Proving Attorney Fees In Georgia: Puzzles & Paradoxes

By John K. Larkins Jr.

If you think proving liability for attorney fees in Georgia is tough, wait until you try to prove the damages. The rules for proving attorney fees, while seemingly simple in theory, have become numerous, confusing, and even contradictory in practice.

This article will discuss the current rules in Georgia for proving attorney fees in general civil litigation,[1] and where some recent cases seem to have gone astray.

A. The Actual Fee & the Reasonable Fee

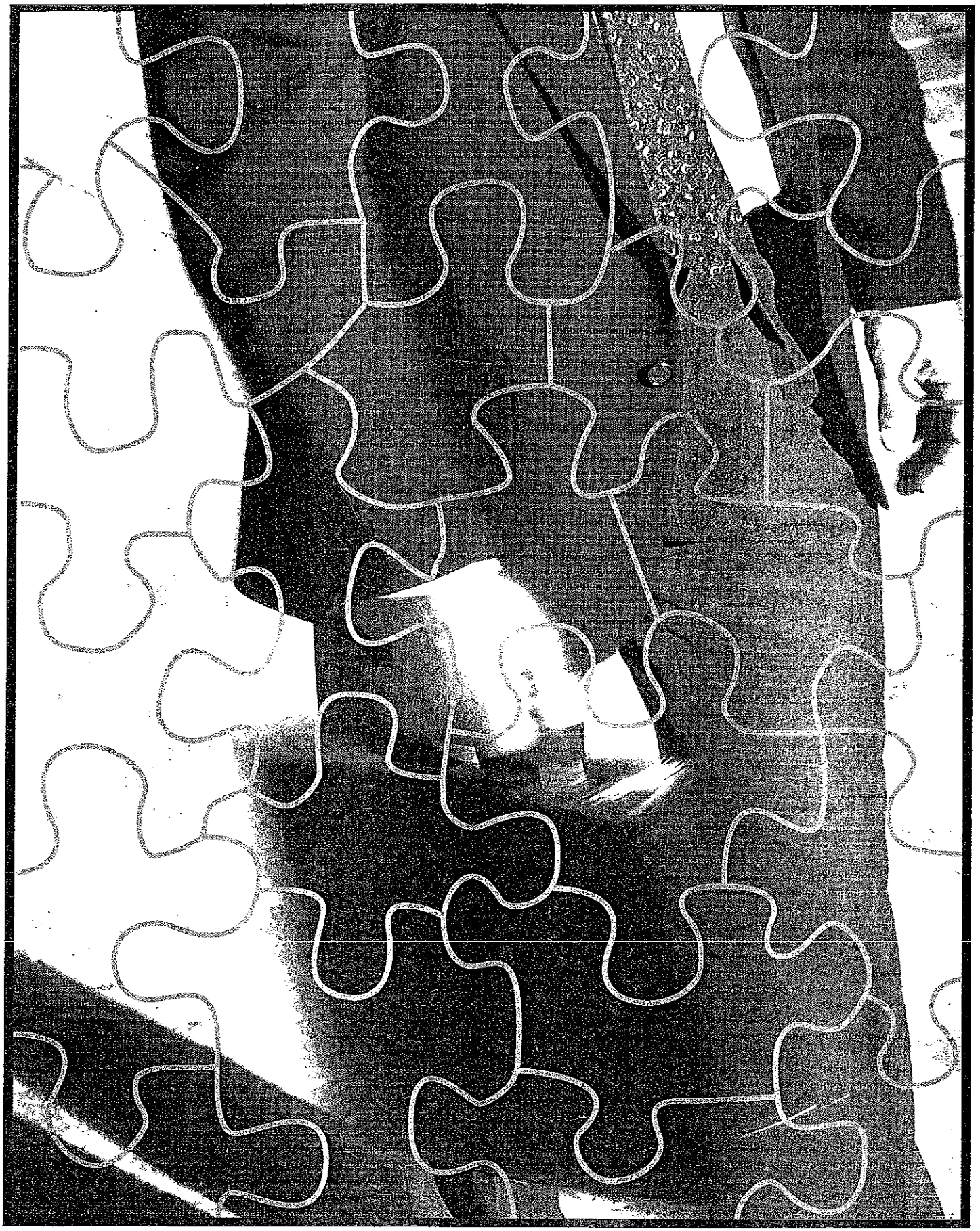
Although the "value" of the lawyer's services is the measure of damages on a claim for attorney fees,[2] proof of "value" requires proof of both the "actual fee" paid or to be paid by the client, if any, and a "reasonable fee" (or the reasonableness of the actual fee).[3]

1. The Actual Fee

Attorney fees recoverable by a litigant are compensatory damages, not punitive damages or a windfall to either the client or the lawyer.[4] Thus, when the fee has been paid, or when there is an agreement to pay a fee, a party seeking a fee award should prove the "actual fee."[5] If no express contract exists between the lawyer and client, the absence of an agreement should be proved, permitting recovery of a reasonable fee.[6]

The actual fee charged or to be charged requires definite proof. Thus, counsel's statement in his place that his fees "will exceed ten thousand dollars" has been held to be insufficient evidence.[7] Likewise, a client's testimony as to "approximate" fees incurred, or similarly indefinite testimony, is inadequate proof of actual fees,[8] as is evidence of an hourly rate without evidence of the hours expended.[9]

An attorney fee award that exceeds the amount determined by the actual fee contract is excessive.[10] Similarly, if the matter is being handled on a contingent fee basis, an award of attorney's fees in excess of the client's recovery is excessive as a matter of law.[11]



