**ATTORNEY FEES PODCAST**

**[This topic is rather extensive. There are different statutes that apply to domestic relations cases (and other types of cases). To preserve clarity, this podcast will only deal with attorney fees in “civil cases” in general and not include the domestic relations-specific code sections. We will address statutes which allow for fees to be awarded in domestic relations cases in another podcast on another date.]**

**ATTORNEY FEES MUST BE AUTHORIZED BY STATUTE OR CONTRACT**

1. Attorney fees cannot be awarded by a court unless such an award is authorized by statute or by contract.[[1]](#endnote-1) In what has come to be known as the “**American Rule**,” as a general proposition, the party who employs an attorney is responsible for the fees of the attorney unless a statute or contract allows for “fee-shifting.”[[2]](#endnote-2) An award of attorney fees was not allowable at common law and, therefore, unless the statute which creates the right to an award of attorney fees authorizes such award to be determined by a jury, there is no right to have a jury consider the award and the trial court must make the determination.[[3]](#endnote-3) “**Since any such statute [awarding attorney fees] is in derogation of common law,…it must be strictly construed against the award of such damages**.”[[4]](#endnote-4)

**ATTORNEY FEES AGREED TO BY CONTRACT**

**(SETTLEMENT AGREEMENT)**

1. If the parties agree by contract to a particular award of attorney fees in the event of a controversy, the trial court can enforce that agreement under a breach of contract theory. The terms of the contract will establish the amount of attorney fees to be awarded. If the contract merely allows one party to collect “attorney fees” without any further definition, the moving party must prove the reasonable value of those fees.[[5]](#endnote-5) “Where parties contract for the recovery of attorney fees, a trial court does not have the authority to alter that arrangement unless it is prohibited by statute.”[[6]](#endnote-6)

**IDENTIFY THE CODE SECTION**

1. Georgia appellate courts have made it clear that any time a trial court makes an award of attorney fees, the statute under which the court made the award must be clearly identified and followed.[[7]](#endnote-7)

**CONTEMPT**

1. 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 affords the trial court the authority to award fees. “No authority exists to award attorney fees merely because the action is for contempt.”[[8]](#endnote-8)

**PROOF OF ATTORNEY FEES**

1. In cases where an award of attorney fees is sought, there seems to be some debate as to whether trial counsel is competent to testify as to the fees being sought or whether another attorney must be proffered as an expert witness. The issue is hearsay, not competency. An attorney may testify regarding the reasonableness of his/her fee without violating Georgia law or the Georgia Rules of Professional Conduct.[[9]](#endnote-9) Trial counsel may testify as to the reasonableness of the fees of his law partner or associate who is not present at the trial or hearing.[[10]](#endnote-10)
2. Trial counsel may choose to “state in his/her place” the elements necessary to support an award of attorney fees.[[11]](#endnote-11) While it is clearly permissible for a litigant to call another attorney to testify as to the reasonableness of trial counsel’s fees, that procedure is not required by law. However, regardless of whether trial counsel offers the evidence or another lawyer qualified as an expert witness is utilized for that purpose, the opposing party must be allowed the opportunity to cross examine.
3. Any award of attorney fees must be an award of **“reasonable” attorney fees**. Therefore, the client would not be able to testify as to whether the fees being charged by counsel were reasonable.[[12]](#endnote-12) “In order to recover attorney fees, however, the order must contain ‘express findings of fact and conclusions of law as to the statutory basis for any such award… An award of attorney fees is unauthorized if [movant] failed to prove the actual costs of the attorney and the reasonableness of those costs.’”[[13]](#endnote-13) Therefore, if the evidence before the trial court establishes the amount of fees paid by the client, the hourly billing rate used to calculate that total, and the amount of time expended in the case but failed to prove that the fees were reasonable, an award of fees must be vacated and remanded on appeal.[[14]](#endnote-14)

**ATTY FEES IN CONTINGENCY CONTRACTS**

1. It is also possible for an award of attorney fees to be based upon a contingency fee agreement.[[15]](#endnote-15) Assuming there is statutory authority for an award of attorney fees, (i.e. an offer of settlement by the plaintiff that was exceeded by the jury’s verdict under §9-11-68(b)(2)), the fact that trial counsel represented the client based upon a contingent fee agreement does not bar an award of attorney fees.
2. “A court may consider a contingent fee agreement and the amount it would have generated as evidence of usual and customary fees in determining both the reasonableness and the amount of an award of attorney fees. When a party seeks fees based on a contingent fee agreement, [however,] the party must show that the contingent fee percentage was a usual or customary fee for such case and that the contingent fee was a valid indicator of the value of the professional services rendered. In addition, the party seeking fees must also introduce evidence of hours, rates, or some other indication of the value of the professional services actually rendered.”[[16]](#endnote-16)
3. When the request for an award of attorney fees is based upon a contingency contract, the evidence presented must be more than the mere existence of the contract.[[17]](#endnote-17) There must be some evidence presented of the hours, rates and other similar indication of the professional services provided to support a contention that the contingency fee is a reasonable fee under the circumstances. It is appropriate for the trial court to consider that both the client and the lawyer assume certain risks in a contingency fee agreement and while the existence of the agreement can be a “guidepost” in the trial court’s determination of reasonableness of the attorney fees, such fee arrangement is not conclusive.[[18]](#endnote-18) The trial court’s order should reflect a full analysis as to reasonableness of such an award, just as is required in an hourly contract between counsel and client.

