ATTORNEYS FEES IN MARITAL AND FAMILY LAW CASES: AN UPDATE*

* Materials generously provided by Charles Fox Miller, Esq. as previously used in his presentations for the Board Certification Review Course.

I. Statutory Entitlement to Attorney's Fees

A. Sections 61.16 and 61.17 of the Florida Statutes authorize Florida Courts to award attorney's fees, suit money and costs in dissolution, separate maintenance, custody, support, enforcement and modification proceedings brought under Chapter 61, including Rule 1.540 actions to vacate final judgments of dissolution. Bane v. Bane, 775 So.2d 938 (Fla. 2000) (when a party files, in an underlying dissolution action, a motion to set aside the final judgment pursuant to rule 1.540(b) based on the fraudulent conduct of a party, that motion is a proceeding under chapter 61, Florida Statutes, such that attorney's fees can be awarded in connection with the motion.)

B. No statutory basis exists for an award of temporary fees or support in an action for annulment, however, the court has equitable jurisdiction to order such relief, which exists independent of the statute. Gilvary v. Gilvary, 648 So.2d 317 (Fla. 3rd DCA 1995) (Putative wife was unaware that husband was already married at time of her marriage) A trial court has equitable jurisdiction to award temporary relief, even in cases of a bigamous marriage, such that a trial court may award temporary alimony and attorney's fees to a putative spouse, even when she is the wrongdoer, such an award is within the sound discretion of the court, depending on the particular facts of each case. Smithers v. Smithers, 804 So.2d 489 (Fla. 4th DCA 2001).

C. Any portion of fees attributable to a separately filed domestic violence injunction cannot be awarded under Fla. Stat. § 741.30. Belmont v. Belmont, 761 So.2d 406 (Fla. 2nd DCA 2000).

D. Section 61.535 of the Florida Statutes provides that a person violating a custody decree of another state so as to make it necessary to enforce the decree in Florida, may be required to pay the necessary travel and other expenses, including attorney fees, incurred by the party entitled to the custody, or his witness. Forrest v. Forrest, 416 So.2d 507 (Fla. 5th DCA 1982).

E. Sections 742.045 and 742.031 of the Florida Statutes authorize attorney's fees in paternity cases on the basis of need and ability to pay, similar to section 61.16. See Zanone v. Clause, 848 So.2d 1268 (Fla. 5th DCA 2003); and Guerin v. DiRoma, 819 So.2d 968 (Fla. 4th DCA 2002).

F. Section 57.105 of the Florida Statutes allows a reasonable attorney's fee to be paid to a prevailing party in a civil action in which the court finds that

the claim or defense when initially presented to the court or at any time before trial was not supported by the facts or would not be supported by the then exiting law. The court may order that the losing party and that party's attorney pay the award in equal parts. The attorney is not responsible however if acting in good faith on the representations of the client as to the facts. This is not a prevailing party statute, however. Mazzorana v. Mazzorana, 703 So.2d 1187 (Fla. 3rd DCA 1997) (Former wife was acting in good faith pursuing claim, and could not be ordered to pay former husband's fees and those of his parents just because he was prevailing party); Dept. of Revenue v. Hannah, 745 So.2d 1055 (Fla. 3rd DCA 1999) (Reversing award of attorney's fees to Appellee to be paid by Department of Revenue for pursuing paternity determination action, finding that Department acted in good faith when it relied on statements of belief of paternity made by child's grandmother, which turned out to be untrue).

G. Section 88.3051 of the Florida Statutes authorizes the responding tribunal to award reasonable attorneys' fees and costs, to the extent otherwise authorized by law, in Uniform Interstate Family Support Act (UIFSA) cases.

II. Fee Agreement with Client

A. A written, executed retainer agreement, which fixes the hourly rate of the firm's attorneys, and clearly explains the attorney's right and intent to claim a charging lien on the judgment in the event of non-payment, is recommended in dissolution cases.

B. When determining the amount of an attorney fee award in Chapter 61 cases, the trial court may disregard contractual hourly rates, or a reduced fee agreement of the attorney, and determine a reasonable attorney's fee award based on consideration of the factors set forth in Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985), and Rosen v. Rosen, 696 So.2d 697 (Fla. 1997). Faust v. Faust, 553 So.2d 1275 (Fla.1st DCA 1989) (Wife was forced to fee bargain with attorney due to her inferior financial position. The appellate court determined that the trial court abused its discretion in limiting fees to wife's agreement.)

C. It is a good idea to include a provision in the fee contract which requires the client to object to each billing statement within a specified amount of time, or any objection to the time billed is deemed waived. Franklin & Marbin. P.A. v. Mascola, 711 So.2d 46 (Fla. 4th DCA 1998).

D. Any provision in retainer agreement for a bonus or other special type of fee cannot be stated as contingent on the results obtained in the dissolution action or the entire agreement may be found void and unenforceable. King v. Young, Beckman, Berman & Karpf, 709 So.2d 572 (Fla. 3rd DCA 1998), rev.

den. E. Mott v. Mott, 800 So.2d 331 (Fla. 2nd DCA 2001); When the marital settlement agreement provides for fees to be awarded to the prevailing party, the trial court is without discretion to decline to enforce that provision. The trial court was required to apply the fee provision contained in the marital settlement agreement that applied to enforcement proceedings to determine award of costs and attorney fees. Marital settlement agreement provided that the prevailing party on issues of enforcement of the agreement would receive costs and fees from the non-prevailing party. Under a prevailing party attorney's fee provision in a marital settlement agreement, the trial court must determine which party prevailed on the significant issues that were tried before the court.

III. Temporary Attorneys' Fees and Costs

A. Standard for Award

1. Temporary attorney's fees are to be awarded using the same standard as fees and costs awarded at the conclusion of a case, namely, need and ability to pay. Nichols v. Nichols, 519 So.2d 620 (Fla. 1988); Robbie v. Robbie, 591 So.2d 1006 (Fla. 4th DCA 1991); Duncan v. Duncan, 642 So.2d 1167 (Fla. 4th DCA 1994). 2. Rathman v. Rathman, 721 So.2d 1218 (Fla. 5th DCA 1998). Holding that wife had not demonstrated need for temporary fees where her own financial affidavit showed a substantial amount of cash on hand.

B. Amount

1. Lawyer for impecunious spouse is not expected to become her banker. Award of temporary fees was reversed as being inadequate. Robbie v. Robbie, 591 So.2d 1006 (Fla. 4th DCA 1991).

2. Trial court must first determine that the amount of temporary fees and costs sought are reasonable before making award. Safford v. Safford, 656 So.2d 485 (Fla. 2nd DCA 1994). See also Ghay v. Ghay, 954 So.2d 1186 (Fla. 2nd DCA 2007) (Trial court's failure to make findings concerning reasonable hourly rates and the amount of fees wife was expected to reasonably incur required reversal of temporary attorney's fees).

C. Evidence

1. Case law does not require specific findings in support of temporary award of fees, as long as sufficient evidence in support of award is on record. Piluso v. Piluso, 622 So.2d 117 (Fla. 4th DCA 1993).

2. Expert testimony may be offered in support of reasonable attorneys

fees pendente lite, but is not required. Rokicki v. Rokicki, 660 So.2d 362 (Fla. 3rd DCA 1995). If such expert opinion is offered as to a reasonable amount of fees to bring case through trial, trial court's award of interim fees should either be in line with that testimony, or explain why amount differs. Robbie v. Robbie, 591 So.2d 1006 (Fla. 1991).

3. Perlow v. Berg-Perlow, 816 So.2d 210 (Fla. 4th DCA 2002); Trial court acted within its discretion in dissolution of marriage proceedings by requiring husband, who sought anticipatory award of temporary attorney fees prior to retaining counsel, to present an attorney to testify as to the attorney's willingness to represent him and as to the elements necessary to determine the amount of the temporary fees.

D. Agreements

1. Courts are not bound to enforce an agreement that limits or waives temporary support or attorney's fees which are needed during coverture. Belcher v. Belcher, 271 So.2d 7 (Fla. 1972); Young v.Young, 322 So.2d 594 (Fla. 4th DCA 1975); Deardoff v. Deardoff, 569 So.2d 917 (Fla. 5th DCA 1990); Fechtel v. Fechtel, 556 So.2d 520 (Fla. 5th DCA 1990). However, the case of Lashkajani v. Lashkajani, 911 So.2d 1154 (Fla. 2005) now holds that prenuptial agreement provisions awarding attorney's fees and costs to prevailing party in litigation regarding the validity and enforceability of a prenuptial agreement are enforceable. It does distinguish between prevailing party provisions and provisions waiving the right to temporary attorney fees. However, this issue must be pled and presented to the trial judge or it will be foreclosed. Moss v. Moss, 939 So.2d 159 (Fla. 2nd DCA 2006).

2. Sasnett v. Sasnett, 683 So.2d 177 (Fla. 2nd DCA 1996); Parties agreed to temporary relief including the pendente lite division of marital funds for the purpose of living expenses and payment of attorney's fees. The court held the agreement did not waive the right to seek additional support or fees, and the trial court could still determine the issue of fees and costs.

E. Equitable Jurisdiction to Award

A trial court has equitable jurisdiction to award temporary relief, even in cases of a bigamous marriage, such that a trial court may award temporary alimony and attorney's fees to a putative spouse, even when she is the wrongdoer, and such an award is within the sound discretion of the court, depending on the particular facts of each case. Smithers v. Smithers, 804 So.2d 489 (Fla. 4th DCA 2001).

F. Effect of Final Outcome of Case on Temporary Fees

Derrevere v. Derrevere, 924 So.2d 987 (Fla. 4th DCA, 2006); Temporary attorney fees reversed at the end of the hearing because the parties positions were equalized as to assets and income and the wife was required to reimburse the husband through a property distribution credit to the husband. See also Price v. Price, 951 So.2d 55 (Fla. 5th DCA 2007).

G. Standard of Review on Appeal for Award or Denial of Temporary Attorney's Fees

Standard of Review on Appeal for award or denial of temporary attorney fees is abuse of discretion. Floyd v. Floyd, 108 So. 896 (Fla. 1926); Garcia v. Garcia, 971 So.2d 872 (Fla. 3rd DCA 2007).

IV. Procedural Requirements for Final Attorney Fee Awards

A. Pleadings

1. Attorneys' fees must be pled to be received. Fla. Stat. § 61.16 is a discretionary fee provision, and not dependent on prevailing in the action. Bull v. Bull, 584 So.2d 171 (Fla. 1st DCA 1991).

2. Absent a proper pleading requesting fees, there is no entitlement. White v. White, 683 So.2d 510 (Fla. 5th DCA 1997). Moss v. Moss, 939 So.2d 159 (Fla. 2nd DCA 2006).

3. It is error to award wife attorney's fees stemming from her successful defense of husband's motion where not pled prior to denial of motion, regardless of statute or contract allowing fees. Miller v. Miller, 911 So.2d 1274 (Fla. 4th DCA, 2005). Longmeier v. Longmeier, 921 So.2d 808 (Fla. 1st DCA, 2006); Because the Wife did not request attorney's fees until well into the case, only partial fees could be awarded and not for time before her request.

B. Evidentiary Hearing

1. Trial court cannot award attorney's fees without receiving evidence with respect to the requesting party's entitlement and the reasonableness of the fees requested, or without making any findings as to the other party's ability to pay. Schlafke v. Schlafke, 755 So.2d 706 (Fla. 4th DCA 1999); Daniel v. Moats, 718 So.2d 949 (Fla. 5th DCA 1998); Perrin v. Perrin, 795 So.2d 1023 (Fla. 2nd DCA 2001); Bator v. Osborne, 983 So.2d 1198 (Fla. 2nd DCA 2008).

2. The Florida Supreme Court case of Florida Patients Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985) requires that a hearing be held to consider the factors to be considered when determining the reasonableness of an

attorney's fee award, and the failure to do so results in reversal and remand of the fee award. See also Steele v. Steele, 617 So.2d 736 (Fla. 2nd DCA 1993).