2. A Reasonable Fee

The actual fee obviously may or may not be reasonable.[12] Thus, there must be proof of "reasonableness," not just proof of the actual fee paid by the client.[13]

"Reasonable value" is by definition a matter of opinion (first, perhaps, for a witness but ultimately for the finder of fact), based on an evidentiary foundation. Although it has been held that "[e]vidence of customary fees ... is the proper standard in assessing reasonable attorney fees,"[14] this statement is clearly too narrow. The finder of fact may consider other evidence in determining value, such as "the experience and expertise of counsel, the amount of time involved in rendering the services, and the rate of compensation allowed in similar cases, among other things."[15]

An expert opinion that a fee is reasonable seems to be simply one of professional judgment,[16] which, like other expert opinion testimony, may be based either on an examination of the relevant facts by the testifying expert (such as a review of the attorney's file in the case)[17] or on a hypothetical question,[18] or both.[19] An expert witness may either address the reasonableness of the actual fee charged (perhaps the more common approach) or may testify to a reasonable hypothetical fee. In the latter case, the expert may testify to a range of reasonable fees.[20] Thus, one case found sufficient evidence that a fee was reasonable where, after examining the file, the expert witness testified that the rate charged was "at the bottom of the rate range of prevailing fees in the county and that the hours expended were within the range of the reasonable number of hours which would have been utilized to prepare the case," but did not testify to a specific "reasonable fee."[21]

It may seem that expert testimony is required to prove the value of an attorney's services. However, a layman may also state an opinion of the value of his attorney's services, provided the witness testifies to "facts and circumstances relative to the employment and the services of his counsel in connection with the case."[22]

Although opinion evidence is *sufficient* to prove a reasonable fee, it is not *necessary*. The finder of fact is not bound by opinion evidence, even if uncontradicted, and may apply its " 'own knowledge and ideas' on the subject."[23] It follows that opinion evidence as to the reasonableness of attorney fees is technically unnecessary, provided that the finder of fact is furnished with evidence sufficient to form its own opinion.[24]

Although not specifically addressed in the caselaw, logically "reasonableness" involves two inquiries: (a) whether the professional services were *reasonably necessary*, and (b) what the reasonable *value* of those services was. The minimal evidentiary foundation required for opinion testimony (whether expert or lay) or for an independent determination of "reasonableness" by the finder of fact appears to be the same: evidence of the nature and character of the services rendered in the case at hand, concerning the particular claims and parties for which the fees are recoverable.[25] The "cost" of the thing being valued (*e.g.*, the actual fee charged the client), while relevant, cannot be the sole basis for the opinion.[26]

The "reasonableness" requirement also applies to contingent fee arrangements.[27] Merely proving the existence of the contingent fee contract is insufficient to prove its reasonableness.[28] However, since the amount of the fee is unknown before the verdict, proof of the reasonableness of the terms of the fee agreement itself is sufficient. Thus, an attorney's testimony that a contingency fee ranging from 33-1/3 to 50 percent was a "usual and customary" fee, and that his opponent charged 40 percent as a "usual and customary" fee, was held to be sufficient to establish that the contingent fee actually charged was reasonable.[29] The finder of fact may also consider whether the fee to be generated is reasonable; the contingent fee contract does not bind the finder of fact to award a fee on that basis.[30]

3. Examination and Cross-Examination

Who should testify on the issue of attorney fees? As indicated above, it is technically unnecessary that a party call an expert witness or offer any opinion evidence at all on this issue.[31] However, by far the more common practice is for either the party's own lawyer or another lawyer—or both—to testify on the issue of attorney fees.[32]

Since testimony by a party's counsel is a "tradition in the courts of Georgia," it is unnecessary that the lawyer be listed as a witness in the pre-trial order (if the only testimony is as to fees).[33] The lawyer may state evidence in his place as an officer of the court.[34] However, the opposing party has the right at that time to insist that counsel's "statement in his place" be verified,[35] and the right to cross-examine.[36]

If an attorney other than the party's trial counsel is called as an expert witness, the expert's opinion may be based on a "study of the file" in the case, on a hypothetical question, or on both.[37] In one case the Court of Appeals referred approvingly to an expert's opinion "[b]ased on his review of counsel's files and research, consideration of the issues and nature of the case, discussion of the case with counsel, and his knowledge of the customary fees and counsel's legal abilities."[38]

The hypothetical question method has a unique feature. The expert can simply be asked a hypothetical question without the necessity of otherwise proving the facts con-

tained in the hypothetical.[39] Since the asking attorney presumptively can testify to establish facts constituting the hypothetical, the foundation for the question is "laid by text of the question itself, so long as the question is premised upon a true account of the history of the case at issue and so long as the question is limited to work for which attorney fees would be recoverable."[40]

The right of cross-examination can be waived,[41] and the party seeking cross-examination on the attorney fee issue must secure a ruling by the court in order to raise the issue on appeal.[42] However, a defendant in default must be afforded an opportunity to cross-examine evidence submitted in support of an attorney fee award.[43]

The Court of Appeals seems to have held that there must be an opportunity to cross-examine a witness offering an affidavit in support of fees on *motions*, although the court did not explain how or if this right must be asserted.[44] Ordinarily, the probative value of an affidavit is not dependent upon cross-examination of the affiant;[45] presumably, therefore, the Court of Appeals did not intend to establish the rule that affidavits in support of fee awards uniquely require cross-examination as a matter of law.

