

Comprehensive Guide to Attorney Fees in Illinois Divorce Cases



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Introduction

Divorce is challenging emotionally and financially, and many people worry about the cost of attorney fees. Understanding the different types of fees in Illinois family law and divorce cases can help you prepare, make informed decisions, and avoid unexpected financial surprises. This guide will explain these fees and offer tips to help you manage them.

Types of Attorney Fees in Illinois Divorce Cases

Illinois divorce cases are governed by the Illinois Marriage and Dissolution of Marriage Act (IMDMA). This law regulates how attorney fees are awarded to ensure fair access to legal representation. Sections 501 and 508 of the IMDMA detail the types of attorney fees available. Below, we explain the different types of fees you may encounter during your divorce.

1. Interim Attorney Fees: Leveling the Playing Field

When one spouse controls most of the family's finances, the other might struggle to afford legal representation. **Interim attorney fees** help address this imbalance by providing funds from the marital estate to the less financially secure spouse. These fees ensure both parties have access to fair legal representation throughout the divorce process.

How to Request Interim Fees: To request interim fees, file a petition with the court that explains your financial situation and why you need the fees. The court considers several factors, including income, assets, and case complexity. It typically looks for assets or accounts within the marital estate that could cover the fees. The court will also review how much the other spouse has already paid toward their own attorney fees and costs.

Example: A stay-at-home parent with no income can request interim fees if the other spouse has income or, preferably, control over liquid marital assets. This allows the financially disadvantaged spouse to hire an attorney.

2. Prospective Attorney Fees: Preparing for Future Legal Costs

Some divorces involve ongoing legal costs that extend beyond the initial stages of the case. **Prospective attorney fees** allow you to secure funds from the marital estate to cover these future expected costs, ensuring that you have the resources to continue your legal representation of your [divorce attorney](#) without interruption.

When to Consider Prospective Fees: If your divorce case is complex or likely to be lengthy, requesting prospective fees can help you manage your legal expenses.

3. Court-Ordered Attorney Fees: Ensuring Fairness

The court may require one spouse to pay the other's attorney fees when there is a big financial difference between them or when one spouse's actions increase the other's legal costs. The court can order these fees due to financial imbalance, misconduct, or as a penalty for not following court orders.

- **When They Apply:** The court often awards these fees if one spouse has more financial resources, or if one spouse delays the case or refuses to provide financial information, causing extra legal costs.
- **Example:** If one spouse earns much more than the other, the court may order them to cover part or all the other spouse's legal fees.

4. Contribution Fees (508(a) Fees): Addressing Financial Disparity

Contribution fees help address financial differences between spouses, ensuring both can afford legal representation. The court typically awards these fees when one spouse has more income or control over marital assets. The court may also award them after the divorce is finalized, when the 'marital estate' has already been divided and no longer exists.

- **How Contribution Fees Work:** The court reviews the financial situations of both spouses and may require the wealthier spouse to help cover the other's attorney fees. This can happen when one spouse received a larger share of the marital estate in the divorce or has a non-marital estate with greater value than the other spouse's assets. The court may also award contribution fees if one spouse earns significantly more than the other.
- **Example:** A spouse with a higher income may be required to contribute to the legal fees of a lower-earning spouse to ensure fairness during the legal process..

5. Fees for Violating Court Orders (508(b) Fees) and Contempt Fees: Penalties for Non-Compliance

The Court may award these fees when one spouse willfully violates court orders. **508(b) fees** cover legal costs caused by these violations. **Contempt fees** apply when a spouse is held in contempt for failing to follow court orders.

- **Common Violations:** These can include failure to comply with visitation schedules, withholding financial information, or ignoring other court-mandated obligations. To obtain these fees, the court must find that the opposing party was in contempt of a court order, or that their actions were willful and unjustified.
- **Example:** If a spouse refuses to follow a court order regarding custody or visitation, the court may require them to pay the other spouse's attorney fees as a penalty.

6. Sanction Fees: Penalizing Misconduct in Litigation

Sanction fees penalize improper conduct during the litigation process. These fees discourage dishonest or unethical behavior, such as hiding assets, filing frivolous motions, or engaging in bad faith litigation tactics. Courts typically award sanctions when a party files a verified petition or motion that lacks a factual basis or was filed for an improper purpose, such as harassment or to increase legal costs. General conduct that is not tied to the filing and signing of a Motion can be more difficult to obtain sanctions for.

- **When Sanctions Are Imposed:** These fees are typically awarded when one spouse engages in behavior that significantly increases the cost or duration of the divorce, especially when motions are filed for an improper purpose.
- **Example:** If a spouse files baseless motions to delay the divorce, the court may impose sanction fees to penalize that behavior and cover the other spouse's legal costs.

