**ATTORNEY FEES IN**

**DOMESTIC RELATIONS CASES**

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Judge Wade Padgett

Superior Court Judge

Augusta Judicial Circuit

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**MEMO FOR SUPERIOR COURT JUDGES-2018**

In general, attorney fees cannot be awarded as part of litigation unless authorized by statute or by contract.[[1]](#endnote-1) The fees awarded in domestic relations matters are authorized by statue and not by a prior agreement between the parties in the event of default of some contractual obligation (i.e. by note or security deed or similar contract).[[2]](#endnote-2) Therefore, if attorney fees are only authorized by statute, there must be statutory authority to impose such fees.

The Legislature has enacted numerous statutes that allow for the award of attorney fees in specific types of litigation. There are also statutes which allow for an award of fees for abusive litigation, bad faith and discovery abuses.[[3]](#endnote-3) However, this memo will focus on statutory authority to impose attorney fees in domestic relations cases. Unique factual situations may authorize imposition of fees under the authority of other statutes but this paper will address the imposition of attorney fees in domestic relations matters which are frequently heard by Superior Court judges around Georgia.

A review of appellate decisions suggests that Georgia appellate courts are frequently reversing the decisions of trial courts where the statutory authority to award fees has not been clearly identified. “When a party seeking attorney fees has failed to present an essential element of proof, but the trial court nevertheless awarded attorney fees, we have consistently reversed or vacated that portion of the judgment awarding the attorney fees and remanded the case to the trial court to hold an evidentiary hearing to allow the party, if possible, to cure the matter.”[[4]](#endnote-4) Where there are two or more code sections which would authorize an award of attorney fees but the trial court does not allocate the fee award between the various code sections, such an award is in error and will be reversed.[[5]](#endnote-5) Therefore, it is of vital importance that the trial court clearly identify the code section under which an award of attorney fees is authorized.

All awards of attorney fees must reflect that the award is reasonable. “[A]s a general rule, ‘evidence must be presented from which the trial court can determine what portion of the total amount of attorney and litigation expenses was attributable to the pursuit or defense of claims for which attorney fees are recoverable and what portion of the attorney’s time was spent on matters that are not recoverable.’”[[6]](#endnote-6) The trial court is prohibited from making an award of attorney fees based solely upon speculation or guesswork.[[7]](#endnote-7) Therefore, in every case in which there is a request for an award of attorney fees, the trial court is required to receive evidence as to the reasonable value of such a request which necessitates proof of the time expended by counsel, the rate charged and the reasonableness of that rate.

The most prevalent statutory authority for the award of attorney fees in domestic relations cases is found in O.C.G.A. §19-6-2.

**O.C.G.A. §19-6-2 FEE AWARDS**

**§ 19-6-2. Attorney fees; when granted; grant of final judgment; how enforced; action by attorney**   
  
(a) The grant of attorney 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 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 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 fees made to him pursuant to this Code section.[[8]](#endnote-8)

There is no requirement that the trial court find that there was wrongdoing by either party in connection with an award of fees under §19-6-2.[[9]](#endnote-9) §19-6-2 only requires that the trial court evaluate the respective financial conditions of the parties, not their wrongdoing.[[10]](#endnote-10)

§19-6-2 is very specific as to what types of domestic relations matters authorize the court to award attorney fees. The statute allows for an award of attorney fees when the action is for:

1) alimony,

2) divorce and alimony, or

3) 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....[[11]](#endnote-11)

Under OCGA § 19-6-2 (a), a trial court may award

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.

“OCGA § 19-6-2 (a) does not apply to a petition for modification of child custody ... or to contempt proceedings unless the allegations are for failure to comply with the original alimony or divorce decree.”[[12]](#endnote-12)

If the contempt is based upon an alleged violation of an order other than the *original* order that awarded alimony order or divorce decree, §19-6-2 fees are not allowed.[[13]](#endnote-13) Where the action seeks solely to modify an alimony or divorce decree, an award of attorney fees under §19-6-2 is in error. Actions to modify child support, child custody, or visitation which do not include any contempt allegations cannot include an award of attorney fees under §19-6-2.[[14]](#endnote-14) However, when the case includes issues relating to modification and contempt, an award under §19-6-2 is not error.[[15]](#endnote-15)

The Supreme Court has addressed the very specific question as to whether an award of alimony is a prerequisite to an award of attorney fees under §19-6-2 in a divorce action. Very clearly, the Court held that an actual award of alimony is NOT a prerequisite to an award of attorney fees.[[16]](#endnote-16) The mere pendency of an action involving issues of divorce and alimony is the initial threshold that must be crossed before an award of attorney fees is authorized under §19-6-2.[[17]](#endnote-17) In a contempt action, an award of fees under §19-6-2 is authorized when the matter is alleged contempt of the visitation provisions of a decree.[[18]](#endnote-18) Obviously, if there is no finding of contempt, an award of attorney fees under §19-6-2 is not authorized.[[19]](#endnote-19) If the initial action was one for modification and a party conducts themselves during the modification litigation in such a manner that would justify a finding of contempt, such behavior would **not** authorize an award of attorney fees under §19-6-2 because the initial action was for modification.[[20]](#endnote-20)

§19-6-2 does not authorize an award of attorney fees in an action for modification of a decree.[[21]](#endnote-21) When an action is filed that includes allegations of both modification and contempt, an award of fees under §19-6-2 is left to the sound discretion of the trial court, provided the case is not purely a modification action.[[22]](#endnote-22) However, once the initial threshold of applicability of §19-6-2 is met, the next question that the trial court must address is whether the respective financial condition of the parties warrant an award of attorney fees.

The amount of attorney fees to be awarded is left to the sound discretion of the trial court but the trial court “. . . shall consider the financial circumstances of both parties as a part of its determination of the amount of attorney fees, if any, to be allowed against either party . . . .” (Emphasis added). Failure to consider evidence of the relative financial conditions of the parties is reversible error.[[23]](#endnote-23) The purpose of attorney fees as authorized under O.C.G.A. §19-6-2 is to ensure that each party is capable of securing effective representation so that all issues raised in the case can be fully and effectively litigated.[[24]](#endnote-24) Wrongdoing by either spouse is not a factor to be considered in determining an award of attorney fees under §19-6-2.[[25]](#endnote-25) Some commentators have referred to §19-6-2 as the “equalizer statute.”

In determining the amount of the award, the trial court is not bound to hear any expert evidence concerning the reasonableness of a particular fee request.[[26]](#endnote-26) There seems to be a difference in the cases which have decided the issue of the type of proof required to support an award of attorney fees under §19-6-2.

There are cases which have held that §19-6-2 does not require any particular proof as to the amount or reasonableness of the fees requested.[[27]](#endnote-27) The trial court is given great latitude in setting an award under §19-6-2 but there must be some current evidence about the financial condition of the parties to support an award.[[28]](#endnote-28) The trial court is authorized but not required to hear expert evidence as to the value of legal services rendered or to be rendered and the trial court is authorized to award more or less than the sum put into evidence.[[29]](#endnote-29) “. . . [A]s 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.”[[30]](#endnote-30)

Conversely, more recent cases have held that there must be more than a “general proffer” to support the attorney fees incurred. “Billing records or other evidence how [the attorney] arrived at that amount” is necessary to support an award.[[31]](#endnote-31) It would seem that the better practice would be for the lawyer requesting an award of attorney fees to offer some evidence in support of the fees incurred.

