

General Contract Clauses: Litigation Costs and Expenses (FL)

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A Standard Clause to be used in a commercial contract under Florida law to allocate litigation costs and expenses to the losing party in a dispute by requiring the losing party to reimburse the prevailing party for the prevailing party's litigation costs and expenses. Litigation costs and expenses typically consist of attorneys' fees, court costs, and other expenses. This Standard Clause has integrated drafting notes with important explanations and drafting and negotiating tips.

DRAFTING NOTE: READ THIS BEFORE USING DOCUMENT

Scope of Standard Clause

The parties to a commercial contract typically prefer structuring the contract to motivate the parties to settle disputes whenever possible. One way to do this is to allocate the cost of pursuing or defending a lawsuit (or alternative dispute resolution (ADR) like arbitration) to the losing party in the dispute, which provides an economic disincentive to the parties against:

- Bringing frivolous lawsuits.
- Unnecessarily protracting lawsuits that the parties should be able to easily settle out of court, particularly when a claim or defense is revealed to lack merit or a reasonable chance of success.

Depending on the nature of the parties and the transaction, a party (typically, the party that is more likely to be defending a lawsuit) sometimes chooses to exclude a litigation expenses provision to deter the other party from bringing small claims that are likely to be meritorious. Florida courts, however, generally enforce contractual provisions that specify the allocation of litigation expenses between parties (see *Christensen v. Christensen*, 291 So. 3d 1016, 1017 (Fla. 2d DCA 2020) (citing *Lashkajani v. Lashkajani*, 911 So. 2d 1154, 1158 (Fla. 2005))).

This Standard Clause requires the losing party in litigation to reimburse the prevailing party for all of the prevailing party's litigation costs and expenses, including attorneys' fees, court costs, and other expenses. Because this Standard Clause contemplates the reimbursement of litigation costs and expenses generally, it does not follow the common convention of being labeled an "attorneys' fees" clause.

Assumptions

This Standard Clause assumes that:

- **This Standard Clause applies only to litigation costs and expenses and does not apply to transaction costs.** Transaction costs include the costs incurred by a party to:
 - investigate the merits of entering into the transaction (also referred to as due diligence);
 - negotiate the transaction;
 - draft the contract;
 - close the transaction; and
 - perform the contract in the ordinary course of business.

The parties may want to include a separate provision to allocate these transaction costs

General Contract Clauses: Litigation Costs and Expenses (FL)

to either the party that incurred them or to the specified party. For a sample provision confirming that each party to a transaction must bear its own transaction costs in a commercial agreement, see [Standard Clause, General Contract Clauses: Transaction Costs](#). Sometimes, the parties also want to allocate responsibility for taxes. For a sample clause that allocates the rights and responsibilities for sales, use, and similar taxes between the parties in a commercial agreement, see [Standard Clause, General Contract Clauses: Taxes](#).

- **The parties have agreed to litigate, not arbitrate, claims.** This Standard Clause allocates responsibility for costs and expenses relating to litigation, not arbitration. Arbitration may involve cost-shifting issues that are beyond its scope. For more information about arbitration, see [US Arbitration Toolkit](#) and [Drafting Contractual Dispute Provisions Toolkit \(FL\)](#).
- **The parties to the agreement are US entities and the transaction takes place in the US.** If any party is organized or operates in, or any part of the transaction takes place in a foreign jurisdiction, these terms may need to be modified to comply with applicable laws in the relevant foreign jurisdiction.
- **The agreement is governed by Florida law.** If the law of another state applies, these terms may

have to be modified to comply with the laws of the applicable jurisdiction.

- **These terms are being used in a business-to-business transaction.** This Standard Clause should not be used in a consumer contract, which may involve legal and regulatory requirements and practical considerations that are beyond the scope of this resource.
- **These terms are not industry-specific.** This Standard Clause does not account for any industry-specific laws, rules, or regulations that may apply to certain transactions, products, or services.
- **Capitalized terms are defined elsewhere in the agreement.** Certain terms are capitalized but not defined in this Standard Clause because they are defined elsewhere in the agreement (for example, Agreement).