B. The "Sufficiency of Evidence" Problem

While the foregoing principles may seem to be relatively straightforward and uncomplicated, the border between sufficient and insufficient evidence can be hazy. For example, in 1912 the Georgia Supreme Court affirmed an attorney fee award on the basis of the client's testimony that, "I thought Judge Hixon's services was worth $250, under what has passed between me and the company, and the nature of the case, and all."[46] By contrast, in 1995 the Georgia Supreme Court reversed an award, condemning an attorney's "conclusory testimony":

> [T]here was no evidence of the number of hours spent on the case or the hourly fee charged, no testimony from other attorneys or other evidence 'to show what constitutes a reasonable fee in light of the litigation history of the case,' .... In short, the conclusory testimony of ... counsel is the only evidence of attorney fees, and it is insufficient.[47]

Prudent counsel will allocate fees where multiple claims, parties, or attorneys are present.

The recent trend seems to be towards more detailed proof, although even recent cases send conflicting messages.

1. *Mitcham* and *Carpet Transport*

The conflicting messages are dramatically illustrated in two recent opinions by the Georgia Court of Appeals, *Mitcham v. Blalock*[48] and *Carpet Transport, Inc. v. Kenneth Poley Interiors, Inc.*[49]

Mitcham involved attorney fees on a motion for discovery sanctions. Tendered into evidence were the attorneys' actual bill and an affidavit from the movant's lawyer verifying the actual fee charged, the services rendered, and the time spent on each task by the lawyer, his associate and a paralegal. The affidavit stated that the fee was reasonable and necessary. Despite this evidence, the Court of Appeals reversed the fee award, finding "no admissible evidence," because the affidavit contained hearsay with respect to the time spent on the matter by an associate attorney and paralegal.[50] The Court of Appeals also found that the time entries such as "telephone call" and "conference" were too indefinite, and it noted "unexplained inconsistencies" between the affidavit and the bills.[51]

Seemingly at the opposite end of the spectrum is *Carpet Transport*, where the client, without objection, merely submitted into evidence invoices from his attorney that described the services rendered, set forth the time spent on each task, stated the amount charged, and itemized expenses. No opinion of "reasonableness" was offered; indeed, there was no testimony at all about the fee. Nevertheless, the Court of Appeals held that the evidence "authorized the jury to find that the fee charged was reasonable in this case," correctly observing that, "[I]t has never been held that such opinion testimony [of what constitutes a reasonable attorney fee] is an invariable requirement."[52]

It is unclear whether the *Mitcham* court considered the description of services in the attorney's affidavit to be insufficient as a matter of law. Without question, in order for an expert to render an opinion that an attorney fee is reasonable, and for the finder of fact to

so find, there must be some evidence of the nature of the services rendered by the attorney.[53] However, many cases have affirmed awards without evidence describing each task performed by the attorney; indeed, it has been held that an expert opinion as to reasonableness need not contain an "hourly breakdown of the fee,"[54] and that attorney fees cannot be denied merely "because the attorney did not keep written time records for every hour spent on the case."[55] Criticism of the particularity of the evidence or "unexplained inconsistencies," as in *Mitcham*, should go to the weight of the testimony, not to its legal sufficiency; such matters are best left to cross-examination and to the judgment of the finder of fact.[56]

Mitcham's rejection as hearsay of an attorney's testimony concerning time spent by his associate and paralegal can only be explained by a failure to qualify the time records as business records.[57] An attorney's time sheets and itemized bills "are clearly admissible under the business records exception to the hearsay rule."[58] Similarly, computer printouts showing hours of work performed on a client's case are admissible as business records.[59]

Carpet Transport, on the other hand, failed to consider whether the invoices sent to the client were hearsay. While invoices from an attorney may be direct evidence of the amount billed[60] and thus evidence of the actual fee, they are hearsay as to the services rendered unless properly admitted as business records.[61] Indeed, this consideration contributed to the downfall of a fee award in *Citadel Corp. v. All-South Subcontractors, Inc.*,[62] where, as in *Carpet Transport*, the party merely introduced "itemized statements" from its attorneys into evidence. In *Citadel Corp.*, however, the Court of Appeals held these itemized statements to be hearsay with no probative value, since no witness testified "with personal knowledge of the services purportedly rendered and reported therein."[63] Since hearsay is incompetent evidence, even without objection.[64] *Carpet Transport* incorrectly held that the invoices provided sufficient evidence of the nature and character of the services rendered.

Fundamentally, where *Mitcham* and *Carpet Transport* (and other recent cases) stumble is by failing to analyze separately proof of the "actual fee" and the "reasonable fee." This is especially evident in *Mitcham*'s apparent insistence on a level of detail that is not necessary to prove either the actual fee or its "reasonableness." As in all matters of proof, there is a threshold of "sufficiency of the evidence" in proof of attorney fees which will always elude precise demarcation. However, much confusion could be avoided by systematic application of the basic rules for proof of the "actual fee" and "reasonable fee" discussed here.

2. Multiple Claims, Parties, or Attorneys

When a case has multiple claims, or multiple parties, or multiple lawyers, things *really* get complicated.