3. Failure to offer evidence from which the Court can make findings is fatal to fee and costs issue. Viera v. Viera, 698 So.2d 1308 (Fla. 5th DCA 1997);

C. Proofs

1. Documentary Evidence

a) Proper documentation must be presented at the evidentiary hearing on attorney's fees. The attorney should keep accurate records detailing the amount and type of work performed for the client. Tucker v. Tucker, 513 So.2d 733 (Fla. 2nd DCA 1987). In Tucker, the attorney claimed that portions of the time sheets were attorney work product, and they were not submitted into evidence. The District Court held that the time sheets in their entirety were needed to determine the propriety of the many hours expended on the clients behalf, and that there had to be documentation submitted to support the award of fees. Therefore, if the attorney would not submit all the records, the award would be cut to reflect only the hours documented.

b) Although highly preferable, specific, written contemporaneous time records are not required to determine reasonable hours expended, where counsel produced a summary of the time expended and testified as to those hours. The Glades Inc. v. The Glades Country Club Apartments, 534 So.2d 723 (Fla. 2nd DCA 1988).

c) When written time records are not produced, the court may reduce the number of hours being claimed. Florida Patients Compensation v. Rowe, 472 So.2d 1145 (Fla. 1985); Cone v. Cone, 656 So.2d 270 (Fla. 4th DCA 1995). See also Safford v. Safford, 656 So.2d 485 (Fla. 2nd DCA 1994) (One page bill with a total amount due from the wife, that did not contain information regarding anticipated work to be done or hourly billing rates, was insufficient evidence regarding request for temporary fees.).

d) Documentary evidence may also be necessary to prove need and ability to pay. Anderson v. Anderson, 642 So.2d 1121 (Fla. 1st DCA 1994) (holding that in the appellant's answer to appellee's petition, she requested attorney's fees; however, she neither filed a financial affidavit, nor submitted evidence of need to the trial court. Consequently, the trial court properly concluded that she waived her opportunity to seek attorney's fees.).

2. Testimonial Evidence

a) Absent a stipulation as to fees, the attorney must testify as to hours reasonably expended, the reasonable hourly rate charged, any agreement as to fees, and any other factors to be considered regarding the total fees and costs billed. See Safford v. Safford, 656 So.2d 485 (Fla. 2nd DCA 1994) (Temporary fee award was reversed and remanded where no testimony was offered on reasonableness of temporary fees, and documentary evidence was insufficient).

b) It is improper to make an award of fees based solely on affidavits. Eckroade v. Eckroade, 570 So.2d 1347 (Fla. 3rd DCA 1990); Wiley v. Wiley, 485 So.2d 2 (Fla. 5th DCA 1986). The court must have a sworn statement from the attorney requesting fees as to the number of hours etc. Faircloth v. Bliss, 917 So.2d 1005 (Fla. 4th DCA, 2006)

c) Expert testimony from another attorney was previously required to establish the reasonably value of the services performed. Ashourian v. Ashourian, 519 So.2d 35 (Fla. 1st DCA 1987). Fla. Stat. § 61.16(1) was amended by § 6 Ch.93-188 Laws of Florida, effective October 1, 1993, to read that, Aan application for attorney's fees or costs, whether temporary or otherwise, shall not require corroborating expert testimony in order to support the award. See also Kay v. Kay, 988 So.2d 1273 (Fla. 5th DCA 2008) (Although statute provides that expert testimony is not required to support an award of attorney's fees and costs in dissolution of marriage, such an award still requires an evidentiary basis).

d) Error to allow non-experts to testify regarding reasonableness and necessity of experts fees. Mard v. Weinstock, 698 So.2d 645 (Fla. 5th DCA 1997).

e) A specific objection to a specific cost is necessary before a party moving for costs is on notice that an evidentiary hearing is required. Since no objection to the wife's accountant's fee was made before the evidentiary hearing on the wife's attorney's fees and costs, the wife was not on notice that her accountants testimony was required at the hearing, and therefore, it was error for the trial court to deny the wife's claim for her accountant's fee based solely on the fact that her accountant had not testified at the hearing. Catalano v. Catalano, 802 So.2d 1146 (Fla. 2nd DCA 2001). See also Lafferty v. Lafferty, 413 So. 2d 170 (Fla. 2nd DCA 1982); Sullivan v. Muaella, 526 So. 2nd 719 (Fla. 2d DCA 1988).

f) Although corroborating evidence for attorney's fees is no longer required by section 61.16 credible, qualified expert testimony as to the reasonableness of a fee may still be presented. Kass v. Kass, 560 So.2d 293 (Fla. 4th DCA 1990) (Trial court's award of fees affirmed as within the parameters of expert witness' testimony). However, the court is not bound by the expert testimony if it is contrary to the court's sensibilities. Dalia v. Alvarez, 605 So.2d 1282 (Fla. 3rd DCA 1992); Miller v. First American Bank and Trust, 607 So.2d 483 (Fla. 4th DCA 1994).

D. Findings of Fact

1. The court must conduct an evidentiary hearing and set forth all the factors it considered and its specific findings when awarding one party attorney's fees. Hosseini v. Hosseini, 564 So.2d 548 (Fla. 1st DCA 1990); White v. White, 575 So.2d 767 (Fla. 2nd DCA 1991); Larrauri v. Larrauri, 584 So.2d 31 (Fla. 2nd DCA 1991).

2. Hoffay v. Hoffay, 555 So.2d 1309 (Fla. 1st DCA 1990) (Even though there is substantial evidence in the record to support a fee award, there must be specific findings as to hourly rate, number of hours reasonably expended, and the appropriateness of any enhancement or reduction factors, or the award is reversible. See also Hamlin v. Hamlin, 722 So.2d 851 (Fla. 1st DCA 1998); Schwartz v. Schwartz, 965 So.2d 832 (Fla. 1st DCA 2007).

3. The court must make findings of fact regarding the need for assistance with fees of the requesting party, and the other party's ability to pay, or it is reversible error. Abernathy v. Fishkin, 638 So.2d 160 (Fla. 5th DCA 1994); Grizzard v. Grizzard, 693 So.2d 705 (Fla. 2nd DCA 1997); Firestone v. Firestone, 704 So.2d 1146 (Fla. 4th DCA 1998); See also Bartor v. Osborne, 983 So.2d 1198 (Fla. 2nd DCA 2008); Schwartz v. Schwartz, 965 So.2d 832 (Fla. 1st DCA 2007).

4. The trial court must make factual findings which support the denial of a party's request for attorney's fees; a trial court cannot decide the issue of attorney's fees without findings as to one spouse's ability to pay fees and the other spouse's need to have fees paid. Perrin v. Perrin, 795 So.2d 1023 (Fla. 2nd DCA 2001); Hammond v. Hammond, 801 So.2d 988 (Fla. 1st DCA 2001) (trial court's order failed to make proper finding regarding whether each party had the ability to pay his or her own attorney's fees; absent such a finding, the denial of fees is erroneous because of the apparent substantial disparity in the income of the parties).

5. It is error for a court to award partial attorney's fees in a lump sum without first making findings as to the hourly rate and reasonable number of hours expended. Broderson v. Christianson, 732 So.2d 384 (Fla. 2nd DCA 1999).

V. Reservation of Jurisdiction for Final Attorney Fee Award

A. Retention of Jurisdiction by Trial Court

1. A party seeking an award of attorney's fees in a chapter 61 action must file a proper pleading requesting attorney's fees prior to the entry of the final judgment or final order. The trial court must either make a finding as to entitlement to fees in the final judgment, or it must make a specific reservation of jurisdiction to conduct

an evidentiary hearing on fees after the final judgment is entered. (Finding of entitlement to fees in the judgment disposes of need for special reservation to conduct hearing as to amount, general reservation of jurisdiction is enough.) Seigel v. Seigel, 715 So.2d 326 (Fla. 2d DCA 1998) (Error for court not to reserve jurisdiction on fee issue, even though Former Wife presented no evidence on fees at modification proceeding, where Former Wife had requested fees prior to final hearing); Evans v. Evans, 801 So.2d 130 (Fla. 4th DCA 2001), but see cases under 12.525 which call into question the viability of an attorney fees claim not filed within 20 days of the final hearing.

2. The trial court erred in denying the wife's request for attorney fees because she did not put on evidence at the final hearing as to the amount of her attorney and accountant fees where the wife sought them in her pleading as well as in opening statement and closing argument. The application for attorney fees and costs implicitly carried with it a request for separate hearing on the amount of attorney fees and costs at the final hearing. Evans v. Evans, 801 So.2d 130 (Fla. 4th DCA 2001). See also, May v. May, 908 So.2d 558 (Fla. 2nd DCA, 2005) which held that the court erred in failing to reserve jurisdiction to determine attorney fees in an order, when it had been pled.

3. Furthermore, it is error for the court to go against parties' stipulation to reserve fees for subsequent hearing and instead tax them against the husband or deny them to the wife. Lickle v. Lickle, 606 So.2d 391 (Fla. 4th DCA 1992); McLish v. Lee, 633 So.2d 56 (Fla. 5th DCA 1994); Krueger v. Krueger, 689 So.2d 1277 (Fla. 2nd DCA 1977).

4. Where trial court had reserved jurisdiction to consider an award of fees and costs in response to party's request for fees, the claim for fees was not extinguished when the party died prior to the final judgment of dissolution of marriage. Hirsch v. Hirsch, 519 So.2d 1056 (Fla. 4th DCA 1988). C.f. Macleod v. Hoff, 654 So.2d 1250 (Fla. 2nd DCA 1995) (Attorney cannot request that court award him or her fees in dissolution proceeding after death of party, as they have no standing in their own name under § 61.16 Florida Statutes).

5. In cases of voluntary dismissal by the petitioner, the court has the continuing authority to consider a claim made for fees prior to the dismissal. Goldman-Link. P.A. v. Kerner, 611 So.2d 629 (Fla. 4th DCA 1993). In cases where the case is dismissed prior to the time an answer is due from the respondent, the respondent may still move for attorney's fees within a reasonable time. Bruce v. Barcomb, 675 So.2d 219 (Fla. 2nd DCA 1996); Green v. Sun Harbor Homeowner's Association. Inc., 730 So.2d 1261 (Fla.1998).

6. Once the time for filing a motion for rehearing or to amend final order has passed, the court is deprived of jurisdiction to amend order to include a reservation

of jurisdiction to award attorney's fees, even if the parties had stipulated that court should retain jurisdiction. Meyer v. Meyer, 525 So.2d 462 (Fla. 4th DCA 1988); Osherow v. Osherow, 727 So.2d 1091 (Fla. 4th DCA 1999), however, the trial court should have amended the final judgment to address the fee claim on timely filed motion for rehearing concerning this issue. Harbin v. Harbin, 762 So.2d 561 (Fla. 5th DCA, 2000).

7. McGlothin v. Hughes, 751 So.2d 677 (Fla. 4th DCA, 2000); Former counsel's claim for attorney fees in divorce proceedings was stale and barred by laches, where counsel did not move for attorney fees until five months after final judgment had been entered and did not request ruling on that motion until over one year later and after counsel had withdrawn from representation of wife.

8. Clark v. Clark, 802 So.2d 478 (Fla. 3rd DCA, 2001); Following death of husband, trial court retained jurisdiction over issue of attorney fees in marriage dissolution action, regardless of whether trial court specifically reserved jurisdiction as to that issue, where request for attorneys fees was filed prior to the death of the husband.

B. Motion pursuant to FCRP 1.525/12.525

Rule 1.525 states that any party seeking a judgment taxing costs, attorney's fee, or both shall serve a motion within 30 days of the filing of the judgment, including a judgment of dismissal or the service of a notice of voluntary dismissal. However, effective March 3, 2005, the Florida Supreme court amended Rule 12.525 of the Florida Family Law Rules of Procedure to say that Rule 1.525 shall not apply in proceedings governed by these rules. Until this amendment, the Florida District courts had interpreted the applicability of Rule 1.525 differently.

After this amendment, conflict existed between the districts as to which law (the family law rule or the rule of civil procedure) should be applied to cases pending on the effective date of the family law rule. The Florida Supreme court resolved this issue when it held that the family law rule, rather than rule of civil procedure, applies to dissolution cases pending as of on the effective date of the family law rule. Montello v. Montello, 961 So.2d 257 (Fla. 2007); Sharon v. Sharon, 974 So.2d 358 (Fla. 2008).

