Litem on many cases and she is a Florida Supreme Court Certified Mediator. Mrs Garcia is a member of the Florida Bar Family Law Section, and serves on the Legislative Committee, the Children's Issues Committee and the Publications Committee of the Florida Bar Family Law Section.

ATTORNEY'S FEES AND COSTS

By Sandy T. Fox, Esquire

I. Overview

Attorney's fees may be awarded under Chapters 61, 742, 88, and Section 57.105 *Florida Statutes*. An award of attorney's fees is to ensure both parties have the same ability to obtain competent counsel. ***Nichols v. Nichols***, 519 So. 2d 620 (Fla. 1988). The trial court must mitigate the harm an impecunious spouse would suffer where the other spouse has a financial advantage.

II. Jurisdiction

A. Statutory Authority: Section 61.16, *Florida Statutes* (maintaining or defending proceeding under this chapter, including enforcement, modification and appeals); Section 61.17, *Florida Statutes* (enforcement); Sections 742.045 and 742.031, *Florida Statutes* (paternity); Section 88.3051, *Florida Statutes* (UIFSA by responding tribunal); and Section 57.105, *Florida Statutes* (claim/defense not supported by material facts or would not be supported by application of existing law to those material facts).

B. Fees Related to Chapter 61: Actions to set aside final judgment. ***Fla. R. Civ. P. 1.540 (b)***; actions to join corporation in dissolution proceedings.

C. Equitable Authority: Upon discretion of the trial court, i.e. annulment.

D. Domestic Violence Cases: Attorney's fees are not authorized in domestic violence proceedings. Section 741.30, *Florida Statutes*.

E. Discuss importance of breaking down the fees for cases in Unified Family Court in light of item D above.

III. What the Court should consider

The main inquiry is whether one spouse has a need and other spouse has the ability to pay. ***Robbie v. Robbie***, 591 So. 2d 1006 (Fla. 4th DCA 1991). Same inquiry whether fees requested are temporary or final. ***Giorlando v. Giorlando***, 103 So. 3d 247, 248 (Fla. 4th DCA 2012). The Court must also consider the relative financial circumstances of the parties. ***Montante v. Montante***, 627 So. 2d 554 (Fla. 4th DCA 1993). Court can also consider factors under ***Rosen v. Rosen***, 696 So. 2d 697 (Fla. 1997): scope and history of the litigation; duration of the litigation; merits of the respective positions; whether litigation is brought to harass (or whether a defense is raised mainly to frustrate or stall); and existence and course of prior or pending litigating.

IV. Need/Ability to Pay:

Differences amongst the District Court of Appeals regarding interpretation of need. Most require actual need whereas some view simple disparity. (1st) actual need; (2d) actual need; (3d) relative need; (4th) sometimes relative and sometimes actual need; and (5th) actual need. Ability to pay must be based upon the resources that are within a party's control and presented as evidence to the Court. ***Mott v. Mott***, 800 So. 2d 331, 334 (Fla. 2d DCA 2001). Court must base the fee award on relative financial positions of the parties at the time of dissolution, not on some unspecified future date. ***Duchesneau v. Duschessneau***, 692 So. 2d 205 (Fla. 5th DCA 1997). Before determining ability to pay, the Court must look at the total obligations such as child support/alimony. ***Tresser v. Tresser***, 737 So. 2d 1195, 1197 (Fla. 2d DCA 1999).

V. Reasonableness:

Absent stipulation, there must be an evidentiary hearing to determine if the fees and costs incurred for services rendered were reasonable; if not, what a reasonable fee would be. ***Soterakis v. Soterakis***, 913 So. 2d 688 (Fla. 5th DCA 2005). If entitled to reasonable fee, the Court should award the whole amount absent findings of the basis for a percentage split. ***See, Cole v. Roberts***, 661 So. 2d 370 (Fla. 4th DCA 1995).