A request for attorney fees under §19-6-2 does not authorize reimbursement for prior divorce litigation between the parties, regardless of the reason that the prior litigation was terminated.[[32]](#endnote-32) It should be noted that the parties in *Padilla* argued that the case of *Moon v. Moon* stood for the proposition that fees from other litigation could be awarded under §19-6-2. However, the *Padilla* court specifically held that *Moon* stood only for the proposition that an award of fees must also recite the statutory authority relied upon in making an award and that the *Moon* case was remanded to the trial court for the purpose of setting forth the authority relied upon in making an award.[[33]](#endnote-33)

**O.C.G.A. §9-15-14 FEE AWARDS**

As addressed above, an award of attorney fees under §19-6-2 requires no specific evidence of wrongdoing by either party. An award under §19-6-2 is based primarily on the respective financial condition of the parties. Alternatively, O.C.G.A. § 9-15-14 authorizes a court to award attorney fees under two different but similar situations. Attorney fees are authorized if the trial court finds that a party asserted a claim, defense or other position with “. . . a complete absence of any justiciable issue of law or fact . . .” and it could not reasonably be believed that a court would accept such claim or position.[[34]](#endnote-34) The statute also provides that an award of fees is authorized if the trial court finds that a party “brought or defended an action, or any part thereof, that lacked substantial justification or . . . was interposed for delay or harassment, or if it finds that . . . [a] party unnecessarily expanded the proceeding by other improper conduct.”[[35]](#endnote-35) The difference between the fees authorized under §9-15-14(a) and those authorized under §9-15-14(b) is that section (a) authorizes an award if no reasonable person would believe that a Court would accept a claim or position, whereas section (b) authorizes an award if an action is brought or defended without substantial justification or for other improper purposes or the litigation is improperly expanded.[[36]](#endnote-36)

The trial court may award attorney fees under §9-15-14 upon the motion of the parties or upon the trial court’s own motion, provided the trial court finds the predicate deficiencies in the action or any part thereof. The statute defines the term “lacked substantial justification” as used in §9-15-14(b) as meaning the action “. . . was substantially frivolous, substantially groundless, or substantially vexatious.”[[37]](#endnote-37) Included within the definition of actions which may be found to be lacking substantial justification are abuses of the discovery allowed by the Civil Practice Act.

An award under §9-15-14 must be based on conduct that occurred during the course of the litigation and not for conduct that occurred before the litigation began.[[38]](#endnote-38) Where a parent fails to submit to a deposition and also fails to reveal that she and the child of the parties had moved to another state which, if known, would have significantly impacted decisions relating to child custody, an award of fees under §9-15-14 would be authorized.[[39]](#endnote-39)

“. . . An order awarding attorney fees under O.C.G.A. § 9-15-14 must include findings of conduct that authorize the award.”[[40]](#endnote-40) Attorney fees under §9-15-14 shall be assessed against either the party or attorney who asserted the claim without reasonable justification. The relative equities between the parties’ financial situation are irrelevant to an analysis under §9-15-14.[[41]](#endnote-41)

A request for attorney fees under §9-15-14 must be made no later than 45 days after the final disposition of the case and shall be decided by the Court without a jury.[[42]](#endnote-42) It is a defense to the claim for attorney fees under §9-15-14 that the party or attorney was acting in good faith in an attempt to establish a new theory of law. It is also important to note that if the alleged offending party was even partially successful in its action, such success would be irreconcilably at odds with a finding that the action or motion was without merit.[[43]](#endnote-43)

A request for an award of attorney fees under §9-15-14 must be made by way of a motion.[[44]](#endnote-44) Requesting an award of fees under §9-15-14 by way of a counterclaim or within the responsive pleadings is improper and cannot sustain an award of attorney fees.[[45]](#endnote-45) However, the “motion” anticipated under §9-15-14 can be made orally under certain circumstances.[[46]](#endnote-46)

An evidentiary hearing is required before the Court can award attorney fees under §9-15-14.[[47]](#endnote-47) The trial court does not have to grant the fees requested under §9-15-14, but it is error to refuse to hear the motion.[[48]](#endnote-48) The party against whom an award is sought under §9-15-14 is entitled to notice and that notice should include a reference to the code section or otherwise communicate that the trial court will address the issue of an award of attorney fees at such hearing.[[49]](#endnote-49) The party against whom an award under §9-15-14 is sought is authorized to challenge the value and need for legal services.[[50]](#endnote-50) Therefore, an award under §9-15-14 requires evidence of the reasonableness of fees incurred, subject to cross examination by the party against whom fees are sought.[[51]](#endnote-51) At such hearing, the party requesting fees bears the burden of proof of showing how the offending party’s conduct increased the amount of attorney fees incurred **and** how much of the fee charged was attributable to improper conduct by the alleged offending party.[[52]](#endnote-52) The award, if any, must be limited to “. . . fees incurred because of the sanctionable conduct.”[[53]](#endnote-53) Fees cannot be awarded under §9-15-14 for fees incurred in connection with an appeal.[[54]](#endnote-54) The trial court’s order must clearly delineate how the award was reached.[[55]](#endnote-55)

The Supreme Court decided a case in which it found that the facts and procedures employed by the trial court supported an award of attorney fees:

Finally, Husband complains of the trial court's award of attorney fees to Wife, contending there was insufficient evidence to support the award. The trial court found Husband had conducted himself during the litigation in a manner intended to prevent completion of the case, to harass and annoy Wife, and to cause her attorney fees to increase, citing as examples Husband's conduct regarding removal of his property from the marital home, his filing of a jury demand and subsequent withdrawal of that demand on the date of the hearing, and his agreement during a hearing regarding division of the equity in the marital home to buy the home, followed by his subsequent failure to keep that agreement. Under OCGA § 9-15-14 (b), a trial court can award attorney fees against a party who has unnecessarily expanded the litigation or acted to cause delay or harassment. The evidence of Husband's conduct during the litigation met that standard. Wife's counsel's statement in her place of the amount of fees incurred by Wife and the reasonableness of those fees was sufficient to support the trial court's award (*Hibbard v. McMillan*, 284 Ga. App. 753, 757, 645 S.E.2d 356 (2007); *Campbell v. Beak*, 256 Ga. App. 493, 568 S.E.2d 801 (2002)) and Husband's failure to question Wife's counsel or seek more information waived his complaint regarding those issues. *Hadlock v. Anderson,* 246 Ga. App. 291, 540 S.E.2d 282 (2000).[[56]](#endnote-56)

In a jury trial which includes a claim for attorney fees under §9-15-14, it is error for a party to testify about attorney fees before the jury because the issue of attorney fees is one for the court to consider, and not the trier of fact.[[57]](#endnote-57) However, there are circumstances where such testimony may be considered harmless error.[[58]](#endnote-58)

**ATTORNEY FEE AWARDS UNDER §13-6-11**

O.C.G.A. §13-6-11 is the statute commonly referred to as the “stubbornly litigious” code section. Generally, §13-6-11 is only available in contract actions and, occasionally, in tort actions. There have been cases where the parties attempted to seek attorney fees when the underlying contract was the parties settlement agreement.[[59]](#endnote-59) However, that issue was specifically addressed in another case wherein the Court of Appeals held that §13-6-11 is not available in disputes stemming from a settlement agreement that is incorporated into a final decree.[[60]](#endnote-60) “The parties' agreement was incorporated into the Amended Final Judgment and Decree, and therefore, the actions were required to be resolved under the amended decree and not the underlying agreement. 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.”[[61]](#endnote-61)

While the appellate cases have repeatedly held that §13-6-11 is not generally applicable to domestic relations actions, there are occasions in which a slight change in the underlying facts of the case might lead to a different result. Where the settlement agreement of the parties is incorporated into a final decree and, after the divorce is final, the parties make alternative arrangements to pay an obligation that was decided within the decree, §13-6-11 may have application.[[62]](#endnote-62)  “[T]he elements of bad faith which will authorize expenses of litigation in an *ex contractu* action are those acts relative to the conduct of entering into a contract or to the transaction and dealings out of which the cause of action arose [cits.], but do not have reference to the motive with which the defendant defends an action after a cause of action has occurred. [Cit.] . . . We construe ‘transactions and dealings out of which the cause of action arose’ to mean not only the negotiation and formulation of the contract, but also included is the performance of the contractual provisions.”[[63]](#endnote-63) Therefore, where a party testifies that he did not make payments due under a settlement agreement because “she didn’t deserve it,” it is possible for such conduct to constitute bad faith as defined under §13-6-11.[[64]](#endnote-64) It is important to stress that the parties were not seeking a contempt citation for failure to abide by the terms of the decree. Instead, the parties were litigating a breach of contract action stemming from a contract that was made after the decree. The obligation had been decided in the decree and the parties entered into a contract to establish a payment schedule for obligations that were established within the decree.