See also Smith v. Smith, 902 So.2d 859 (Fla. 1st DCA, 2005) (because the adoption of 12.525 occurred during the pendency of the appeal, it applied to the case). While recognizing that 12.525 is procedural, it is also remedial and because the Supreme Court recognized that it is designed to give effect to the special nature of family law, as distinct from general civil litigation; Sharon v. Sharon, 915 So. 2d 630 (Fla. 2nd DCA, 2005), Caldwell v. Finochi, 909 So.2d 976 (Fla. 2nd DCA, 2005); and Montello v. Montello, 937 So.2d 1154 (Fla. 3rd DCA 2006), aff'd by

Montello v. Montello, 961 So.2d 257 (Fla. 2007). Prior to Montello, conflict existed between the districts as to the law that applied to pending cases.

C. Scope of Reservation of Jurisdiction

1. The purpose of the reservation of jurisdiction in the final judgment of dissolution is so that the court can determine the entitlement to and the amount of attorney's fees and costs reasonably incurred during the proceedings leading up to the final judgment, and not for attorney's fees that may be incurred in future proceedings or enforcement or modification.

2. Therefore, when post-dissolution contempt proceedings were concluded without provision for fees and costs, the court could not consider request for such fees filed subsequent to post-dissolution orders, even though the original final judgment of dissolution contained a reservation of jurisdiction. Cibula v. Cibula, 578 So.2d 519 (Fla. 4th DCA 1991).

3. The reservation of jurisdiction to award fees sometime in the future was found to be a nullity where it did not specifically provide that the wife would receive an attorney fee award, and just reserved jurisdiction to determine entitlement in the future. Duchesneau v. Duchesneau, 692 So.2d 205 (Fla. 5th DCA 1997).

4. In Bane v. Bane, 775 So.2d 938 (Fla.2000), the Florida Supreme Court held that motion for relief from judgment under 1.540 was a proceeding under chapter 61 governing divorce, support, and custody for purposes of attorney fee provision and therefore, attorney fees based on need and ability to pay are available.

VI. Need and Ability to Pay

A. Generally, the purpose of Section 61.16 Florida Statutes is to allow an award of attorney's fees in dissolution actions to ensure both parties will have the same ability to secure competent legal representation in the preparation of their respective cases. Nichols v. Nichols, 519 So.2d 620 (Fla. 1988); Robbie v. Robbie, 591 So.2d 1006 (Fla. 4th DCA 1991); Duncan v. Duncan, 642 So.2d 1167 (Fla. 4th DCA 1994); Schwartz v. Schwartz, 965 So.2d 832 (Fla. 1st DCA 2007); Von Baillou v. Von Baillou, 959 So.2d 821 (Fla. 4th DCA 2007).

B. Relative Need versus Actual Need

There is somewhat of a split in the district courts concerning the degree of "need" that must be shown in order to be entitled to an award of attorney's fees. Some hold that where the requesting spouse is in the inferior financial position, then he or she is entitled to an award of attorney's fees, regardless of actual need. The

more popular view is that a fee award is only warranted if the requesting spouse cannot afford competent counsel without depleting the marital assets awarded or utilizing alimony or income needed for-daily living expenses. Thus, actual need is found in cases in which both parties have received equitable distribution, and both have income, but the requesting party would suffer undue hardship by paying their own fees, while the other party would not.

1. First DCA (Requires showing of actual need)

a) Flemming v. Flemming, 742 So.2d 843 (Fla. 1st DCA 1999) (Reversing the order denying fees to the former wife given the disparity of income and holding that the former wife should not be required to use the assets she was awarded in equitable distribution to pay her fees).

b) Burkhart v. Burkhart, 731 So.2d 733 (Fla. 1st DCA 1999) (There can be no entitlement to fees where there is no evidence that one party is unable to pay their own fees, or that the other party is in the better position to pay.

c) Nowell v. Nowell, 634 So.2d 235 (Fla. 1st DCA 1994) (Where there exists a wide disparity in income levels and resources, it is error not to award a reasonable attorney fee award). See also Segovis v. Anderson, 686 So.2d 757 (Fla. 1st DCA 1997).

2. Second DCA (Requires showing of actual need)

a) Lopez v. Lopez, 780 So.2d 164 (Fla. 2nd DCA 2001) (Reversing and remanding trial order requiring the husband to pay the majority of the wife's attorney's fees and costs where the parties' financial positions were equalized through the award of alimony and equitable distribution of assets; husband was employed as a physician, as a contract employee with a health clinic, the wife possessed additional non-marital assets enabling her to retain competent counsel, and the final judgment contained no Rosen findings suggesting the need for such an award; thus, the wife possessed an ability equal to that of the husband, post-dissolution, to pay her attorney's fees and costs).

b) Stoler v. Stoler, 679 So.2d 837 (Fla. 2nd DCA 1996) (Reversing and remanding order requiring husband to pay all wife's fees where wife was awarded sufficient assets and alimony to be able to contribute to the payment of her fees without significantly invading her assets). See also Green v. Green, 646 So.2d 210 (Fla. 2nd DCA 1994).

c) Grizzard v. Grizzard, 693 So.2d 705 (Fla. 2nd DCA 1997) (Reversing and remanding order finding wife was entitled to fee award based only on finding that husband's income exceeded wife's, but there had been no finding that the wife

needed assistance where she had been awarded significant assets and had substantial monthly income).

d) Williams v. Williams, 766 So.2d 1127 (Fla. 2nd DCA 2000) (Affirming attorney fee award of $2,670 where ex-wife was in precarious financial situation, while ex-husband enjoyed a superior earning capacity).

e) Teschner v. Teschner, 760 So.2d 215 (Fla. 2nd DCA 2000) (Finding that the wife is obligated to make some contribution to the husband for his fees where the wife left the marriage with substantially more assets, although most were not-marital, and where the husband had litigated in good faith- [sounding more like relative need that actual need]).

3. Third DCA (Requires showing of superior ability to pay)

a) Murray v. Murray, 826 So.2d 1029 (Fla. 3rd DCA 2001) (Trial court abused its discretion in denying wife statutory attorney's fees and costs pursuant to Fla. Stat. § 61.16; husband's income far exceeded wife's income for same period as well as wife's ability to earn in the future; court improperly considered wife's share of equitable distribution in denying attorney's fees and costs, because substantial part of wife's equitable distribution was the equity in marital home, and the very significant amount of fees and costs in case would seriously erode her share of the marital estate).

b) Cavanaugh v. Cavanaugh, 800 So.2d 315 (Fla. 3rd DCA 2001) (Trial court abused its discretion in denying wife's request for award of attorneys fees and costs pursuant to Fla. Stat. § 61.16; to ensure that both parties have similar access to competent legal counsel, the trial court must look to each spouse's need for suit money versus each spouse's respective ability to pay. citing Rosen v. Rosen, 696 So.2d 697, 699 (Fla. 1997).

c) Reynolds v. Reynolds, 664 So.2d 1131 (Fla. 3rd DCA 1995) (Evidence showed that husband had superior ability to pay wife's attorney's fees, given his greater income and health, and the non liquidity of her assets, and was thus required to pay all of her fees).

d) Sol v. Sol, 656 So.2d 206 (Fla. 3rd DCA 1995) (General rule is that one with superior or greater financial ability to pay in dissolution case will pay the other spouse's attorney fees and costs, but where disparity is minor, the award should not be for the entire amount of fees and the trial court has discretion to enter a percentage of attorney's fee award where one spouse's income is only slightly lower than the other spouse)

e) Natoli v. Natoli, 641 So.2d 477 (Fla. 3rd DCA 1994) (Error to deny wife's request for fees where husband had superior earning ability and financial resources).

f) Robinson v. Robinson, 655 So.2d 123 (Fla. 3rd DCA 1995) (The trial court's order requiring the wife to pay only a portion of the husband's attorney's fees due to the husband's limited contribution to the marriage and the wife's poor health, was reversed and remanded for an order requiring the wife to pay all the husband's fees where the wife had the greatly superior financial position).

g) Pubillones v. Lyons, 943 So.2d 881 (Fla. 3rd DCA 2006); In making a determination regarding attorney's fees, the trial court may take into account all relevant factors including whether one spouse has voluntarily limited or failed to disclose income. The wife in this case had her attorney fees denied because the court found that after payment to her by the husband, and her underemployment, she would have the same ability as husband to pay fees because no great disparity between the parties' income existed.

h) Estate of Basalyga v. Estate of Basalyga, 949 So.2d 251 (Fla. 3rd DCA 2007); When determining an award of attorney's fees to one party, the trial court should wait until the proceeding has concluded to make a determination of need and ability to pay based upon the financial circumstances of the parties after the case has concluded.

4. Fourth DCA (Sometimes requires showing of actual need, but at other times, relative financial positions seems to be standard used)

a) Satter v. Satter, 709 So.2d 617 (Fla. 4th DCA 1998) (Former husband was worth 13 million and former wife was worth 1.1 million following divorce, so court determined that neither one had the need for assistance with their attorney fees; relative need was not the standard). See also Von Baillou v. Von Baillou, 959 So.2d 821 (Fla. 4th DCA 2007); Donoff v. Donoff, 940 So.2d 1221 (Fla. 4th DCA 2006).

b) Carlson v. Carlson, 719 So.2d 936 (Fla. 4th DCA 1998) (Following Satter, and finding no entitlement to fees just because adverse party has the greater ability to pay; no testimony was directed to former wife's need or former husband ability to pay in this case).

c) Hough v. Hough, 739 So.2d 654 (Fla. 4th DCA 1999) (Reversing denial of fees to wife where following an equal equitable distribution and an award of permanent alimony to the wife, the husband still had the greater income and better ability to pay fees and the wife would have to invade her equitable distribution to pay fees, while the husband could pay them out of his income). See also Bagley v. Bagley, 720 So.2d 582 (Fla. 4th DCA 1998); Von Baillou v. Von Baillou, 959 So.2d

821 (Fla. 4th DCA 2007); and Adair v. Adair, 720 So.2d 316 (Fla. 4th DCA 1998) (Reversing denial of fees to wife despite equal equitable distribution. The husband had significantly more income than the wife and enjoyed considerably more non-marital assets).

d) Bomwell v. Bomwell, 720 So.2d 1140 (Fla. 4th DCA 1998) (where final judgment leaves parties in substantially equal financial positions, they should each pay their own fees).

e) Derrevere v. Derrevere, 924 So.2d 987 (Fla. 4th DCA, 2006); Temporary attorney fees reversed at the end of the hearing because the parties positions were equalized as to assets and income and the wife was required to reimburse the husband through a property distribution credit to the husband.

5. Fifth DCA (Requires showing of actual need in most cases)

a) Morris v. Morris, 743 So.2d 81 (Fla. 5th DCA 1999) (Following equitable distribution, the wife was awarded $876,000 in net marital assets and $45,000 a year in alimony; although the husband had double the income and more assets, the court found that the wife had sufficient funds to pay her own fees). C.f. Alpha v. Alpha, 885 So.2d 1023 (Fla. 5th DCA 2004) (Abuse of discretion not to award fees where the former wife will be required to expend the principal of the assets obtained from equitable distribution which were not substantial and former husband has far greater income and the ability to pay).

b) Smith v. Smith, 655 So.2d 1267 (Fla. 5th DCA 1995) (Although the husband had almost triple the wife's income, the wife was not entitled to an attorney fee award where the husband's health required he pay considerably higher monthly expenses).

c) Mauldin v. Mauldin, 493 So.2d 1103 (Fla. 5th DCA 1986) (Reversing order requiring husband to pay wife's attorney's fees following an equal distribution of assets and where wife had sufficient income, with the ability to earn more, and could pay her own fees).

d) Wilkerson v. Wilkerson, 623 So.2d 1192 (Fla. 5th DCA 1993) (Finding the wife could pay her own attorney fees, even though the husband earned approximately $120,000 to $140,000 annually, while the wife was sick and only earning $9,000 annually, because the $450,000 in primarily liquid marital assets were shared equally, and the husband had to pay the wife $2,500 per month in alimony, as well as the $5,300 in marital debt).

e) Doerflein v. Doerflein, 724 So.2d 153 (Fla. 5th DCA 1998) (Attorney's fees should not be awarded solely on the basis of the superior financial position of one

party, but should also consider the need of the party seeking the fees and the ability of the other party to pay them).

f) Thomas. v. Thomas, 776 So.2d 1092 (Fla. 5th DCA 2001) (where the wife's need for attorney's fees and the husband's ability to same were reflected by the evidence presented at trial, the trial court erred in failing to order the husband to pay all or a portion of the wife's attorney's fees and costs; the wife was entitled to have her attorney's fees and costs paid in whole or in part by the husband).

