

Counsel Fees

Podcast # 9 of 9

STARK & STARK ATTORNEYS AT LAW

A frequently asked question is whether or not your spouse will be responsible for your attorney fees. The simple answer is that attorney fees are a claim which either spouse may make against each other.

Common misconceptions are that attorney fees are effected by the grounds of the divorce, are determined by which party wants the divorce, or are determined by who initially files the divorce. None of those are relevant factors in determining the payment of counsel fees.

At the outset of a case, either party can make application to the Court for an advance of attorney's fees, the use of assets or even the ability to borrow against assets in order to fund the litigation expenses including attorney's or expert witness fees. The Court is authorized to permit the withdrawal of or borrowing against marital assets in order to give a party the ability to properly fund their representation and litigation expenses.

At the conclusion of the case, either party may make an application for counsel fees to be paid by the other party. That application is principally dependent upon two basic factors. Those factors are:

1. the good faith of the parties with regard to the litigation; and
2. the financial disparity between the parties.

Good faith is often misconstrued. Parties often believe that virtually anything which their spouse does during the divorce is "in bad faith." However, the type of "bad faith" which may effect the award of counsel fees must be a type of conduct that complicates or increases the cost of the divorce, or must have some other financial impact on the marital assets.

In the majority of cases, the determination of counsel fees is based simply on a "leveling of the playing field." The intent is to allow both parties to have adequate access to marital funds to obtain necessary and appropriate representation, expert services if needed and or appraisal fees necessary to process the divorce.

Robert J. Durst
Shareholder/Chair
Stark & Stark Divorce Group
993 Lenox Drive
Building Two
Lawrenceville, NJ 08648
609.895.7342
rdurst@stark-stark.com



Robert J. Durst II is Chair of the Divorce Group of Stark & Stark and is certified by the New Jersey Supreme Court as a Matrimonial Attorney and by the National Board of Trial Advocacy as a Civil Trial Attorney. Mr. Durst is a frequent lecturer on Family Law topics, was a Co-Founder of the New Jersey Summer Family Law Institute and is currently the Co Director of the American Trial Lawyers annual Boardwalk Seminar on Family Law. His leading lectures include a nationally known presentation on the distribution of stock options, the use and distribution of life insurance, and an original series on evidence in divorce cases.