

In order for a party to be entitled to attorney's fees from the other party, in whole or in part, the party requesting fees must prove: (1) the party needs financial assistance to pay the fees and costs; and (2) the other party has the ability to pay the fees and costs. *See, e.g., Lopez v. Lopez*, 780 So.2d 164 (Fla. 2d DCA 2001).

Next, the party requesting fees "must prove with evidence the reasonableness and necessity of the fee sought." *Chouri v. Chouri*, 2 So.3d 987 (Fla. 2d DCA 2008).

The reasonableness of a fee is proven by proving the reasonable number of hours and the reasonable hourly rate. "The number of hours reasonably expended, determined in the first step, multiplied by a reasonable hourly rate, determined in the second step, produces the lodestar, ..." *Florida Patient's Compensation Fund v. Rowe*, 472 So.2d 1145, 1151 (Fla. 1985).

"The only evidence with regard to the wife's attorney's fees was the wife's testimony that she lacked the ability to pay her own fees ... We point out that there is a difference between establishing a need for fees [and an ability to pay] and establishing what a reasonable fee award should be. The latter requires evidence detailing exactly what services were performed, the hours expended, and the hourly rate. ... Without any evidence of those factors, there is nothing to support an actual award." *Warner v. Warner*, 692 So.2d 266, 267, 268 (Fla. 5th DCA 1997), which reversed an attorney fee award to the wife.

Therefore, a motion for attorney's fees must be proven by (a) testimony of the total hours performed by the attorney and any associates and paralegals; (b) testimony of the reasonable hourly rate of all of these, and (c) testimony that the hours were reasonable and necessary for the representation of the party.

To prove the hours worked, the "attorney fee applicant should present records detailing the amount of work performed." *Florida Patient's Compensation Fund v. Rowe*, 1150. An "award of attorney's fees requires competent and substantial evidence. ... Competent evidence includes invoices, records and other information detailing the services provided as well as the testimony from the attorney in support of the fee. ... [Here], appellee's attorney did not testify ... Without the attorney's testimony as to the reasonableness of the hours expended and the hourly rate, the evidence does not support the award." *Brewer v. Solovsky*, 945 So.2d 610 (Fla. 4th DCA 2006).

Regarding the reasonableness of the hourly rate, "the party who seeks the fees carries the burden of establishing the prevailing 'market rate,' *i.e.*, the rate charged in that community by lawyers of reasonably comparable skill, experience and reputation, for similar services." *Florida Patient's Compensation Fund, supra*, at 1151.

In a Chapter 61 case, the testimony of the lawyer seeking the fees does not have to be corroborated by another lawyer. §61.16 provides: "[a]n application for attorney's fees, suit money, or costs, whether temporary or otherwise, shall not require corroborating expert testimony in order to support an award under this chapter." So, while another attorney is not required to corroborate counsel's own testimony, nevertheless, the testimony of the lawyer seeking the fees is required to support the findings of fact that the court must make for an attorney fee award.

The attorney seeking fees must support the request with his or her own testimony and also corroborating documents, that is, "invoices, records and other information detailing the services provided as well as the testimony from the attorney in support of the fee." *Brewer, supra*.

If temporary fees are sought for prospective work, then the lawyer's testimony must establish the total reasonable and necessary number of hours "to be expended" by the attorney

and any associates or paralegals of the attorney and also the reasonable hourly rate of all of these. *Baker v. Baker*, 35 So.3d 76, 77 (Fla. 2d DCA 2010).

On any attorney fee motion, the court may also consider the factors in the decision of *Rosen v. Rosen*, 696 So.2d 697 (Fla. 1997) and F.S. §61.16. Under that statute, “the financial resources of the parties are the primary factor to be considered” when deciding a motion for fees. *Rosen* at 700. “However, other relevant circumstances to be considered include factors such as the scope and history of the litigation; the duration of the litigation; the merits of the respective positions; whether the litigation is brought or maintained primarily to harass (or whether a defense is raised mainly to frustrate or stall); and the existence and course of prior or pending litigation.” *Rosen* at 700.

However, if an attorney wants the court to consider any of the *Rosen* factors, the facts supporting a consideration of these factors should be raised in the motion, and then these factors must also be supported by competent substantial evidence at the hearing, which means the testimony of the lawyer seeking the fee, before the court can consider any of these factors in making an attorney fee award.

So, the evidence at a hearing on a motion for attorney’s fees must show:

- (1) A need for financial assistance in order to pay fees;
- (2) An ability by the other party to pay the movant’s fees, in whole or in part;
- (3) The number of hours reasonably and necessarily required to represent the movant;
- (4) The reasonable hourly rate for the attorney and any associates and paralegals;
- (5) Proof of any *Rosen* factors, if any are stated in the motion.
- (6) And due process requires that all of these facts should all be alleged in the motion for fees so the adverse party is on notice of what will be proven at the hearing, and
- (7) The affidavit of the movant’s lawyer should be filed with the motion and admitted into evidence at the hearing, which states the number of hours required to represent the movant, the reasonable hourly rate - which means an averment that the hourly rate is “the prevailing ‘market rate,’ *i.e.*, the rate charged in that community by lawyers of reasonably comparable skill, experience and reputation, for similar services,” - any *Rosen* factors; and the attorney’s detailed billing showing the dates and time should be attached, with deletions necessary to preserve the attorney client privilege.
- (8) If court costs are sought, a separate affidavit by the lawyer seeking costs should be filed with the motion and admitted in evidence at the hearing, which lists the court costs sought - the amounts, dates incurred, and for what - and all of the costs listed must be allowed by the “Statewide Uniform Guidelines for Taxation of Costs in Civil Actions.” 915 So.2d 612