C. Ability to Pay

1. Evidence

The trial court must consider evidence regarding spouse's ability to pay, in addition to evidence regarding spouse's need for attorney's fees. Where the trial court took evidence only as to the father's financial circumstances and no evidence was presented as to mother's ability to pay, other than reference being made to the parties' financial affidavits which were not introduced into evidence, the trial court's attorney's fee award in favor of the father was reversed. Lucero v. Lucero, 793 So.2d 144 (Fla. 2nd DCA 2001).

2. Determining Income

a) Although one spouse may earn a much greater income than the spouse requesting attorney's fees, the court must consider the total impact of all the obligations imposed by the final judgment before deciding if the payor spouse is able to pay for the other spouse's attorney's fees. Pelton v. Pelton, 617 So.2d 714 (Fla. 1st DCA 1992); Tresser v. Tresser, 737 So.2d 1195 (Fla. 2nd DCA 1999) (In order to determine entitlement to attorney's fees, the court must consider the parties' respective incomes after subtracting alimony and child support payments from the obligor spouse's income, adding the alimony to the obligee spouse's income, and subtracting the obligee spouse's share of the child support from his or her income).

b) Ability to pay must be based on the resources available to the parties without having to look to resources beyond their individual control. Azzarelli v. Purello, 555 So.2d 1276 (Fla. 2nd DCA 1989) (The court cannot consider the assets of a party's relatives or new spouse.); Mathis v. Mathis, 706 So.2d 126 (Fla. 5th DCA 1998) (error to consider future financial prospects); Freid v. Freid, 731 So.2d 833 (Fla. 5th DCA 1999).

c) Where the trial court fails to identify the source of imputed income, upon which an award of attorney's fees is based, the award will be reversed. Wilkinson v. Wilkinson, 714 So.2d 524 (Fla. 5th DCA 1998).

d) Rogers v. Rogers, 824 So.2d 902 (Fla. 3rd DCA 2002) In a marital dissolution action, when determining a party's ability to pay and the other party's need for attorney fees and costs, the general rule is that the trial court may only consider the financial resources of the parties and not the financial assistance of family or friends, but an exception to this general rule is that income can be imputed based on gifts if the gifts are continuing and ongoing, not sporadic, and where the evidence shows that the gifts will continue in the future. In marital dissolution proceedings, trial court could not consider fact that husband's parents made large, sporadic loans to husband, for purposes of determining whether husband was required to pay attorney fees for wife, and thus remand of temporary attorney fees order had to be reversed and remanded, even though trial court also considered husband's assets in making award, where loans varied in amount and frequency, no evidence indicated that husband's parents would continue to loan husband money in future, unlike gifts, husband continued to be legally indebted to parents, and loans were primary factor finding that husband had ability to pay.

3. Determining Financial Positions

a) Award is based on the relative financial positions of the parties at the time the proceeding has concluded, not an unspecified future date. Duchesneau v. Duchesneau, 692 So.2d 205 (Fla. 5th DCA 1997). In Catone v. Catone, 698 So.2d 362 (Fla. 4th DCA 1997), the attorney fee award was reversed due to the court's reservation of jurisdiction to establish equitable distribution if the parties couldn't work it out, since there could be no determination of the parties' relative financial circumstances until a final equitable distribution was ordered.

b) In modification actions, the attorney's fee award is based on the relative financial positions of parties at time the order is entered on the modification and not on the financial ability during time between proceeding and attorney fee hearing. Mathis v. Mathis, 706 So.2d 126 (Fla. 5th DCA 1998).

c) Where the trial court finds one party is able to pay fees, but then entire financial position of parties is changed on appeal, the issue of ability has to be revisited by the trial court when determining fee award. Segall v. Segall, 708 So.2d 983 (Fla. 4th DCA 1998); Ginsburg v. Ginsburg, 610 So.2d 655 (Fla. 1st DCA 1993); Collingsworth v. Collingsworth, 624 So.2d 287 (Fla. 1st DCA 1993).

d) Whether a party has liquid or non-liquid assets is irrelevant to a determination of ability to pay; the value of all assets are to be considered as equally available when determining ability to pay and need. Emmel v. Emmel, 671 So.2d 282 (Fla. 5th DCA1996); Kay v. Kay, 723 So.2d 366 (Fla. 4th DCA 1998)

(Attorney's fees can be paid from the capital assets of the party charged with the obligation, or by ordering a QDRO to reach party's interest in pension).

e) Pursuant to Fla. Stat. § 61.16, the trial court can award attorney's fees to a party, "after considering the financial resources of both parties." The court is permitted to take into account the earning ability of both spouses, the amount of marital assets and liabilities distributed to each spouse, and the liquidity of the assets distributed. McMillan v. McMillan, 977 So.2d 655 (Fla. 5th DCA 2008) citing Doyle v. Doyle, 789 So.2d 499 (Fla. 5th DCA 2001); Wilkerson v. Wilkerson, 623 So.2d 1192 (Fla. 5th DCA 1993).

f) Where Husband failed to appear at temporary attorney's fees hearing brought by Wife, Wife presented sufficient testimony as to Husband's ability to pay the requested attorney's fees through witness testimony; several of Husband's previous attorneys testified as to fees previously paid to them by Husband and that there had never been a problem being paid by Husband; said witness testimony was sufficient to establish that Husband had ability to pay large attorney's fees in current action. Kalmanson v. Kalmanson, 796 So.2d 1249 (Fla. 5th DCA 2001).

g) Pietras v. Pietras, 842 So.2d 956 (Fla. 4th DCA 2002); Sum withdrawn from account by wife and used to pay her attorneys and expert witness in dissolution action was not part of marital assets, and should not have been included in marital net worth, nor was sum to be charged as asset to husband, where husband was already charged with payment of those fees and costs.

h) Peralta v. Peralta, 835 So.2d 1244 (Fla. 2nd DCA 2003); In order to enforce trial court's order that husband and wife bear their own attorney fees, wife was entitled to credit for disproportionate share of marital assets that were used to pay husband's attorney fees, in marital dissolution case, where, although court ordered equal division of marital estate, funds from estate were used to pay husband's attorney fees that totaled $128,000, and wife's attorney fees that totaled $64,000.

4. Non-marital assets

a) When determining ability to pay attorneys fees the court must consider all resources available to both parties, including non-marital assets. Eiler v. Eiler, 695 So.2d 870 (Fla. 4th DCA 1997); Bagley v. Bagley, 720 So.2d 582 (Fla. 4th DCA 1998).

b) Clerc v. Clerc, 712 So.2d 1249 (Fla. 5th DCA 1998) (Each party should pay their own fees where husband's non-marital assets were offset by marital debt allocated to husband in final judgment, and his income was depleted by support obligations).

c) Error to fail to award fees and costs after an equal distribution of assets, where one party continues to enjoy a superior economic position. Karrer v. Karrer, 694 So.2d 159 (Fla. 3rd DCA 1997) (Parties not in equal positions even though they had identical income, where husband was a serviceman and received free rent and utilities); Blackburn v. Blackburn, 513 So.2d 1360 (Fla. 2nd DCA 1987); Leonard v. Leonard, 613 So.2d 1339 (Fla. 3rd DCA1993).

VII. Criteria for Determination of Reasonable Award

A. Lodestar Methodology

1. Provus v. Provus, 44 So.2d 656 (Fla. 1950), set forth some factors to be considered in fixing an amount of attorney's fees.

a) Services rendered
b) Responsibility incurred
c) Nature of the services
d) Skill required
e) Circumstances under which the services were rendered
f) Ability of the litigant to respond
g) Value of the services to the client
h) Beneficial results, if any, of the services

2. Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985), further defined the standards applicable in making a determination as to a reasonable fee. The Florida Supreme Court lists for the trial court's consideration, the following factors, as set forth in the disciplinary rule of the Florida Bar Rules of Professional Conduct, 4-1.5(b):

a) the time and labor required, the novelty and difficulty of the issues and the legal skill required;

b) the likelihood that the representation will preclude other employment by the lawyer;

c) the customary fee;

d) the result obtained;

e) the time limitations imposed by the client or circumstances;

f) the nature and length of the professional relationship with the client;

g) the experience, reputation, and ability of the lawyers; and

h) the fixed or contingent nature of the fee.

The Court in Rowe further held that following consideration of the above factors, the court must then determine the number of hours reasonably expended in the case before it, and multiply them by a reasonable hourly rate for that attorney in that community, in order to obtain the "lodestar figure". There may be reduction or enhancement factors which may then be applied to the lodestar figure. Rowe at 1150 -1152. See also Cone v. Cone, 656 So.2d 270 (Fla. 4th DCA 1995); Hamlin v. Hamlin, 722 So.2d 851 (Fla. 1st DCA 1998); Schwartz v. Schwartz, 965 So.2d 832 (Fla.1st DCA 2007).

3. It is well-settled that in determining the proper amount of attorney's fees based on a contract, the trial court must set forth specific findings as to the hourly rate, number of hours reasonably expended, and appropriateness of the reduction or enhancement factors. The trial court's failure to make said requisite findings was reversible error. Zucker v. Zucker, 774 So.2d 890 (Fla. 4th DCA 2001).

4. Enhancement and reduction factors are not often used in fee awards under Fla. Stat. § 61.16.

a) It has been held that under ordinary circumstances a contingency fee multiplier is not justified in dissolution cases. Standard Guaranty Ins. Co. v. Quanstrom, 555 So.2d 828,835 (Fla. 1990).

b) Even though the results obtained were beneficial, lodestar multipliers are not appropriate for enhancing fees in dissolution cases absent extraordinary circumstances. Garcia v. Garcia, 570 So.2d 357 (Fla. 3rd DCA 1990).

c) Generally, the "results obtained" factor is considered irrelevant to the determination of attorney's fee award in dissolution cases, as fee awards under § 61.16 are not based on who is the prevailing party. Faust v. Faust, 553 So.2d 1275 (Fla. 1st DCA 1989); Pirino v. Pirino, 558 So.2d 171 (Fla. 5th DCA 1990); Fabre v. Levine, 618 So.2d 317 (Fla. 1st DCA 1993); Claughton v. Claughton, 625 So.2d 853 (Fla. 3rd DCA1993) (absent rare and extraordinary cases with truly special circumstances, an enhancement or multiplier should not be granted in domestic relations cases).

B. Reduction of Fees Claimed as Unreasonable or Unnecessary

1. The attorney's fees awarded in dissolution cases should only be made for those services found to be reasonably necessary. Dralus v. Dralus, 627 So.2d 505 (Fla. 2nd DCA 1993); Lewis v. Lewis, 665 So.2d 322 (Fla. 4th DCA 1995); Boulis v.

Boulis, 754 So.2d 810 (Fla. 4th DCA 2000) (Where the court determines that there is a material issue of fact concerning the cut-off date for establishing marital assets, and that once that issue is resolved the court will be in a better position to predict the scope of discovery and the time needed to litigate the case, then it can not determine a reasonable award of temporary fees until such issues are resolved).

2. Hours that are "unit billed", or billed by a predetermined number of minutes for each task regardless of actual time spent, result in excessive amounts billed and are not justified. Browne v. Costales, 579 So.2d 161 (Fla. 3rd DCA 1991), it is improper to award fees for services that were unit billed without regard to actual time spent on legal work. Nickerson v. Nickerson, 608 So.2d 835 (Fla. 3rd DCA 1992); Dralus v. Dralus, 627 So.2d 505 (Fla. 2nd DCA 1993).