**§13-6-11 BAD FAITH-UNDERLYING TRANSACTION**

1. **O.C.G.A. §13-6-11** provides:
   1. 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.
   2. Where the **plaintiff** has specifically included a request for an award of fees under §13-6-11 in his/her pleadings, the fact finder may consider an award of attorney fees if the plaintiff proves that the defendant has 1) acted in bad faith; OR 2) been stubbornly litigious; OR 3) has caused the plaintiff unnecessary trouble or expense.
   3. When a pretrial conference is conducted and the resulting pretrial order does not reference a claim for attorney fees under §13-6-11, that issue us deemed ***waived*** if the pretrial order is not amended prior to trial.[[19]](#endnote-19)
   4. The remedies of this statute are only available to **plaintiffs** in civil litigation.[[20]](#endnote-20)
      1. However, where a ***defendant*** asserts an independent counterclaim, that defendant can seek an award of attorney fees assuming the defendant properly included the prayer in his/her pleadings. Where the defendant’s counterclaim was a compulsory counterclaim and not an independent counterclaim for recovery, the defendant cannot utilize the provisions of §13-6-11 to recover attorney fees.[[21]](#endnote-21)
      2. However, the defendant (or “plaintiff in counterclaim”) can only recover those attorney fees that represent the portion of fees that are allocable to the prosecution of the independent counterclaim.
2. The party claiming fees under §13-6-11 has the burden of proof and “must segregate out the hours that are recoverable from those hours not recoverable.”[[22]](#endnote-22)
3. §13-6-11 does not create a separate cause of action and, accordingly, the plaintiff (or defendant who presents an independent counterclaim) can only recover attorney fees on claims within the litigation on which the party prevailed.[[23]](#endnote-23) Although the statute does not specifically require the plaintiff to prevail on its claims, the appellate decisions have repeatedly held that “[a]n award of attorney fees but no other damages or affirmative relief …is illegal and void, not merely erroneous and voidable.”[[24]](#endnote-24) Even an award of nominal damages on the underlying claims can support an award of attorney fees under §13-6-11.[[25]](#endnote-25)
4. The term “bad faith” under §13-6-11 relates to the conduct of the defendant prior to the filing of the lawsuit. Bad faith under §13-6-11 does not relate to the handling of the litigation by the defendant, but instead is related to the acts in the transaction which gave rise to the lawsuit.[[26]](#endnote-26)
   1. A finding of bad faith under §13-6-11 cannot be based upon mere negligence or an honest mistake as to one’s rights and responsibilities. Bad faith requires a finding of some interested or sinister motive and it must be more than bad judgment or negligence. The term requires proof of a “dishonest purpose or some moral obliquity, and implies conscious doing of wrong, and means breach of known duty through some motive of interest or ill will.”[[27]](#endnote-27)
   2. “If bad faith is not an issue and the basis for attorney fees is either stubborn litigiousness or unnecessary trouble and expense, there is not any evidence to support an award pursuant to [OCGA § 13–6–11](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST13-6-11&originatingDoc=Ic744d904033c11da9439b076ef9ec4de&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Keycite)) if a bona fide controversy clearly exists between the parties.”[[28]](#endnote-28)

**§13-6-11 FEES CANNOT BE AWARDED AS PART**

**OF SUMMARY JUDGMENT**

1. It would be inappropriate to award fees under §13-6-11 to the plaintiff as a summary judgment matter but it would not be inappropriate to award summary judgment to the defendant in such a setting, provided the issue of bad faith is not at issue. If bad faith is an issue, the matter must be decided **by the jury** if there is any evidence that would support a finding of bad faith.

**MAKING AN AWARD UNDER §13-6-11**

1. As is true for all statutes which support an award of attorney fees, there must be evidence that the fees claimed were reasonable under §13-6-11.[[29]](#endnote-29)
   1. When considering a request for an award of fees under §13-6-11, the trial court must also consider whether there are other statutes which allow for an award of such fees. For example, in a case which alleges that an insurer should be found liable for attorney fees when the insurer acts in bad faith in refusing to pay a claim (O.C.G.A. §33-4-6), it has been held that because the legislature provided a specific procedure and limited penalty for such cases, that limited penalty is the exclusive penalty and recovery of fees under a more general statutes such as §13-6-11 is not allowed.[[30]](#endnote-30)

**§9-15-14 LITIGATION ABUSE**

1. O.C.G.A. § 9-15-14 includes the following language:

(a) In any civil action in any court of record of this state, reasonable and necessary attorney's fees and expenses of litigation shall be awarded to any party against whom another party has asserted a claim, defense, or other position with respect to which there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim, defense, or other position. Attorney's fees and expenses so awarded shall be assessed against the party asserting such claim, defense, or other position, or against that party's attorney, or against both in such manner as is just.

(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.

1. §9-15-14 has its origins in the abusive litigation torts that were identified in *Yost v. Torok*.[[31]](#endnote-31) The difference between the fees authorized under §9-15-14(a) and those authorized under §9-15-14(b) is that subsection (a) authorizes an award if no reasonable person would believe that a Court would accept a claim or position, whereas subsection (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. The purpose of an award of attorney fees under §9-15-14 is to recompense litigants who incurred attorney fees addressing frivolous claims or defenses and is also intended to punish and deter litigation abuses.[[32]](#endnote-32)
   1. “The purpose of th[is] statutory subsection[ ] is twofold: to both punish and deter litigation abuses and to recompense litigants who are forced to expend resources in contending with abusive litigation. …[A]s a necessary predicate to having issued the award, the trial court must determine that the fees were unwarranted and amassed solely as a result of abusive conduct by the party against whom they were assessed.”[[33]](#endnote-33)
   2. “And we must keep in mind that OCGA §9–15–14 ... is intended to discourage the bringing of frivolous claims, not the presentation of questions of first impression about which reasonable minds might disagree or the assertion of novel legal theories that find arguable, albeit limited, support in the existing case law and statutes.”[[34]](#endnote-34)
   3. Where a party seeking an award of attorney fees under §9-15-14(b) files a motion for summary judgment relating to the underlying claim(s) in the litigation and the motion is denied, there can be no award of fees except in unusual cases.[[35]](#endnote-35) By definition, if summary judgment is denied, it can be assumed that the claim or defense of the other party was not frivolous. However, if facts further developed after the motion for summary judgment was heard support an award of fees, that would constitute the “unusual case.” ‘[A]n award of attorney fees under O.C.G.A. § 9-15-14(b) is not warranted where the claim at issue is dependent upon the resolution of a factual or legal dispute.[[36]](#endnote-36)

**HOW AND TO WHOM AN AWARD CAN BE MADE UNDER §9-15-14**

1. §9-15-14 allows for an award of fees against ***a party, the party’s attorney, or both***. A party may not insulate themselves from potential sanctions under §9-15-14 by claiming that they were relying upon advice of counsel. “If that were the case, then no party represented by counsel could be liable for sanctions.”[[37]](#endnote-37)
   1. A fee award under §9-15-14 may be made to a party but not directly to an attorney. The award may specify the amounts due to the respective parties and may identify the parties and/or counsel who are liable for the award of fees. However, the actual award must be made to an offended party, not counsel for the offended party.[[38]](#endnote-38)
2. §9-15-14 includes a potential award of attorney fees under subsection (a) and (b) and the appellate courts have been careful to identify that those two subsections require different elements of proof and are designed to sanction different types of conduct. **§9-15-14(a) provides for a mandatory award of fees whereas an award of fees under §9-15-14(b) is discretionary**.[[39]](#endnote-39)
3. Where it is alleged that a claim or defense lacks substantial justification or otherwise is subject to the sanctions of §9-15-14(a) or (b), the request for an award of attorney fees under §9-15-14 must be made by way of a motion.[[40]](#endnote-40) 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.[[41]](#endnote-41) However, the “motion” anticipated under §9-15-14 can be made orally under certain circumstances.[[42]](#endnote-42)