It has long been established that proof of actual and reasonable fees must be limited to elements of the case for which attorney's fees are recoverable by law.[65] Thus, fees incurred on appeal against a co-defendant who is voluntarily dismissed must be eliminated when fees are sought against the remaining defendant.[66] Likewise, since O.C.G.A. § 13-6-11 does not permit recovery for expenses incurred in the defense of a claim, a party seeking fees under that statute on a counterclaim must distinguish between the fees expended in defense and the fees expended in pursuit of the counterclaim,[67] and a party defending a counterclaim must separate the fees attributable to prosecuting the main action.[68] Similarly, under § 13-6-11 only fees associated with the "present action" are recoverable.[69] Finally, if the claim for attorney's fees is based on a contractual right (rather than statute), fees attributable to enforcement of the contract must be distinguished from fees attributable to other matters.[70]

The rule that in multi-count cases there must be proof of actual and reasonable fees allocable to the counts on which the party prevails has caused considerable trouble. An award was reversed where the jury awarded fees on only one count of a multi-count complaint and the evidence related to the "total fees" for the case.[71] In a "multi-count, multiple-defendant" case, a judgment for fees was reversed because the plaintiff's expert failed to account for the fees allocable to particular claims against the particular defendant whom the jury found acted in bad faith and failed to account for claims disposed of by summary judgment in favor of the defendants.[72] Another case reversed a fee award where the evidence failed to distinguish between a successful fraud claim and nine other claims disposed of either by summary judgment or directed verdict.[73] However, there is authority that fees need not be allocated if the party against whom the fees are awarded has acted in bad faith.[74]

Where there are multiple lawyers, the actual fees of each lawyer must be proved.[75] Where there are multiple parties and multiple lawyers claiming entitlement to fees, the evidence must permit an allocation of fees among them.[76]

The rules requiring allocation of fees pose obvious practical problems. Must a party cull out the fees attributable to every aspect of the case on which he does not prevail? Realistically, how can fees be separated and allocated between claims or issues?

These questions are not hypotheti-

cal. In *First Union National Bank v. Davies-Elliott, Inc.*,[77] a plaintiff prevailed on all its claims except a claim for punitive damages. An award of attorney fees was reversed, in part, because "there was a finding in favor of the [defendant] on the claims for punitive damages and no recovery of attorney fees attributable to these claims could be had."[78] Thus, the party was required to allocate its attorney fees, even though it prevailed on its causes of action, simply because it failed to recover on a single element of its damages. If this reasoning is taken to its logical conclusion, proof of attorney fees would have to be allocated among all possible legal theories and types of damages in the case—a practical impossibility.

Two cases suggest a solution. First, in *McDonald v. Winn*[79] the court declined to limit attorney fees only to a particular issue which formed the basis for a finding of bad faith. Although the reason for the court's holding was that "a party acting in bad faith should pay the full price for losing,"[80] *McDonald*'s holding suggests that a court should not require allocation of attorney fees to particular issues embraced *within a cause of action*. In other words, if a party seeks both compensatory and punitive damages in a single claim, it should be unnecessary to allocate fees simply because the jury may decline to award all the damages sought.

Second, *Thico Plan, Inc. v. Ashkouti*[81] suggests that courts should take a practical approach when examining attorney fees. In *Thico Plan*, after voluntarily dismissing two complaints, the plaintiff ultimately prevailed on the third complaint. On appeal, the defendant challenged the award of attorney fees attributable to the two former actions. The Court of Appeals affirmed the judgment, recognizing that there are many "activities normally attendant to pursuing a legal claim" and holding that "the dismissed complaints were part of the linear progression from claim to judgment."[82] This reasoning is compelling and practical: activities "normally attendant to pursuing a legal claim" may in fact include activities on which a party technically does not prevail (*e.g.*, alternative theories), and even "unsuccessful" aspects of a case can be "part of the linear progression" resulting in a successful claim.

Prudent counsel will allocate fees where multiple claims, parties, or attorneys are present. Happily, the allocation may not have to be precise. In *Campbell v. Bausch*, testimony that "approximately one-fourth to one-third of the total hours" had been spent in prosecution of the claim for which fees were sought was held to be sufficient.[83]

Fundamentally, the "multiple claim/multiple party" problem is an aspect of "reasonableness": were the fees claimed reasonably *necessary* for the prosecution of the claim against the party? If clear allocation is impossible, evidence that the fees sought were "necessary" to the prevailing claim should be sufficient. In any event, allocation of fees among issues contained within a successful claim should not be required, and courts should be hesitant to draw fine lines allocating fees on the theory that the services rendered did not contribute to the prevailing claims.[84]

C. Remand or Reversal?

An award of attorney fees must be affirmed if there is any evidence to support it.[85] When the verdict exceeds the amount authorized by the evidence, the appellate court in some cases may "reform" the verdict on appeal, or reduce the excessive amount by remittitur.[86] Where there is a failure of proof and it is impossible to determine whether fees were awarded in a particular amount, the entire judgment must be reversed.[87] Where there has been a failure of proof and the verdict or judgment sets forth a separate amount for the fees, the appellate court may affirm on the condition that the improper amount be written off,[88] may reverse the award,[89] or may remand the damages issue for an evidentiary hearing (a remedy employed in many recent cases).[90]

Where liability is separately established in the lower court, remand for further evidence on damages is appropriate.[91] However, this distinction between liability and damages seems to have resulted in inconsistent authority regarding the appropriate appellate remedy for the erroneous denial of a directed verdict or j.n.o.v. on the attorney fee issue.[92] Indeed, one case seems to hold that it is necessary to move for directed verdict on liability and damages separately, finding that it was not error to deny the motion "insofar as it failed to distinguish between liability *vel non* and the quantum of damages."[93] There is authority that the failure to prove damages on a claim for attorney fees should result in a directed verdict,[94] and, except in unusual circumstances, a litigant should not get a second chance to prove his claim if the appropriate motion is made in the court below.

D. Conclusion

Proof of attorney fees in Georgia can be a dim, topsy-turvy maze, fraught with strange and unexpected perils. In many cases, there almost seems to be a latent skepticism of attorney fees as damages. Fundamentally, however, where authorized by law, attorney fees are simply another species of damages, nothing more and nothing less.

John K. Larkins Jr. is a partner with Chilivis, Cochran, Larkins & Bever, an Atlanta firm concentrating on civil litigation and white collar criminal defense. He received a B.A. from Vanderbilt University in 1973 and a J.D. from the University of Georgia in 1976.

