

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

WAYNE M. OWEN, JR.,

Appellant,

v.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D13-0187

CITY OF KEY WEST and
EMPLOYERS MUTUAL, INC.,

Appellees.

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Opinion filed August 22, 2013.

An appeal from an order of the Judge of Compensation Claims.
Laura Roesch, Judge.

Date of Accident: August 18, 2010.

Bill McCabe, Longwood, and Ricardo Morales, Doral, for Appellant.

George A. Helm, III, of George A. Helm, III, P.A., Lake Mary, for Appellees.

PER CURIAM.

In this workers' compensation appeal, Claimant asserts the Judge of Compensation Claims (JCC) erred for six reasons. We find merit in only one—whether the JCC erred in concluding that section 440.34(1), Florida Statutes, prohibited her from approving a retainer agreement whereby Claimant would pay his attorney an hourly fee for defending him at a hearing on the Employer/Carrier's

motion to tax costs. See Jacobson v. Se. Pers. Leasing, Inc., 113 So. 3d 1042, 1045 (Fla. 1st DCA 2013) (“We conclude to the extent that sections 440.34 and 440.105(3)(c), Florida Statutes, prohibit Claimant from retaining counsel to defend a motion to tax costs against him, those statutes infringe upon Claimant’s constitutional rights under the First Amendment of the Constitution.”). Accordingly, we reverse the order of the JCC denying the motion for approval of the retainer agreement, and remand for entry of an order approving the agreement. On remand, the JCC has the authority to determine whether the proposed fee is reasonable.

REVERSED and REMANDED for further proceedings consistent with this opinion.

THOMAS, ROWE, and SWANSON, JJ., CONCUR.