Bracketed Items

Bracketed items in ALL CAPS should be completed with the facts of the transaction. Bracketed items in sentence case are either optional provisions or include alternative language choices, to be selected, added, or deleted at the drafter's discretion.

General Contract Clauses: Litigation Costs and Expenses

1. **Litigation Costs and Expenses.** If any party institutes any legal suit, action, or proceeding against the other party [to enforce this Agreement (or obtain any other remedy regarding any breach of this Agreement)/arising out of[or relating to] this Agreement, including, but not limited to, contract, equity, tort, fraud, and statutory claims], the prevailing party in[a final, non-appealable judgment regarding] the suit, action, or proceeding is entitled to receive, and the non-prevailing party shall pay, in addition to all other remedies to which the prevailing party may be entitled, the costs and expenses incurred by the prevailing party in conducting or defending the suit, action, or proceeding, [including any costs that are taxable pursuant to any applicable statute, rule, or guideline (including, but not limited to, the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions), as well as costs not taxable thereunder and]including [reasonable/actual] attorneys' fees and expenses[, / and] court costs[, and [OTHER EXPENSES]], even if not recoverable by law[(including, without limitation, all fees, taxes, costs, and expenses incident to appellate, bankruptcy, and post-judgment proceedings)].

DRAFTING NOTE: DRAFTING THE LITIGATION COSTS AND EXPENSES PROVISION

The parties should consider whether and to what degree the clause should address the following matters:

- **Scope of claims.** The clause may cover either:

– only those claims brought to enforce the terms of the agreement or a specific term or provision of an agreement; or

General Contract Clauses: Litigation Costs and Expenses (FL)

- all claims that may be related to the agreement, including any tort or other non-contractual claims, by including the bracketed language “arising out of[or relating to] this Agreement, including, but not limited to, contract, equity, tort, fraud, and statutory claims.”

The clause language also may determine if a party may receive fees for litigating the attorneys’ fees issue. For example:

- by including the language “any legal suit, action, or proceeding” or similar broad and general language, a prevailing party may be entitled to attorneys’ fees if forced to litigate the reasonableness of the amount of the fees (“fees for fees”) (see *Waverly at Las Olas Condo. Ass’n, Inc. v. Waverly Las Olas, LLC*, 88 So. 3d 386, 389 (Fla. 4th DCA 2012)); or
- with more narrow language (for example, “litigation to enforce” or “brought to enforce” the agreement), the court may limit a party’s recovery to fees incurred litigating the entitlement to fees, not the amount (*Nazarova v. Nayfeld*, 2022 WL 1560679, at *1 (Fla. 3d DCA May 18, 2022); *Bayview Loan Servicing, LLC v. Cross*, 286 So. 3d 858, 861-62 (Fla. 5th DCA 2019); *N. Dade Church of God, Inc. v. JM Statewide, Inc.*, 851 So. 2d 194, 196 (Fla. 3d DCA 2003)).

- **Types of claims.** If there are multiple types of claims in a lawsuit, but the clause covers only particular claims, a court may still award attorneys’ fees for litigating claims not covered by the contract provision (for example, a liability claim). A trial court evaluates the relationship between the claims and if the issues are so intertwined that allocation is not feasible, the court may award the full fee (*Chodorow v. Moore*, 947 So.2d 577, 579 (Fla. 4th DCA 2007)). To be “intertwined,” the claims must:

- involve a common core of facts; and
- be based on related legal theories.

(*Current Builders of Florida, Inc. v. First Sealord Sur., Inc.*, 984 So. 2d 526, 533-34 (Fla. 4th DCA 2008).)

- **Recovery of actual versus reasonable attorneys’ fees, court costs, and other expenses.** The clause may authorize the prevailing party to either recover its:
 - “actual” attorneys’ fees, court costs, and other expenses; or
 - only “reasonable” attorneys’ fees, court costs, and expenses.