**ATTORNEY FEES IN MODIFICATION OF ALIMONY ACTIONS**

In actions for modification of alimony for a spouse, the trial court is authorized to award attorney fees under the authority of O.C.G.A. §19-6-19(d):

In proceedings for the modification of alimony for the support of a spouse pursuant to the provisions of this Code section, the court may award attorneys' fees, costs, and expenses of litigation to the prevailing party as the interests of justice may require.[[65]](#endnote-65)

§19-6-19 must be read in conjunction with O.C.G.A. §19-6-22 which provides when a petition is filed pursuant to §19-6-19, the court may require the obligated party to pay the fees of the non-obligated party in defense of such a petition.[[66]](#endnote-66) Importantly, §19-6-22 does not require a finding of which party prevailed in the modification action. §19-6-22 authorizes, but does not require, an award of attorney fees to the non-obligated party defending the modification action. In short, §19-6-19(d) requires a finding of which party prevailed in the action whereas §19-6-22 authorizes an award to the non-obligated party who is defending a modification action, regardless of which party prevails. Neither statute mandates an award of attorney fees.

It is important to note that §19-6-19 only authorizes an award of attorney fees in cases of modification of alimony. The statute does not apply to a child custody modification action.[[67]](#endnote-67) Prior to the modification of the statutes effective July 1, 2006, both §19-6-19 and §19-6-22 applied to modification actions relating to both child support and alimony. However, the change of the statutes removed modifications of child support from the types of cases where attorney fees are authorized under §19-6-19 and §19-6-22.

Under §19-6-19(d), the trier of fact is required to determine which party prevailed in the modification action. Even if the petitioner is only partially successful in his/her request and does not receive the full relief requested, an award of attorney fees to the petitioner would be authorized, but not required, as the petitioner would be the prevailing party.[[68]](#endnote-68) Interestingly, a divided Supreme Court of Georgia decided that an award under §19-6-19(d) would be authorized even where the parties settled their case outside of court, which then required the trial court to decide which party prevailed within the terms of the settlement agreement.[[69]](#endnote-69)

Under §19-6-19(b), if a former spouse obligated to pay alimony seeks to terminate his/her alimony obligation due to alleged cohabitation by the former spouse receiving alimony, the issue of an award of attorney fees is also presented. If the payor spouse is unsuccessful in proving cohabitation, the payor spouse is liable for the reasonable attorney fees of the former spouse in defending the action.

The standard of proof under §19-6-19(d) authorizes the award of attorney fees to the prevailing party “. . . as the interests of justice may require . . . .” There is no provision within the statute that the trial court is required to consider any issues other than which party prevailed and whether the interests of justice require an award of attorney fees. The language of the current version of §19-6-19(d) would not require a comparative analysis of the financial condition of the parties, although cases interpreting older versions of the statute suggested that an analysis of the financial condition of the parties was required.[[70]](#endnote-70)

The burden of proof under §19-6-22 is even more direct. If a petition to modify alimony is filed by the party obligated to pay alimony, the trial court may require the petitioner to pay “reasonable expenses of litigation” incurred by the non-obligated former spouse to defend the case. The language of the statute suggests that there must be a finding by the trial court as to the reasonableness of the attorney fees and other expenses of litigation incurred. Again, this statute was modified, effective January 1, 2007, to remove petitions for modification of child support from the types of cases addressed by §19-6-22.

**ATTORNEY FEES IN CONTEMPT ACTIONS**

Even where a party is found to be in contempt of a court’s order, attorney fees may not be awarded unless there is statutory authority which affords the trial court the authority to award fees. “No authority exists to award attorney fees merely because the action is for contempt.”[[71]](#endnote-71) “[S]uperior courts do not have authority to require the payment of attorney fees as punishment for contempt.”[[72]](#endnote-72) The only statutory authority for an award of attorney fees in a contempt action would be §19-6-2 and, if there were litigation abuses, §9-15-14. There is no other independent statutory authority to award attorney fees in a contempt action.

Where an order of incarceration is entered with an established purge payment which would allow the offending party to be released from confinement, payment of an award of attorney fees for the new contempt action cannot be a prerequisite to being released from confinement. “A trial court does not have the authority to make payment of a new attorney fees award a condition for purging contempt of a previous order.”[[73]](#endnote-73)

**ATTORNEY FEES IN CSRU/PUBLIC ASSISTANCE ACTIONS**

O.C.G.A. §19-11-7(d) authorizes an award of reasonable attorney fees to the prevailing party when child support is sought from a parent of a child who receives public assistance. The statute requires that there be a finding of which party prevailed and the trial court must also determine the reasonableness of the attorney fees. This statute is applicable only to actions where the Department of Human Services, Division of Child Support Services is seeking to create or enforce a child support order and where the child is receiving public assistance. There are very few appellate cases which address this particular statute.

The practical realities of this statute could be significant. Because the statute allows for an award of attorney fees to the “prevailing party,” it is entirely possible that the Department could be required to pay the attorney fees of a successful obligated party.

**ATTORNEY FEES IN PRIVATE MODIFICATION OF CHILD SUPPORT CASES**

O.C.G.A. §19-6-15 is the primary child support statute in Georgia and sets forth the manner and amount of presumptive child support and grounds for deviation from the presumptive amount. The statute also provides another statutory scheme for the award of attorney fees. §19-6-15(k)(5) provides that in proceedings where a modification of child support is addressed,[[74]](#endnote-74) the trial court may award attorney fees, costs and expenses of litigation to the prevailing party “. . . as the interests of justice may require . . . .” This language is virtually identical to the language of §19-6-19(d) and it follows that the line of cases where the issue of “prevailing party” and “interests of justice” were addressed would apply to this statutory interpretation.[[75]](#endnote-75) The trial court must determine which party prevailed in a §19-6-15(k) analysis. Even where the petitioner did not recover all that she asked for and the respondent received some concessions as to the modification request, there cannot be two prevailing parties. The trial court has the discretion to award fees or refuse to do so but the trial court cannot find that both parties prevailed.[[76]](#endnote-76)

An award under §19-6-15(k)(5) can be made as part of a temporary order. Even though the statute requires a finding as to which party was the prevailing party, it is possible for the trial court to determine which party prevailed at the temporary hearing and make an appropriate award.[[77]](#endnote-77)

An award under §19-6-15 requires proof of the actual costs incurred and the reasonableness of those costs.[[78]](#endnote-78) §19-6-15 also requires the trial court to award attorney fees in one specific situation. “. . . 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 fees and expenses of litigation **shall** be awarded to the custodial parent.” (emphasis supplied)[[79]](#endnote-79) This is one of very few provisions within the domestic relations arena where a trial judge is required to award attorney fees if a particular factual scenario is proven.