Endnotes

1. Some types of cases may have somewhat different rules because the fees authorized by a particular statute permit more judicial discretion. *See, e.g.*, Webster v. Webster, 250 Ga. 57, 58, 295 S.E.2d 828, 829 (1982) (domestic relations). A trial court is *not* vested with discretion under the Civil Practice Act to award fees without evidence. *See* Tandy Corp v. McCrimmon, 183 Ga. App. 744, 746, 360 S.E.2d 70, 72 (1987).
2. *See* Fiat Auto U.S.A., Inc. v. Hollums, 185 Ga. App. 113, 116, 363 S.E.2d 312, 316 (1987); *see also* Hub Motor Co. v. Zurawski, 157 Ga. App. 850, 852, 278 S.E.2d 689, 691 (1981) (no proof of "value").
3. *E.g.*, Brunswick Floors, Inc. v. Shuman, 185 Ga. App. 362, 363, 364 S.E.2d 96, 98 (1987); *Fiat*, 185 Ga. App. at 116, 363 S.E.2d at 316; Eberhart v. Morris Brown College, 181 Ga. App. 516, 519, 352 S.E.2d 832 (1987) (proof of actual fee alone is not sufficient). *But see* Hardwick, Cook & Co. v. Peachtree, Ltd., 184 Ga. App. 822, 825, 363 S.E.2d 31, 33 (1987) ("'Sufficient evidence to support an award of attorney's fees would not necessarily have to consist of the man hours devoted to the case but might only consist of an opinion of an expert ... as to what a reasonable fee would be for the services rendered.'") (quoting Liberty Mut. Ins. Co. v. Kirkland, 156 Ga. App. 576, 577, 275 S.E.2d 152, 153 (1980)).
4. *E.g.*, Williams v. Harris, 207 Ga. 576, 579, 63 S.E.2d 386, 390 (1951).
5. *See Brunswick Floors*, 185 Ga. App. at 363, 364 S.E.2d at 98 (a party not permitted to recover "more attorney fees than he had actually incurred in connection with the litigation"). Although there are some cases apparently approving attorney fee awards in the absence of proof of the actual fee, *see* Tam v. Newsome, 141 Ga. App. 76, 77, 232 S.E.2d 613, 615 (1977), the "actual fee" seems now clearly established as an element of proof. *See, e.g.*, Hughes v. Great Southern Midway, Inc., 265 Ga. 94, 454 S.E.2d 130 (1995) (award reversed because plaintiff failed to prove actual costs of attorney and the reasonableness of those costs) (quoting *Fiat*, 185 Ga. App. at 116, 363 S.E.2d at 316.)
6. *O'Neal v. Spivey*, 167 Ga. 176, 145 S.E. 71 (1928) (client entitled to award in absence of agreement for fees, where evidence introduced as to value of the services rendered). *See Williams*, 207 Ga. at 577, 63 S.E.2d at 38 ($250 pre-trial fee and obligation to pay further "reasonable" fee for subsequent services; $500 award authorized). *Cf. Brunswick Floors*, 185 Ga. App. at 363, 364 S.E.2d at 98 (award reversed where no proof whatsoever of "fees actually incurred").
7. Smith v. Travis Pruitt & Assocs, P.C., 265 Ga. 347, 348, 455 S.E.2d 586, 587 (1995).
8. City of College Park v. Pichon, 217 Ga. App. 53, 55-56, 456 S.E.2d 686, 690 (1995); Price v. Mitchell, 154 Ga. App. 523, 526, 268 S.E.2d 743, 747 (1980).
9. Duncan v. Cropsey, 210 Ga. App. 814, 815-16, 437 S.E.2d 787, 789 (1993); Spencer v. Dupree, 150 Ga. App. 474, 480, 258 S.E.2d 229, 233 (1979).
10. Walther v. Multicraft Constr. Co., 205 Ga. App. 815, 818, 423 S.E.2d 725, 727 (1992).
11. First Union Nat'l Bank v. Davies-Elliott, Inc., 215 Ga. App. 498, 503, 452 S.E.2d 132, 138 (1994).
12. Patterson & Co. v. Peterson, 15 Ga. App. 680, 684, 84 S.E. 163 (1915), is often quoted: "The plaintiff, by merely paying a given amount to his attorney, could not bind the defendants for this amount unless there were some evidence that the amount so paid was reasonable, and unless it was found so to be by the jury trying the case."
13. Hershiser v. Yorkshire Condominium Ass'n, 201 Ga. App. 185, 186, 410 S.E.2d 455, 457 (1991); Hercules Automotive, Inc. v. Hayes, 194 Ga. App. 135, 137, 389 S.E.2d 571, 572-73 (1989); First Bank of Clayton County v. Dollar, 159 Ga. App. 815, 817, 285 S.E.2d 203, 205 (1981).
14. Hartford Ins. Co. v. Mobley, 164 Ga. App. 363, 363, 297 S.E.2d 312, 313 (1982). This case relied upon Good Housekeeping Shops v. Hines, 150 Ga. App. 240, 257 S.E.2d 205 (1979); however, *Good Housekeeping* held that the customary fee is "a" proper standard, not "the" proper standard. *Id.* at 245.
15. F.N. Roberts Pest Control Co. v. McDonald, 132 Ga. App. 257, 261, 208 S.E.2d 13, 16 (1974). The Code of Professional Responsibility, which lists factors to be considered in determining when a fee is "clearly excessive," may provide a framework for a legal standard of reasonableness. STATE BAR OF GA. CANON OF ETHICS DR 2-106; Rule 4-102(d). A jury charge on attorney fees incorporating the ethical standards is recommended in WILLIAM R. WILBURN, GA. LAW OF DAMAGES § 38-9 (4th ed. 1994). The Court of Appeals considered and rejected a contention that a fee was excessive as a matter of law under DR 2-106. Wehunt v. Wren's Cross of Atlanta Condominium Ass'n, 175 Ga. App. 70, 73, 332 S.E.2d 368, 371 (1985). By not rejecting the argument outright, the Court of Appeals left open the possibility that DR 2-106 could be used to find some fees excessive as a matter of law.
16. *See* Columbus Dodge, Inc. v. Garlock, 153 Ga. App. 652, 653, 266 S.E.2d 311, 312 (1980) (expert testimony "based upon more than twenty-three years of legal practice").
17. *See* Miner v. Harrison, 205 Ga. App. 523, 527, 422 S.E.2d 899, 902 (1992).
18. Altamaha Convalescent Center, Inc. v. Godwin, 137