3. The court may consider the complexity of the case when determining the reasonableness of the bill.

a) Carlson v. Carlson, 639 So.2d 1094 (Fla. 4th DCA 1994), was a single issue modification case, yet the attorney claimed to have a total of 278.75 hours of work spent. The wife was awarded only two thirds of the fees and costs billed. On appeal, the award was reversed and remanded because the trial court erred in failing to make findings as to the breakdown of hours expended among different members of the law office, and as to other findings mandated by Florida Patient's Compensation Fund v. Rowe, supra. Further, it was error for the court to include any portion of the interest the wife's attorney charged his client in the award to be paid by the husband).

b) Rahman v. Rahman, 643 So.2d 1200 (Fla. 5th DCA 1994). The trial court's order finding the wife's attorney's fees to be reasonable and to be paid by the husband was reversed when the appellate court determined that the 109.2 hours spent by the attorney on the wife's case was unreasonable as the issues were routine, and the only witnesses were the husband and the wife.

c) Even if the attorney does in fact spend all the time he bills for on a case, this is not necessarily the amount of time for which he can properly charge his client if the matter was not complex or difficult enough to demand so much time. He or she can only charge for the time that reasonably should be devoted to accomplish a particular task. The Florida Bar v. Richardson, 574 So.2d 60 (Fla. 1990); Whitney v. Whitney, 638 So.2d 517 (Fla. 3rd DCA 1994). See also Romero v. Romero, 971 So.2d 863 (Fla. 3rd DCA 2007) (even a vexatious opponent should not have to pay for wholly unnecessary efforts expended by the other litigant's attorney).

4. In a "handholding" case such as Guthrie v. Guthrie, 357 So.2d 247 (Fla. 4th DCA 1978), the court has held that work performed to indulge the eccentricities

of the client should more properly be charged to the client than to the opposing party.

5. The court will not order the other party to pay excessive and unnecessary fees of the requesting party caused by duplicative efforts of multiple attorneys. Tomaino v. Tomàino, 629 So.2d 874 (Fla. 4th DCA 1993); Brake v. Murphy, 736 So.2d 745 (Fla. 3rd DCA 1999) (A party may hire as many attorneys as it desires, but the opposing party is not required to pay for duplicative efforts).

C. Partial Fee Award

1. Once entitlement to attorney's fees has been established on appeal, the issues of need and ability to pay are not reopened on remand. Yohanan v. Claire, 435 So.2d 913 (Fla. 4th DCA 1983), but see White v. White, 695 So.2d 381 (Fla. 4th DCA 1997) which indicates that even after entitlement is determined the court should make a determination as to the amount of need and the ability to pay in making the award. The court must hold an evidentiary hearing to establish whether the fees and costs incurred for services rendered were reasonable, and if not, what a reasonable fee would be. Martin v. Martin, 561 So.2d 1266 (Fla. 3rd DCA 1990).

2. It was error to base the wife's attorney fee award on the percentage of total income the husband earned, as in a child support award. Rather, once a determination was made that the husband had the superior ability to pay the fees, then he should pay all of her fees. Gomez v. Gomez, 636 So.2d 204 (Fla. 3rd DCA 1994); Wheeler v. Wheeler, 679 So.2d 31 (Fla. 4th DCA 1996) (Error to use same percentage when awarding fees as was used in awarding child support). See also Widder v. Widder, 673 So.2d 954 (Fla. 4th DCA 1999)

3. Despite affidavits in the full amount of fees requested, the court has discretion to discount the amount of fees claimed if it finds the parties have modest resources and the issues litigated were simple, and not all of the fees were reasonable. See West v. West, 710 So.2d 194 (Fla. 4th DCA 1998).

4. It is error for the trial court to determine entitlement and the amount of a reasonable fee, and then without explanation, award only a percentage of the whole amount. Cole v. Roberts, 661 So.2d 370 (Fla. 4th DCA 1995); Tresser v. Tresser, 737 So.2d 1195 (Fla. 2nd DCA 1999) (Reversing award of only 25% of fees to wife where there was substantial disparity in net incomes of parties after allowing for the husband's support obligations); Lowman v. Lowman, 724 So.2d 648 (Fla. 2nd DCA 1999). See also Mount v. Mount, 33 Fla.L.Weekly D2073 (Fla. 2nd DCA Aug. 29, 2008); Wilkins v. Wilkins, 546 So.2d 44 (Fla. 4th DCA 1989) (Error to order partial fee award without specific findings as to why only partial award was made).

5. Trial court erred in awarding the wife to pay only one-half of the husband's reasonable attorney's fees and costs. The wife's net monthly income was almost four and one-half times that of the husband, the wife was awarded a substantial portion of parties' marital net worth, and the wife had non-marital assets. Additionally, the husband had been declared indigent prior to the attorney's fee hearing. Based upon the husband's great financial need and the wife's ability to pay, the trial court should have required the wife to pay all of the husband's reasonable attorney's fees and costs. Krafchuk v. Krafchuk, 804 So.2d 376 (Fla. 4th DCA 2001).

6. Trial court did not abuse its discretion by requiring the husband to pay 25% of the wife's attorney's fees and costs, based upon the disparity in the parties' incomes, but also based upon the fact that the parties' marital assets were equally divided and the husband was required to pay all of the parties' marital debt. Mobley v. Mobley, 778 So.2d 343 (Fla. 1st DCA 2000).

7. Trial court may award attorney's fees for certain aspects of a matter, while not awarding fees for other aspects of a matter, such as unsuccessfully contesting a pre-nuptial agreement. Mills v. Mills, 948 So.2d 885 (Fla. 3rd DCA 2007).

VIII. Fees Caused by Unnecessary and Vexatious Litigation

A. Litigation Caused by Noncompliant Party

1. The legislature amended Fla. Stat. § 61.16(1), effective July 1, 1996, to provide that in cases brought for enforcement, if the court determines that the noncompliant party is not justified in his or her refusal to obey a court order, the court may not award fees, suit money or costs to the noncompliant party.

a) Baker v. Green, 732 So.2d 6 (Fla. 4th DCA 1999) (Former Husband was entitled to attorney's fees when he was forced to resort to the courts to enforce his summer visitation, when it was clear that the former wife had inexcusably frustrated that visitation).

b) The court may consider violations of court orders as the basis for limiting or denying a fee award 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) (Poor financial condition of mother did not require reversal of fee award which was caused by mother's misconduct). Similarly, Robinson-Wilson v. Wilson, 932 So.2d 330 (Fla. 4th DCA, 2006); stated that notwithstanding the fact that a "great disparity in incomes existed", an award of attorney fees against the mother for interfering with the father's visitation is warranted under Fla. Stat. §. 61.13(4)(c)(1)

and the court's inherent authority under the inequitable doctrine). See also T/F Sys., Inc. v. Malt, 814 So.2d 511 (Fla. 4th DCA 2002).

2. Litigation Brought in Bad Faith

a) Rosen v. Rosen, 696 So.2d 697 (Fla. 1997). The Florida Supreme Court found that the provisions of '61.16 should be construed liberally to allow the courts to consider any factor necessary to do justice and equity when determining an attorney fee award. Therefore, a request for fees may be denied where the court finds that the action is frivolous, or brought primarily to harass the adverse party. The courts are to examine the history, scope, duration, and merits of the litigation, as well as the motivation of the parties for initiating or defending an action. See also Dake v. Kirkley, 767 So.2d 1289 (Fla. 5th DCA 2000) (Although reversed and remanded for proper findings, the reduction of the wife's fee award might have been supported by record indicating that wife unreasonably and unnecessarily pursued permanent alimony in a two year marriage, and continuously hampered the father's visitation efforts causing the father to seek custody, when he had originally been agreeable to awarding the wife custody).

b) The Fourth District Court found that a party's financial condition should not shield them from the consequences of their conduct within the judicial system. When a party abuses the legal system or engages in conduct which results in needless litigation and legal fees, that party should be held responsible for their own fees, and possibly those of the other party. Mettler v. Mettler, 569 So.2d 496 (Fla. 4th DCA 1990); Sutter v. Sutter, 578 So.2d 788 (Fla. 4th DCA 1991). In Sutter, however, the court held that the wife was unable to pay the whole amount of her husband's attorney's fees, even though most of the fees were due to her litigiousness; and remanded the case to determine what portion of the husband's fees she could afford.

c) Ugarte v. Ugarte, 608 So.2d 838 (Fla. 3rd DCA 1992), held that the wife could be awarded attorney's fees due to the husband's litigious behavior. Levy v. Levy, 862 So.2d 48 (Fla. 3rd DCA 2003), found that an attorney fee award to the wife was proper because the husband engaged in litigation misconduct.

d) Garcia v. Guerra, 738 So.2d 459 (Fla. 3rd DCA 1999), held that it was not frivolous for the former wife to have brought suit to enforce child support arrearage, even though former husband was successful in his laches defense, and so fees awarded to former husband on that basis were reversed); See also Wilkinson v. Wilkinson, 714 So.2d 524 (Fla. 5th DCA 1998) (Reversing award of fees to wife where, on appeal, it was determined that husband had not taken an unreasonable position in litigation, and did not bring actions to harass wife).

e) Attorney's fees may be awarded as a punitive measure in response to one party's litigation of frivolous or non-meritorious claims. Crowley v. Crowley, 678 So.2d 435 (Fla. 4th DCA 1996).

f) Newnum v. Weber, 715 So.2d 306 (Fla. 5th DCA 1998) (Reversing fee award to wife where there was no finding of former husband's ability to pay post-dissolution fees and holding that since former wife had begun post-judgment litigation in bad faith to prevent former husband from taking child to see paternal grandparents, and interfered with the former husband's visitation rights, causing protracted litigation concerning the modification of custody and support, she did not deserve an award of fees).

Sanctions Against Counsel

g) The court has the inherent power to assess attorney's fees against counsel as sanctions for litigating in bad faith upon specific findings detailing actions and conduct of counsel that were taken in bad faith. Diaz v. Diaz, 826 So.2d 229 (Fla. 2002). However, pursuit of "long shot" claims cannot form the basis for assessing attorney's fees against attorney under the inherent authority doctrine. Id. See also Moakley v. Smallwood, 826 So.2d 221 (Fla. 2002); Smallwood v. Perez, 735 So.2d 495 (Fla. 3rd DCA 1998) (Wife was not barred from making post-dissolution motion seeking additional attorney's fees directly from husband's trial lawyer as sanctions for pursuing merit-less litigation, following award of fees in dissolution suit to be paid by husband).

h) For award of attorney fees under the court's inherent authority the court must make an express finding of bad faith and must provide the attorney the opportunity and notice to be heard. Moakley v. Smallwood, 826 So.2d 221 (Fla. 2002). The award also must be supported with specific factual findings. See also, Finol v. Finol, 912 So.2d 627 (Fla. 4th DCA, 2005), reversing 2 fee award from counsel due to his client's persistent failure to pay wife's fees. The appellate court found no opportunity to be heard and no findings required reversal.

i)In determining entitlement to attorney's fees, court may consider, in addition to need and ability to pay, 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, and the existence and course of prior or pending litigation. Affirming award of temporary attorney's fees in modification and denial of additional request for fees. Daugharty v. Daugharty, 790 So.2d 1113 (Fla. 1st DCA 2001) citing Rosen, 696 So.2d at 700, and Taylor v. Taylor, 734 So.2d 473 (Fla. 4th DCA 1999).

j) Becker v. Becker, 778 So.2d 438 (Fla. 1st DCA 2001); Trial court was not required to make express finding regarding husband's ability to pay wife's attorney

fees before entering order awarding such fees to wife, where husband demonstrated consistent disregard for trial court's directions and his antagonistic and willful actions contributed to amount of attorney fees incurred by wife; it would have been inequitable for trial court to allow husband to use his financial status as a shield to protect himself from suffering consequences of abusing the judicial system. See also Romero v. Romero, 971 So.2d 863 (Fla. 3rd DCA 2007).

k) Young v. Hector, 884 So.2d 1025 (Fla. 3rd DCA 2004). Trial and appellate attorney fees were awarded on appeal to former husband, in equal shares from the wife and her trial counsel, because the trial judge was "plainly misdirected and misled and counsel continued to argue and relitigate matters already determined non-meritorious and which should have been concluded by the appellate court's prior mandate."

l) Boca Burger v. Forum, 912 So.2d 561 (Fla. 2005), rehearing den. The Appellate court may impose sanctions on an appellee or its lawyer for frivolous defense of a patently erroneous trial court order. Remanded to the trial court to review counsel's conduct on appeal and consider.

m) Peterson v. De Luca, 936 So.2d 752 (Fla. 4th DCA 2006),Although the wife lost on all of her issues, her positions below were not so lacking in merit as to independently justify an attorney's fee award against her. The court must still perform an analysis of need and ability to pay.

n) Ratigan v. Stone, 947 So.2d 607 (Fla. 3rd DCA 2007); Although trial court determined that there was insufficient evidence to establish either parties' entitlement to attorney's fees, the trial judge did have the discretion in awarding attorney's fees as a sanction for the Husband's litigation misconduct.

