

# Equitable Considerations in Florida Family Courts: What Do You Mean I Might Have to Pay Their Attorney's Fees?

Article  
Lowndes  
10.06.2025

In Florida, the family court is designated as a court of equity. Meaning, the primary goal of the family court is to achieve fairness between the parties in the form of monetary and non-monetary relief depending on the type of case and claims presented. Due to this principle, individuals are often surprised to learn about certain remedies that exist under the law for those seeking relief in the family court. One such remedy that is often met with surprise is the ability to seek an award of attorney's fees and costs from the opposing party.

Attorney's fees include payments made from a client to a lawyer for legal services rendered by the lawyer and costs include itemized payments such as filing fees, service fees, subpoena fees, court reporting fees, expert fees, appraisal fees etc. Depending on the facts and circumstances of a case, the court can require that one party pay part, or all, of the fees of another party.

## Relevant Statutes

The authority of the court to award attorney's fees and costs is found directly in the Florida Statutes. For cases involving dissolution of marriage or support unconnected with dissolution of marriage, the authority to grant attorney's fees is provided in Florida Statute § 61.16. In pertinent part, the statute states "[t]he court may from time to time, after considering the financial resources of both parties, order a party to pay a reasonable amount for attorney's fees, suit money, and the cost to the other party..." In paternity cases, this same authority is provided to the court under Florida Statute § 742.045.

## Factual Considerations

Typically, in examining the "financial resources" of the parties, the court must determine whether one party has a financial need for attorney's fees from the other party and whether that other party has a financial ability to pay those attorney's fees. In examining financial resources, the court can

## Related Attorneys

[Haley C. Davis](#)

## Related Expertise

[Family & Marital Law](#)

analyze income and assets, including both marital and nonmarital assets, available to each party.

The court also has the discretion to consider other issues relevant to a potential award of attorney's fees and costs. Under *Rosen v. Rosen*, 696 So. 2d 697 (1997), the court may also consider 1) scope and history of the litigation, 2) duration of the litigation, 3) merits of the parties' respective positions, 4) whether the litigation is being brought to harass the other party, and 5) the existence of prior or other pending litigation. These factors are also examined under principles of fairness.

If an award of attorney's fees is being made at the time of a Final Judgment of Dissolution of Marriage, the court must also consider how much a spouse is receiving in the equitable distribution of the marital assets and whether that spouse is receiving alimony and to what extent. Meaning, the Court is considering a party's full financial picture at the time of divorce. The idea is that the court is attempting to make things "fair" and ensuring that each party has the ability to pay for their attorneys without unreasonably spending down assets they receive in the dissolution proceeding.

After examining the totality of the financial circumstances, the court is empowered to act with discretion to decide as to whether one party should be required to contribute to the other party's attorney's fees.

## Additional Avenues to Seek Attorney's Fees

While attorney's fees are most frequently awarded in family law cases based on the specific statutory authority discussed above, parties should also be aware there are other avenues for seeking attorney's fees in family law cases such as contractual provisions or an award of attorney's fees as a sanction for bad faith conduct.

Florida courts have recognized that prevailing party attorney's fee provisions in marital contracts are valid and enforceable. This includes a party who successfully defends against a claim brought by another party, even if the other party has not defaulted under the terms of the contract. Additionally, Florida courts recognize and enforce default fee provisions which allow a party to seek fees against the other, if the court finds that party has defaulted on the agreement.

Finally, courts may under limited circumstances award attorney's fees as a sanction pursuant to Florida statutes, court rules, and case law due to a failure to follow court or procedural rules, contempt proceedings, and certain litigation conduct. These potential circumstances should be discussed with an experienced family law attorney.

## Our Firm

It is important for individuals engaged in family law proceedings to understand their potential right to seek an award of attorney's fees and costs or their potential liability for the payment of an opposing party's attorney's fees and costs. At Lowndes, our experienced family law attorneys assist clients in navigating this issue in family law proceedings.