Ga. App. 394, 397, 224 S.E.2d 76, 79 (1976).

19. State Farm Mut. Auto. Ins. Co. v. Chadwick, 154 Ga. App. 394, 395, 268 S.E.2d 436, 438 (1980).
20. *See Columbus Dodge*, 153 Ga. App. at 653, 266 S.E.2d at 312; *see also Brunswick Floors*, 185 Ga. App. at 363, 364 S.E.2d at 98 ("reasonableness" testimony that fee would be "probably between four and five thousand dollars"; case reversed for absence of proof of actual fee).
21. Long v. Marion, 182 Ga. App. 361, 366, 355 S.E.2d 711, 716, *aff'd*, 257 Ga. 431, 360 S.E.2d 255 (1987).
22. Mutual Life Ins. Co. v. Chambliss, 131 Ga. 60, 63, 61 S.E. 1034 (1908). As a general principle, a lay witness may give an opinion as to value if the witness has "some knowledge, experience or familiarity with the value of the property in question or similar property," and an "opportunity for forming a correct opinion," and must "give reasons for the value assessed." *See, e.g.*, Sisk v. Carney, 121 Ga. App. 560, 563, 174 S.E.2d 456, 459 (1970); *see also* Hoard v. Wiley, 113 Ga. App. 328, 332, 147 S.E.2d 782, 785 (1966). Whether any witness, lay or expert, is competent to give an opinion as to value is a matter of law for the court; his credibility is for the jury. Dickens v. Adams, 137 Ga. App. 564, 566, 224 S.E.2d 468, 471 (1976).
23. Baker v. Richmond City Mill Works, 105 Ga. 225, 31 S.E. 426 (1898) (quoting Head v. Hargrave, 105 U.S. (Otto) 45, 48, 26 L.Ed. 1028, 1029 (1882)).
24. Carpet Transport Inc. v. Kenneth Poley Interiors, Inc., 219 Ga. App. 556, 558, 466 S.E.2d 70, 73 (1995); *see also* Ga. Ry. & Elec. Co. v. Tompkins, 138 Ga. 596, 603, 75 S.E. 664 (1912) (same, regarding physician's fees).
25. *See Altamaha Convalescent Center*, 137 Ga. App. at 398-99; 224 S.E.2d at 80.
26. *Hershiser*, 201 Ga. App. at 186, 410 S.E.2d at 457.
27. U-Haul Co. of Western Ga. v. Ford, 171 Ga. App. 744, 746, 320 S.E.2d 868, 872 (1984).
28. *Hercules Automotive*, 194 Ga. App. at 137, 389 S.E.2d at 572-73; *First Bank of Clayton County*, 159 Ga. App. at 817-18, 285 S.E.2d at 205.
29. *Walther*, 205 Ga. App. at 817, 423 S.E.2d at 727.
30. Southern Cellular Telecom v. Banks, 209 Ga. App. 401, 403, 433 S.E.2d 606, 608 (1993).
31. *See also* O.C.G.A. § 24-9-65.
32. *See First Bank of Clayton County*, 159 Ga. App. at 817, 285 S.E.2d at 205 ("Generally, a party will proffer the opinion testimony of his present counsel as well as that of other attorneys in an effort to show what constitutes a reasonable attorney fee in light of the litigation history of the case.").
33. Halpern v. The Lacy Inv. Corp., 259 Ga. 264, 266, 379 S.E.2d 519, 521 (1989).
34. Georgia Building Servs., Inc. v. Perry, 193 Ga. App. 288, 300, 387 S.E.2d 898, 908 (1989).
35. *Id.*
36. Mitcham v. Blalock, 214 Ga. App. 29, 32-33, 447 S.E.2d 83, 87 (1994); *Southern Cellular*, 209 Ga. App. at 402, 433 S.E.2d at 607.
37. *See supra* notes 16-19 and accompanying text.
38. Hayes Constr. Co. v. Thompson, 184 Ga. App. 482, 484, 361 S.E.2d 865, 868 (1987).
39. *Altamaha*, 137 Ga. App. at 397, 224 S.E.2d at 79.
40. *Id.*
41. *See* Tillett v. Patel, 192 Ga. App. 60, 61, 383 S.E.2d 622, 624 (1989); Hall v. Robinson, 165 Ga. App. 410, 411, 300 S.E.2d 521, 523 (1983).
42. *Georgia Building Servs.*, 193 Ga. App. at 299, 387 S.E.2d at 908.
43. Oden v. Legacy Ford-Mercury, Inc., 222 Ga. App. 666, 669, 476 S.E.2d 43, 45 (1996).
44. The court hinted that depositions and evidentiary hearings could accommodate the right of cross-examination. *Mitcham*, 214 Ga. App. at 32-33, 447 S.E.2d at 87.
45. Norton v. Ga. R.R. Bank & Trust, 248 Ga. 847, 848, 285 S.E.2d 910, 911 (1982); Mustin v. Citizens & Southern Nat'l Bank, 168 Ga. App. 549, 309 S.E.2d 822, 823 (1983).
46. *Mutual Life*, 131 Ga. at 63; *see also* I.M.C. Motor Express, Inc. v. Cochran, 180 Ga. App. 232, 232-33, 348 S.E.2d 750, 751 (1986) (attorney's undisputed testimony "that he charged $65 per hour for his time and that, after three court appearances and a motion for summary judgment, his bill amounted to over $8,000" sufficient to support award).
47. Hughes v. Great Southern Midway, Inc., 265 Ga. 94, 95-96, 454 S.E.2d 130, 132 (1995).
48. *Supra* note 36.
49. *Supra* note 24.
50. The Court of Appeals echoed this reasoning in *Oden*, 222 Ga. App. at 668, 476 S.E.2d at 45.
51. *Mitcham*, 214 Ga. App. at 32-33, 447 S.E.2d at 87. *Mitcham* relied on *Southern Cellular Telecom v. Banks*, 209 Ga. App. 401, 433 S.E.2d 606 (1993); however, *Southern Cellular* held that the lawyer failed to distinguish tasks related to successful claims from those related to unsuccessful claims, not that the descriptions were *per se* inadequate. 209 Ga. App. at 402, 433 S.E.2d at 607.
52. *Carpet Transport*, 219 Ga. App. at 558, 446 S.E.2d at 73. It appears that the invoices were sufficient to prove the actual fee.
53. *See* Willis-Wade Co. v. Lowry, 144 Ga. App. 606, 606-07, 241 S.E.2d 461, 461 (1978); *Altamaha*, 137 Ga. App. at 397, 224 S.E.2d at 79; Talley-Corbett Box Co. v. Royals, 134 Ga. App. 769, 770, 216 S.E.2d 358, 359 (1975).