Despite the contract’s language, the amounts of these awards may be limited by statute (FL ST BAR Rule 4-1.5(a) and § 57.104, Fla. Stat.). Further, while courts may base actual fees on the attorney hours expended and the attorney’s customary hourly billing rate, in determining reasonable fees, they use their discretion (see *Dunn v. Sentry Ins.*, 462 So. 2d 107, 109 (Fla. 5th DCA 1985)). For example, courts use a reasonable-hours-times-reasonable-rates formula (the lodestar approach) (*Universal Prop. & Cas. Ins. Co. v. Deshpande*, 314 So. 3d 416, 419 (Fla. 3d DCA 2020); see also *Certain Underwriters at Lloyd’s London v. Candelaria*, 2022 WL 1559917, at *3 (Fla. 3d DCA May 18, 2022) (discussing Lodestar methodology)). They also consider:

- the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- the likelihood that the acceptance of the employment will preclude other employment by the lawyer;
- the fee customarily charged in the locality for similar legal services;
- the amount involved and the results obtained;
- the time limitations imposed by the client or by the circumstances;
- the nature and length of the professional relationship with the client;
- the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- whether the fee is fixed or contingent.

(FL ST BAR Rule 4-1.5(b)(1), (c); see also *22nd Century Properties, LLC v. FPH Properties, LLC*, 160 So. 3d 135, 142 (Fla. 4th DCA 2015) and *Indep. Serv. Provider v. Aponte*, 2021 WL 5921656, at *1 (M.D. Fla. Nov. 1, 2021), report and recommendation adopted sub nom. 2021 WL 5578393 (M.D. Fla. Nov. 30, 2021) (both discussing factors).)

However, if a fee agreement provides for an alternative payment structure (for example, an alternative fee recovery clause in a retainer agreement), the client’s compensation rate may not control. For example, if a third party is liable for attorneys’ fees, the higher alternative fee provision of an agreement would not limit the attorneys’ fees award to the lower hourly rate the client was obligated to pay under the contract (see *Forthuber v. First Liberty Ins. Corp.*, 229 So. 3d 896,

899-900 (Fla. 5th DCA 2017) (citing to *First Baptist Church of Cape Coral, Florida, Inc. v. Compass Const., Inc.*, 115 So. 3d 978, 981 (Fla. 2013))).

- **Recovery of fees, costs, and expenses associated with judgment enforcement.** The clause may authorize recovery of attorneys' fees, court costs, and other expenses associated with judgment enforcement by including the bracketed language "(including, without limitation, all fees, taxes, costs, and expenses incident to appellate, bankruptcy, and post-judgment proceedings)."

In addition to the above, the parties should also consider whether and to what degree the clause should address the following matters:

- The recovery of costs and expenses not normally recoverable (see Recovery of Costs and Expenses Not Normally Recoverable).
- The degree to which a party must prevail (see Degree to Which a Party Must Prevail).

Additional Considerations

Recovery of Costs and Expenses Not Normally Recoverable

Florida courts generally rely on the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions (Uniform Guidelines) to determine what costs a party may recover (FL ST RCP Taxation of Costs). A clause, however, may authorize recovery of other costs and expenses not normally recoverable if the parties negotiate and expressly list those costs by using the bracketed language "[and [OTHER EXPENSES]]" (see *Midway Services, Inc. v. Custom Mfg. & Eng'g, Inc.*, 974 So. 2d 427, 430 (Fla. 2d DCA 2007)).

For example, an expert witness's fee is taxed as a litigation cost, but the expert's travel time is not normally taxable. Parties may want to consider including expert witness travel time in the cost clause, particularly when the area of expertise is highly specialized and subject matter experts may not be located within the immediate vicinity of the jurisdiction.

To recover costs and expenses not normally recoverable under the Uniform Guidelines, the contract language must clearly identify the costs a party may recover for a court to enforce the provision. If a contract provision contains general language (for

example, "all costs incurred"), a court looks to the Uniform Guidelines to determine if it may award the requested cost (*Midway Services*, 974 So. 2d at 430 and *Wood v. Panton & Co. Realty, Inc.*, 950 So. 2d 534, 535 (Fla. 4th DCA 2007)).