Where a case involves both the modification of child support and the modification of child custody, it is appropriate for an award of attorney fees to be made under §19-9-3(g), §19-6-15(k)(5) or both.[[80]](#endnote-80) Under §19-9-3(g), where a modification of child custody is at issue, an award of reasonable attorney fees may be made “to be paid by the parties in proportions and at times determined by the judge.” In contrast, an award in a modification of child support case allows for an award of reasonable attorney fees “as the interests of justice may require” under §19-6-15(k)(5).[[81]](#endnote-81) Both statutes require a finding of reasonableness of the attorney fees being requested.

**ATTORNEY FEES IN CHILD CUSTODY CASES**

In 2007, Georgia reconfigured and amended the child custody statute, codified at O.C.G.A. §19-9-3 and provided that the amendments would apply to all child custody proceedings and modifications filed on or after January 1, 2008. Prior to the enactment of the statute, as amended, Georgia law did not provide separate statutory authority for the award of attorney fees in child custody matters. As recently as 2001, the Georgia Court of Appeals held, “. . . [a]ttorney fees are not awardable in an action seeking change of custody by the noncustodial parent, even where child support is also sought . . . .”[[82]](#endnote-82) However, the enactment of §19-9-3 changed the prior law.

§19-9-3(g) provides:

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 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 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 fees made pursuant to this subsection.

It is interesting to note that the statutory authority to award attorney fees in child custody cases is unique in that it does not require the trial court to determine a prevailing party, does not require an analysis of the relative financial conditions of the parties and there is no reference to “the interests of justice.” Even though the statute does not specifically set forth a requirement that the trial court find that the attorney fees being requested are reasonable, the appellate decisions have reiterated that any award under §19-9-3(g) requires a finding of reasonableness.[[83]](#endnote-83) No statute allows for an award of attorney fees “based solely upon speculation or guesswork.”[[84]](#endnote-84)

Analysis of §19-9-3(g) requires a revisit to other statutes addressed within this paper. The statute begins, “[e]xcept as provided in Code Section 19-6-2 . . . .” §19-6-2 is the general attorney fees statute in actions involving alimony, divorce and alimony, or contempt actions arising from an alimony action or divorce and alimony action. Therefore, if an award of attorney fees is authorized under §19-6-2, the provisions of §19-9-3(g) would not be applicable. §19-9-3(g) was intended for cases in which §19-6-2 is inapplicable.

The next phrase of §19-9-3(g) provides that the authority to award attorney fees under §19-9-3(g) is in addition to the provisions of §19-6-15. §19-6-15 is the child support statute which authorizes an award of attorney fees in cases involving modification of child support. Therefore, if a particular case involves issues of modification of child support and child custody, the provisions of both §19-9-3(g) and §19-6-15 would be applicable and available to the trial judge. However, §19-9-3(g) and §19-6-15 are different in the factual findings required under each respective statute before awarding attorney fees.

§19-9-3(g) provides that the trial court may order reasonable attorney 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. Importantly, there is no requirement that the trial judge consider the respective financial conditions of the parties as required under §19-6-2. There is also no prevailing party analysis required of the trial judge. The trial court has seemingly absolute discretion to apportion the authorized costs and fees without any further factual finding. However, there is a “reasonableness” component which would suggest that the trial judge must make a finding that the fees charged are reasonable, demanding that there be evidence as part of the record which would support such a finding.[[85]](#endnote-85) It is appropriate for the attorney requesting the award to testify to her hourly rate and amount of time expended. It is permissible for the trial judge to review billing records in camera but cross examination must be allowed.[[86]](#endnote-86) Both §19-9-3 and §19-6-15 give the trial court broad discretion in the award of attorney fees but that discretion will not support an arbitrary award.[[87]](#endnote-87)

§19-9-3(g) goes on to provide that an award of attorney fees and other authorized costs may be awarded at both the temporary and final hearing. The final judgment in the matter shall include the amount granted, the manner of payment and provides that the award may be collected via contempt and *fieri facias*, even if the parties later reconcile. The statute also authorizes an attorney to enforce an award of attorney fees in his or her own name. The fact that the attorney withdrew from representation prior to the conclusion of the litigation does not bar a request for fees of the attorney who withdrew.[[88]](#endnote-88) The only potential impediment to such a request is that a motion for the award of attorney fees under §19-9-3 must be made before the final judgment is entered as opposed to the procedure allowed under §9-15-14 which would allow for a post-judgement to be made.

Where a case involves both the modification of child support and the modification of child custody, it is appropriate for an award of attorney fees to be made under §19-9-3(g), §19-6-15(k)(5) or both.[[89]](#endnote-89) Under §19-9-3(g), where a modification of child custody is at issue, an award of reasonable attorney fees may be made “to be paid by the parties in proportions and at times determined by the judge.” In contrast, an award in a modification of child support case allows for an award of reasonable attorney fees “as the interests of justice may require” under §19-6-15(k)(5).[[90]](#endnote-90) Both statutes require a finding of reasonableness of the attorney fees being requested.

**ATTORNEY FEES IN UCCJEA CASES**

O.C.G.A. §19-9-40 *et. seq*. is commonly referred to as the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). The UCCJEA allows for the award of attorney fees in several situations.

Under the UCCJEA, the trial court is required to award to the prevailing party (including any state), all necessary and reasonable attorney fees, travel costs, costs, communication expenses, investigative fees, witness expenses, and child care costs incurred in the matter unless the trial court finds that the assessment of such costs would be “clearly inappropriate.” However, such award may not be made against any state unless authorized by some other provision of Georgia law.[[91]](#endnote-91) In making such an award, the trial court must establish which party prevailed and also make a finding that the fees are necessary and reasonable. The only situation where such an award is not required is if the non-prevailing party can establish such an award would be clearly inappropriate.[[92]](#endnote-92)

Where a case arises under the UCCJEA and it is decided that the court does not have jurisdiction under the statute, §19-9-92 does not allow for an award of attorney fees. The only situation where an award under §19-9-92 would be appropriate is where the action is one to enforce an existing custody order and the trial court finds that one party prevailed in the action.[[93]](#endnote-93) If one party engaged in “unjustifiable conduct” in an attempt to invoke Georgia to assume jurisdiction under the UCCJEA, §19-9-68 requires an award of attorney fees if it is determined that Georgia did not, in fact, have subject matter jurisdiction over the case.[[94]](#endnote-94) If a party is in violation of the visitation provisions of an existing child custody determination, the trial court is required to make an award of attorney fees and costs in accordance with the provisions of §19-9-92.[[95]](#endnote-95)

Under the various provisions of the UCCJEA which allow or mandate an award of attorney fees, the trial court is afforded the authority to decline to award attorney fees if such an award would be “clearly inappropriate.” There is no statutory definition of “clearly inappropriate” in the UCCJEA.[[96]](#endnote-96)

**ATTORNEY FEES IN FAMILY VIOLENCE CASES**

O.C.G.A. §19-13-4 authorizes the trial court to “...award costs and attorney fees to either party.”[[97]](#endnote-97) There is no statutory guidance as to the evidence that must be presented to support such an award but the award of attorney fees must further the goal of bringing about cessation of acts of family violence.[[98]](#endnote-98) Specifically, there is no reference within the statute that fees may be awarded to a prevailing party or that the financial conditions of the parties should be considered. However, in the only appellate case where an award of attorney fees stemming from §19-13-4 has been addressed, the Georgia Court of Appeals held that consideration of the financial conditions of the parties is inappropriate.[[99]](#endnote-99)

In *Suarez*, the trial court granted grandparents’ petition for a protective order against their son-in-law but granted the son-in-law over $10,000 in attorney fees. In dicta, the Court of Appeals noted that the purpose of the Family Violence Act was to provide for the cessation of acts of family violence and the Court of Appeals questioned how an award of attorney fees to the party who was found to have committed acts of family violence would serve to cease acts of family violence. However, the trial court had based the award in part upon the disparity in the relative income of the parties and the award was overturned because the trial court had incorrectly applied the standards of §19-6-2 to an analysis under §19-13-4.[[100]](#endnote-100) Therefore, it is clearly error for the trial court to consider the disparity of income between the parties in an award of fees under §19-13-3.