VI. Temporary Fee Awards:

Standard is need and ability to pay based on income and assets of each party. Evidentiary hearing and testimony required, but expert testimony not required. There must be sufficient evidence on the record to support the award. ***See Moore v. Kelso-Moore***, 152 So. 3d 681 (Fla. 4th DCA 2014);

A. Importance of preparing a proposed budget

VII. Final Fee Awards

A. Pleadings: A claim for attorney's fees must be pled in the original action, otherwise it is waived. ***Watson v. Watson***, 124 So. 3d 340 (Fla. 1st DCA 2013).

B. Proof: (1) Written billing records; (2) documentary evidence such as financial affidavits; (3) testimonial evidence – counsel must testify re: hours expended and hourly rate. ***See, Braswell v. Braswell***, 4 So. 3d 4 (Fla. 2d DCA 2009).

C. Objections to Costs: Must be raised prior to any hearing on the issue. *See, Catalano v. Catalano*, 802 So. 2d 1146 (Fla. 2d DCA 2001).

D. Written Findings of Fact Required: Need written findings of need, ability to pay, hourly rate, # of hours expended and appropriateness of enhancement/reduction. *Mitchell v. Mitchell*, 141 So. 3d 1228 (Fla. 1st DCA 2014).

E. Award Must be Supported by the Evidence: Competent/substantial evidence required. *Bohner v. Bohner*, 997 So. 2d 454 (Fla. 2d DCA 2008).

F. Payment of Fees Awarded: Court must order reasonable payment of fee award, such as within a reasonable period of time. *See Wright v. Wright*, 965 So. 2d 1168 (Fla. 2d DCA 2007).

G. Reservation of Jurisdiction by Trial Court: Court should reserve jurisdiction for a subsequent hearing on fees/costs, both as to entitlement and amount.

VIII. Suit Money and Costs

A. Taxation of Costs: The Statewide Uniform Guidelines for Taxation of Costs in Civil Actions are advisory only and set forth the ability to tax litigation costs. Litigation costs that should be taxed are: depositions, documents/exhibits, expert/lay witnesses, court reporting other than depositions, and reasonable charges for special magistrates, GALs and attorneys ad litem. Litigation costs that may be taxed are: mediation fees, travel expenses of experts/witnesses, e-discovery expenses, cost of producing copies of electronic media in response to discovery request, and cost of converting electronically stored info. Litigation costs that should not be taxed are long distance calls with witnesses, expenses re consulting but non-testifying experts, costs incurred with any matter not reasonably calculated to lead to discovery of admissible evidence, travel time of attorneys and experts and travel expenses of attorney.

B. Suit Money: Expenses other than costs, including fees and costs not within the scope of Guidelines for Taxation of Costs.

C. Interest: Interest on fees/costs begins on the date of entitlement. *Quality Engineered Installation v. Higley South, Inc.* 670 So. 2d 929 (Fla. 1996).

IX. Settlement Offers

Although trial courts in dissolution proceedings have the authority under 61.16, *Florida Statutes*, to deny fees for litigation misconduct, there is no authority for denying attorney's fees solely for the failure to accept an offer of settlement. *Kaiser v. Harrison*, 985 So. 2d 1226 (Fla. 5th DCA 2008). Fees may be assessed against a party and counsel for failure to accept a reasonable settlement offer and bad faith litigation, if supported by detailed findings. *Diaz v. Diaz*, 826 So. 2d 229 (Fla. 2002).

X. Antenuptial Agreements

Parties cannot limit or contract away entitlement and/or amount of temporary fee award in a pre-nuptial or post-nuptial agreement. *Belcher v. Belcher*, 271 So. 2d 7 (Fla. 1972) and *Sasnett v. Sasnett*, 683 So. 2d 177 (Fla. 2d DCA 1996).

