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CIVIL LITIGATION Court and Litigation Costs: Provide for the Award of Attorney's Fees and Expenses Incurred in Obtaining a Court Order for Attorney's Fees and Expenses of Litigation

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CIVIL LITIGATION

*Court and Litigation Costs: Provide for the Award of
Attorney's Fees and Expenses Incurred in Obtaining a Court
Order for Attorney's Fees and Expenses of Litigation*

CODE SECTION: O.C.G.A. § 9-15-14 (amended)
BILL NUMBER: SB 1
ACT NUMBER: 269
GEORGIA LAWS: 1997 Ga. Laws 689
SUMMARY: The Act allows a party to recover attorney's fees and expenses incurred in seeking a court order for payment of attorney's fees and expenses relating to the underlying litigation.
EFFECTIVE DATE: July 1, 1997

History

The Act amends chapter 15 of title 9 of the Georgia Code.¹ Under prior law, either party to a lawsuit could recover attorney's fees and costs if the other party asserted a claim or defense frivolously or in bad faith.² The previous Code section³ allowed a party to recover attorney's fees and expenses "which are reasonable and necessary for defending or asserting the rights of a party."⁴ Questions were left unanswered as to whether the court could also award the moving party attorney's fees and costs of the hearing incurred in recovering fees from the underlying litigation.⁵

Prior to the Act, some "judges were under the impression that Code section 9-15-14 authorized attorney's fees for only the action the moving party prevailed on, not the cost of the [9-15-14] hearing, while other judges believed that they had the authority to award the cost of the

1. Compare 1986 Ga. Laws 1591 (formerly found at O.C.G.A. § 9-15-14 (Supp. 1996)), with O.C.G.A. § 9-15-14 (Supp. 1997).

2. See 1986 Ga. Laws 1591, § 1, at 1592-93 (formerly found at O.C.G.A. § 9-15-14 (Supp. 1996)).

3. *Id.*

4. *Id.* at 1593.

5. See Telephone Interview with Sen. Billy Ray, Senate District No. 48 (Apr. 16, 1997) [hereinafter Ray Interview].

hearing also.⁶ SB 1⁷ was introduced to clear up that ambiguity and avoid differing results from one case to the next.⁸

Senator Billy Ray stated that the "genesis for bringing the bill was a court case [he] had last year."⁹ In that case, which was still pending when the interview took place, Senator Ray's client had been kept in the case as a defendant for the sole purpose of providing jurisdiction to the plaintiff.¹⁰ On the eve of summary judgment, Senator Ray's client was dismissed, after already spending over \$4000 defending himself.¹¹ Senator Ray estimated that his client would need to spend another \$2000 to recover the original \$4000 under Code section 9-15-14.¹² Senator Ray believed that, in such cases, the party should be able to recover not only the cost of the underlying frivolous litigation, but should also be able to recover the cost of the hearing.¹³

SB 1

The bill, as introduced, amended Code section 9-15-14(d) by adding the following sentence: "Attorney's fees and expenses of litigation incurred in obtaining an order of court pursuant to this Code section shall also be assessed by the court and included in its order."¹⁴ The first version of the bill *mandated* the award of such costs.¹⁵ Senator Peg Blitch presented an amendment to SB 1 changing the word *shall* to the word *may*.¹⁶ The amendment was introduced to allow the courts full discretion in awarding such fees¹⁷ and to prevent abuse by the moving party.¹⁸

6. *Id.*

7. The first version of the bill, introduced by Senator Billy Ray, failed in the Senate on January 31, 1997. *See* Final Composite Status Sheet, Mar. 28, 1997. Observation of the floor debate on that day indicates that the bill was defeated solely to harass Senator Ray (a freshman). *See* Ray Interview, *supra* note 5. Several senators took tongue-in-cheek issue with a freshman senator presenting a senate bill numbered one. *See id.*

8. *See* Ray Interview, *supra* note 5.

9. *Id.*

10. *See id.*

11. *See id.*

12. *See id.*

13. *See id.*

14. SB 1, as introduced, 1997 Ga. Gen. Assem. The bill was pre-filed by Senator Ray on January 3, 1997, and introduced on January 13, 1997.

15. *See* SB 1, as introduced, 1997 Ga. Gen. Assem.

16. *See* SB 1 (SFA), 1997 Ga. Gen. Assem. The amendment was presented to and adopted by the Senate on February 3, 1997. *See* Final Composite Status Sheet, Mar. 28, 1997.

17. *See* Telephone Interview with Sen. Peg Blitch, Senate District No. 7, (Apr. 21, 1997). Senator Blitch indicated that SB 1, as introduced, placed too great a restriction on the courts and that a mandate was not sensitive to differing factual circumstances. *Id.*

18. *See* Ray Interview, *supra* note 5. The use of the word "shall" would provide the

The bill, as amended by Senator Blicht, passed in the Senate on February 3, 1997 and the House on March 28, 1997.¹⁹ There was no opposition to the bill,²⁰ and it was actively supported by the Georgia Trial Lawyers Association.²¹ Governor Zell Miller signed the bill on April 14, 1997²² and it became effective on July 1, 1997.²³

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moving party with two particularly obvious avenues of abuse. First, a moving party may choose to use multiple lawyers in preparing for the hearing, thus increasing the costs to the opposing party. *See id.* Second, the moving party is encouraged to turn down an opposing party's offer to settle the claim of attorney's fees. *See id.*

19. *See* Final Composite Status Sheet, Mar. 28, 1997.

20. *See* Ray Interview, *supra* note 5. Senator Ray stated that the bill was not controversial and that no appeals court had addressed the issue because "you're usually talking about \$2,000.00 to \$4,000.00 and you're not going to see an appeal over such a small amount of money." *Id.*

21. *See* Telephone Interview with Aubry Villinas, Georgia Trial Lawyer's Association (Apr. 16, 1997). Mr. Villinas said that the Georgia Trial Lawyer's Association (GTLA) supported the bill because it is "going to benefit everyone"; it cuts equally and fairly for both sides. *Id.* Mr. Villinas spoke in support of SB 1 before the Senate Special Judiciary Committee. Record of Proceedings in the Senate Special Judiciary Committee (Jan. 27, 1997) (available in Georgia State University College of Law Library).

22. *See* Final Composite Status Sheet, Mar. 28, 1997.

23. *See* O.C.G.A. § 9-15-14 (Supp. 1997).