**ATTORNEY FEES UNDER §19-7-54(h)**

When a party seeks to set aside a prior determination of paternity and is unsuccessful, the trial court is required to “. . . assess the costs of the action and attorney fees against the movant.”[[101]](#endnote-101) This Code section became effective on May 9, 2002 and the statute is silent on the standard of proof required to authorize an award of attorney fees. There is no indication that an award of fees under §19-7-54 should include an analysis of the relative financial conditions of the parties and there is no provision that would allow an award of attorney fees to the movant if that person was successful in their petition. There are no appellate decisions which address an award of attorney fees under §19-7-54.

**INTEREST ON MONETARY AWARDS RENDERED PURSUANT TO TITLE 19**

Although not directly related to attorney fees, there are occasions in which a request is made for the imposition of interest on awards in domestic relations cases. O.C.G.A. §7-4-12.1 allows all monetary awards, court orders, decrees or judgments rendered pursuant to Title 19 to accrue interest at the rate of 7 percent per annum. The interest commences 30 days from the day the award or payment is due.[[102]](#endnote-102) The court has discretion to modify the date on which the interest accrues and has discretion in applying or waiving past due interest. When determining whether to apply waive or reduce the amount of interest owed, there are several factors the court shall consider:

1. Whether good cause existed for the nonpayment of the child support;
2. Whether payment of the interest would result in substantial and unreasonable hardship for the parent owing the interest;
3. Whether applying, waiving, or reducing the interest would enhance or detract from the parent’s current ability to pay child support, including the consideration of the regularity of payments made for current child support of those dependents for whom support is due; and
4. Whether the waiver or reduction of interest would result in substantial and unreasonable hardship to the parent to whom interest is owed.

**MAKING THE AWARD**

The Georgia appellate cases are clear that an award of attorney fees requires a finding of the statutory authority relied upon by the trial court in making the award.[[103]](#endnote-103) Regardless of the evidence presented, if the trial court fails to cite the statutory authority upon which it relied in making the award, “...the issue of attorney fees must be remanded for an explanation of the statutory basis for the award and any findings necessary to support it. . . .”[[104]](#endnote-104) There is no requirement that the trial court search for the proof necessary within the evidence or search Georgia law for an applicable code section. The statutory authority which is relied upon by the parties must be identified by the parties and the trial court is not authorized to make an award that is based upon authority not identified by the moving party.[[105]](#endnote-105)

If the award is based upon §9-15-14, the order must specifically identify the conduct upon which the award was made, that an award of fees were warranted and reasonable and express findings of fact and conclusions of law must be made within the written order. Additionally, the order must specifically set forth whether the order is made under the authority of §9-15-14(a) or §9-15-14(b).[[106]](#endnote-106) The order must set forth that the award is based upon legal work performed in furtherance of inappropriate conduct as defined under §9-15-14.[[107]](#endnote-107) Failure to do so will require a remand for further proceedings, regardless of the evidence presented at the hearing.[[108]](#endnote-108) Also, the parties are entitled to reasonable notice that the trial court will consider an award under §9-15-14 and a hearing on the matter. Failure to conduct such a hearing under §9-15-14 is reversible error unless the hearing is waived.[[109]](#endnote-109)

During the hearing, it is appropriate for an attorney to state in his/her place the value of fees charged in the case and the reasonableness of such fees. Cross examination must be allowed. If the party opposing the award of such fees fails to question the attorney or request for evidence concerning such fees, that party has waived his/her complaint involving such issues.[[110]](#endnote-110) However, it is also appropriate for an expert witness (i.e. another attorney) to testify, subject to cross examination, as to the reasonableness of the fee. As with any expert witness, there must be sufficient evidence to establish that the witness is an expert by virtue of training or experience. Thereafter, the expert must establish that the witness is familiar with similar types of cases, the regular and usual hourly rate for similar cases within the jurisdiction and venue, the number of hours claimed in the instant case and whether, in the opinion of the expert, such hours and the rate claimed are appropriate. The opposing party is entitled a right of cross examination.[[111]](#endnote-111)

USCR 24.7 provides that a divorce cannot be granted unless all contestable issues in the case have been finally resolved. This provision does not prohibit the trial court from granting the divorce and reserving the issue of attorney fees, provided the issue was raised prior to the entry of final judgment.[[112]](#endnote-112) As mentioned above, a request for an award under §9-15-14 can be made at any time during the litigation, but no later than 45 days after entry of the final judgment. USCR 24.7 does not alter the time limitations set forth in §9-15-14.

“When there is more than one statutory basis for the attorney fee award and neither the statutory basis for the award nor the findings necessary to support an award is stated in the order and a review of the record does not reveal the basis of the award, the case is remanded for an explanation of the statutory basis for the award and the entry of any findings necessary to support it.”[[113]](#endnote-113)

**CONCLUSION AND SUMMARY**

Georgia law provides multiple statutory schemes under which attorney fees may be awarded. However, the statutes are quite inconsistent in the manner of proof and procedural requirements in addressing attorney fees.

The one thing that is consistent between all the statutes is that the trial court must identify the statutory authority under which an award was made. If that statute requires particular proof, the order must specifically set forth findings of fact and conclusions of law which support the award. Although some older appellate decisions indicate a willingness of the appellate court to insert their own opinion as to what statute was relied upon in granting attorney fees, more recent opinions frequently end with the case being remanded for further proceedings or simply a reversal of the decision without affording the parties or the trial court an opportunity to perfect the record.

The attached exhibit is the author’s attempt to create a cross reference on the issue of statutes which authorize an award of attorney fees in domestic relations cases. Reference should be made to the relevant section of the paper for more detailed analysis of each statute referenced in the attachment.

**CROSS REFERENCE–ATTORNEY FEES IN DOMESTIC CASES**

|  |  |
| --- | --- |
| **DIVORCE** |  |
| §19-6-2 | Must consider financial situation of parties—fault not at issue—prevailing party not relevant—“Equalizer Statute”—reasonableness finding required |
| § 9-15-14 | Baseless claim/defense or lacked substantial justification/expanded litigation—requires notice and hearing—must be requested via motion (during litigation or w/in 45 days of time case becomes final in this court)—or by court’s own motion—conduct must be proved and clearly recited in order—identify subsection (a) or (b)—subsection (a) is mandatory, (b) is discretionary—not to be decided by trier of fact (judge decision)—must differentiate between improper conduct and reasonable conduct—reasonableness of requested fees must be shown |
| § 19-9-3(g) | Only in modification or establishment of child custody cases—prevailing party not relevant—financial conditions not relevant—reasonableness finding required |
| **CONTEMPT** |  |
| § 19-6-2 | ONLY IF CONTEMPT IS BASED ON ORIGINAL DECREE. Must consider financial situation of parties—fault not at issue—prevailing party not relevant—“Equalizer Statute”—reasonableness finding required. |
| § 9-15-14 | Baseless claim/defense or lacked substantial justification/expanded litigation—requires notice and hearing—must be requested via motion (during litigation or w/in 45 days of time case becomes final in this court)—or by court’s own motion—conduct must be proved and clearly recited in order—identify subsection (a) or (b)—subsection (a) is mandatory, (b) is discretionary—not to be decided by trier of fact (judge decision)—must differentiate between improper conduct and reasonable conduct—reasonableness of requested fees must be shown |
| **LEGITIMATION** |  |
| § 19-9-3(g) | Only in modification or establishment of child custody cases—prevailing party not relevant—financial conditions not relevant—reasonableness finding required |