XI. Prevailing Party Clauses

Contractual provisions that prevailing party pays attorney's fees are enforceable. *Mott v. Mott*, 800 So. 2d 331 (Fla. 2d DCA 2001). The trial judge is without discretion to fail to enforce the prevailing party provision. *Dauids v. Dauids*, 718 So. 2d 1263 (Fla. 2d DCA 1998).

XXI. Waiving Temporary Attorney's Fees

A waiver clause of temporary fees is unenforceable in pre-nuptial agreements and waiver of temporary fees/future fees is also unenforceable in post-nuptial agreements. In MSA's, however, fee waiver provisions are generally enforceable. **Trowbridge v. Trowbridge**, 674 So. 2d 928 (Fla. 4th DCA 1996).

XIII. Assets

A Court can authorize parties to liquidate assets to fund litigation. **See, Schmitz v. Schmitz**, 891 So. 2d 1140 (Fla. 4th DCA 2005).

XIV. Appellate Attorney's Fees

A. Temporary Fees: Trial court has continuing jurisdiction to award temporary fees pending appeal. **Fla. R. App. P. 9.600 (c)**.

B. Final Fees: Must be filed with appellate court within time frame for service of reply brief. **Fla. R. App. P. 9.400 (b)**

C. Need and Ability to Pay: Appellate court determines preliminary entitlement and remands to trial court to determine amount based on need/ability.

D. Review of Trial Court's Fee Order: Must be filed within 30 days of trial court ruling. **Fla. R. App. P. 9.400 (c)**.

E. Costs for Appeal: Must be filed within 30 days of appellate mandate. **Fla. R. App. P. 9.400 (a)**.

XV. Enforcement

Fees under Chapter 61 are enforceable by contempt as they are in the nature of support. **Robbie v. Robbie**, 683 So. 2d 1131 (Fla. 4th DCA 1996).

XVI. Bankruptcy

If fees are awarded in the nature of support, they are not dischargeable in bankruptcy. **See, In re Rugiero**, 502 F. App'x 436 (6th Cir. 2012).

XVII. Reasonableness

The amount of fees sought must be reasonable. **Trovato v. Trovato**, 16 So. 3d 290 (Fla. 4th DCA 2009). A Court may use factors set forth in **Rosen v. Rosen**, 696 So. 2d 697 (Fla. 1997), **Florida Compensation Fund v. Rowe**, 472 So. 2d 1145 (Fla. 1985) and Rule 4-1.5 of the Florida Rules of Professional Conduct. Types of fees not permitted: unit billing, hand-holding, and duplicative efforts.

XVIII. Vexatious Litigants

A. Inherent Authority: Court has inherent authority to sanction party and counsel for bad faith litigation. **See Moya v. Moya**, 118 So. 3d 916 (Fla. 3d DCA 2013). A party's behavior, such as violation of court orders, can be used to limit/deny fees regardless of need. **Flannery v. Crowe**, 720 So. 2d 308 (Fla. 4th DCA 1998).

XIX. 57.105 Fees

Fees shall be assessed under Section 57.105, *Florida Statutes* in equal amounts by the losing party and counsel if either knew or should have known that a claim or defense was not supported by the material facts necessary to establish the claim or defense; or would not be supported by the application of

then-existing law to those material facts. Party seeking 57.105 fees must send a draft motion within 21 days of motion being filed with the Court.

XX. Retainer

A written retainer with hourly rates and rights to charging/retaining liens should be executed in every case. Non-refundable retainers are permissible but contingency contracts are not.