**DUTIES OF THE COURT UNDER §9-15-14**

1. After a proper motion has been made, the trial court has several duties. First, the trial court is required to conduct a hearing on the issue of an award of attorney fees under §9-15-14.[[43]](#endnote-43) While the statute allows the trial court to make an award under §9-15-14 on its own motion, the party against whom an award is sought is entitled to notice and an opportunity to be heard before such an award is made.[[44]](#endnote-44) The hearing must include the right of the alleged offending party to cross-examine the witnesses.[[45]](#endnote-45) A party can waive his/her right to a hearing, either expressly or by conduct.[[46]](#endnote-46) However, the filing of an objection to an award under §9-15-14 is sufficient to preserve the right to a hearing.[[47]](#endnote-47) There is no right to a jury trial on the issue of an award of attorney fees under §9-15-14, and a request for a jury determination of such an award is a nullity.[[48]](#endnote-48) 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.[[49]](#endnote-49)
2. Both subsections (a) and (b) of §9-15-14 require a finding that the amount of fees claimed were “reasonable and necessary.”[[50]](#endnote-50)
3. 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.[[51]](#endnote-51) However, there are circumstances where such testimony may be considered harmless error.[[52]](#endnote-52)
4. The trial court is **required to make express findings** that point to the conduct of the party or counsel that is subject to the sanctions set forth in §9-15-14. “The trial court need not cite ‘specific testimony, argument of counsel, or any other specific factual reference’ in its order awarding fees under O.C.G.A. § 9-15-14; it is only required to specify the conduct upon which the award is made.”[[53]](#endnote-53) “[T]he goal in shifting attorney fees ‘is to do rough justice, not to achieve auditing perfection.’”[[54]](#endnote-54) However, there is no requirement that the trial court make findings of fact when the trial court denies an award of attorney fees.[[55]](#endnote-55) **The trial court must also specifically identify the subsection of §9-15-14 which supports the award**. “[A]n order awarding attorney fees pursuant to [O.C.G.A. § §9-15-14] must specifically state whether the award is made under O.C.G.A. § §9-15-14(a) or (b) or both.”[[56]](#endnote-56)

**LANGUAGE OF COURT’S ORDER UNDER §9-15-14**

1. It has been held that the trial court’s order granting fees under §9-15-14 was insufficient where the trial court’s order found that a party had been “unreasonably and stubbornly litigious and has been frivolous in her conduct in these proceedings.”[[57]](#endnote-57) Similarly, it was found to be insufficient for the trial court’s order to merely conclude that an award of fees was warranted due to a party’s “stubborn litigiousness.”[[58]](#endnote-58) A case was also remanded for further findings of fact where the trial court’s order awarding fees under §9-15-14 merely concluded that the party’s position was “without justification,” and that their position had “an utter lack of merit.”[[59]](#endnote-59) While there have been several cases which have affirmed an award of attorney fees under §9-15-14 even where the trial court failed to identify the subsection of the statute, the general rule is that **the trial court must identify the subsection** which is being utilized to support an award under §9-15-14.[[60]](#endnote-60) The reason the appellate courts cite for the requirement that the trial court cite the relevant subsection is that there are different standards of review on appeal. “Specificity in the award is important because the standards of appellate review are different under each subsection: the standard under subsection (a) is the ‘any evidence’ rule; the standard under subsection (b) is abuse of discretion.”[[61]](#endnote-61)

**APPORTIONMENT UNDER §9-15-14**

1. In many cases, some actions of the parties during litigation might be improper while others were appropriate. The trial court is required to apportion the fees between the claims or defenses that were frivolous and any non-frivolous claims or defenses.[[62]](#endnote-62) §9-15-14 specifically requires the trial court to identify the improper conduct, and the resulting award must reflect the reasonable attorney fees associated with the improper conduct that would give rise to an award under §9-15-14.[[63]](#endnote-63) An award of fees under §9-15-14 that reflects a “lump sum” or unapportioned attorney fees is improper and is not permitted.[[64]](#endnote-64) The trial court’s order must articulate why the amount awarded was an appropriate sum for the sanctionable conduct as opposed to any other sum charged by the non-offending attorney.[[65]](#endnote-65) “The trial court’s award of [$12,106.68] may have been reasonable, but the trial court’s order, on its face fails to show the complex decision making process necessarily involved in reaching a particular dollar figure and fails to articulate why the amount awarded was [$12,106.68] as opposed to any other amount.”[[66]](#endnote-66)

**AMOUNT OF AWARD UNDER §9-15-14**

1. An award of attorney fees under §9-15-14 is not limited to the amount actually charged by the attorney representing the aggrieved party. Where evidence is presented as to the reasonable value of the attorney’s work in the case which also involved sanctionable conduct, the fact that the attorney agreed to represent the clients for a flat fee does not limit the award to that reduced amount.[[67]](#endnote-67) The test required under §9-15-14(a) and (b) is proof of reasonableness of the fees claimed, not limited by the amount actually charged by the attorney. Because §9-15-14 has the dual purpose of punishing abusive litigation and compensating parties who are forced to contend with abusive litigation, the mere fact that an attorney was willing to represent clients at a reduced rate or flat rate does not limit an award of attorney fees to the amount actually incurred.[[68]](#endnote-68) As noted above, the statute also allows for an award where counsel has charged a contingency fee and the award made under §9-15-14 may or may not be equal to the contingency fee charged.[[69]](#endnote-69) Again, the test is reasonableness and the statute does not cap an award of attorney fees to the amount actually charged. Other statutes which allow for an award of attorney fees utilize the statutory language “fees actually incurred” or similar language.[[70]](#endnote-70) §9-15-14(a) and (b) allow for an award of reasonable attorney fees. §9-15-14(d) allows for an award of the attorney fees incurred in pursuing an award under §9-15-14(a) or (b). The fact that the legislature elected to utilize different language within the same statute would suggest that a different standard is applicable and that an award under §9-15-14(a) or (b) is not limited to the fees actually incurred.[[71]](#endnote-71)

