

**RISSMAN, BARRETT, HURT,
DONAHUE & McLAIN, P. A.
ATTORNEYS AT LAW**

STEVEN A. RISSMAN
ROBERT C. BARRETT
JENNINGS L. HURT III
ROBERT A. DONAHUE
JOHN E. McLAIN III
RICHARD S. WOMBLE
STACIE B. GREENE
THEODORE N. GOLDSTEIN
RAYMOND A. LOPEZ
VANCE R. DAWSON
RICHARD B. MANGAN JR.
HENRY W. JEWETT II
DANIEL M. POLLACK
ART C. YOUNG
NICOLE D. RUOCCO
DANIEL T. JAFFE
BEATRIZ E. JUSTIN
GREGORY GIANNUZZI
DAVID K. BEACH
F. DEAN HEWITT
EDWARD M. COPELAND IV
DAVID R. KUHN
G. WILLIAM LAZENBY IV
R. CLIFTON ACORD II
JILL M. SPEARS
JEFFREY J. KERLEY
KARISSA L. OWENS

OF COUNSEL
ROBERT J. JACK
JOHN P. DALY

EXECUTIVE DIRECTOR
W. SCOTT PETERSON

201 EAST PINE STREET
15TH FLOOR
P. O. BOX 4940
ORLANDO, FLORIDA 32802-4940
TELEPHONE (407) 839-0120
TELECOPIER (407) 841-9726
ORLANDO@RISSMAN.COM

TAMPA COMMONS
ONE NORTH DALE MABRY HIGHWAY
11TH FLOOR
TAMPA, FLORIDA 33609
TELEPHONE (813) 221-3114
TELECOPIER (813) 221-3033
TAMPA@RISSMAN.COM

709 SEBASTIAN BOULEVARD
SUITE B
SEBASTIAN, FLORIDA 32958
TELEPHONE (772) 228-3228
TELECOPIER (772) 228-3229
SEBASTIAN@RISSMAN.COM

WWW.RISSMAN.COM

PLEASE REPLY TO: TAMPA

AMY L. BAKER
AMANDA L. BRUS
STEVEN B. BURRES
DEREK J. BUSH
SEAN M. CROCKER
CHRISTOPHER E. DENNIS
SARAH E. EGAN
JAMES E. FAVERO III
SUSAN R. FULLER
PAUL B. FULMER
JANNINE C. GALVEZ
ELISE J. GEIBEL
CHRISTOPHER A. HANSON
VICTORIA S. LUNA
LAURA F. LYTLE
ERIC F. OCHOTORENA
JEREMY T. PALMA
JEFFREY M. PATNEAUDE
D. BLAKE REHBERG
KELLEY A. RICHARDS
RICHARD B. ROBBINS
JUAN A. RUIZ
GREG R. SCHMITZ
BRYAN R. SNYDER
LARRY D. SPENCER
MEREDITH M. STEPHENS
ELIZABETH M. STUART
F. PAUL TIPTON
NICOLETTE E. TSAMBIS
JASON R. URBANOWICZ
MEGHAN C. WHISENHUNT
CHRISTINE V. ZHAROVA

Florida Law Weekly
Week of June 14, 2013

COSTS/ATTORNEY'S FEES

Jacobson v. Southeast Personnel Leasing, Inc., 38 Fla. L. Weekly D1242 (Fla. 1st DCA June 5, 2013).

The claimant appealed an order from the Judge of Compensation Claims granting, in part, the Employer/Carrier's Motion to Tax Costs against him under Florida Statute Section 440.34(3) and denying the claimant's Motion to Approve a Retainer Agreement between him and Mr. Michael Winer. The retainer agreement related to Mr. Winer providing legal services to the claimant for the limited purpose of representing him in a defense to oppose the Employer/Carrier's Motion to Tax Costs.

The claimant's main challenge related to the constitutionality of Florida Statute Section 440.34 and 440.105(3)(c) insofar as the sections preclude the claimant from contracting for legal services to defense against the Employer/Carrier's Motion to Tax Costs.

The First DCA made a detailed analysis of the various constitutional arguments raised by the claimant's attorney and concluded that, in narrow circumstances, a claimant can hire an attorney in a workers compensation case without regard to the limitations of Florida Statute Section 440.34. Specifically, the First DCA concluded that the claimant's prohibition from retaining counsel to defense a Motion to Tax Costs against him, infringes upon the claimant's constitutional rights under the First Amendment of the Constitution. Accordingly, as applied specifically to this case, Florida Statute Section 440.34 and 440.105(3)(c) are unconstitutional. The JCC's order was reversed and remanded for a new hearing on the Motion to Tax Costs and Motion to Approve a Retainer. On remand, the JCC has the authority to determine whether the proposed fee is reasonable.

In Judge Wetherell's concurring opinion he agrees that Section 440.105(3)(c) and 440.34 are unconstitutional as applied to these facts because the statutes had the effect of precluding the claimant from contracting with an attorney to defend the action brought by the Employer/Carrier to tax its prevailing party costs against the claimant pursuant to Section 440.34(3). However, Judge Wetherell does not find these statutes to be unconstitutional in other circumstances.