Degree to Which a Party Must Prevail

Florida courts generally define a prevailing party as the party succeeding on the "significant issues" in the litigation (*Moritz v. Hoyt Enterprises, Inc.*, 604 So. 2d 807, 810 (Fla. 1992)). When a party prevails on only a portion of the claims, courts evaluate the relationship between the successful and unsuccessful claims to award attorneys' fees (*Anglia Jacs & Co., Inc. v. Dubin*, 830 So. 2d 169, 172 (Fla. 4th DCA 2002); see also *Indep. Serv. Provider*, 2021 WL 5921656, at *3 (collecting cases)).

To some extent, the parties may draft the clause to specify the degree to which the party seeking to recover litigation costs and expenses must prevail. For example, whether the party seeking to recover must either:

- Prevail on all of its claims or just some claims.
- Win the trial on the merits, rather than settle its claims, even if the settlement award is substantial.

However, at least one Florida appellate court has held that parties cannot contractually modify the significant issues test (see *Port-A-Weld, Inc. v. Padula & Wadsworth Const., Inc.*, 984 So. 2d 564, 569-70 (Fla. 4th DCA 2008)). If including a definition of prevailing party in the contract provision, counsel should draft it carefully to not run afoul of the "significant issues" standard.

To recover costs apart from attorneys' fees, a party does not have to meet the significant issues tests for a prevailing party under *Moritz*. Rather, under § 57.041, Fla. Stat., a court must award costs to the party "recovering judgment." (*Hawks v. Libit*, 251 So. 3d 321, 324 (Fla. 2d DCA 2018); see also *Court Costs*.)

Florida courts do not consider all contractual provisions that entitle a party to attorneys' fees as "prevailing party" fee provisions. As a matter of construction, courts strictly construe contractual attorneys' fees provisions, so if the language of the clause does not clearly impose a "prevailing party" standard, courts do not read that into the provision. Therefore, a court may award attorneys' fees to a party

even though they did not prevail in the litigation. (See *B & H Const. & Supply Co., Inc. v. Dist. Bd. of Trustees of Tallahassee Cmty. Coll., Florida*, 542 So. 2d 382, 387 (Fla. 1st DCA 1989).)

Indemnification Provisions

Provisions related to attorneys' fees are sometimes included in remedies provisions, like indemnification provisions (see [Standard Clause, General Contract Clauses: Indemnification \(FL\)](#) and [Practice Note, Risk Allocation in Commercial Contracts: Contractual Remedies as Risk Allocation Tools](#)). The parties should review the contract's indemnification provisions to ensure consistency regarding the reimbursement of attorneys' fees, court costs, and other expenses, especially if the parties structure the indemnification provision to cover direct claims as well as third-party claims.

To avoid a potential dispute, if the indemnification provision covers direct claims (typically, in addition to third-party claims), the parties should ensure that the:

- Indemnification provision exclusively governs the reimbursement of attorneys' fees, court costs, and other expenses incurred by the indemnified party against the indemnifying party to recover losses regarding direct claims (and third-party claims, if applicable) covered under the indemnification provision.
- Mutual litigation costs and expenses provision exclusively governs the reimbursement of attorneys' fees, court costs, and other expenses by the prevailing party in any other dispute not covered by the indemnification provision. Parties should not

attempt to include a unilateral provision allowing only one party by name the right to recover as Florida has adopted a statute that reforms contracts containing such provisions and makes them reciprocal (§ 57.105(7), Fla. Stat.; *Levy v. Levy*, 326 So. 3d 678, 681 (Fla. 2021)).

If the indemnification provision covers only third-party claims, then the parties should ensure that the:

- Indemnification provision exclusively governs the reimbursement of attorneys' fees, court costs, and other expenses incurred by the indemnified party against the third party in the third-party claim.
- Mutual litigation costs and expenses provision exclusively governs the reimbursement of attorneys' fees, court costs, and other expenses:
 - by the indemnified party against the indemnifying party to recover the costs and expenses of enforcing the indemnification provision to recover losses in third-party claims, including attorneys' fees, court costs and other expenses incurred by the indemnified party in its dispute against the third party; and
 - by the prevailing party in any other dispute not covered by the indemnification provision.

For further discussion on indemnification clauses in Florida, see [Practice Note, Indemnification Clauses in Commercial Contracts \(FL\)](#) and [Standard Clause, General Contract Clauses: Indemnification \(FL\)](#).