XXI. Attorney Enforcement

A. Charging Liens: Safeguards and protects the attorney's right to payment of fees and costs for the services he or she rendered secured by the judgment or recovery. ***Sinclair, Louis, Siegel, Heath, Nussbaum & Zavertnik, P.A. v. Baucom***, 428 So. 2d 1383 (Fla. 1983). The following must be shown: valid agreement; express/implied agreement that payment may come from proceeds of litigation; non-payment or dispute regarding payment; and timely notice of the lien. Liens may not attach to alimony, child support, or property not involved in the lawsuit. Cannot attach to client's homestead exempt real property despite client's waiver in retainer. ***Chames v. Demayo***, 972 So. 2d 850 (Fla. 2007). Cannot typically seek "fees for fees." ***Wight v. Wight***, 880 So. 2d 692 (Fla 2d DCA 2004);

B. Retaining Liens: An attorney's possessory interest in a client's file/papers which is held by the attorney until fee has been paid. A file will not be released without payment with limited exceptions of: attorney's misconduct caused the withdrawal; client has immediate need to defend criminal prosecution; attorney has filed a counterclaim or independent action seeking to collect the fee. ***Foreman v. Behr***, 866 So. 2d 705 (Fla. 2d DCA 2003).

C. Income Withholding Order: IWO to collect attorney's fees incurred as a result of securing/collecting child support/alimony is permissible pursuant to Section 61. 1301, *Florida Statutes*.

2015 ATTORNEY'S FEES CASES

Lopez v. Dept. of Revenue, 40 Fla. L. Weekly D2229 (Fla. 3d DCA Sept. 30, 2015): Purported father, entitled to sanctions for DOR's continued prosecution of child support case without support, was also entitled to fees incurred in defending magistrate's report and recommendations on previously filed sanctions motion from DOR's exceptions.

Law v. Law, 163 So. 3d 553 (Fla. 3d DCA 2015): Wife was entitled to attorney's fees and costs as sanctions as law firm had no legal basis to support claim for proceeds of foreclosure sale to pay husband's outstanding attorney's fees in divorce proceeding; home was homestead property subject to protections and wife's interest not waived.

Florida Dept. of Revenue v. James, 159 So. 3d 973 (Fla. 3d DCA 2015): Attorney's fees assessed against ex-wife in Title IV-D action was improper as ex-wife was the obligee, and statute limits fees to the non-prevailing obligor.

Hutchinson v. Hutchinson, 40 Fla. L. Weekly D2239 (Fla. 1st DCA Oct. 2, 2015): where marital property has been equitably distributed and the parties' incomes have been equalized through an alimony award, it is an abuse of discretion for trial court to award attorney's fees in dissolution of marriage proceeding.

Berg v. Young, 40 Fla. L. Weekly D2036 (Fla. 4th DCA Sept. 2, 2015): Reversed and remanded for trial court to award husband prevailing party fees regarding the validity of the agreement and to consider whether wife was entitled to attorney's fees where court did not address substantial disparity between parties' incomes or provide specific factual findings regarding its determination that parties responsible for their own fees.

Haywald v. Fougere, 164 So. 3d 786 (Fla. 1st DCA 2015): Sums the husband had to pay for alimony and child support were required to be deducted from his ability to pay; relative abilities of the parties to pay attorney's fees precluded an award of fees to wife.

Edgar v. Firuta, 165 So. 3d 758 (Fla. 3d DCA 2015): The financial resources of the parties are primary factor to be considered; remanded for trial judge to determine number of hours reasonably expended, determine reasonable hourly rate, calculate the "lodestar amount" and adjust the fee if necessary to ensure equity between the parties.

Beckstrom v. Beckstrom, 40 Fla. L. Weekly D1014 (Fla. 4th DCA April 29, 2015): Trial court must make requisite written findings of ability to pay and payment plan imposed; **see also Wiesenthal v. Wiesenthal**, 154 So. 3d 484 (Fla. 4th DCA 2015):

Sisca v. Sisca, 165 So. 3d 689 (Fla. 4th DCA 2015): Trial court abused its discretion by requiring former wife to pay former husband's attorney and expert witness fees which require her to invade her investment assets which she would already have to do in order to meet her needs, thereby failing to demonstrate requisite need and ability to pay.

Henderson v. Henderson, 162 So. 3d 203 (Fla. 5th DCA 2015): Order reversed denying fees without findings as to the parties' needs, abilities to pay and misconduct.