|  |  |
| --- | --- |
| **MODIFICATION** |  |
| § 9-15-14 | Baseless claim/defense or lacked substantial justification/expanded litigation—requires notice and hearing—must be requested via motion (during litigation or w/in 45 days of time case becomes final in this court)—or by court’s own motion—conduct must be proved and clearly recited in order—identify subsection (a) or (b)—subsection (a) is mandatory, (b) is discretionary—not to be decided by trier of fact (judge decision)—must differentiate between improper conduct and reasonable conduct—reasonableness of requested fees must be shown |
| § 19-6-19(b) | Only in modification of spousal alimony cases—only available to alimony recipient if request to modify alimony due to live in lover claim fails—reasonableness finding required |
| § 19-6-19(d) | Only in modification of spousal alimony cases—prevailing party **not** relevant—only available to alimony recipient—“Interests of Justice”—reasonableness finding required |
| § 19-6-22 | Only in modification of spousal alimony cases—can require either party to pay attorney fees of other party—reasonableness required |
| § 19-6-15(k)(5) | Only in modification of child support cases—only available to prevailing party—“Interests of Justice”—award required if court finds non-custodial parent refuses to exercise visitation and upward modification awarded as result—reasonableness finding required |
| §19-9-3(g) | Only in modification or establishment of child custody cases—prevailing party not relevant—financial conditions not relevant—reasonableness finding required |
| § 19-9-68(c) | Only available in UCCJEA cases—Georgia jurisdiction only because of unjustifiable conduct of party—also available to prevailing party—awarded “unless clearly inappropriate”—reasonableness finding required |
| § 19-9-90/19-9-92 | Only available in UCCJEA cases—petitioner entitled to immediate physical custody—reasonableness finding required |

|  |  |
| --- | --- |
| **ALIMONY** |  |
| § 19-6-2 | (establishment of alimony) Must consider financial situation of parties—fault not at issue—prevailing party not relevant—“Equalizer Statute”—reasonableness finding required |
| § 19-6-19(b) | Only in modification of spousal alimony cases—only available to alimony recipient if request to modify alimony due to live in lover claim fails—reasonableness finding required |
| § 19-6-19(d) | Only in modification of spousal alimony cases—prevailing party **not** relevant—only available alimony recipient—“Interests of Justice”—reasonableness finding required |
| § 19-6-22 | Only in modification of spousal alimony cases—can require either party to pay attorney fees of other party—reasonableness required |
| **FAMILY VIOLENCE** |  |
| § 19-13-4 | Only in family violence cases—no prevailing party analysis required—financial conditions not relevant—reasonableness finding required |
| § 19-11-7(d) | Only in Div. Child Support Services (State Agency) actions where dependent child is receiving public assistance—prevailing party—reasonableness finding required |
| **PATERNITY CASES** |  |
| § 19-7-54(g) | Only available in set aside of paternity action—if unsuccessful, award against movant required—cannot award to movant—reasonableness finding required |
| **INTEREST ON TITLE 19 AWARDS** |  |
| § 7-4-12.1 | Court shall consider 7% interest: 1) if good cause existed for the nonpayment of child support; 2) hardship for the parent owing; 3) if it would detract from ability to pay child support; and 4) if waiver of interest would result in hardship to parent owed |