The table below provides a side-by-side comparison of how parties can make various indemnification provisions consistent with a litigation costs and expenses provision.

Indemnification Versus Litigation Costs and Expenses: A Comparison

Type of claims covered by indemnification provision:	Indemnification provision should exclusively cover attorneys' fees, court costs, and other expenses:	Mutual litigation costs and expenses provision should exclusively cover attorneys' fees, court costs, and other expenses:
Direct and third-party.	<p>Incurring by: the indemnified party.</p> <p>Incurring against: the indemnifying party.</p> <p>Incurring to recover: losses regarding both direct and third-party claims covered under the indemnification provision.</p>	<p>Incurring by: the prevailing party.</p> <p>Incurring against: the losing party.</p> <p>Incurring to recover: losses on claims not covered by the indemnification provision.</p>

General Contract Clauses: Litigation Costs and Expenses (FL)

Type of claims covered by indemnification provision:	Indemnification provision should exclusively cover attorneys' fees, court costs, and other expenses:	Mutual litigation costs and expenses provision should exclusively cover attorneys' fees, court costs, and other expenses:
Direct only (very unusual).	<p>Incurred by: the indemnified party.</p> <p>Incurred against: the indemnifying party.</p> <p>Incurred to recover: losses regarding direct claims covered under the indemnification provision.</p>	<p>Incurred by: the prevailing party.</p> <p>Incurred against: the losing party.</p> <p>Incurred to recover: losses on claims not covered by the indemnification provision.</p>
Third-party only.	<p>Incurred by: the indemnified party.</p> <p>Incurred against: the indemnifying party.</p> <p>Incurred to recover: losses regarding third-party claims covered under the indemnification provision.</p>	<p>Incurred by: the indemnified party.</p> <p>Incurred against: the indemnifying party.</p> <p>Incurred to recover: the costs and expenses of enforcing the indemnification provision to recover losses on third-party claims.</p> <p>Incurred by: the prevailing party.</p> <p>Incurred against: the losing party.</p> <p>Incurred to recover: any losses for claims covered by the mutual litigation costs and expenses provision but not the indemnification provision.</p>

Litigation Costs and Expenses

Litigation costs and expenses in Florida typically consist of:

- Attorneys' fees (see Attorneys' Fees).
- Court costs (see Court Costs).
- Other costs and expenses related to pursuing or defending litigation (see Other Costs and Expenses).

Attorneys' Fees

Attorneys' fees are typically the largest component of the cost of pursuing or defending litigation. Florida courts generally follow the "American Rule," where each side is responsible for its own attorneys' fees (*Price v. Tyler*, 890 So. 2d 246, 250 (Fla. 2004)). However, a party to litigation may be able to recover its attorneys' fees if:

- **A statute allows attorneys' fees.** A statute that governs the **substantive** law of the underlying dispute may allow the prevailing party to recover its attorneys' fees from the losing party as an element of damages. For example, Florida law authorizes the award of attorneys' fees to a prevailing "small business party" (which includes a sole proprietorship, or a Florida partnership or corporation with less than 25 employees and a net worth of two million or less) in a lawsuit initiated by a state agency (§ 57.111(3)(d), (4)(a), Fla. Stat.).
- **A contract provides for attorneys' fees.** The parties may opt out of the American Rule by agreeing to a contract provision (like the one set out in this Standard Clause) that allows the prevailing party to recover its attorneys' fees from the losing party. However, Florida law requires reciprocity in fee-shifting provisions, regardless of contract language. Therefore, even if a contract provision provides for

General Contract Clauses: Litigation Costs and Expenses (FL)

only one identifiable party to receive attorneys' fees if required to act to enforce the contract and they prevail, the other party to the contract has the same right to recovery if a prevailing party in enforcing the contract. (§ 57.105(7), Fla. Stat.; see also *Levy*, 326 So. 3d at 681 and *Azalea Trace, Inc. v. Matos*, 249 So. 3d 699, 701-02 (Fla. 1st DCA 2018).) A prevailing party also may recover:

- under a contract provision for attorneys' fees even if a court later rescinds the contract or fails to enforce it, for example, as a result of fraud in the inducement (*Katz v. Van Der Noord*, 546 So. 2d 1047, 1049 (Fla. 1989)); and
- when the opposing party (typically a mortgagor) fails to establish standing at the time of the suit (*Page v. Deutsche Bank Tr. Co. Americas*, 308 So. 3d 953, 960 (Fla. 2020)).