IX. Costs and Suit Money

A. Costs are the expenses incurred in maintaining or opposing a legal action, and are often recoverable by the same statutes that authorize attorney's fee to be recoverable. In November 2005 the Florida Supreme Court issued new Statewide Uniform Guidelines for Taxation Costs in Civil Actions. These guidelines now breakdown the costs into those that the court should tax, may tax, and should not tax. 915 So.2d 612 (Fla. 2005). Taxable costs include:

1. Filing fees for pleadings and other court papers.

2. Expenses related to depositions of parties or witnesses, as long as the deposition serves a "useful purpose." Fatolitis v. Fatolitis, 271 So.2d 227 (Fla. 2nd DCA 1973). See also Orlando Regional Medical Center v. Chmielewski, 573 So.2d 876 (Fla. 5th DCA 1990); Southeast Florida Cable. Inc v. Islandia 1 Condominium

Assoc. Inc., 661 So.2d 91 (Fla. 4th DCA 1995). However, the travel costs of the prevailing attorney incurred in connection with the out-of-town deposition, are not taxable. See Statewide Uniform Guidelines (3).

3. Court Reporter Fees; the cost of transcription for the purpose of appeal are generally not taxable without specific direction from appellate court. Belcher v. Belcher, 307 So.2d 918 (Fla. 3rd DCA 1975).

4. Charges for court officers involved in the case, such as general masters and process servers, and Guardian and Attorney Ad Litems. Franklin & Criscuolo/Lienor v. Etter/Guardian Ad Litem, 924 So. 2d 947, (Fla. 3rd DCA, 2006); held that guardian ad litem fees could be charged and also that they had priority over counsel's fees, even if counsel received a charging lien, but could be litigated as to reasonableness.

5. Expenses for photographs which are not used will be assessed against unsuccessful litigant. Loftin v. Anderson, 66 So.2d 470 (Fla. 1953).

6. Private Detective Fees; a portion of a private detective's fees were allowed to be recovered in Elkins v. Elkins, 228 So.2d 105 (Fla. 3rd DCA 1969); The court had examined the detective and determined that $2,000 of the fee was unreasonable in view of the services performed for that fee.

7. Taxing Expert Witness Fees as costs is within the judge's discretion, but there must be a basis in the record for the award, although an evidentiary hearing is not required.

a) Manuel v. Manuel, 498 So.2d 1369 (Fla. 1st DCA 1986) (Court had authority to award expert witness fee for wife's accountant based on statement submitted by accountant and court's observation of witness at trial, and review of record, without conducted evidentiary hearing as to reasonableness); Cutler v. Cutler, 421 So.2d 585 (Fla. 3rd DCA 1982) (The court held accountant fees were taxable as costs).

b) Wiederhold v. Wiederhold, 696 So.2d 923 (Fla. 4th DCA 1997), held that the courts have authority to reduce attorney and expert witness fees where the court finds that the work being charged was unnecessary, even though there is un-refuted evidence in support of the claim for fees.

c) Craig v. Chung, 751 So.2d 192 (Fla. 4th DCA 2000), the trial court order which awarded the ex-wife a drastically reduced expert witness fee, was reversed as an abuse of discretion given the unrebutted testimony.

d) Attorneys Expert witness fees may be taxed as costs for the attorney testifying as to the reasonable value of the attorneys fees sought. Travieso v. Travieso, 474 So.2d 1184 (Fla. 1985); Murphy v. Tallardy, 422 So.2d 1098 (Fla. 4th DCA 1982); Dept. of HRS v. Kahn, 639 So.2d 689 (Fla. 5th DCA 1994).

8. Charges by an expert witness pursuant to the Statewide Uniform Guidelines for Taxation of Costs in Civil Action

a) Charges related to research and examinations done in preparation of expert opinion, but only to extent court determines they were warranted.

b) Travel time and expenses for out of town expert if court determines travel was necessary. (exceeds 100 miles from their business)

c) Time spent testifying at trial to extent fee is determined to be reasonable.

d) Time spent waiting to testify if delay not caused by attorney or witness, and if determined to be reasonable.

9. Charges of non-expert witness living out of the state for traveling to trial and testifying are taxed at statutory rate See Statewide Uniform Guidelines.

10. Only the cost of Xeroxed copies of documents which are actually filed in the Court file should be taxed. See Statewide Uniform Guidelines.

11. Copy costs of unfiled papers, postage, and long distance calls, are not generally taxable costs. Northbrook Life Ins. Co. v. Clark, 590 So.2d 528 (Fla. 2nd DCA 1991); First Southern Ins. Co. v. Block, 567 So.2d 960 (Fla. 4th DCA 1990).

12. Rule of Appellate Procedure 9.400(a), provides a list of costs which may be taxed in favor of the prevailing party as long as proper motion made and costs are authorized by mandate from appellate court regarding fees. Cochran v. Perruso, 667 So.2d 494 (Fla. 4th DCA 1996).

B. Suit Money is technically a term which refers to the temporary award of expenses and attorney's fees incurred in bringing or defending litigation, but is commonly used in the context of family law matters to mean a broader range of recoverable expenses than costs which are ordinarily taxable in other civil cases, and applies to final as well as temporary awards. See Stoler v. Stoler, 679 So.2d 837 (Fla. 2nd DCA 1996) (Suit money includes attorney's fees and costs not within the scope of the Statewide Uniform Guidelines for Taxation of Costs). Suit money and costs are recoverable under Fla. Stat. § 61.16 and require the same finding of need and ability to pay. Exactly what charges are recoverable as suit money must be gleaned from the case law:

1. Ortiz v. Ortiz, 211 So.2d 243 (Fla. 3rd DCA 1968) (Allowing recovery of costs for a deposition not introduced into evidence); Payne v. Payne, 481 So.2d 551 (Fla. 2nd DCA 1986).

2. The travel time of a party's out-of-town attorney may be awarded if selection of out-of-town counsel is not unreasonable. Wright v. Wright, 577 So.2d 1355 (Fla. 1st DCA 1991); Brock v. Brock, 654 So.2d 163 (Fla. 1st DCA 1995); See also Chandler v. Chandler, 330 So.2d 190 (Fla. 2nd DCA 1976) (In the absence of showing that there is no local legal expertise on the issue involved in the matter, travel time for out-of-town attorney should not be awarded.)

3. Foster v. Foster, 220 So.2d 447 (Fla. 3rd DCA 1969) (the cost of a party's travel to attend a child custody hearing precipitated by petition of the former husband has been held to be recoverable); Peacock v. Peacock, 394 So.2d 1066 (Fla. 4th DCA 1981) (suit money included cost of trip to country to attend contempt hearing); Sochia v. Sochia, 573 So.2d 388 (Fla. 4th DCA 1991) (Wife's travel and other expenses expended litigating the matter would be included in the category of suit money).

4. In dissolution of marriage actions, a request for attorney's fees and costs alone may not put the opposing party on notice that suit money is also sought. Sochia v. Sochia, 573 So.2d 388 (Fla. 4th DCA 1991) (Testimony given without objection concerning the wife's travel expenses and other expenses which would fall into the category of suit money placed the husband on notice that the wife was seeking suit money, even though her petition only requested attorney's fees and costs).

C. Interest on Fees and Costs.

1. Interest on fees and costs awarded a party, begins to accrue from date of entitlement, even if the amount is not yet determined, and post judgment interest may accrue on post-judgment amount. Quality Engineered Installation. Inc. v. Higley South Inc., 670 So.2d 929 (Fla. 1996). Stoler v. Stoler, 679 So.2d 837 (Fla. 2nd DCA 1996).

X. Offers of Settlement

A. Court cannot deny claim for fees solely based on failure to accept offer to settle. Court must also consider comparative financial circumstances. Aue v. Aue, 685 So.2d 1388 (Fla. 1st DCA 1997).

B. Diaz v. Diaz, 826 So.2d 229 (Fla. 2002). Reversing former wife's award of attorney's fees to be paid by former husband, and order assessing fees against

former husband's counsel where the trial court, amongst other things, failed to make specific findings detailing that actions and conduct of counsel were taken in bad faith, former husband did not seek help of counsel until after he filed for divorce, and counsel could not have had any input in rejection of original settlement offer.

C. Oldham v. Oldham, 683 So.2d 579 (Fla. 4th DCA 1996) (while the attorney's fees award was reversed and remanded because the equitable distribution scheme had been substantially changed on appeal, Judge Polen, concurring specially, stated that the trial court had correctly awarded the wife only 60% of her fees because it found that the litigation was prolonged due to the wife's unreasonable refusal to accept a pretrial offer of settlement which was nearly $20,000 more favorable than the ultimate equitable distribution award, and she had to bear the risk of rejecting a reasonable offer of settlement). C.f. Gauthier v. Gauthier, 768 So.2d 1119 (Fla. 2nd DCA 2000) (Trial court had denied former wife's motion for fees and costs because former wife had refused settlement offer that was the same as the ultimate result. The appellate court reversed denial and found that the record did not support the factual determination that an offer of settlement was actually made, and further held the former wife had been forced to defend against a frivolous motion to reduce her alimony, which according to Rosen could justify an award of fees since the litigation was brought primarily to harass.)

XI. Appellate Fees

A. Procedure and Jurisdiction

1. Section 61.16 Florida Statutes states specifically that "the trial court shall have continuing jurisdiction to make temporary attorney's fees and costs awards reasonably necessary to prosecute or defend an appeal on the same basis and criteria as though the matter were pending before it at the trial level." Swartz v. Swartz, 691 So.2d 2 (Fla. 3rd DCA 1996) (wife should have filed motion for interim appellate attorney's fees to defend husband's appeal of interim order, in the trial court under 9.600(c), rather than in the appellate court).

2. Rule of Appellate procedure 9.600(c), pertains to dissolution of marriage actions and authorizes the trial court to retain jurisdiction to enter and enforce orders awarding temporary attorney's fees and costs reasonably necessary to prosecute or defend an appeal.

3. Rule of Appellate procedure 9.400(b), provides that a motion for attorney's fees for appellate work must be filed in the appellate court stating the grounds on which recovery is sought, and served within the time for service of reply brief. The assessment of the fees may be remanded to the trial court. Rule 9.400(c), provides for the review of a fee order rendered by the trial court by filing a motion within 30 days of rendition.

4. A trial court is without jurisdiction to award attorney's fees in an appellate proceeding. Under 9.400(b) a motion for attorney's fees must be filed in the appellate court and served within the time for service of a reply brief. If entitlement is established, the appellate court will remand the case to the trial court for a hearing to determine the proper amount based on need and ability. Boyer v. Boyer, 588 So.2d 615 (Fla. 5th DCA 1991); Dresser v. Dresser, 350 So.2d 1152 (Fla. 1st DCA 1977).

5. Review of trial court's denial of motion for appellate attorney's fees is properly brought under 9.400(c). Gerhardt v. Gerhardt, 738 So.2d 485 (Fla.4th DCA 1999).

6. Authority to award costs to the prevailing party is vested in the trial court upon a motion filed within thirty (30) days of mandate being issued pursuant to 9.400(a). Vella v. Vella, 691 So.2d 612 (Fla. 5th DCA 1997).