**ENDNOTES**

1. *O’Neal v. Crawford County*, 339 Ga. App. 687 (2016); *Bankston v. Warbington*, 319 Ga. App. 821, 823 (2013). [↑](#endnote-ref-1)
2. There has been one noted exception–where attorney fees included in a settlement agreement. *Haley v. Haley*, 282 Ga. 204 (2007). [↑](#endnote-ref-2)
3. §9-15-14 (abusive litigation); §13-6-11 (bad faith in underlying transaction); §9-11-37 (discovery abuses). [↑](#endnote-ref-3)
4. *Driver v. Sene*, 327 Ga. App. 275, 279-280 (2014). [↑](#endnote-ref-4)
5. *Woodruff v. Choate*, 334 Ga. App. 574 (2015); *Hall v. Hall*, 335 Ga. App 208 (2015). There are dozens of cases which have been remanded for failure to identify the relevant code section. [↑](#endnote-ref-5)
6. *Jackson v. Sanders*, 333 Ga. App. 544, 561 (2015). [↑](#endnote-ref-6)
7. *Jackson v. Sanders*, 333 Ga. App. 544, 561 (2015). [↑](#endnote-ref-7)
8. O.C.G.A. §19-6-2 [↑](#endnote-ref-8)
9. *Cothran v. Mehosky*, 286 Ga. App. 640, 641 (2007). [↑](#endnote-ref-9)
10. *Cole v. Cole, 333 Ga. App. 753, 754-755 (2015); Rogers v. Baliles, 333 Ga. App. 725, 728 (2015).* [↑](#endnote-ref-10)
11. *Dallow v. Dallow*, 299 Ga. 762, 777 (2016). Interestingly, *Ga. Divorce, Alimony and Child Custody*, (§2:21, McConaughey, 2016-2017 ed.), provides that attorney fees are allowed in separate maintenance actions as such actions regularly involve issues of alimony. [↑](#endnote-ref-11)
12. *Grailer v. Jones*, 349 Ga. App. 625, 824 S.E.2d 118, 126 (2019); citing *Moore v. Hullander*, 345 Ga. App. 568, 571 (2018). [↑](#endnote-ref-12)
13. *Grailer v. Jones*, 349 Ga. App. 625, 824 S.E.2d 118, 126 (2019); citing *Hall v. Hall*, 335 Ga. App. 208, 211-212 (2015). [↑](#endnote-ref-13)
14. *Cothan v. Mehosky*, 286 Ga. App. 640, 641-642 (2007), citing *Cotting v. Cotting*, 261 Ga. App. 370, 372 (2003). [↑](#endnote-ref-14)
15. *Odum v. Russell*, 342 Ga. App. 390, 394-395 (2017). [↑](#endnote-ref-15)
16. *Scott v. Scott*, 251 Ga. 619, 620 (1983); *Flesch v. Flesch*, 301 Ga. 779, 782 (2017). [↑](#endnote-ref-16)
17. *Scott v. Scott*, 251 Ga. 619, 620 (1983). [↑](#endnote-ref-17)
18. *Brochin v. Brochin*, 294 Ga. App. 406, 407 (2008); citing *Thedieck v. Thedieck*, 220 Ga. App. 764, 767, 470 S.E.2d 265 (1996). [↑](#endnote-ref-18)
19. *Brochin v. Brochin*, 294 Ga. App. 406, 407 (2008); *Mullins-Leholm v. Evans,* 322 Ga. App. 869, 871-872 (2013). [↑](#endnote-ref-19)
20. *Cothran v. Mehosky*, 286 Ga. App. 640, 642 (2007). [↑](#endnote-ref-20)
21. *Id.* at 641-642. [↑](#endnote-ref-21)
22. *McDonogh v. O’Connor*, 260 Ga. 849, 850 (1991). [↑](#endnote-ref-22)
23. *Anderson v. Svard*, 282 Ga. 53 (2007); *Ansell v. Ansell,* 328 Ga. App. 586, 591 (2014). [↑](#endnote-ref-23)
24. *Rieffel v. Rieffel,* 281 Ga. 891, 892-893 (2007), citing *Johnson v. Johnson*, 260 Ga. 443 (1990). [↑](#endnote-ref-24)
25. *Cason v. Cason*, 281 Ga. 296 (2006); citing *Williams v. Cooper*, 280 Ga. 145, 147 (2006); *Gomes v. Gomes*, 278 Ga. 568, 569 (2004); *McGahee v. Rogers*, 280 Ga. 750, 753 (2006); *Cole v. Cole*, 333 Ga. App. 753, 754-755 (2015); *Rogers v. Baliles*, 333 Ga. App. 725, 728 (2015). [↑](#endnote-ref-25)
26. *Bulat v. Bulat*, 280 Ga. 310 (2006); citing *Bradley v. Bradley*, 233 Ga. 83, 84-85 (1974) and *Webster v. Webster*, 250 Ga. 57, 58 (1982). [↑](#endnote-ref-26)
27. *Mumford v. Phillips*, 195 Ga. App. 782, 783 (1990). [↑](#endnote-ref-27)
28. *Thedieck v. Thedieck*, 220 Ga. App. 764, 767 (1996). In *Thedieck*, the Court of Appeals noted that there was evidence of the financial condition of the parties at the time of the divorce decree but that decree had been entered two years prior and was too stale to be considered. [↑](#endnote-ref-28)
29. *Webster v. Webster*, 250 Ga. 57, 58 (1982); citing *Hilsman v. Hilsman*, 245 Ga. 555 (1980) and *Sweat v. Sweat*, 123 Ga. 801 (1905). [↑](#endnote-ref-29)
30. *Alexandrov v. Alexandrov*, 289 Ga. 126, 127-128 (2011), citing *Webster v. Webster*, 250 Ga. 57, 58 (1982); *Horn v. Shepherd*, 292 Ga. 14, 20 (2012). [↑](#endnote-ref-30)
31. *Driver v. Sene*, 327 Ga. App. 275, 279-280 (2014). [↑](#endnote-ref-31)
32. *Padilla v. Padilla*, 282 Ga. 273, 275 (2007). [↑](#endnote-ref-32)
33. *Moon v. Moon*, 277 Ga. 375 (2003). [↑](#endnote-ref-33)
34. O.C.G.A. §9-15-14(a). [↑](#endnote-ref-34)
35. O.C.G.A. §9-15-14(b). [↑](#endnote-ref-35)
36. A more thorough discussion of fees under §9-15-14 is included in the attached paper which addresses attorney fees awards in general and that discussion is not limited to domestic relations matters. [↑](#endnote-ref-36)
37. O.C.G.A. §9-15-14(b). [↑](#endnote-ref-37)
38. *Regan v. Edwards*, 334 Ga. App. 65, 66-67 (2015); *See* *Stone v. King*, 196 Ga. App. 251, 253 (1990) (comparing fee awards pursuant to OCGA § 13–6–11, which may be based on conduct arising prior to litigation); *Cobb County v. Sevani*, 196 Ga. App. 247, 248–249 (1990) (holding that “[t]he focus of [OCGA § 9–15–14(b)] is clearly upon actions that are undertaken in connection with the underlying legal proceedings, and not upon the pre-litigation actions of one who only subsequently becomes a party to a legal proceeding.”). [↑](#endnote-ref-38)
39. *Hall v. Hall*, 241 Ga. App. 690, 692 (1999). [↑](#endnote-ref-39)
40. *Cason v. Cason*, 281 Ga. 296, 300 (2006); citing *Porter v. Felker*, 261 Ga. 421 (1991); *In re Serpentfoot*, 285 Ga. App. 325, 329 (2007). See “Making the Award” section of this paper for further discussion of an award under §9-15-14. [↑](#endnote-ref-40)
41. *Glaza v. Morgan*, 248 Ga. App. 623, 625 (2001). [↑](#endnote-ref-41)
42. O.C.G.A. §9-15-14(d) and (e). A request for fees may also be made via motion before final disposition of the case. *Bankston v. Warbington*, 332 Ga. App. 29, 35-37 (2015). [↑](#endnote-ref-42)
43. *Fox-Korucu v. Korucu*, 279 Ga. 769, 770 (2005). [↑](#endnote-ref-43)
44. *Williams v. Coope*r, 280 Ga. 145, 146 (2006); *Green v. McCart*, 273 Ga. 862, 863 (2001). [↑](#endnote-ref-44)
45. *Jackson v. Jackson*, 282 Ga. 459, 460-461 (2007); *Langley v. National Labor Group, Inc.*, 262 Ga. App. 749, 753, (2003); *Glass v. Glover*, 241 Ga. App. 838, 839 (2000). [↑](#endnote-ref-45)
46. *Nesbit v. Nesbit*, 295 Ga. App. 763, 764-765 (2009). [↑](#endnote-ref-46)
47. *Fox-Korucu v. Kroucu*, 279 Ga. 769, 770 (2005); *Williams v. Becker*, 294 Ga. 411, 413 (2014). [↑](#endnote-ref-47)
48. *Bankston v. Warbington*, 332 Ga. App. 29, 35-27 (2015). [↑](#endnote-ref-48)
49. *Williams v. Cooper*, 280 Ga. 145, 146 (2006). Even if the trial court initiates a sua sponte motion from the court and not the parties, the party against whom fees are sought is entitled to notice, containing the information necessary to understand that the court is considering an award of fees. [↑](#endnote-ref-49)
50. *Honkan v. Honkan*, 283 Ga. App. 522, 523 (2007); *Williams v. Cooper*, 280 Ga. 145, 146 (2006). [↑](#endnote-ref-50)
51. There are cases which suggest that, because the trial court can assess fees based upon its own motion, no hearing is required. However, those cases have been overruled. *Williams v. Cooper*, 280 Ga. 145, 147 (2006). [↑](#endnote-ref-51)