54. *Hardwick, Cook & Co.*, 184 Ga. App. at 825, 363 S.E.2d at 33 (citation omitted). *See also Columbus Dodge*, 153 Ga. App. at 653, 266 S.E.2d at 313 (expert testimony not inadmissible simply because expert did not ask other lawyers what they charge).
55. Waller v. Scheer, 175 Ga. App. 1, 6, 332 S.E.2d 293, 298 (1985).
56. *See* Eagle & Phoenix Mfg. Co. v. Browne, 58 Ga. 224, 246 (1877) ("That testimony from such sources might be of little weight, would not render it inadmissible."); Bagley v. Fulton- DeKalb Hosp. Auth., 216 Ga. App. 537, 539, 455 S.E.2d 325, 327 (1995) ("Questions about the accuracy of business records go to their weight, not their admissibility.").
57. *See Oden*, 222 Ga. App. at 668, 476 S.E.2d at 45 (rejecting as hearsay attorney's affidavit testimony regarding time spent by others); *see also Southern Co. v. Hamburg*, 220 Ga. App. 834, 470 S.E.2d 467 (1996) (same).
58. N.D.T., Inc. v. Connor, 196 Ga. App. 314, 316, 395 S.E.2d 901, 903 (1990).
59. Appellant's contention that the proper foundation was not laid because [the attorney] did not actually operate the computer is without merit. It is well established that the personal appearance of all the various clerical personnel who made the entries or fed the information into the computer is not required. Nor does the absence of the original daily time sheets render the printouts inadmissible; this may have gone to their credit but not to their admissibility. Likewise, monthly statements which were either drafted by [the attorney] or prepared under his supervision were admissible as summaries of the computer printouts which were already in evidence. Reisman v. Martori, Meyer, Hendricks & Victor, 155 Ga. App. 551, 553-54, 271 S.E.2d 685, 687 (1980) (citations omitted).
60. *See* Perkins v. Augspurger, 184 Ga. App. 522, 523, 362 S.E.2d 88, 90 (1987) (regarding automobile repair bills).
61. *See* Taylor v. Associated Cab Co., 110 Ga. App. 616, 619-20, 139 S.E.2d 519, 522 (1964) (physician's bills inadmissible hearsay since the physicians did not testify). This problem of proof resulted in the enactment of O.C.G.A. § 24-7-9.
62. 217 Ga. App. 736, 458 S.E.2d 711 (1995).
63. *Id.* at 738, 458 S.E.2d at 712.
64. *Id.; see also, e.g.*, Quinones v. Maier & Berkele, Inc., 192 Ga. App. 585, 588, 385 S.E.2d 719, 722 (1989).
65. *Altamaha*, 137 Ga. App. at 399, 224 S.E.2d at 80.
66. *Id.*
67. Professional Consulting Servs. of Ga., Inc. v. Ibrahim, 206 Ga. App. 663, 666, 426 S.E.2d 376, 378 (1992); Batchelor v. Tucker, 184 Ga. App. 761, 763, 362 S.E.2d 493, 495-96 (1987).
68. Lineberger v. Williams, 195 Ga. App. 186, 189, 393 S.E.2d 23, 26 (1990).
69. *Hughes*, 265 Ga. at 95, 454 S.E.2d at 132; Alston v. Stubbs, 170 Ga. App. 417, 419, 317 S.E.2d 272, 274 (1984).
70. *Citadel Corp.*, 217 Ga. App. at 738-39, 458 S.E.2d at 712.
71. Augusta Tennis Club, Inc. v. Leger, 186 Ga. App. 440, 443, 367 S.E.2d 263, 265 (1988).
72. Arford v. Blalock, 199 Ga. App. 434, 439-40, 405 S.E.2d 698, 703 (1991). *Accord* Cherokee Ins. Co. v. Lewis, 204 Ga. App. 152, 154-55, 418 S.E.2d 616, 619 (1992).
73. *Southern Cellular*, 209 Ga. App. 401, 433 S.E.2d 606. *Accord* R.T. Patterson Funeral Home, Inc. v. Head, 215 Ga. App. 578, 586, 451 S.E.2d 812, 819 (1994).
74. Crocker v. Stevens, 210 Ga. App. 231, 238, 435 S.E.2d 690, 698 (1993). Note, however, that *Crocker* cites *McDonald v. Winn*, 194 Ga. App. 459, 390 S.E.2d 890 (1990), which did not involve multiple causes of action. Apparently contrary to *Crocker* is *R.T. Patterson Funeral Home*, 215 Ga. App. at 586, 451 S.E.2d at 819 (holding that jury was authorized to find that defendants had acted "in the most atrocious bad faith" but still allowing attorney fees only for prevailing claim).
75. *See First Union Nat'l Bank*, 215 Ga. App. at 503, 452 S.E.2d at 138.
76. Tomberlin Assoc. Architects, Inc. v. Free, 174 Ga. App. 167, 169, 329 S.E.2d 296, 299 (1985).
77. *Supra* note 11.
78. *Id.* at 503, 452 S.E.2d at 138.
79. *Supra* note 74.
80. 194 Ga. App. at 461, 390 S.E.2d at 892.