**UNIQUE TIME ELEMENT TO AWARDS UNDER §9-15-14**

1. A request for fees under §9-15-14 can be made **up to 45 days after** final disposition of the action, but there is no prohibition to the motion being filed while the underlying case remains pending.[[72]](#endnote-72) Under prior versions of §9-15-14(e), the motion had to be filed after the disposition of the action but within 45 days of that disposition. The current version of the statute allows for filing of the motion under §9-15-14(e) at any time during the litigation but not later than 45 days after the final disposition.[[73]](#endnote-73)
2. A voluntary dismissal of the underlying suit does not prevent a request for an award of fees under §9-15-14.
   1. “[M]ere voluntary dismissal under O.C.G.A. § 9-11-41(a) is not ‘final’ because [Georgia law] allows an action to be renewed after dismissal. ‘Final disposition’ does not occur until a second dismissal, expiration of the original applicable period of limitations, or six months after the discontinuance or dismissal, whichever is later. [Otherwise], the ‘window of opportunity’ would begin to run while the case could still be renewed, and a litigant could lose the right to seek O.C.G.A. § 9-15-14 penalties after a dismissal that proved to be only temporary rather than final.”[[74]](#endnote-74)
3. For the purposes of an award under §9-15-14, the time for filing the motion begins running once the trial court issues a final judgment that is filed with the clerk of court.[[75]](#endnote-75)
   1. The focus is on whether the ruling “leaves no issues remaining to be resolved, constitutes the court’s final ruling on the merits of the action, and leaves the parties with no further recourse in the trial court.”[[76]](#endnote-76) The term “final disposition” under §9-15-14 has been held to be synonymous with the phrase “final judgment” as set forth in O.C.G.A. § 5-6-34(a).[[77]](#endnote-77) The filing of an appeal does not delay or toll the running of the 45 day period.[[78]](#endnote-78) Similarly, failure of the parties to have a civil case disposition form filed as required under §9-11-58(b) does not impact the 45 day time period.[[79]](#endnote-79)

**§9-15-14’S APPLICABILITY TO POST-JUDGMENT ACTIONS**

1. §9-15-14 **does** apply to post-judgment matters and, therefore, is applicable to post-judgment discovery disputes.[[80]](#endnote-80) **[The Court of Appeals was reversed by the Supreme Court after we presented this topic in 2017 so our prior paper said the opposite]**
   1. Only parties to the litigation can make a claim for fees under §9-15-14.[[81]](#endnote-81)
      1. If a non-party seeks to object to abusive post-judgment discovery, they must utilize §9-11-26(c) or §9-11-37.[[82]](#endnote-82)
2. §9-15-14 does not apply to appeals and if a party asserts that the opposing party’s appeal was frivolous, they must request an award under §5-6-6 through the appropriate appellate court and not through a claim under §9-15-14.[[83]](#endnote-83)

**SETTLEMENT AS A DEFENSE TO §9-15-14**

1. A settlement agreement entered in the underlying case must specifically reserve the right to seek an award of attorney fees under §9-15-14. “Failure to do so will preclude any later attempt to recover those fees.”[[84]](#endnote-84)
   1. The withdrawal of counsel before entry of an award under §9-15-14 will not insulate offending counsel from being required to pay reasonable fees associated with abuses that occurred before counsel withdrew from representation.[[85]](#endnote-85)

**DIFFERENCES BETWEEN §13-6-11 AND §9-15-14**

1. An award of attorney fees under §13-6-11 applies to conduct of the parties which arises from the underlying transaction which resulted in litigation. By contrast, an award of attorney fees under §9-15-14 applies where it is alleged and proven that there was improper conduct during the litigation.[[86]](#endnote-86)
   1. §9-15-14 clearly applies to activities of the parties during litigation and has no application for pre-litigation activities of the parties.[[87]](#endnote-87) While §13-6-11 allows for an award of attorney fees for bad faith that related to the underlying transaction, §9-15-14 applies only to conduct of the parties and their counsel during litigation.
   2. By way of an example, where the parties are involved in litigation and there is a dispute relating to an alleged settlement agreement that was reached during the depositions of the witnesses, a claim for attorney fees in connection with enforcing that settlement agreement would fall under §9-15-14 and not §13-6-11. However, if the parties reached a settlement agreement outside of litigation and one party filed suit solely to enforce that settlement contract, an award of attorney fees would have to be considered under §13-6-11 and not §9-15-14.[[88]](#endnote-88)
2. When a pretrial conference is conducted and the resulting pretrial order does not reference a claim for attorney fees under §13-6-11, that issue is deemed waived if the pretrial order is not amended prior to trial. In contrast, O.C.G.A. §9-15-14 specifically provides that the jury does not decide the issue and that a motion requesting an award of attorney fees under §9-15-14 can be made as late as 45 days following final disposition of the case in the trial court. Therefore, the pretrial order should not include any reference to any claims for fees under §9-15-14 and there is no waiver of the claim if the matter is not addressed in the pretrial order. Fees under §13-6-11 require a jury determination and must be included in the pretrial order or they are deemed waived. Fees under §9-15-14 cannot be decided by a jury and failure to address such an award in the pretrial order does not constitute a waiver of those claims.[[89]](#endnote-89)

**§9-11-37 ATTY FEES RELATING TO DISCOVERY DISPUTES**

**[COPY OF §9-11-37 IN MATERIALS-too long to reprint here]**

1. While the parties may rely upon §9-15-14(b) in an attempt to recover attorney fees in connection with discovery disputes, many cases have held “[i]n most cases, a party seeking compensation for another party’s failure to comply with discovery requests would follow the procedures set forth in O.C.G.A. § 9-11-37.”[[90]](#endnote-90)
   1. One of the primary differences between a request for award of attorney fees caused by discovery abuses made under §9-15-14 or §9-11-37 is the timing of the motion. As noted above, a motion made under §9-15-14 may be made while the litigation remains pending but no later than 45 days after the final resolution of a case. However, there is no similar provision within §9-11-37. A motion for an award of attorney fees under §9-11-37 must be made while the underlying case remains pending. Therefore, where plaintiff’s counsel voluntarily dismisses the lawsuit “moments before the hearing on sanctions,” as allowed under §9-11-41(a), the trial court cannot award fees under §9-11-37.[[91]](#endnote-91) In that circumstance, the moving party could request an award under §9-15-14 but the dismissal divested the trial court of authority to consider a motion for sanctions under §9-11-37(b).[[92]](#endnote-92)
2. Remember the requirements of USCR 6.4(B) that requires parties to confer and make a good faith effort to resolve discovery disputes before filing a motion (compel or protective order) and a certificate to that effect must be attached to the motion.
3. There are really two different statutes that deal with discovery disputes which we will probably deal with in the podcast dealing with discovery disputes:
   1. §9-11-26(c) allows parties to seek protective orders when they believe the discovery request is improper (see statute below)
   2. §9-11-37 allows for orders compelling discovery (and would allow for a protective order to be issued in response to a motion to compel) AND allows for an award of fees in certain circumstances (see statute attached as a separate document)
4. **O.C.G.A. §9-11-26(c)** provides:
   1. (c) Protective orders. Upon motion by a party or by the person from whom discovery is sought and for good cause shown, the court in which the action is pending or, alternatively, on matters relating to a deposition, the court in the county where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) That certain matters not be inquired into or that the scope of the discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the court;