52. *Williams v. Cooper*, 280 Ga. 145, 146-147 (2006). [↑](#endnote-ref-52)
53. *Smith v. Pearce*, 334 Ga. App. 84, 92-94 (2015). [↑](#endnote-ref-53)
54. *Yates Paving & Grading Co. v. Bryan County*, 265 Ga. App. 578, 583 (2004); *DeKalb Co. v. Adams*, 263 Ga. App. 201, 204 (2003). [↑](#endnote-ref-54)
55. *Yates Paving & Grading Co. v. Bryan County*, 265 Ga. App. 578, 583 (2004); *DeKalb Co. v. Adams*, 263 Ga. App. 201, 204 (2003). [↑](#endnote-ref-55)
56. *Taylor v. Taylor*, 282 Ga. 113, 115 (2007). [↑](#endnote-ref-56)
57. *Groover v. Groover*, 279 Ga. 507, 508 (2005). [↑](#endnote-ref-57)
58. *Groover v. Groover*, 279 Ga. 507, 508 (2005). [↑](#endnote-ref-58)
59. *Sheppard v. Sheppard*, 229 Ga. App. 494, 496 (1997). Interestingly, the issue of stubborn litigiousness is to be submitted to the trier of fact which, if a jury trial, would be inapposite to the general principle that issues of attorney fees should not be addressed before a jury. *See* *Groover*, *supra*. [↑](#endnote-ref-59)
60. *Waits v. Waits*, 280 Ga. App. 734, 736 (2006). [↑](#endnote-ref-60)
61. *Id.* at 736, citing *Walker v. Estate of Mays*, 279 Ga. 652, 653 (2005). [↑](#endnote-ref-61)
62. *St. Holmes v. St. Holmes*, 169 Ga. App. 283 (1983). [↑](#endnote-ref-62)
63. *St. Holmes v. St. Holmes*, 169 Ga. App. 283, 284 (1983). [↑](#endnote-ref-63)
64. *St. Holmes v. St. Holmes*, 169 Ga. App. 283, 284 (1983). [↑](#endnote-ref-64)
65. O.C.G.A. §19-6-19(d). This statute was modified, effective July, 2006, to remove the right to seek attorney fees when there is a requested modification of “alimony for a child” (i.e. child support). *See* *Haley v. Haley*, 282 Ga. 204, 206 (2007). [↑](#endnote-ref-65)
66. O.C.G.A. §19-6-22. [↑](#endnote-ref-66)
67. *Glaza v. Morgan*, 248 Ga. App. 623, 625 (2001). But see analysis of §19-9-3 herein. [↑](#endnote-ref-67)
68. *Shapiro v. Lipman*, 259 Ga. 85 (1989). [↑](#endnote-ref-68)
69. *Haley v. Haley*, 282 Ga. 204 (2007). It may be very important to note that the parties settled the matter but specifically set out that the issue of an award of attorney fees would be submitted to the trial court for determination. [↑](#endnote-ref-69)
70. *Hilsman v. Hilsman*, 245 Ga. 555, 557 (1980). [↑](#endnote-ref-70)
71. *Tate v. Tate*, 340 Ga. App. 361, 364 (2017), citing *Minor v. Minor*, 257 Ga. 706, 709 (1987). [↑](#endnote-ref-71)
72. *Sampson v. Cureton*, 343 Ga. App. 466 (2017). [↑](#endnote-ref-72)
73. *Horn v. Shepherd*, 292 Ga. 14, 21 (2012), citing *Gay v. Gay*, 268 Ga. 106-106-107 (1997). [↑](#endnote-ref-73)
74. The statute deals only with actions involving modification of child support and not establishment of a child support obligation. [↑](#endnote-ref-74)
75. Child support modification was formerly included within §19-6-19 and §19-6-19 was amended, effective January 1, 2007, to exclude any reference to child support modification at the same time that the issue of attorney fees in modification of child support was made a part of §19-6-15. [↑](#endnote-ref-75)
76. *Mironov v. Mironov*, 296 Ga. 114, 115-116 (2014). [↑](#endnote-ref-76)
77. *Hall v. Hall*, 335 Ga. App. 208, 213 (2015). [↑](#endnote-ref-77)
78. *Jackson v. Sanders*, 333 Ga. App. 544, 561 (2015). [↑](#endnote-ref-78)
79. O.C.G.A. §19-6-15(k)(5). [↑](#endnote-ref-79)
80. *Neal v. Hibbard*, 296 Ga. 882, 891 (2015); *Viskup v. Viskup*, 291 Ga. 103, 106-107 (2012). [↑](#endnote-ref-80)
81. *Neal v. Hibbard*, 296 Ga. 882, 891 (2015). [↑](#endnote-ref-81)
82. *Walker v. Walker*, 248 Ga. App. 177, 180, 546 S.E.2d 315 (2001); citing *Interest of S.K.R.*, 229 Ga. App. 652 (1997). [↑](#endnote-ref-82)
83. *Jackson v. Sanders*, 333 Ga. App. 544, 561-562 (2015). [↑](#endnote-ref-83)
84. *Hall v. Hall*, 335 Ga. App. 208, 213 (2015). [↑](#endnote-ref-84)
85. Based upon the wording of the statute, one might argue that the reasonableness finding is only required as to attorney fees and expenses of litigation and that reasonableness is not a required finding as to experts, a guardian ad litem or “other costs.” However, the case of *Jackson v. Sanders*, 333 Ga. App. 544, 561 (2015) holds that there must be sufficient proof of the actual costs and that those attorney fees were reasonable. [↑](#endnote-ref-85)
86. *Gordon v. Abrahams*, 330 Ga. App. 795, 799 (2015). [↑](#endnote-ref-86)
87. *Jackson v. Sanders*, 333 Ga. App. 544, 561-562 (2015). [↑](#endnote-ref-87)
88. *Neal v. Hibbard*, 296 Ga. 882, 892 (2015). [↑](#endnote-ref-88)
89. *Neal v. Hibbard*, 296 Ga. 882, 891 (2015); *Viskup v. Viskup*, 291 Ga. 103, 106-107 (2012). [↑](#endnote-ref-89)
90. *Neal v. Hibbard*, 296 Ga. 882, 891 (2015). [↑](#endnote-ref-90)
91. O.C.G.A. §19-9-92. [↑](#endnote-ref-91)
92. There are no cases which establish the level of proof or the standards under which a litigant can establish that an award would be “clearly inappropriate.” [↑](#endnote-ref-92)
93. *Delgado v. Combs*, 314 Ga. App. 419, 431-432 (2012). [↑](#endnote-ref-93)
94. *Delgado v. Combs*, 314 Ga. App. 419, 430-431 (2012). [↑](#endnote-ref-94)
95. O.C.G.A. § 19-9-90; *Ward v. Smith*, 334 Ga. App. 876, 882-883 (2015). [↑](#endnote-ref-95)
96. Where a party “tricks” the other party in the process of perfecting service of process, that is not “unjustifiable conduct” which would allow for an award of attorney fees under the UCCJEA. *Delgado v. Combs*, 314 Ga. App. 419, 430-431 (2012). However, no cases have commented or made findings concerning the phrase “clearly inappropriate.” [↑](#endnote-ref-96)
97. O.C.G.A. §19-13-4(a)(10). [↑](#endnote-ref-97)
98. *Dalenberg v. Dalenberg*, 325 Ga. App. 833, 836 (2014). [↑](#endnote-ref-98)
99. *Suarez v. Halbert*, 246 Ga. App. 822 (2000). [↑](#endnote-ref-99)
100. *Suarez v. Halbert*, 246 Ga. App. 822, 825 (2000). [↑](#endnote-ref-100)
101. O.C.G.A. §19-7-54(h). [↑](#endnote-ref-101)
102. O.C.G.A. §7-4-12.1(a). [↑](#endnote-ref-102)
103. Moon v. Moon, 277 Ga. 375, 378 (2003); Wilson v. Wilson, 282 Ga. 728, 734, 702 (2007); Cason v. Cason, 281 Ga. 296, 300 (2006). [↑](#endnote-ref-103)
104. *Wilson v. Wilson*, at 734. [↑](#endnote-ref-104)
105. *Suarez v. Halbert*, 246 Ga. App. 822, 824-825 (2000). [↑](#endnote-ref-105)
106. *State of Georgia v. Douglas Asphalt*, 295 Ga. App. 421 (2009). [↑](#endnote-ref-106)
107. Hallman *v. Emory University*, 225 Ga. App. 247, 252-253 (1997) (extensive discussion of §9-15-14 fees and evidence). [↑](#endnote-ref-107)
108. *Panhandle Fire Prot., Inc. v. Batson Cook Co.*, 288 Ga. App. 194, 199 (2007); citing *McKemie v. City of Griffin*, 272 Ga. 843, 844-845 (2000). [↑](#endnote-ref-108)
109. *McGahee v. Rogers*, 280 Ga. 750, 754 (2006); *Butler v. Lee*, 336 Ga. App. 102, 105 (2016). [↑](#endnote-ref-109)
110. *Taylor v. Taylor*, 282 Ga. 113, 115 (2007). [↑](#endnote-ref-110)
111. *Cohen v. Feldman*, 219 Ga. App. 90, 92 (1995); *Mitcham v. Blalock*, 214 Ga. App. 29, 32-33 (1994). [↑](#endnote-ref-111)
112. *Brochin v. Brochin*, 277 Ga. 66, 67 (2003). [↑](#endnote-ref-112)
113. *Hall v. Hall*, 335 Ga. App. 208, 211 (2015), citing *Viskup v. Viskup*, 291 Ga. 103, 106 (2012) and *Blumenshine v. Hall*, 329 Ga. App. 449, 454 (2014). [↑](#endnote-ref-113)