A court, however, may not enforce a prevailing party attorneys' fee contract provision if the parties never actually formed a contract (for example, when a condition precedent has not been met) (see *Page*, 308 So. 3d at 960 and *Surgical Partners, LLC v. Choi*, 100 So. 3d 1267, 1269 (Fla. 4th DCA 2012); see also *Venezia v. JP Morgan Mortgage Acquisition Corp.*, 279 So. 3d 145, 146-47 (Fla. 4th DCA 2019)).

In some cases, a litigant may be able to recover attorneys' fees if the other party:

- **Rejects a settlement offer.** If a party rejects a formal settlement offer (referred to as an offer of judgment) and the final court decision is less favorable to the rejecting party than the settlement offer, the court may:

- withhold or reduce the rejecting party's award for attorneys' fees and costs; or
- award the offering party attorneys' fees.

(§§ 45.061 and 768.79, Fla. Stat.; Fla. R. Civ. P. 1.442(h).)

- **Is sanctioned for raising unsupported claims or defenses.** The court may award attorneys' fees and costs as sanctions. For example, Florida law authorizes a court to award legal fees to the prevailing party in a civil action if the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:

- was not supported by the material facts necessary to establish the claim or defense; or
- would not be supported by the application of then-existing law to those material facts.

(§ 57.105(1), Fla. Stat.)

However, an award of sanctions under section 57.105(1) only applies to attorneys' fees and not costs (see *In re Estate of Assimakopoulos*, 228 So. 3d 709, 712-14 (Fla. 2d DCA 2017) (citing several cases)).

- **Is sanctioned for unreasonable delay.** The court also may award fees if the moving party proves by a preponderance of the evidence that a party took certain actions primarily for the purpose of unreasonable delay (§ 57.105(2), Fla. Stat.).
- **Engages in certain wrongful acts.** If one party engages in a wrongful act that forces another party into litigation with a third-party, the court may award the third-party litigation expenses as special damages to the wronged party based on the wrongful act doctrine (see *MV Senior Mgmt., LLC v. Redus Florida Hous., LLC*, 319 So. 3d 66, 67 (Fla. 1st DCA 2020)). These attorneys' fees are an exception to the American Rule under common law, and must be specifically pled as special damages (*Rayburn v. Bright*, 163 So. 3d 735, 736-37 (Fla. 5th DCA 2015)).

Court Costs

A party recovering judgment generally may recover court cost under Florida law (§ 57.041, Fla. Stat.; *Sherman v. Sherman*, 279 So. 3d 188, 192-93 (Fla. 4th DCA 2019)). Section 57.071 lists the costs which are permitted, including:

- Any reasonable premiums or expenses paid on all bonds or other security instruments furnished by a party.
- Any expenses of the court reporter *per diem*, transcribing proceedings, and depositions, including opening statements and arguments by counsel.
- Any sales or use tax due on legal services provided to a party.

(§ 57.071(1), Fla. Stat.)

Under Section 57.071(2), a court may not award expert witness fees as costs unless the party who retained the expert follows certain procedural

General Contract Clauses: Litigation Costs and Expenses (FL)

requirements for providing opposing parties with the expert's report (§ 57.071(2), Fla. Stat.). Although it has never been amended or repealed by the Florida legislature, this subsection of the statute has been held unconstitutional by the Florida Supreme Court because it encroaches on the court's rulemaking authority (*Massey v. David*, 979 So. 2d 931, 939 (Fla. 2008)).

A court may award expert or witness fee expenses as taxable costs without any procedural requirements in the following instances:

- Deposed expert or skilled witnesses are allowed a witness fee, and this fee **may** be taxed as costs (Fla. R. Civ. P. 1.390(c)).
- Testifying expert or skilled witnesses are entitled to a witness fee that includes the costs of any exhibits they use, and those fees **must** be taxed as costs (§ 92.231(2), Fla. Stat.).