APPENDIX "A"

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY,
FLORIDA

IN RE: THE MARRIAGE OF

FAMILY DIVISION

MARY SMITH
Petitioner/Wife,

CASE NO.:

and

JOHN SMITH
Respondent/Husband.

_____ /

MOTION FOR TEMPORARY ATTORNEY'S FEES, SUIT MONIES AND COSTS

The Petitioner/Wife, MARY SMITH, by and through her undersigned counsel and pursuant to Florida Statutes §61.16, respectfully requests the entry of an Order requiring the Respondent/Husband, JOHN SMITH, to pay an award of temporary attorney's fees, suit monies, and costs, and as grounds therefor, hereby states:

1. This is an action for Dissolution of Marriage.
2. According to Florida Statute, § 61.16, "the court may from time to time, after considering the financial resources of both parties, order a party to pay a reasonable amount for attorney's fees, suit money, and the cost to the other party of maintaining or defending any proceeding under this chapter..."
3. There appears to be great financial disparity between the parties.
4. The Wife is presently employed but has insufficient financial resources to pay her attorney's fees, suit monies and costs.

5. Throughout the parties' marriage, the Husband has provided the Wife and minor child with financial support.

6. A substantial financial disparity exists between the Husband and the Wife.

7. The Husband has the present ability to pay the Wife's temporary attorney's fees, suit monies and costs.

8. The Wife is in need and the Husband has the ability to pay her attorney's fees, suit monies, and costs so that the parties may be on equal footing throughout this action.

9. The Wife should not be penalized in this litigation because she is a financially disadvantaged spouse. The playing field must be leveled by the Court.

10. It is respectfully requested that the Wife be granted an award of temporary attorney's fees, suit monies and costs, sufficient to defend this action through trial.

11. A good faith attempt to resolve the issues contained herein has been made by the Wife's counsel prior to the filing of this motion or will be made prior to setting this matter to be heard before this Honorable Court.

WHEREFORE, the Petitioner/Wife respectfully requests the entry of an Order for the aforesaid relief and any further relief as this Court deems just and equitable under the circumstances.

CERTIFICATE OF SERVICE

I HEREBY certify that a true and correct copy of the foregoing was sent by U.S. Mail to: Lawyer, Address, City, State, Zip Code, Telephone, Facsimile, E-Mail, on this 6th day of February, 2015.

APPENDIX "B"

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY,
FLORIDA

IN RE: THE MARRIAGE OF

FAMILY DIVISION

MARY SMITH
Petitioner/Wife,

CASE NO.:

and

JOHN SMITH
Respondent/Husband.

_____ /

NOTICE AND CLAIM OF ATTORNEY CHARGING AND RETAINING LIEN

NOTICE IS HEREBY given to all parties that LAW FIRM, is entitled to a special lien, retaining lien, and/or or charging lien in this cause for its representation of the Respondent/Wife. The lien claimed is for expenses and compensation which is due to LAW FIRM, pursuant to contract with the Respondent/Wife, for services rendered in the above styled cause. The lien is claimed against any monies or either, personal property or real property, as well as a claim for monies distributed pursuant to any Order or directive of the Court as security for payment of the fees and disbursements incurred on behalf of the Respondent/Wife.

All parties are called upon to take notice of this lien and the interest of LAW FIRM, and any sums of money or other properties which are or may be due to the Respondent/Wife, as a result of these proceedings. The

Petitioner/Husband, is directed not to disburse any funds directly to the Respondent/Wife, or anybody who is claiming or liening through her, without first honoring this Notice of Charging Lien.

This lien relates back to the date of the retainer agreement DATED, and is superior in dignity to any other liens subsequent to that date.