7. Appellant's request for appellate attorney's fees was denied because same was barred by the parties' marital settlement agreement incorporated into their first dissolution of marriage. Squire v. Squire, 783 So.2d 1239 (Fla. 1st DCA 2001).

8. Rados v. Rados, 791 So.2d 1130 (Fla. 2nd DCA 2001); A trial court cannot award appellate attorney's fees unless the appellate court has authorized such an award. A litigant who wants to pursue a claim for appellate attorney's fees is required to file a motion for fees stating the legal basis for the claim. A trial judge considering a motion for appellate attorney fees on remand should look first to the language of the appellate court's remand order to determine its role in resolving the motion. Determination of entitlement to appellate attorney's fees does not rely on a "prevailing party" standard, but is based on the financial resources of the parties unless the appellate party's cause is deemed to be frivolous. The appellate court is presumed to have not decided entitlement to appellate attorney fees in a domestic relations case when the order simply grants a motion for fees but is otherwise silent, and the order then is only a determination that the trial court should further address the matter, and the trial court is entitled to consider all the issues presented by the motion.

9. Pettegrew v. Pettegrew, 777 So.2d 1081 (Fla. 2nd DCA 2001); The amended final judgment likewise reflected that the husband's request for a rehearing on the issue of attorney's fees had been granted, but did not specifically find entitlement nor determine a dollar amount. Because the trial court only granted a rehearing on the issue of fees incurred by the husband, and did not set a dollar amount, this portion of the judgment is nonfinal and nonappealable. See also McIlveen v. McIlveen, 644 So.2d 612 (Fla. 2nd DCA 1994) (order which only

determines right to attorney's fees without setting amount of said fees is a non appealable, non final order).

10. Boca Burger v. Forum, 912 So.2d 561 (Fla. 2005). The Appellate court may impose sanctions on an appellee or its lawyer for frivolous defense of a patently erroneous trial court order. Remanded to the trial court to review counsel's conduct on appeal and consider.

B. Need and Ability to Pay

1. The appellate court doesn't generally determine the ability to pay attorney fees in dissolution cases, when the court grants a motion for entitlement to appellate fees and remands for imposition of fee award, the remand is for the determination of need and ability. Tremblay v. Tremblay, 687 So.2d 313 (Fla. 4th DCA 1997). Tremblay also held that the lower court's order assessing attorney's fees must contain a specific finding of the present ability to pay, or there can be no presumption of ability for the purpose of enforcing the order through contempt.

2. Error to award inadequate temporary appellate fees where the record supports a higher amount and husband has the ability to pay the same. Martin v. Martin, 611 So.2d 1357 (Fla. 4th DCA 1993).

3. Gerhardt v. Gerhardt, 738 So.2d 485 (Fla. 4th DCA 1999), held that all that requesting party needs to do is demonstrate need and ability to pay to have motion for appellate fees granted, pursuant to ' 61.16. The court further clarified that when the appellate court grants a motion for appellate fees, the matter is then remanded to the trial court for a full determination of need and ability and the amount of reasonable fees on appeal. Thus a "blanket grant of a motion for appellate attorney's fees under 61.16 is, unless we expressly say otherwise in the order granting the motion, a determination of only whether the matter of appellate fees should be heard further by the trial court. It represents our tentative conclusion that the moving party should be given a chance to show that he or she needs help from the adverse party." Id. at 486.

4. Consideration of merit of litigation: Section 61.16 of the Florida Statutes provides, in part, that when the appellate court decides whether to award fees it shall "primarily consider the relative financial resources of the parties, unless an appellate party's cause is deemed to be frivolous." Taylor v. Taylor, 734 So.2d 473 (Fla. 4th DCA 1999), observed that this language is very similar to that of Rosen which allows the courts to consider the merits of the litigation. Accordingly, the court denied the mother's request for additional appellate fees due to the lack of merit of her case despite the fact that it had affirmed the trial court's award to her of temporary appellate fees.).

XII. Miscellaneous

A. Ancillary Actions

1. Fees can be taxed for ancillary actions as long as they are closely related. Kass v. Kass, 560 So.2d 293 (Fla. 4th DCA 1990). Wife's fees were taxed against husband for defending a certiorari discovery appeal which the husband had nothing to do with; but, it stemmed from the dissolution action. Pyzka et al v. Mulling, 602 So.2d 956 (Fla. 3rd DCA 1992).

2. Domestic violence statute, chapter 741, does not authorize an award of attorney's fees. Baumgartner v. Baumgartner, 693 So.2d 84 (Fla. 2nd DCA 1997); Lewis v. Lewis, 689 So.2d 1271 (Fla. 1st DCA 1997) (statute authorizing award of attorney's fees in marital dissolution proceedings does not support award of fees in connection with permanent injunction against domestic violence by spouse, absent evidence that dissolution proceeding was pending); Abraham v. Abraham, 730 So.2d 746 (Fla. 3rd DCA 1999) (ordering restitution to the husband for the fees he had paid the wife's law firm for services rendered in a domestic violence proceeding, which was litigated before the rendition of the dissolution of marriage).

3. Trial court may award fees and costs not only incurred by a party in a modification of support action, but also in the defense of a related eviction action that was also before the court. Stengel v. Grish, 649 So.2d 945 (Fla. 4th DCA 1995).

B. Non-final Fee Award

1. Order only determining entitlement and not amount of fee award is non-final order and not immediately appealable. Rausch v. Rausch, 680 So.2d 624 (Fla. 5th DCA 1996); Ritter v. Ritter, 690 So. 2d 1372 (Fla. 2nd DCA 1997).

2. Montanez v. Montanez, 697 So.2d 184 (Fla. 2nd DCA 1997) (Appellate court lacks jurisdiction to review issue of entitlement to fees and costs where trial court had not set amount); Carlson v. Carlson, 696 So.2d 1332 (Fla. 4th DCA 1997).

C. Fees in Excess of Contract Rate

1. A court generally may not award a fee greater than that contracted for between the former wife and her attorney. See Winterbotham v. Winterbotham, 500 So.2d 723 (Fla. 2nd DCA 1987). See also Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985); Sotolongo v. Brake, 616 So.2d 413 (Fla. 1992); Albert v. Goldman-Link P.A., 661 So.2d 1293 (Fla. 4th DCA 1995).

2. Where attorney is hired through a prepaid legal services plan, the contract rate is presumed to be reasonable and the attorney is not entitled to be compensated in excess of contract rate. Sotolongo v. Brake, 616 So.2d 413 (Fla. 1992). However, award of fees could be in excess of billing rate agreed to with client, if the fee was reduced to allow the party to be able to secure counsel. Id.

D. Bonus provision

1. Contingency fee arrangements are ethically prohibited in family law proceedings. Albert v. Goldman-Link. P.A., 661 So.2d 1293 (Fla. 4th DCA 1995).

2. A contract provision providing for a bonus fee to be determined based on results obtained in dissolution proceeding was held to be a contingency fee which is void and unenforceable in dissolution actions pursuant to R. Regulating Fla. Bar 4-1.S (f)(3), and the court found that it voided the entire agreement. King v. Young, Berkman, Berman & Karpf, 709 So.2d 572 (Fla. 3rd DCA 1998); Law Office of James M. Russ v. Cone, 716 So.2d 853 (Fla. 5th DCA 1998).

3. Where retainer discussed additional fee that client could pay at end of case if requested by attorney, but did not obligate client to pay bonus without his or her consent, court determined that agreement was not void, but that attorney had no enforceable right under contract to a million dollar bonus. May v. Sessums, 700 So.2d 22 (Fla. 2nd DCA 1997).

E. Agreement as to Fees

1. Contractual provision that prevailing party recovers attorney's fees governs regardless of need and ability factors.

a) Davids v. Davids, 718 So.2d 1263 (Fla. 2nd DCA, 1998) (Wife entitled to an award of fees and costs, pursuant to provision in marital settlement agreement that fees were to be paid to the prevailing party in a suit brought to enforce the agreement). See also, Zakian v. Zakian, 837 So.2d 549 (Fla. 4th DCA 2003). Even if the record supported the former husband's argument as to the former wife's ability to pay fees, fees could only be awarded under the agreement not Fla. Stat. § 61.16, if the agreement contained a prevailing party provision.

b) Hutchinson v. Hutchinson, 687 So.2d 912 (Fla. 4th DCA 1997) (Granting former wife fees under prevailing party provision, even though both parties had some success in litigation. Court held that to qualify as the prevailing party there does not have to be a complete victory, and test is for court to determine which party prevailed on significant issues).

2. Court not bound by agreement for attorney's fees when to enforce agreement would be in violation of public policy or when there has been an abuse of the legal system by the party claiming fees.

a) In Steinfeld v. Steinfeld, 565 So.2d 366 (Fla. 4th DCA 1990); (overruled on other grounds) all award of fees to wife despite waiver of fees in agreement where husband had forced her to defend baseless and non-meritorious proceedings was upheld.

b) Remington v. Remington, 711 So.2d 212 (Fla. 4th DCA 1998) (parties' settlement agreement provided that former husband would pay fees incurred in legal proceedings brought with reference to the rights and obligations set forth in the agreement, but when wife brought contempt action, court refused her request for fees, finding that she had been "overly litigious").

c) Belcher v. Belcher, 271 So.2d 7 (Fla. 1972); Fechtel v. Fechtel, 556 So.2d 520 (Fla. 5th DCA 1990). Courts are not bound to enforce an agreement which limits or waives temporary support or attorney's fees during coverture.

F. Punitive Measures

1. Attorney's fees may be awarded as a punitive measure where a spouse in a domestic relations case institutes frivolous non-meritorious claims that contribute to unnecessary legal expenses, costs and a delay of the proceedings. Crowley v. Crowley, 678 So.2d 435, (Fla. 4th DCA 1996); McAliley v. McAliley, 704 So.2d 611 (Fla. 4th DCA 1997); Sumlar v. Sumlar, 827 So.2d 1079 (Fla. 1st DCA 2002); King v. King, 719 So.2d 920 (Fla. 5th DCA 1998). See also Baker v. Green, 732 So.2d 6 (Fla. 4th DCA 1999); Diaz v.Diaz, 826 So.2d 229 (Fla. 2002).

2. Fees may be assessed against the party's attorney upon a specific finding of bad faith against counsel. See Patsy v. Patsy, 666 So.2d 1045 (Fla. 4th DCA 1996); Moakley v. Smallwood, 826 So.2d 221(Fla. 2002). But the opportunity to be heard must be had and specific findings of fact and specific findings of bad faith must be made.

3. Barna v. Barna, 850 So.2d 603 (Fla. 4th DCA 2003); Trial court properly awarded wife fees against husband in marital dissolution proceedings for pursuing frivolous litigation brought without regard for the cost burden to wife, where husband challenged the constitutionality of the alimony statutes, litigation required wife's participation, and husband's counsel's attack on the alimony statutes was irrelevant, frivolous, and brought only to advance the cause of an unrelated client.

G. Installment Payments

1. The court may order the attorney's fee award to be paid in installments if need be, as long as the time frame is reasonable and the order provides for interest.

a) Urbieta v. Urbieta, 469 So.2d 930 (Fla. 3rd DCA 1985), reversed the trial court's payment plan for the attorney's fee award of $5,800.00 because it would take eight years for the attorney to be paid and the husband's financial affidavit showed assets of $391,000.

b) Hood v. Hood, 535 So.2d 715 (Fla. 5th DCA 1989), held that given the husband's weekly income over $1,100 and assets of $117,000, he did not need seven years to pay the wife's attorney's fees of $14,000, and a payment period of not more than two years was recommended.

c) Freid v. Freid, 731 So.2d 833 (Fla. 5th DCA 1999) Affirming installment payments which were ordered in oral pronouncement by court, although written judgment ordered fee paid in lump sum. Oral pronouncements by judge are to control over clerical mistake in written final judgment.

d) Error for the trial court to set payment on attorney's fees lower than the interest payment due on principal amount of fees. Lewis v. Lewis, 699 So.2d 808 (Fla. 1st DCA 1997); Williams v. Williams, 697 So.2d 1311 (Fla. 3rd DCA 1997) (reversing order allowing unreasonably small installment payments on fee award); but see Koeppell v. Holyszko, 643 So.2d 72 (Fla. 2nd DCA 1994) (Error to order husband to pay monthly payments for attorney fees of wife, when installment payments added to total monthly support obligations exceeded total amount of net income imputed to husband).

e) Wright v. Wright, 965 So.2d 1168 (Fla. 2nd DCA 2007), held that the structure of the attorney's fees award was manifestly unreasonable and abuse of discretion where court determined that Husband had the ability to pay Wife's fees and costs, but nonetheless, tied payment thereof to the sale of the marital home, which according to the Final Judgment, would not occur for thirteen years.

