

ATTORNEY'S FEES:
To pay or not to pay that is the question

Classroom Outline / Syllabus
2 hours Advanced - CE 3-24a - Adjuster Law and Policy
Course ID # 66124

- I. **Plaintiff's entitlement:** (10 Minutes)
 - a. Florida Statute § 627.428
 - b. When does the clock start
 - i. When is suit filed?
 - ii. Pre-suit work
 - 1. demand letter
 - 2. review of file before suit
 - c. When does the clock end
 - i. Final judgment
 - ii. Partial judgment
 - d. Should you stipulate to entitlement
 - i. When to stipulate
 - ii. If yes be clear

- II. **Defendant's discovery:** (20 Minutes)
 - a. Florida Rule of Civil Procedure 1.350
 - b. Request for timesheets
 - i. Are they made contemporaneously with activity
 - c. Invoices
 - i. Do they have any
 - ii. What are genuine taxable costs
 - d. Retainer agreements
 - i. Do they really exist
 - ii. Who is responsible for fees

- III. **Plaintiff's discovery:** (30 Minutes)
 - a. Florida Rule of Civil Procedure 1.350
 - b. Request for timesheets
 - i. Does it matter
 - ii. Can they see them
 - 1. attorney client?
 - c. Invoices

- IV. **How to evaluate time and costs:** (15 Minutes)
 - a. Get it in writing
 - i. Can you do it without a timesheet
 - b. Reasonably expended
 - i. What would a reasonable attorney in the community spend doing the same work

- c. What is the issue of the case
 - i. Complex v. non complex

V. **How to evaluate the hourly rate:** (15 Minutes)

- a. Is it reasonable
- b. Has it been awarded before
- c. Personal facts
 - i. How long in practice
 - ii. Board certified
 - iii. Area of practice
 - iv. Expert witness

VI. **Putting it all together:** (5 Minutes)

- a. How does it add up
 - i. time and labor required, novelty and difficulty of question involved, and skill requisite to perform legal service properly,
 - ii. likelihood, if apparent to client, that acceptance of particular employment will preclude other employment by lawyer,
 - iii. fee customarily charged locally for similar legal services,
 - iv. amount involved and result obtained,
 - v. time limitations imposed by client or circumstances,
 - vi. nature and length of professional relationship with client,
 - vii. experience, reputation, and ability of lawyer performing services, and
 - viii. whether fee is fixed or contingent.
- b. Lodestar
 - i. In *Florida Patient's Compensation Fund v. Rowe*, 472 So.2d 1145, 1150 (Fla.1985), the supreme court adopted the federal lodestar approach as the foundation for setting reasonable fee awards by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate for the services of the prevailing party's attorney."
 - ii. Reasonable rate x reasonable hours = Lodestar

VII. **Multiplier:** (15 Minutes)

- a. The exception, not the rule
- b. Is it difficult to find other counsel
 - i. Provider deposition
- c. Facts of the case
 - i. What is the risk
- d. Look at the case law

VIII. **Negotiations:** (10 Minutes)

- a. Mediation
 - i. Some judges require it
 - ii. Sometimes a good thing before a hearing

- b. Meet with opposing counsel
- c. What does your attorney think

IX. **Expert witnesses:**

- a. Can they be waived?
- b. Who to hire
 - i. Should you hire a plaintiff's attorney
- c. Do you have to pay plaintiff's expert
- d. Taxable costs

X. **The Court's role at the fee hearing:**

- a. Mediator
- b. Judges are attorneys and they do not like to cut time

XI. **Simulated Fee Hearing:**

- a. Brief review of case facts
- b. Brief review of timesheets
- c. Mock fee hearing

XII. **Questions / comments:**