CERTIFICATE OF SERVICE

I **HEREBY** certify that a true and correct copy of the foregoing was sent by E-Mail to: Lawyer, Address, City, State, Zip Code, Telephone, Facsimile, E-Mail and by U.S. Mail to Client, Address, City, State, Zip Code, on this 6th day of February, 2015.

APPENDIX "C"

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY,
FLORIDA

IN RE: THE MARRIAGE OF

FAMILY DIVISION

MARY SMITH

CASE NO.:

Petitioner/Former Wife,

and

JOHN SMITH

Respondent/Former Husband.

_____/

ORDER GRANTING FORMER WIFE'S MOTION FOR ATTORNEY'S FEES, SUIT MONIES AND COSTS

THIS CAUSE having come before the Court on the Former Wife's Motion for Attorney's Fees, Suit Monies and Costs and the Court having heard the argument of counsel, considered the testimony of the parties and Sandy T.

Fox, Esquire, reviewed the pleadings and evidence, and being otherwise duly and fully advised in the premises, this Court finds as follows:

BACKGROUND

1. This is an action for dissolution of marriage that is in post-judgment proceedings.
2. The request for attorney's fees and costs filed by the Former Wife focuses on post-judgment litigation concerning enforcement of the Final Judgment of Dissolution of Marriage.
3. On October 3, 2007, the Court entered a Final Judgment of Dissolution of Marriage.
4. The Former Husband failed to appear for trial and did not appeal the Final Judgment of Dissolution of Marriage.
5. Pursuant to the Final Judgment of Dissolution of Marriage, the Former Husband was ordered to pay the Former Wife \$750 per month in permanent alimony.
6. Pursuant to the Final Judgment of Dissolution of Marriage, the Former Husband was to purchase the Former Wife's interest in the marital residence in the amount of \$75,000 by refinancing said property or obtaining the necessary financing. In the event that the Former Husband was unable to refinance or obtain financing to purchase the Former Wife's interest in the marital residence within 61 days following the entry of the Final Judgment of Dissolution of Marriage, the property was ordered to be sold.
7. On April 28, 2011, the Former Wife filed a Motion for Indirect Civil Contempt and Enforcement.
8. On April 28, 2011, the Former Wife filed a Motion for Entry of Income Deduction Order and Order Directing Alimony Payment Through State Disbursement Unit which was granted by the Court on June 28, 2011.
9. On July 14, 2011, the Former Wife filed a Motion to Compel Job Search.
10. On August 28, 2011, the Court entered an Order which found the Former Husband in indirect civil contempt of Court, appointed a special magistrate to sell the former marital residence and required the Former Husband to perform a weekly job search.
11. On September 2, 2011, the Court entered an Order incarcerating the Former Husband for his failure to comply with the August 28, 2011 Order. Ironically, the Former Husband purged the jail sentence less than 48 hours after being taken into custody.
12. On September 23, 2011, the Former Wife filed a Motion to Amend Alimony Arrears and for Entry of Money Judgment. On October 18, 2011, the Court entered an Order which granted this Motion. The Former Husband failed to make any effort to resolve this matter with counsel and failed to appear at the hearing.
13. On September 27, 2011, the Former Wife filed a Motion for Order to Show Cause.

14. On November 22, 2011, the Court entered an Order to Show Cause why the Former Husband should not be held in indirect criminal contempt of Court. Thereafter, the Court appointed a Special Prosecutor and a Public Defender to represent the Former Husband. The Former Husband was subsequently found guilty of indirect criminal contempt of Court.

15. On December 20, 2011, the Former Wife filed a Motion for Indirect Civil Contempt of Court due to the Former Husband's failure to once again pay his permanent alimony obligation.

16. On May 24, 2012, the Former Wife filed a Motion in which she requested that the Court Order the Former Husband to execute an affidavit required to sell the marital residence. This is a matter which should have been agreed to by the Former Husband. Ultimately, this resulted in the Court entering an Order on July 3, 2012 granting the Former Wife's Motion.