81. 171 Ga. App. 536, 320 S.E.2d 604 (1984).
82. 171 Ga. App. at 539, 320 S.E.2d at 609.
83. Campbell v. Bausch, 195 Ga. App. 791, 792, 395 S.E.2d 267, 269 (1990).
84. *Cf.* Dee v. Sweet, 218 Ga. App. 18, 20-21, 460 S.E.2d 110, 113 (1995) ("[I]n light of the practical difficulties required in allocating attorney fees to specific claims in RICO cases, we will not require it unless the unsuccessful claims and those not receiving awards of attorney fees are 'distinctly different claims for relief ... based on different facts and legal theories.' ").
85. *A.P.S.S., Inc. v. Clary & Assocs., Inc.*, 178 Ga. App. 131, 132, 342 S.E.2d 375, 377 (1986). Also, since recovery of expenses of litigation is dependent on prevailing on the principal claim, reversal of the latter *ipso facto* results in a reversal of the former. *See* Mumford v. Phillips, 195 Ga. App. 792, 395 S.E.2d 45 (1990).
86. *Walther*, 205 Ga. App. at 818, 423 S.E.2d at 727-28; Old Equity Ins. Co. v. Barnard, 120 Ga. App. 596, 598, 171 S.E.2d 636, 639 (1969). Each of these cases concerned contingent fees. Query: would the same result obtain whenever the award exceeds the actual fee?
87. Reserve Life Ins. Co. v. Gay, 214 Ga. 2, 3-4, 102 S.E.2d 492, 494 (1958).
88. *E.g., City of College Park*, 217 Ga. App. at 56, 456 S.E.2d at 690; *Cherokee Ins. Co.*, 204 Ga. App. at 155, 418 S.E.2d 616, 619; *Tally-Corbett Box Co.*, 134 Ga. App. at 771, 216 S.E.2d at 359.
89. *Smith*, 265 Ga. at 348, 455 S.E.2d at 619; *Duncan*, 210 Ga. App. at 816, 437 S.E.2d at 789; *Arford*, 199 Ga. App. at 440, 405 S.E.2d at 704, *Lineberger*, 195 Ga. App. at 189, 393 S.E.2d at 26.
90. United Companies Lending Corp. v. Peacock, 267 Ga. 145, 475 S.E.2d 601 (1996); *Oden*, 222 Ga. App. at 670, 476 S.E.2d at 45; *Southern Co.*, 220 Ga. App. at 842-43, 470 S.E.2d at 474; *R.T. Patterson*, 215 Ga. App. at 587, 451 S.E.2d at 819; *Mitcham*, 214 Ga. App. at 33, 447 S.E.2d at 87; *Southern Cellular*, 209 Ga. App. at 402, 433 S.E.2d at 606; *Tandy Corp.*, 183 Ga. App. at 746, 360 S.E.2d at 72.
91. For example, in *Southern Co.* and *Southern Cellular*, the parties consented to a bifurcation of the issues, reserving the damage issues for the judge; in *United Companies* and *Oden*, liability was established by default.
92. *Compare R.T. Patterson*, 215 Ga. App. at 587, 451 S.E.2d at 819, and *First Union Nat'l Bank*, 215 Ga. App. at 503, 452 S.E.2d at 138 (remanding for evidentiary hearing), *with Arford*, 199 Ga. App. at 440, 405 S.E.2d at 704, and *Lineberger*, 195 Ga. App. at 189, 393 S.E.2d at 26 (reversing denial of motion j.n.o.v.).
93. *R.T. Patterson*, 215 Ga. App. at 587, 451 S.E.2d at 819. O.C.G.A. § 9-11-50(e) provides that an appellate court may order a new trial when a directed verdict is erroneously denied, but the *R.T. Patterson* court's appellate bifurcation of liability and damages seems strained and unprecedented.
94. *E.g., Batchelor*, 184 Ga. App. at 763, 362 S.E.2d at 495; *Eberhardt*, 181 Ga. App. at 519, 352 S.E.2d at 835. Correspondingly, a j.n.o.v. or involuntary dismissal would likewise be appropriate.