(6) That a deposition, after being sealed, be opened only by order of the court;

(7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; or

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. Paragraph (4) of subsection (a) of Code Section 9-11-37 applies to the award of expenses incurred in relation to the motion.

1. By comparison, §9-11-37 applies to motions to compel. **(statute attached separately)**
2. Subsection (a) of §9-11-37 allows parties to file a motion to compel in the event that there are discovery disputes.
   1. §9-11-37(a)(2) allows:
      1. “If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to subsection (c) of Code Section 9-11-26.”
   2. §9-11-37(a)(4) allows for expenses of the motion, if granted, to be awarded unless the court finds that the opposition to the motion to compel was “substantially justified or that other circumstances make an award of expenses unjust.”
3. Subsection (b) of §9-11-37 allows for an award of sanctions in the event that an order issued by the trial court relating to a discovery abuse is not obeyed.
   1. §9-11-37(b)(2)(b) provides:
      1. “In lieu of any of the foregoing orders, or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.”
4. Both subsections (a) and (b) of §9-11-37 allow an award of attorney fees in the event a motion to compel is granted, in whole or in part, but there are important differences between the two subsections.
   1. §9-11-37(a)(4) allows for fees to be awarded against the PARTY OR THE ATTORNEY ADVISING THE PARTY, OR BOTH, if a motion to compel is brought, granted and the opposition was not substantially justified “or other circumstances exist that makes an award unjust”
      1. §9-11-37(a)(4) does not require a prior order from the court before an award is allowed
   2. §9-11-37(b)(2)(b) **requires a court order**[[93]](#endnote-93) which was defied by a party and the award can be made against the PARTY OR THE ATTORNEY ADVISING THE PARTY, OR BOTH.
      1. In addition to the several other sanctions listed for refusal to comply with the court’s order in §9-11-37(b), the court can award fees, including attorney fees, if a motion to compel is brought, granted and the opposition was not substantially justified “or other circumstances exist that makes an award unjust”
5. Failure to conduct a hearing on a motion for sanctions under §9-11-37(b) to determine whether the failure to respond was willful is reversible error.[[94]](#endnote-94) “Normally, this [required hearing] can be accomplished as part of the hearing on the motion to compel itself.”[[95]](#endnote-95) However, where the improper conduct occurs after the hearing anticipated under §9-11-37(a) has been conducted, a second hearing is required. “Even if…it seems clear that the position taken by the losing party was not substantially justified, he should have the change to attack the reasonableness of the costs or convince the court that other circumstances make an award of expenses unjust.”[[96]](#endnote-96)
6. Where a party failed to respond to discovery requests and the opposing party opts to obtain the documents from a third party instead of seeking a motion to compel, §9-11-37 does not apply.[[97]](#endnote-97)

**CONCLUSION AND WRAP-UP**

1. So in conclusion on the subject of attorney fees in civil cases:
2. §13-6-11 allows for an award if there is bad faith in the underlying transaction that gave rise to the lawsuit being filed
   1. Fees under §13-6-11 really only available to plaintiffs;
   2. Under §13-6-11, fact-finder must find bad faith;
   3. §13-6-11 fees cannot be awarded in summary judgment;
   4. Fees under §13-6-11 are waived if not included within a pretrial order or if the case is settled;
   5. “reasonableness” of fees must be found.
3. Fees under §9-15-14 require the court to find the applicable subsection (a or b)
   1. Claim under §9-15-14 can be brought up to 45 days after “final disposition;”
   2. Award under §9-15-14(a) is mandatory but award under §9-15-14(b) is discretionary;
   3. If summary judgment is denied, extremely rare to justify award under §9-15-14;
   4. §9-15-14 allows for an award of fees against ***a party, the party’s attorney, or both***.
   5. Court must make specific findings of inappropriate conduct;
   6. Court’s order must apportion between fees that were based on inappropriate conduct and that which would have been required anyway;
   7. Opposing party must be afforded hearing on the issue of an award of fees.
4. Fees under §9-11-37:
   1. Based upon motion to compel;
   2. USCR 6.4 requirement of good faith attempt to resolve;
   3. Two different sections, (a) and (b);
      1. (a) allows award if opposition not justified;
      2. (b) requires a court order that was violated;
   4. Opposing party must be afforded hearing on the issue of an award of fees;
   5. Dismissal of action, no award of fees under §9-11-37 available.
5. We realize this podcast had lots of references to cases, statutes, etc. You can find a written copy (with citations) on Sidebar (for superior court judges).
   1. If do not have access to Sidebar, you can contact us and we will get you a copy of the outline.
      1. But you have to agree in advance to ignore typos, etc.
   2. Just contact us at goodjudgepod@gmail,com and we will get you one.
   3. Once again, if you are a judge of another class of court, an attorney or other person interested in this topic but without access to Sidebar, please help us by getting a copy and sharing it on your website, list server or other site.
6. We have also prepared a chart that I use as a “cheat sheet” whenever the issue of attorney fees arise.
   1. We have a separate “cheat sheet” for domestic relations actions
   2. These are not secret and we have shared them with attorneys, other classes of court, etc.
   3. If you want a copy of the “cheat sheet,” let us know at goodjudgepod@gmail,com and we will try to get them out promptly.
7. The issue of attorney fees awards arises with frequency in civil litigation.
   1. It is clear that the law allows the judge to award fees in several different situations;
   2. But the applicable law has to be strictly complied with because it is in derogation of the common law to have one party pay the other’s fees.
8. We have given several presentations on this issue to Superior Court judges and our advice is not any sort of secret:
   1. If an attorney wants to be awarded fees, have him/her do the research and follow the law;
   2. It is not the judge’s duty to go looking for an applicable statute or attempt to have evidence presented that would support an award;
   3. Allow the lawyers seeking the award or opposing the award do “their thing”
9. But you can use this guide to know when/if they meet the requirements
10. Now, about the listeners being allowed to call in…..