7. Fee Disgorgement: Rebalancing Financial Resources

Fee Disgorgement happens when the court orders one spouse's attorney to return a portion of the retainer or other unearned attorney's fees they've been paid if the other spouse cannot afford their own attorney fees. This ensures both parties can access legal representation, even if one has already paid significant attorney fees.

- **When Disgorgement Applies:** The court may order fee disgorgement when one spouse has paid significant attorney fees and the other struggles to afford legal counsel. However, the court cannot disgorge fees that the attorney has already earned. Disgorgement usually applies to unearned fees, such as retainers that have not yet been earned by the attorney.
- **Example:** A court may order disgorgement if one spouse's attorney has received a large payment which has not yet been earned by that attorney (i.e. an unearned retainer), but the other spouse cannot afford to pay their own attorney.

8. Frivolous Lawsuit Fees: Protecting Against Baseless Claims

If one spouse files a baseless or frivolous lawsuit during the divorce, the court may order them to pay the other's attorney fees. **Frivolous lawsuit fees** fall under sanction fees. Courts impose sanctions, including attorney fees, under **Illinois Supreme Court Rule 137** when one spouse files a lawsuit with no factual or legal basis. These fees are intended to prevent misuse of the legal system and discourage groundless claims.

- **Preventing Legal Harassment:** These sanctions help protect against legal costs caused by baseless claims from your spouse.
- **Example:** If a spouse files a lawsuit with no legal basis simply to harass the other, the court may require them to cover the other spouse's attorney fees.

Attorney Fee Models in Illinois Divorce Cases

Understanding how your attorney will bill you is crucial for managing legal costs effectively. Below are the common fee models used by family law attorneys in Illinois:

- **Retainer Fees:** This is an upfront payment made to secure the attorney's services. The retainer is typically held in a trust account and drawn upon as the attorney works on your case.
- **Hourly Rates:** With this model, you are billed for the time your attorney spends on your case, usually in hourly increments. This can be ideal for more complex cases where the amount of work required is uncertain. Most times, a case requires an initial retainer, which is billed using an hourly rate model.

- **Flat Fees:** A flat fee means paying a set amount for specific legal services, like drafting a divorce petition or handling an uncontested divorce. **However, flat fees are uncommon in divorce cases, and our firm typically does not offer this model.**
- **Hybrid Models:** Some attorneys may use a combination of fee structures, such as a lower hourly rate paired with a flat fee for certain services, to better accommodate your financial situation.

By understanding these models, you can choose a law firm that aligns with your financial needs and ensures that you are prepared for the costs involved.

Addressing Attorney Fee Concerns

Addressing concerns or questions about attorney fees proactively can help reduce stress in an already difficult situation. Whether you're dealing with a fee petition from a previous attorney or trying to manage your current fees, here's how to handle these situations:

- **Open Communication:** If you're facing financial difficulties, discuss your situation openly with your attorney. An attorney who is aware of your circumstances is more likely to work with you.
- **Correcting Fee Errors:** If you believe your fees contain an error or seem unreasonable, bring it up with your attorney right away.
- **Understanding the Consequences:** Ignoring concerns about fees can result in serious legal consequences. These can include judgments against you and your assets, wage garnishment, additional attorney fees for collection, and interest. It's important to resolve any concerns promptly to avoid further complications.

Practical Tips for Managing Attorney Fees

- **Budget Wisely:** Set a budget for your legal fees and stick to it as closely as possible.
- **Seek Contributions:** If your spouse earns significantly more than you, consider filing for interim or contribution fees to help cover your costs.
- **Keep Detailed Records:** Document all your legal expenses carefully. This will be crucial if you need to request fee contributions or court-ordered fees.
- **Ask if there are ways to reduce your fees:** If there are things you can do instead of paying a law clerk or paralegal to complete them, such as following up with a bank about a subpoena which was issued, you may be able to reduce fees. Having a paralegal or a law clerk call the bank to keep following up is usually something the client could do if they are trying to manage fees. Additionally, ask your attorney how to organize and label large amounts of documentation to save on fees. Discuss with your attorney how you can help lower your costs. Talk to your attorney about how you can help to keep your bill down.
- **Manage your volume of Communication:** Contact your attorney only about matters necessary to further your case and try to limit how often you reach out. If you're calling or emailing daily, you could end up with a hefty bill. Instead, consider sending a weekly email with all the information and questions you need to address. This can be more cost-effective than frequent calls or emails.

Ready to Take Control of Your Attorney Fees

Understanding the various types of attorney fees in [Illinois divorce cases](#) can help you navigate the financial challenges of divorce more effectively. Whether you're seeking interim fees to cover immediate costs or need to request court-ordered fees due to your spouse's misconduct, knowing your options is the first step toward ensuring a fair outcome. For personalized advice and guidance on managing your attorney fees, [reach out to Anderson Boback & Marshall](#) today.