17. On July 3, 2012, the Court entered an Order Granting Former Wife's Motion for Indirect Civil Contempt. Once again, the Former Husband was found in indirect civil contempt for his failure to pay alimony. The Former Husband was given the opportunity to purge himself of the contempt by tendering \$4,000 to counsel for the Former Wife. The Former Husband was subsequently incarcerated in the Miami-Dade County Jail and, for the second time, purged his jail sentence shortly thereafter.

18. The Former Husband further thwarted the discovery process. He failed to appear for a deposition and was sanctioned. He terminated a deposition and was ordered to reappear. He failed to comply with discovery which resulted in the Court granting an Ex-Parte Motion to Compel filed by the Former Wife.

19. The Former Husband also filed frivolous and meritless pleadings. For example, the Former Husband filed a Supplemental Petition which was dismissed by Agreed Order for being legally insufficient. The Former Husband filed a motion for relief under Rule 1.540 of the Florida Rules of Civil Procedure which was denied.

20. The Former Wife requests that this Court require the Former Husband to pay 100% of her attorney's fees and costs. The Former Wife argues that the Former Husband engaged in meritless and baseless litigation because he simply did not want to comply with the Final Judgment of Dissolution of Marriage when he had the present ability to do so. The Former Wife further argues that it would be inequitable to require her to pay her attorney's fees and costs since she had no alternative but to seek relief from the Court.

21. The Former Husband argues that counsel for the Former Wife was aggressive with the litigation and that the litigation was unnecessary.

22. The Court finds that the Former Husband's argument is meritless and baseless. In fact, it took numerous indirect civil contempt hearings, a criminal contempt trial and a job search for the Former Husband to begin to comply with his permanent alimony obligation. It would be grossly inequitable and contrary to Florida law for the Former Wife to be required to pay her attorney's fees and costs given the Former Husband's conduct in this case and continued display of bad faith litigation.

FLORIDA LAW

23. The purpose of Florida Statute §61.16 is to allow an award of attorney's fees and costs in a dissolution of marriage action to ensure that both parties will have the same ability to secure competent counsel. **Nichols v. Nichols**, 519 So.2d 620 (Fla. 1988).

24. Violation of Court Orders may be considered as a basis for an award of attorney's fees and costs awards regardless of need and ability to pay. **Flannery v. Crowe**, 720 So.2d 308 (Fla. 4th DCA 1998); **Rosa v. Rosa**, 723 So.2d 312 (Fla. 4th DCA 1998); **Robinson-Wilson**, 932 So.3d 330 (Fla. 4th DCA 2006).

25. It is mandated that the provisions of Florida Statute §61.16 are to be construed liberally and that the Court can consider other factors above and beyond need and ability to pay in awarding attorney's fees and costs. **Rosen v. Rosen**, 696 So.2d 697 (Fla. 1997).

26. Attorney's fees and costs can be awarded as a result of a party's conduct in causing unnecessary attorney's fees and costs. **Becker v. Becker**, 778 So.2d 438 (Fla. 1st DCA 2001); **Ugarte v. Ugarte**, 609 So.2d 838 (Fla. 3d DCA 1992); **Levy v. Levy**, 862 So.2d 48 (Fla. 3d DCA 2003); **Ratigan v. Stone**, 947 So.2d 607 (Fla. 3d DCA 2007); **Martinez v. Martinez**, 995 So.2d 1091 (Fla. 3d DCA 2008).

27. A party's financial condition should not shield them from the consequences of their conduct within the judicial system. **Mettler v. Mettler**, 569 So.2d 496 (Fla. 4th DCA 1990).

28. The Court has considered the evidence and testimony presented and finds that the Former Wife has the need and the Former Husband has the ability to pay 100% of the Former Wife's attorney's fees and costs.

29. Further and in reviewing the Former Husband's bank statements, the Court once again finds that the Former Husband has always had the ability to pay the Former Wife alimony and his conduct proximately contributed to the Former Wife's attorney's fees and costs.