1. *Money v. Thompson & Green Machinery Co.*, 155 Ga. App. 566, 567, 271 S.E.2d 699 (1997); *Cary v. Guiragossian*, 270 Ga. 192, 508 S.E.2d 403 (1998); *Moon v. Moon,* 277 Ga. 375, 379 (2003); *Cason v. Cason*, 281 Ga. 296, 299, 637 S.E.2d 716 (2006); *Gordon v. Abrahams*, 330 Ga. App. 795, 799 (2015). [↑](#endnote-ref-1)
2. *Kilmark v. Board of Regents*, 175 Ga. App. 857, 870 (1985); *Williams v. Binion*, 227 Ga. App. 893 (1997). [↑](#endnote-ref-2)
3. *Hudson v. Abercrombie,* 258 Ga. 729, 730 (1988). [↑](#endnote-ref-3)
4. *Doster v. Bates*, 266 Ga. App. 194, 195 (2004). [↑](#endnote-ref-4)
5. *Summit at Scarborough Homeowners Association, Inc. v. Williams*, 343 Ga. App. 342, 807 S.E.2d 63 (2017). [↑](#endnote-ref-5)
6. *Summit at Scarborough Homeowners Association, Inc. v. Williams*, 343 Ga. App. 342, 807 S.E.2d 63 (2017), citing *Merrill v. Lee*, 301 Ga. 34, 36 (2017). [↑](#endnote-ref-6)
7. *McCarthy v. Ashment-McCarthy*, 295 Ga. 231, 233-234 (2014). [↑](#endnote-ref-7)
8. *Tate v. Tate*, 340 Ga. App. 361, 364 (2017), citing *Minor v. Minor*, 257 Ga. 706, 709 (1987). [↑](#endnote-ref-8)
9. *Mecca Construction, Inc., v. Maestro Investments, LLC*, 320 Ga. App. 34, 45 (2013); *Nichols v. Main Street Homes, Inc.*, 244 Ga. App. 591 (2000); Rule 3.7(a)(2) of the Georgia Rules of Professional Conduct. [↑](#endnote-ref-9)
10. *Fulton Co. Bd. of Assessors v. Greenfield Inv. Group, LLC*, 314 Ga. App. 523, 526 (2012). [↑](#endnote-ref-10)
11. *Medical Office Mgmt. v. Hardee*, 303 Ga. App. 60, 66-67 (2010). [↑](#endnote-ref-11)
12. *Gray v. King*, 270 Ga. App. 855, 858 (2004); *In re Serpentfoot*, 285 Ga. App. 325, 329 (2007). [↑](#endnote-ref-12)
13. *In re Serpentfoot*, 285 Ga. App. 325, 329 (2007), citing *Gray v. King*, 270 Ga. App. 855, 858 (2004). [↑](#endnote-ref-13)
14. *In re Serpentfoot*, 285 Ga. App. 325, 329 (2007). [↑](#endnote-ref-14)
15. *Shiv Aban, Inc. v. Georgia Dept. of Transportation*, 336 Ga. App. 804, 819-821 (2016). [↑](#endnote-ref-15)
16. *Georgia Dept. of Corrections v. Couch*, 296 Ga. 469, 483 (2014), citing *Brock Built, LLC v. Blake*, 316 Ga. App. 710, 714-715 (2012). [↑](#endnote-ref-16)
17. *Brandenburg v. All-Fleet Refinishing, Inc.*, 252 Ga. App. 40, 43 (2001), cited in *Georgia Dept. of Corrections v. Couch*, 296 Ga. 469, 483-484 (2014). [↑](#endnote-ref-17)
18. *Southern Cellular Telecom v. Banks*, 209 Ga. App. 401 (1993). [↑](#endnote-ref-18)
19. *McClure v. McCurry*, 329 Ga. App. 342, 342-343 (2014). [↑](#endnote-ref-19)
20. *Williamson v. Harvey Smith, Inc*., 246 Ga, App. 745, 750 (2000). [↑](#endnote-ref-20)
21. *Singh v. Sterling United, Inc.*, 326 Ga. App. 504 (2014). [↑](#endnote-ref-21)
22. *Williamson v. Harvey Smith, Inc*., 246 Ga, App. 745, 750 (2000). [↑](#endnote-ref-22)
23. *David C. Joel, Atty. at Law, PC v. Chastain*, 254 Ga. App. 592, 597 (2002); *Lamb v. Savage Disposal Co. of Georgia*, 244 Ga. App. 193 (2000); *Benchmark Builders, Inc. v, Schultz*, 289 Ga. 639, 329-330 (2011). [↑](#endnote-ref-23)
24. *Benchmark Builders, Inc. v. Schultz*, 289 Ga. 329, 330 (2011). [↑](#endnote-ref-24)
25. *Singh v. Sterling United, Inc.*, 326 Ga. App. 504 (2014). [↑](#endnote-ref-25)
26. *Artzner v. A & A Exterminators, Inc.,* 242 Ga. App. 766 (2000). [↑](#endnote-ref-26)
27. *MARTA v. Mitchell*, 289 Ga. App. 1, 3 (2007), citing *Rapid Group v. Yellow Cab, etc.,* 253 Ga. App. 43, 49-50 (2001). [↑](#endnote-ref-27)
28. *Chong v Reebaa Const. Co*.*, Inc.,* 292 Ga. App. 750 (2008). [↑](#endnote-ref-28)
29. *Sims v. G.T. Architecture Contractors Corp.*, 292 Ga. App. 94 (2008). [↑](#endnote-ref-29)
30. *Clary v. Allstate Fire and Casualty Ins. Co.*, 340 Ga. App. 351, n. 7 (2017). [↑](#endnote-ref-30)
31. *Yost v. Torok,* 256 Ga. 92, 94-95 (1986); *Long v. City of Helen*, 301 Ga. 120, n.2 (2017). [↑](#endnote-ref-31)
32. *Long v. City of Helen*, 301 Ga. 120, 121 (2017), citing *Riddell v. Riddell*, 293 Ga. 249, 250 (2013). [↑](#endnote-ref-32)
33. *Cohen v. Rogers*, 341 Ga. App. 146, 153 (2017), citing *Hindu Temple and Community Center of the High Desert, Inc. v. Raghunathan*, 311 Ga. App. 109 (2012). [↑](#endnote-ref-33)
34. *Russell v. Sparmer*, 339 Ga. App. 207, 210 (2016), citing *Gibson Const. Co. v. GAA Acquisitions I,* 314 Ga App. 674, 677 (2012). [↑](#endnote-ref-34)
