

## ATTORNEY'S FEES

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**1. Q. *This divorce is my husband's fault! Won't he have to pay all my attorney's fees?***

A. The answer to this question is yes...and no. The payment of attorney's fees is governed by state statutes which set out specific instances in which attorney's fees can be awarded by a judge. As a general rule, each partner pays his or her own attorney's fees. Some exceptions are covered below. There is no law that requires the spouse "causing the separation" to pay the other party's attorney's fees.

**2. Q. *What if we're going to sign a separation agreement and not go to court at all?***

A. In this case, payment of the attorney's fees you incur in the drafting and negotiating of a separation agreement is a point to be negotiated as a part of your agreement. Even if your spouse initiated the separation, there is no law that requires him or her to pay the fees you may incur to obtain a separation agreement.

**3. Q. *Can a judge order my wife to pay my fees if I have to take her to court for custody of the children?***

A. The judge may order attorney's fees in custody cases if:

- You are an interested party (such as a parent or relative);
- You are acting in good faith; and
- You do not have sufficient means with which to pay the costs and fees involved in bringing or defending a custody case.

This decision is entirely up to the judge. The judge may decide not to award attorney's fees to you even if the above elements are met. And there is no guarantee that, when attorney's fees are granted, they will be adequate or equal to what you have spent.

**4. Q. *How about child support cases?***

A. Again, the law allows the judge to award you attorney's fees if you meet the above criteria plus the judge finds that the party ordered to pay support (the other parent) refused to provide adequate support at the time you filed your case. Thus, if you and your spouse separate, the children remain with you, and your spouse continues to provide an adequate amount of support, then you will not be entitled to an award of attorney's fees. What is "adequate support" will be up to the judge to decide; it may or may not

be equal to the amount your spouse is actually required to pay.

**5. Q. *What if I have to go to court to get alimony?***

A. If you can prove to the judge that you are a dependent spouse, are entitled to alimony and do not have the money to pay your attorney's fees, the judge may award you attorney's fees. Again, this is entirely up to the judge.

**6. Q. *Maybe I should ask about when I can't get attorney's fees!***

A. There are two actions in which an award of attorney's fees is NOT allowed. These are absolute divorce and property division. In these actions no matter who is at fault or who wins, the law does not allow for the award of attorney's fees.

**7. Q. *If the judge does give me attorney's fees, will my spouse have to pay all of my attorney's bill?***

A. Probably not. First, the judge can only order attorney's fees which relate to the issue he or she has heard. If the judge has only heard your action for custody and support, only the fees you have incurred for representation concerning custody and support can be awarded. Additionally, while the judge can order payment of a "reasonable" attorney's fee, this may or may not be the entire bill. The amount is solely the judge's decision.

**8. Q. *Are there any other actions in which I might get attorneys' fees?***

A. There are several other situations in which attorney's fees can be awarded. However, only three are likely to arise in your domestic case:

- Failure to comply with discovery. The parties to a lawsuit are allowed a period of time in which they can request the other party to produce documents or answer written or oral questions, so that each party can "discover" what information the other party has. If your spouse fails to comply with your discovery requests (fails to produce documents or produces altered documents, for example) and you are then forced to go to court to get an order requiring his or her compliance, you may ask for payment of your attorney's fees in connection with your spouse's failure to comply.
- "Rule 11" motions. Our law has many rules which govern how to file, serve and try cases. One of these is Rule 11 of the N.C. Rules of Civil Procedure, which sets out the requirements for a valid pleading (your complaint or motion for alimony, custody, etc.). Rule 11 requires that each pleading be "well grounded in fact and in law" (that is, have a valid factual and legal basis), be filed after "reasonable inquiry" as to the truth of its allegations, and not be used solely for the purpose of delay, additional expense or harassment. If a judge should find that the requirements of Rule 11

have been violated, he may award, among other things, the payment of a reasonable attorney fee.

- Injunctive relief in equitable distribution cases. If you have to ask a judge to sign an injunction to prevent your spouse from damaging, removing or destroying marital (or separate) property, the court can also award you attorney's fees up to the fair market value of the property involved.

**9. Q. *Can I at least get a tax deduction for the attorney's fees I wind up paying?***

- A. You may deduct those amounts which represent fees charged to you for tax advice or assistance in obtaining alimony. You will not receive much tax counseling from your domestic lawyer, but if alimony is an issue, the amount you pay for advice and litigation to obtain alimony is tax-deductible. If you are ordered to pay alimony, you may also deduct any attorney's fees you are required to pay for your spouse if they are clearly designated as part of the alimony you pay.

**10. Q. *What if I have other questions?***

- A. Please ask our attorneys. They are here to help you.