

# ATTORNEY'S FEES

## Basic Domestic Attorney's Fees

OCGA § 19-6-2(a) The grant of attorney's fees as a part of the expenses of litigation, made at any time during the pendency of the litigation, whether the action is for alimony, divorce and alimony, or contempt of court arising out of either an alimony case or a divorce and alimony case, including but not limited to contempt of court orders involving property division, child custody, and child visitation rights, shall be:

(1) Within the sound discretion of the court, except that the court *shall consider the financial circumstances of both parties* as a part of its determination of the amount of attorney's fees, if any, to be allowed against either party; and

(2) A final judgment as to the amount granted, whether the grant is in full or on account, which may be enforced by attachment for contempt of court or by writ of fieri facias, whether the parties subsequently reconcile or not.

(b) Nothing contained in this Code section shall be construed to mean that attorney's fees shall not be awarded at both the temporary hearing and the final hearing.

(c) An attorney may bring an action in his own name to enforce a grant of attorney's fees made to him pursuant to this Code section.

## Frivolous Litigation

OCGA § 9-15-14(b) The court may assess reasonable and necessary attorney's fees and expenses of litigation in any civil action in any court of record if, upon the motion of any party or the court itself, it finds that an attorney or party brought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was *interposed for delay or harassment*, or if it finds that an attorney or party *unnecessarily expanded the proceeding by other improper conduct*, including, but not limited to, abuses of discovery procedures available under Chapter 11 of this title, the "Georgia Civil Practice Act." As used in this Code section, "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

Must file motion – answer or counterclaim not sufficient. *Glass v. Glover*, 241 Ga.App. 838, 528 S.E.2d 262 (2000). Fees must be sought after final judgment and no later than 45 days thereafter. *Fairburn Banking Co. v. Gafford*, 263 Ga. 792, 439 S.E.2d 482 (1994); *Swafford v. Bradford*, 225 Ga.App. 486, 484 S.E.2d 300 (1997). See *Wrightson v. Wrightson*, 266 Ga. 493, 467 S.E.2d 578 (1996) (divorce – fees allowed where party expanded litigation by filing emergency motion for custody); *Taylor v. Taylor*, 282 Ga. 113, 115, 646 S.E.2d 238, 240 (2007) (divorce – fees allowed where party unnecessarily expanded litigation or acted to cause delay or harassment).

## Modification of Child Support

OCGA §19-6-15(k)(5) In proceedings for the *modification of a child support* award pursuant to the provisions of this Code section, the Court may award attorney's fees, costs, and expenses of litigation *to the prevailing party as the interests of justice may require*. Where a Custodial Parent prevails in an upward modification of child support based upon the Noncustodial Parent's

failure to be available and willing to exercise court ordered visitation, reasonable and necessary attorney's fees and expenses of litigation shall be awarded to the Custodial Parent.

### **Child Custody**

OCGA § 19-9-3(g) Except as provided in Code Section 19-6-2, and in addition to the attorney's fee provisions contained in Code Section 19-6-15, the judge may order reasonable attorney's fees and expenses of litigation, experts, and the child's guardian ad litem and other costs of *the child custody action and pretrial proceedings to be paid by the parties in proportions and at times determined by the judge*. Attorney's fees may be awarded at both the temporary hearing and the final hearing. A final judgment shall include the amount granted, whether the grant is in full or on account, which may be enforced by attachment for contempt of court or by writ of fieri facias, whether the parties subsequently reconcile or not. An attorney may bring an action in his or her own name to enforce a grant of attorney's fees made pursuant to this subsection.

### **Bad Faith, etc.**

OCGA § 13-6-11 The expenses of litigation generally shall not be allowed as a part of the damages; but where the plaintiff has specially pleaded and has made prayer therefor and where the defendant has acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense, the jury may allow them.

"OCGA § 13-6-11, governing expenses of litigation in contract actions, *does not authorize an award of attorney fees* in this case [contempt]. . . . The rights of the parties after a divorce is granted are based not on the settlement agreement, but on the judgment itself. Thus, whatever claim the parties have is founded on the final decree, and not on the underlying agreement." *Waits v. Waits*, 280 Ga. 734, 736, 634 S.E.2d 799, 800-801 (2006) (attorney's fees affirmed on § 19-6-2). But see *Sheppard v. Shepard*, 229 Ga.App. 494, 496, 494 S.E.2d 240, 243 (1997) (post divorce – suit for breach of separation agreement not made part of decree – court suggested that fees would be allowed under OCGA § 13-6-11, but there was no evidence of amount).

### **Other Attorney's Fees Statutes**

OCGA § 19-6-19 (d) – modification of alimony – to the prevailing party as the interests of justice may require

OCGA § 19-6-22 – defending modification of alimony – reasonable expenses of defense

OCGA § 19-9-92 – UCCJEA cases.

OCGA § 19-13-4 (a) (10) – family violence.

OCGA § 19-7-54 (g) – unsuccessful attempt to set aside paternity.

## CASE LAW SUMMARY

"Generally, an award of attorney fees is not available in Georgia unless authorized by statute or contract." *Moon v. Moon*, 277 Ga. 375, 379, 589 S.E.2d 76, 81 (2003). "[A] trial court may award attorney fees under OCGA §19-6-2 based on the knowledge of the financial circumstances of the parties that it has acquired during the [] proceedings and **based on its ability to place a value on legal services rendered by an attorney in a divorce action.**" (Emphasis supplied.) *Bulat v. Bulat*, 280 Ga. 310, 310-311, 626 S.E.2d 504, 505 (2006).

"The purpose of an award of attorney fees pursuant to § 19-6-2 is to ensure effective representation of both spouses **so that all issues can be fully and fairly resolved.**" (Punctuation omitted; emphasis supplied.) *Moon*, supra. "If the award [is] predicated on OCGA § 19-6-2, . . . direct testimony as to the value of legal services **is not required** in determining attorney fees in those cases involving alimony. As experienced and able lawyers, trial judges are quite capable of placing a value on the legal services rendered by an attorney in a divorce action. In addition, an award of attorney fees pursuant to § 19-6-2 is **not predicated upon a finding of misconduct of a party.**" (Citations and punctuation omitted; emphasis supplied.) *Moon*, supra, Fn 4. See also *Hilsman v. Hilsman*, 245 Ga. 555, 556, 266 S.E.2d 173, 175 (1980).

Other statutes require proof of the actual cost of the attorney's fees and the reasonableness thereof. Evidence of the following should be submitted: **legal services rendered, the number of hours worked, the hourly billing rate, the amount of the fees, and that the fees are reasonable.** "In order to recover attorney fees, a prevailing party must prove both their actual costs and their reasonableness." *In re Serpentfoot*, 285 Ga.App. 325, 329, 646 S.E.2d 267, 271 (2007) (attorney's fees for frivolous litigation pursuant to OCGA §9-15-14). See also *Wehner v. Parris*, 258 Ga. 772, 773, 574 S.E.2d 921, 922-923 (2002) (proof of attorney's fees for defending an increase in child support under OCGA § 9-15-14 and former OCGA §19-6-22).

"An attorney may testify as to the reasonableness of his own fee." *Campbell v. Beak*, 256 Ga.App. 493, 498, 568 S.E.2d 801, 806 (2002). "A party opposing a claim for attorney fees has a basic right to confront and challenge testimony as to the value and need for legal services". *Mitcham v. Blalock*, 214 Ga.App. 29, 32-33, 447 S.E.2d 83, 87 (1994).