35. *Marino v. Clary Lakes Homeowners Ass’n, Inc.*, 331 Ga. App. 204, 211 (2015); *O’Leary v. Whitehall Construction*, 288 Ga. 790, 792-793 (2011). [↑](#endnote-ref-35)
36. *Lee v. Park*, 341 Ga. App. 350, 353 (2017). [↑](#endnote-ref-36)
37. *Bircoll v. Rosenthall*, 267 Ga. App. 431, 437 (2004). [↑](#endnote-ref-37)
38. *Brewer v. Paulk*, 296 Ga. App. 26, 31 (2009), citing *Betallic, Inc. v. Deavours*, 263 Ga. 796 (1994). [↑](#endnote-ref-38)
39. *Haney v, Camp*, 320 Ga. App. 111, 114 (2013) (subsection (a) provides for a mandatory award upon a finding of the absence of any justiciable issue whereas subsection (b) allows for a discretionary award upon a finding that a party lacked substantial justification or that the action was interposed for delay or harassment) [↑](#endnote-ref-39)
40. *Williams v. Coope*r, 280 Ga. 145, 146, 625 S.E. 2d 754 (2006); *Green v. McCart*, 273 Ga. 862, 863, 548 S.E.2d 303 (2001). [↑](#endnote-ref-40)
41. *Jackson v. Jackson*, 282 Ga. 459, 460-461, 651 S.E.2d 92 (2007); *Langley v. National Labor Group, Inc.*, 262 Ga. App. 749, 753, 586 S. E. 2d 418 (2003); *Glass v. Glover*, 241 Ga. App. 838, 839, 528 S.E.2d 262 (2000). [↑](#endnote-ref-41)
42. *Nesbit v. Nesbit*, 295 Ga. App. 763, 764-765 (2009). [↑](#endnote-ref-42)
43. *Horton v. Horton*, 299 Ga. 46 (2016); *Russell v. Sparmer*, 339 Ga. App. 207 (2016). [↑](#endnote-ref-43)
44. *Butler v. Lee*, 336 Ga. App. 102, 104 (2016). [↑](#endnote-ref-44)
45. *Heiskell v. Roberts*, 342 Ga. App. 109, 117 (2017). [↑](#endnote-ref-45)
46. *Tavakolian v. Agio Corp*, 304 Ga. App. 660, n. 19 (2010); *Dallow v. Dallow*, 299 Ga. 762, 778 (2016); *Munoz v. American Lawyer Media,* 236 Ga App. 462, 467 (1999)*.* [↑](#endnote-ref-46)
47. *MacDonald v. Harris*, 266 Ga. App. 287, 288 (2004). [↑](#endnote-ref-47)
48. *McClure v. McCurry*, 329 Ga. App. 342, 342-343 (2014); O.C.G.A. § 9-15-14(f). [↑](#endnote-ref-48)
49. *Bankston v. Warbington*, 332 Ga. App. 29, 35-27 (2015). [↑](#endnote-ref-49)
50. *Long v. City of Helen*, 201 Ga. 120, 121 (2017). [↑](#endnote-ref-50)
51. *Groover v. Groover*, 279 Ga. 507, 508 (2005). [↑](#endnote-ref-51)
52. *Groover v. Groover*, 279 Ga. 507, 508 (2005). [↑](#endnote-ref-52)
53. *Cohen v. Rogers*, 341 Ga. App. 146, 152 (2017). [↑](#endnote-ref-53)
54. *Cohen v. Rogers*, 341 Ga. App. 146, 152 (2017), citing the US Supreme Court’s decision in *Fox v. Vice*, 563 U.S. 826, 838 (2011). [↑](#endnote-ref-54)
55. *Haney v, Camp*, 320 Ga. App. 111, 114 (2013). [↑](#endnote-ref-55)
56. *McNair v. McNair*, 343 Ga. App. 41, (2017); *McClure v. McCurry*, 329 Ga. App. 342, 344 (2014). [↑](#endnote-ref-56)
57. *In re Serpentfoot*, 281 Ga. App. 325, 328-329 (2007). [↑](#endnote-ref-57)
58. *Cason v. Cason*, 281 Ga. 296, 299-300 (2006). [↑](#endnote-ref-58)
59. *Interfinancial Midtown v. Choate Construction Co.,* 284 Ga. App. 747, 751-753 (2007). [↑](#endnote-ref-59)
60. Several cases have been cited by the appellate courts which suggest that if the language of the order granting fees under §9-15-14 tracks the statutory language of subsection (a) or (b), the failure of the trial court to cite the relevant subsection may not be fatal to the award. *Ellis v. Caldwell*, 290 Ga. 336, 339-340 (2012); *Nelson & Hill, PA v. Wood*, 245 Ga. App. 60, 64 (2000); *Kim v. Han*, 339 Ga. App. 886, 889 (2016). [↑](#endnote-ref-60)
61. *Fulton County School Dist. v. Hersh*, 320 Ga. App. 808, 814-815 (2013), citing *Haggard v. Bd. of Regents*, 257 Ga. 524, 527 (1987). [↑](#endnote-ref-61)
62. *Trotter v. Summerour*, 273 Ga. App. 263 (2005); *Executive Excellence, LLC v. Martin Bros. Investments, LLC*, 309 Ga. App. 279 (2011) [↑](#endnote-ref-62)
63. *Shiv Aban, Inc. v. Georgia DOT*, 336 Ga. App. 804, 820-821 (2016). [↑](#endnote-ref-63)
64. *Brewer v. Paulk*, 296 Ga. App. 26, 31 (2009), citing *Harlkleroad v Stringer*, 231 Ga. App. 464, 472 (1998) and *Huggins v. Chapin*, 233 Ga. App. 109 (1998). *Fedina v. Larichev*, 322 Ga. App. 76, 81 (2013); *City of Albany v. Pait*, 335 Ga. App. 215 (2015). [↑](#endnote-ref-64)
65. *Fedina v. Larichev*, 322 Ga. App. 76, 81 (2013), citing *Trotman v. Velociteach Project Mgmt., LLC*, 311 Ga. App. 208, 214 (2011). [↑](#endnote-ref-65)
66. *Gibson Law Firm, LLC v. Miller Built Homes, Inc.*, 327 Ga. App. 688, 691 (2014), citing *Fedina v. Larichev*, 322 Ga. App. 76, 81 (2013). [↑](#endnote-ref-66)
