

1-F-4 | ATTORNEY'S FEES

Reasonable attorney's fees will be assessed against a board or commission found to have violated the Sunshine Law. Section 286.011(4), F.S. See *Indian River County Hospital District v. Indian River Memorial Hospital, Inc.*, 766 So. 2d 233, 235 (Fla. 4th DCA 2000), concluding that the trial court erred by failing to assess attorney's fees against a nonprofit hospital corporation found to have violated the Sunshine Law. And see s. 286.011(5), F.S., authorizing the assessment of attorney fees if a board appeals an order finding the board in violation of the Sunshine Law and the order is affirmed.

While s. 286.011(4), F.S., authorizes an award of appellate fees if a person successfully appeals a trial court order denying access, the statute "does not supersede the appellate rules, nor does it authorize the trial court to make an initial award of appellate attorney's fees." *School Board of Alachua County v. Rhea*, 661 So. 2d 331 (Fla. 1st DCA 1995), review denied, 670 So. 2d 939, 332 (Fla. 1996). Thus, a person prevailing on appeal must file an appropriate motion in the appellate court in order to receive appellate attorney's fees. *Id.* If a board appeals an order finding the board in violation of the Sunshine Law, and the order is affirmed, "the court shall assess a reasonable attorney's fee for the appeal" against the board. Section 286.011(5), F.S.

Attorney's fees may be assessed against the individual members of the board except in those cases where the board sought, and took, the advice of its attorney. Section 286.011(4) and (5), F.S.

If a member of a board or commission charged with a violation of s. 286.011, F.S., is subsequently acquitted, the board or commission is authorized to reimburse that member for any portion of his or her reasonable attorney's fees. Section 286.011(7), F.S. Cf. AGO 86-35, stating that this subsection does not authorize the reimbursement of attorney's fees incurred during an investigation of alleged sunshine violations when no formal charges were filed, although common law principles may permit such reimbursement.

Reasonable attorney's fees may be assessed against the individual filing an action to enforce the provisions of s. 286.011, F.S., if the court finds that it was filed in bad faith or was frivolous. Section 286.011(4), F.S. The fact that a plaintiff may be unable to prove that a secret meeting took place, however, does not necessarily mean that attorney's fees will be assessed. See *Bland v. Jackson County*, 514 So. 2d 1115, 1116 (Fla. 1st DCA 1987),



concluding that although the plaintiff was unable to prove that a meeting in violation of the Sunshine Law took place, the evidence showed that the county commission unanimously voted on the issue in an open public meeting without identifying what they were voting on and without any discussion and under these circumstances an inference might reasonably be drawn that the commissioners had no need to discuss the action being taken because they had already discussed and decided the issue before the public meeting.

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