30. The Former Husband's testimony regarding his employment and income was and is not credible. Based upon the evidence presented at the hearings in this matter and at today's hearing, the Former Husband has totally and unequivocally taken meritless positions regarding why he did not pay his alimony

when all of his banking records show that he had the ability to do so. The deposits set forth on the Former Husband's banking records are substantially greater than the income listed on his financial affidavit.

31. The Former Husband has engaged in litigation misconduct which resulted in the Former Wife having to incur unnecessary attorney's fees and costs. His actions caused an extraordinary amount of time and effort at every step of the litigation. He has abused the legal system and engaged in conduct which resulted in needless litigation and legal fees.

ATTORNEY'S FEES, SUIT MONIES AND COSTS

32. On April 26, 2011, the Former Wife retained the services of Sandy T. Fox, P.A.

33. Sandy T. Fox, Esquire spent 49.5 hours, at his hourly rate of \$275 per hour, for a total of \$13,612.50, which the Court finds is reasonable.

34. Sandy T. Fox, Esquire's assistant, Eduardo Ortega, spent 0.1 hours, at an hourly rate of \$125.00 per hour, for a total of \$12.50, which the Court finds is reasonable.

35. Sandy T. Fox, Esquire's associate attorney, Mark Sawicki, Esquire, spent 5.4 hours, at an hourly rate of \$200.00 per hour for a total of \$1,080, which the Court finds is reasonable.

36. Sandy T. Fox, Esquire's associate attorney, Francisco J. Vargas, Esquire, spent 24.9 hours, at an hourly rate of \$200.00 per hour for a total of \$4,980, which the Court finds is reasonable.

37. Sandy T. Fox, P.A., has incurred costs in the amount of \$5,526, which the Court finds is reasonable.

38. The Former Wife has paid \$14,550 to Sandy T. Fox, P.A. and has an outstanding balance of \$10,661.

39. Sandy T. Fox, Esquire has also requested 2.0 hours for preparation and attendance at today's, at his hourly rate of \$275 per hour for a total of \$550, which the Court finds is reasonable.

40. The total attorney's fees and costs incurred by the Former Wife while being represented by Sandy T. Fox, P.A., inclusive of the instant hearing, is \$25,761, which the Court finds is reasonable.

41. The Court has considered the factors set forth in *Florida Patient's Compensation v. Rowe*, 472 So. 2d 1145 (Fla. 1985) and finds that the total attorney's fees, suit monies and costs incurred by the Former Wife during the pendency of this action of 25,761 are reasonable.

IT IS, THEREUPON, ORDERED AND ADJUDGED as follows:

A. The Former Wife's Motion for Attorney's Fees, Suit Monies and Costs be and the same is hereby GRANTED.

B. The Former Husband shall pay the Former Wife \$25,761 in attorney's fees and costs at the rate of \$750 per month until paid in full. Said payment shall commence on September 1, 2013 and shall be made on the first of each month thereafter.

C. The attorney's fees and costs award shall accrue interest at the statutory rate commencing on July 3, 2013. **Quality Engineered Installation, Inc. v. Hugley South, Inc., 670 So.2d 929 (Fla. 1996); Wright v. Wright, 965 So.2d 1168 (Fla. 2d DCA 2007).**

D. The Former Husband shall make payments directly to Sandy T. Fox, P.A., 2750 NE 185 Street, Suite 302, Aventura, Florida 33180.

E. This Order may be enforced by Sandy T. Fox, P.A.

F. The Former Husband shall inform the Clerk of Court and counsel for the Former Wife of any changes in his address until this Order has been paid in full.

G. The Court retains jurisdiction of the parties hereto, the subject matter hereof and to enforce this Order.

DONE AND ORDERED in Chambers at Miami, Miami-Dade County, Florida, this _____ day of _____, 2013.

HONORABLE
Circuit Court Judge