67. *Hindu Temple and Community Center of the High Desert, Inc. v. Raghunathan*, 311 Ga. App. 109, 117-118 (2012). [↑](#endnote-ref-67)
68. *Hindu Temple and Community Center of the High Desert, Inc. v. Raghunathan*, 311 Ga. App. 109, 118 (2012). [↑](#endnote-ref-68)
69. *Shiv Aban, Inc. v. Georgia Dept. of Transportation*, 336 Ga. App. 804, 819-821 (2016). [↑](#endnote-ref-69)
70. O.C.G.A. § 9-11-11.1(b); *Hindu Temple and Community Center of the High Desert, Inc. v. Raghunathan*, 311 Ga. App. 109, n. 37 (2012). [↑](#endnote-ref-70)
71. *Hindu Temple and Community Center of the High Desert, Inc. v. Raghunathan*, 311 Ga. App. 109, n. 37 (2012). [↑](#endnote-ref-71)
72. O.C.G.A. § 9-15-14(e); *McClure v. McCurry,* 329 Ga. App. 342, 343 (2014). [↑](#endnote-ref-72)
73. *Kim v. Han*, 339 Ga. App. 886, 888 (2016). [↑](#endnote-ref-73)
74. *Hart v. Redmond Regional Medical Center*, 300 Ga. App. 641, 643 (2009), citing *Meister v. Brock*, 268 Ga. App. 849, 850 (2004). [↑](#endnote-ref-74)
75. *Horesh v. DeKinder*, 295 Ga. App. 826, 827-828 (2009). [↑](#endnote-ref-75)
76. *Horesh v. DeKinder*, 295 Ga. App. 826, 827 (2009), citing *Standridge v. Spillers*, 263 Ga. App. 401, 403 (2003). [↑](#endnote-ref-76)
77. *Kim v. Han*, 339 Ga. App. 886, 888 (2016). [↑](#endnote-ref-77)
78. *Condon v. Vickery*, 270 Ga. App. 322, 326 (2004); *Fairburn Banking Co. v. Gafford*, 263 Ga. 792, 794 (1994); *Hewitt v. Walker*, 234 Ga. App. 78 (1998); *Little v. Gen. Motors Corp.*, 229 Ga. App. 781 (1997). [↑](#endnote-ref-78)
79. *Horesh v. DeKinder*, 295 Ga. App. 826, 828-830 (2009). The logic for essentially ignoring the language of §9-11-58(b) in connection with the 45 day “window of opportunity” to file a motion under §9-15-14 is set forth within *Horesh*. [↑](#endnote-ref-79)
80. *Workman v. RL BB ACQ I-GA CVL, LLC*, 303 Ga. 693 (2018). **NOTE:** A copy of the Supreme Court’s opinion is in these materials [↑](#endnote-ref-80)
81. *Workman v. RL BB ACQ I-GA CVL, LLC*, 303 Ga. 693, 697 (2018). [↑](#endnote-ref-81)
82. *Workman v. RL BB ACQ I-GA CVL, LLC*, 303 Ga. 693, 697-698 (2018). [↑](#endnote-ref-82)
83. *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-83)
84. *Fortson v. Hardwick*, 297 Ga. App. 603, 604-605 (2009), citing *Waters v. Waters*, 242 Ga. App, 588, 590 (2000). [↑](#endnote-ref-84)
85. *Andrew, Merritt, Reilly & Smith, LLP v. Remote Accounting Solutions, Inc.*, 277 Ga. App. 245, 246-247 (2006). [↑](#endnote-ref-85)
86. *Sotter v. Stephens*, 291 Ga. 79, 83 (2012). [↑](#endnote-ref-86)
87. *Cobb County v. Sevani*, 196 Ga. App. 247, 247-248 (1990); *Regan v. Edwards*, 334 Ga. App. 65, 66-67 (2015). [↑](#endnote-ref-87)
88. *Stone v. King*, 196 Ga. App. 251, 252 (1990). [↑](#endnote-ref-88)
89. *McClure v. McCurry*, 329 Ga. App. 342, 342-343 (2014). [↑](#endnote-ref-89)
90. *Gibson Law Firm, LLC v. Miller Built Homes, Inc.*, 327 Ga. App. 688, n. 2 (2014). *See Mariner Health Care, Inc. v. PricewaterhouseCoopers LLP*, 282 Ga. App. 217, 220-221 (2006) where the Court of Appeals identified a case which would be one of the unusual cases where an award under §9-11-37 is not available but remedy could be sought under §9-15-14. [↑](#endnote-ref-90)
91. *C&S Industrial Supply Co., Inc. v. Proctor & Gamble Paper Products Co.*, 199 Ga. App. 197, 197 (1991). [↑](#endnote-ref-91)
92. *Mariner Health Care, Inc. v. PricewaterhouseCoopers LLP*, 282 Ga. App. 217, 220-221 (2006). There is no “bad faith exception” to O.C.G.A. § 9-11-41 (the voluntary dismissal statute) and an action can be voluntarily dismissed at any time before trial provided the trial court has not verbally pronounced a termination of the case. *Hart v. Redmond Regional Medical Center*, 300 Ga. App. 641, 642 (2009). [↑](#endnote-ref-92)
93. *Carrier Corp. v. Rollins, Inc.,* 316 Ga. App. 630, 638 (2012). [↑](#endnote-ref-93)
94. *American Radiosurgery, Inc. v. Rakes*, 325 Ga. App. 161, 167-168 (2013); *North Druid Development, LLC v. Post, Buckley, Schuh & Jernigan, Inc.*, 330 Ga. App. 432, 437 (2014). [↑](#endnote-ref-94)
95. *Gomez v. Peters*, 221 Ga. App. 57, 60 (1996). [↑](#endnote-ref-95)
96. *Gomez v. Peters*, 221 Ga. App. 57, 60 (1996). [↑](#endnote-ref-96)
97. *Jones-Shaw v. Shaw*, 291 Ga. 252, 254 (2012). [↑](#endnote-ref-97)