The Uniform Guidelines identify which costs courts may award. These guidelines are advisory only and are not intended to limit the amount of costs recoverable under a contractual fee agreement. (FL ST RCP Taxation of Costs.) However, while Florida courts retain broad discretion to tax costs, the Uniform Guidelines were created to help courts assess costs, and the guidelines generally set the benchmark (see, for example, *Midway Services*, 974 So. 2d at 430).

The party moving for a cost award has the burden to prove that requested costs were reasonably necessary either to defend or prosecute the case at the time the action precipitating the cost was taken (*Delmonico v. Crespo*, 127 So. 3d 576, 579 (Fla. 4th DCA 2012) (citing *In re Amendments to Unif. Guidelines for Taxation of Costs*, 915 So. 2d 915 So. 2d 612, 614, 616) (Fla. 2005)). The Uniform Guidelines divide costs into three categories:

- Litigation costs that a court **should** tax (recoverable).
- Litigation costs that a court **may** tax (recoverable).
- Litigation costs that a court **should not** tax (not recoverable).

(FL ST RCP Taxation of Costs.)

Under the Uniform Guidelines, litigation costs that a court **should** tax include:

- Costs incurred during depositions, including the cost of:
 - the original and one copy of the deposition and court reporter's per diem for all depositions;
 - the original and/or one copy of an electronic deposition and the fee of the technician for electronic depositions used at trial; and
 - telephone toll and electronic conferencing charges for telephone and electronic depositions.
- Costs incurred for copies of documents and exhibits, including copies:
 - of reasonably necessary documents filed with the court; and
 - of documents obtained in discovery (even if not used at trial).
- Reasonable fees for expert depositions and trial testimony and the costs of preparation of any court ordered expert report.
- Costs of witness subpoenas, witness fees, and service of witnesses for depositions and trial.
- Reasonable court reporter per diems for reporting at hearings, trial, and post-trial hearings.
- Reasonable charges for required special magistrates, guardians ad litem, and attorneys ad litem appointed by state rules and statutes.

(FL ST RCP Taxation of Costs I.)

Litigation costs that a court **may** tax include:

- A mediator's costs and fees.
- An expert's reasonable travel expenses when travelling more than 100 miles from the expert's place of business (not including the time for travel).
- Reasonable travel expenses for witnesses.
- Electronic discovery expenses, including the cost of:
 - producing copies of relevant electronic media in response to a discovery request; and
 - converting electronically stored information to a reasonably usable format in response to a discovery request that seeks production in that format.

(FL ST RCP Taxation of Costs II.)

General Contract Clauses: Litigation Costs and Expenses (FL)

Litigation costs that a court **should not** tax include:

- The cost of long distance telephone calls with expert and non-expert witnesses (including the administrative conferences to schedule depositions or request that a witness attend trial).
- Any expense for consulting but non-testifying experts.
- Costs incurred for any matter not reasonably calculated to lead to the discovery of admissible evidence.
- Travel time for attorneys and experts.
- Attorney travel expenses.
- The cost of privilege review of documents, including electronically stored information.

(FL ST RCP Taxation of Costs III.)

Other Costs and Expenses

As the Uniform Guidelines are advisory only, Florida courts have the authority to award costs and expenses

outside of these guidelines (see FL ST RCP Taxation of Costs). However, Florida case law indicates that there are certain types of costs outside the Uniform Guidelines that the courts refuse to allow, unless specifically awarded under a contract provision. These costs include:

- **Investigative expenses.** The Uniform Guidelines do not address investigation costs, such as surveillance or private process server expenses and Florida courts typically do not allow these expenses (see *Mitchell v. Osceola Farms Co.*, 574 So. 2d 1162, 1163 (Fla. 4th DCA 1991)).
- **The cost of computerized legal research.** Florida courts have treated the cost of computer assisted legal research as an item of attorney overhead costs, which are not recoverable (see, for example, *Wood*, 950 So. 2d at 535 (Fla. 4th DCA 2007) and *Ocean Club Cmty. Ass'n, Inc. v. Curtis*, 935 So. 2d 513, 517 (Fla. 3d DCA 2006)).

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