2. An award of fees to be paid within an uncertain time period should be interpreted to mean payment is due within a reasonable time. Braccio v. Braccio, 629 So.2d 1105 (Fla. 4th DCA 1994) (Holding that the trial court abused its discretion when it failed to enforce its previous order that directed the husband to pay the wife's fees "forthwith". Although, "forthwith" may not necessarily mean immediately, it should not be interpreted to mean payment over a long period of years. Furthermore, the trial court should have given priority to the payment of attorney's fees over the husband's vacation expenses).

XIII. Enforcement of Attorney's Fees

A. Contempt

1. The court may use its power of contempt to enforce payment of an attorney's fee awarded in an action under chapter 61, as such does not violate the constitutional prohibition against imprisonment for debt. Fishman v Fishman, 656 So.2d 1250 (Fla. 1995); Lewis v. Lewis, 699 So.2d 808 (Fla. 1st DCA 1997); Wertkin v. Wertkin, 763 So.2d 465 (Fla. 4th DCA 2000).

2. When a money judgment is entered for the amount owed under an attorney's fee award, enforcement of the award by contempt is not precluded. Robbie v. Robbie, 683 So.2d 1131 (Fla. 4th DCA 1996).

3. No fees on fees B Work performed by an attorney concerning the amount of the fee, inures solely to the benefit of the attorney and therefore is not taxable to the other party. Wight v. Wight, 880 So.2d 692 (Fla. 2nd DCA 2004).

B. Enforcement in Own Name

1. The attorney may enforce an attorney fee order in his own name if the award was ordered to be paid directly to him. Fla. Stat. § 61.16. However, the attorney may not apply for an award of fees in his own name under this section. MacLeod v. Hoff, 654 So.2d 1250 (Fla. 2nd DCA 1995).

2. The attorney may enforce a perfected charging lien against the client, or seek fees owed by the client in a breach of contract action, or by quantum meruit. See Rochlin v. Cunningham, 739 So.2d 1215 (Fla. 4th DCA 1999) (Finding the attorney was entitled to recover a reasonable fee amount for services rendered in paternity action which was established by the Retainer Agreement)

C. Income Deduction Orders

Spalding v. Spalding, 813 So.2d 1078 (Fla. 4th DCA 2002); Income deduction orders cannot be used solely for the payment of attorney fees. Income deduction order entered pursuant to a contempt order for ex-husband's failure to pay his ex-wife's attorney fees and costs would be vacated since income deduction order was entered solely for attorney fees and did not fall within statute authorizing income deduction orders for alimony and/or child support; although ex-wife's attorney fees arose out of the underlying final judgment of dissolution awarding support, award of attorney fees arising from action for support could not, itself, be characterized as either alimony or support for purposes of statute.

D. Charging Liens

1. A charging lien is an equitable right to have unpaid attorney fees and costs secured by a lien on the assets recovered from a client. Sinclair, Louis, Siegel, Heath, Nussbaum & Zavertnik. P.A. v. Baucom, 428 So.2d 1383 (Fla. 1983).

2. In order to perfect a charging lien, the lawyer must show:

a) The existence of a valid agreement for the payment of fees.

b) An understanding between the attorney and client, either express or implied, that payment for the attorney's services will come from any recovery or proceeds of the litigation in the event of nonpayment.

c) An avoidance of payment on the part of the client, or a dispute as to the actual amount of fees owed.

d) Timely notice of the intent to impose a charging lien, as well as notice and opportunity to be heard as to the adjudication of that lien. See Sinclair, Louis, Siegel, Heath, Nussbaum & Zavertnik. P.A. v. Baucom. et al, 428 So.2d 1383 (Fla. 1983); Daniel Mones. P.A. v. Smith, 486 So.2d 559 (Fla. 1986); Rose v. Marcus, 622 So.2d 63 (Fla. 3rd DCA 1993); Shawzin v. Sasser. P.A., 658 So.2d 1148 (Fla. 4th DCA 1995)

3. Notice of a charging lien is timely if filed prior to the close of the proceedings.

a) Hutchins v. Hutchins, 522 So.2d 547 (Fla. 4th DCA 1988), found an attorney's claim of lien to be "timely" noticed when the attorney filed a notice and claim of charging lien after he withdrew as attorney, but before the case was settled with the new attorney. All parties must recognize an attorney's interest in the case once notice of lien is given, and give that attorney, even though withdrawn, notice of all proceedings affecting his right to participate in the recovery. See also Boose, Casey, Ciklin, et al v Runco, 741 So.2d 1219 (Fla. 4th DCA 1999).

b) Newton v. Kiefer, 547 So.2d 727 (Fla. 2nd DCA 1989), holds that as long as notice of intent to claim a charging lien is given prior to final disposition of the case, the attorney who has withdrawn need not attend the final hearing or otherwise pursue his lien claim before final judgment. It is the notice which perfects the lien. This court held that "even though the Trial Court could not adjudicate the charging lien at the final hearing because the appellant was not present, it should have reserved jurisdiction in the final judgment to do so in the future". See also Shawzin v. Sasser, 658 So.2d 1148 (Fla. 4th DCA 1995) (Holding that court could impose charging lien, but attorney could not additionally seek a money judgment because he had not noticed the client that there would be a claim for money judgment).

c) Former Wife's attorney is entitled to enforce charging lien against Former Husband where lien was timely perfected and funds were substantially distributed directly to the Former Wife. Sharyn D. Garfield, P.A. v. Green, 687 So.2d 1388 (Fla. 4th DCA 1997).

4. An attorney's charging lien cannot attach to property not involved in the suit and not before the court. Cole v. Kehoe, 710 So.2d 705 (Fla. 4th DCA 1998); Noel v. Sheldon J. Schlesinger P.A., 984 So.2d 1265 (Fla. 4th DCA 2008). See also Yavitz v. Martinez, Charlip, Delgado & Befeler, 568 So.2d 103 (Fla. 3rd DCA 1990) (Ruled that an attorney is not entitled to a lien in excess of the proceeds recovered in the action).

5. There must be, in addition to services provided, tangible fruits of those services, or in other words, a positive settlement for the client must be obtained for the lien to attach.

a) Glickman v. Scherer, 566 So.2d 574 (Fla. 4th DCA 1990), held that an attorney's services in a child custody and support action did not result in any tangible proceeds to which a lien could attach.

b) Dyer v. Dyer, 438 So.2d 954 (Fla. 4th DCA 1983), held that a fundamental purpose of dissolution actions is to achieve an equitable distribution of the parties' assets, and therefore, even though the dissolution action failed to generate "new" proceeds, as argued by the former wife in this case, the lien may still attach to the redistributed marital assets as they are the "proceeds" of the action, and the positive results of the attorney's efforts.

c) In Dyer, the court also pointed out that alimony awarded for the sole purpose of support cannot be subjected to a charging lien as such would be against public policy. See also Zimmerman v. Livnat, 507 So.2d 1205 (Fla. 4th DCA 1987); Leone v. Leone, 619 So.2d 323 (Fla. 3rd DCA 1993) (holding that an attorney's charging lien could not be enforced against an award of alimony if to do so would deprive former spouse of daily sustenance or minimal necessities of life; this case allowed fees to be awarded out of wife's portion of husband's life insurance policy fund, but not from the portion assigned for the benefit of the child).

d) Attorney is entitled to charging lien on settlement proceeds even though settlement was reached without assistance of counsel, where counsel had rendered services which assisted in some degree to settlement. Boose, Casey, Ciklin, et al. v. Runco, 741 So.2d 1219 (Fla. 4th DCA, 1999); Franklin & Marbin, P.A. v. Mascola, 711 So.2d 46 (Fla. 4th DCA 1998) (There were no proceeds of attorney's services where attorney was discharged prior to conclusion of action, attorney has claim for fees on contract or quantum meruit).

e) Attorney was not entitled to charging lien for reasonable fees in a paternity action where attorney did not produce a positive judgment or settlement for client, and there were no tangible fruits of attorney's services. Rochlin v. Cunningham, 739 So.2d 1215 (Fla. 4th DCA 1999).

f) In Demayo v. Chames, 972 So.2d 850 (Fla. 2007), the Florida Supreme Court affirmed the reversal of a charging lien against client's real property as only those exemptions specifically mentioned in the constitution are valid. See also Cutler v. Cutler, 33 Fla. L. Weekly, D2103 (Fla. 3rd DCA Sep. 03, 2008).

In Demayo, 972 So.2d at 850, the Court adopted Judge Wells' dissent from the original (and unreported) Demayo v. Chames, 30 Fla. L. Weekly D2692, D2695-96 (Fla. 3d DCA Nov.30, 2005), opinion which explained that if charging liens and other waivers to the homestead exemption, that are not mentioned in the Constitution, are permitted :

T]he waiver of the homestead exemption will become an everyday part of contract language for everything from the hiring of counsel to purchasing cellular telephone services. The average citizen, who is of course charged with reading the contracts he or she signs ... often fails to read or understand boilerplate language detailed in consumer purchase contracts, language which the contracts themselves often permit to be modified upon no more than notification in a monthly statement or bill.... [S]uch consumers may lose their homes because of a "voluntary divestiture" of their homestead rights for nothing more than failure to pay a telephone bill. This inevitably will result in whittling away this century old constitutional exemption until it becomes little more than a distant memory.

6. An attorney who sues to collect a fee from a client may not assert a retaining lien so as to avoid producing the client's files as part of discovery in a fee collection case. Fingar v. Braum, 807 So.2d 202 (Fla. 4th DCA, 2002).

7. Soule, Leal & Associates, P.A. v. Zipnick, 770 So.2d 1282 (Fla. 4th DCA, 2000); In dissolution proceedings, trial court did not abuse its discretion in approving stipulated equitable distribution of parties' property that would leave no assets with husband on which husband's former law firm could enforce its charging lien for unpaid attorney fees, despite former firm's claim of fraud, where husband's current counsel had attempted, unsuccessfully, to negotiate fee issue with former firm, former firm was notified of scheduled hearing on parties' proposed settlement, and former firm was present at the hearing and advocated its position regarding its lien.

E. Discharge in Bankruptcy

1. Where fees are awarded in connection with child custody, support, and/or enforcement of support, they are not subject to discharge in Bankruptcy. Scharmen v. Scharmen, 613 So.2d 121 (Fla. 1st DCA 1993).

2. Where an order for attorney's fees is subsequently discharged in Bankruptcy, without objection, it is no longer enforceable. Cravey v. Cravey, 601 So.2d 314 (Fla. 3rd DCA 1992).

3. A debtor's obligation to pay his former wife's attorney's fees incurred as a result of dissolution proceedings is not dischargeable in bankruptcy where the award was in the nature of alimony, maintenance, or support. Scharmen v. Scharmen, 613 So.2d 121 (Fla. 1st DCA 1993) (holding that attorney's fee awarded in a post dissolution proceeding not dischargeable as the fees were incurred through the litigation of issues so tied in with the obligation of support as to be in the nature of support or alimony.); Fortner v. Fortner, 631 So.2d 327 (Fla. 2nd DCA 1994) (The wife won her suit in bankruptcy court establishing that the debt owed her by the husband was not dischargeable. She then was awarded her fees for the bankruptcy proceeding in her enforcement action in civil court).

4. Provisions of settlement agreement incorporated into final judgment of dissolution which were non-modifiable and part of equitable distribution, were not in the nature of support, alimony or maintenance obligations so as to be non-dischargeable in bankruptcy proceedings. Doerflein v. Doerflein, 724 So.2d 153 (Fla. 5th DCA 1998).