RECOVERING AND PROVING ATTORNEY'S FEES AND PROTECTING THE AWARD

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TABLE OF CONTENTS

I. The "English Rule" and the "American Rule"

Two well-known rules governing the assessment of attorney's fees that result from litigation are the "English rule" and the "American rule." The English rule provides that the losing party must pay the other side's attorney's fees. The principles behind the English rule are that a litigant, as plaintiff or defendant, is entitled to legal representation and that success in a lawsuit is not complete unless the prevailing party recovers its legal expenses.

The English rule can be traced back to the Statute of Gloucester enacted in 1278, which allowed only the victorious plaintiff to recover attorney's fees. *The American Rule on Attorney Fee Allocation: The Injured Person's Access to Justice*, 42 Am. U. L. Rev. 1567, 1570 (1992-1993). It was not until 1607 in England that a prevailing defendant could recover attorney's fees on the same basis as the winning plaintiff. *Id*. at 1571.

Early in its history, the United States adopted the "loser pays" rule that was used in England, and attorney's fees were typically awarded to the successful party. *Attorney Fee-Shifting in America: Comparing, Contrasting, and Combining the American Rule and English Rule*, 15 Ind. Int'l & Comparative Law Review 583, 584 (2005). However, in a case decided in 1796, the United States Supreme Court implicitly rejected the English rule and issued a decision which led to what is now known as the "American rule," whereby each party bears his own attorney's fees and expenses of litigation, regardless of the outcome. *Arcambel v. Wiseman*, 3.U.S. (3 Dall.) 306 (1796).

Under the current state of the American rule, the prevailing party in a lawsuit is generally not entitled to recover his attorney's fees unless allowed by a specific statute or contract provision. The American rule finds its support in three concepts: First, that

litigation is uncertain, and a person should not be penalized for merely pursuing or defending a lawsuit. *The Fleischmann Distilling Co. v. Maier Brewing Co.*, 386 U.S. 714, 718, 87 S.Ct. 1404, 1407 (1967). Second, the thought is that persons who are not able to afford litigation would be unjustly discouraged from bringing legitimate actions to vindicate their rights or would be dissuaded from properly defending legal actions if, upon losing the lawsuit, they would be forced to pay their opponent's counsel. *Id*. Third, the belief is that courts would be unduly burdened if required in every case to preside over litigation regarding what constitutes reasonable attorney's fees. *Id*.

II. The Rule in Georgia Regarding Attorney's Fees

Consistent with the American rule, the general rule in Georgia is that attorney's fees are not available unless specifically authorized by statute or contract. *O'Conner v. Bielski*, 288 Ga. 81, 83, 701 S.E.2d 856, 858 (2010); *Cary v. Guiragossian*, 270 Ga. 192, 195, 508 S.E.2d 403, 406 (1998). There are numerous Georgia statutes which authorize or permit the recovery of attorney's fees in some form or fashion. This paper will review the manner in which attorney's fees are proved in Georgia courts and in federal courts applying Georgia law.

III. Proving Attorney's Fees

A. Proving Attorney's Fees in Georgia Courts

"It is well-settled that an award of attorney fees is to be determined upon evidence of the reasonable value of the professional services which underlie the claim for attorney fees." *Southern Cellular Telecom v. Banks*, 209 Ga. App. 401, 403, 433 S.E.2d 606, 608 (1993). The burden is on the party seeking attorney's fees to establish both their actual cost and their reasonableness. *Doe v. HGI Realty, Inc.*, 254 Ga. App. 181, 183, 561 S.E.2d 450, 453 (2002). To justify an award of attorney's fees, a party

must present evidence that describes with sufficient particularity how his attorneys spent their time.

A party will not be entitled to recover attorney's fees if he fails to prove the value of the services rendered. *Home Depot U.S.A. v. Trvdeich*, 268 Ga. App. 579, 584, 602 S.E.2d 297, 302 (2004). Therefore, an award of attorney's fees will not be authorized if a party fails to prove the actual costs of his attorneys and the reasonableness of those charges. *Hardnett v. Ogundele*, 291 Ga. App. 241, 245, 661 S.E.2d 627, 630 (2008); *Scoggins v. Kia Motors America, Inc.*, 272 Ga. App. 495, 496, 612 S.E.2d 823, 825 (2005).

1. Billing Statements

An attorney's billing statements are commonly used to show the actual cost of attorney's fees and expenses of litigation. *Santora v. American Combustion, Inc.*, 225 Ga. App. 771, 774-75, 485 S.E.2d 34, 38 (1997). These billing statements are admissible as business records under an exception to the hearsay rule. *Id.*; *NDT, Inc. v. Connor*, 196 Ga. App. 314, 316, 395 S.E.2d 901, 903 (1990).

Santora involved a claim for attorney's fees. The lead attorney testified and introduced detailed billing statements showing the fees incurred. *Santora*, 225 Ga. App. at 775, 395 S.E.2d at 38. The Court of Appeals held that "[t]hese statements were clearly admissible as business records." *Id*. The Court explained that "[b]illing statements are often used to prove actual costs. Subject to the laying of an adequate foundation, these statements are admissible under the business record exception to the hearsay rule, O.C.G.A. § 24-3-14." *Id*. at 774, 395 S.E.2d at 37 (cit. omitted). The business records exception to the hearsay rule is now codified at O.C.G.A. § 24-8-803(6).

The *Santora* decision provides a good description of the proper manner by which to prove attorney's fees:

> At the hearing on attorney fees in this case, American's lead counsel introduced detailed billing records. She explained how she computed the amounts attributable to this litigation, separating out work done on this particular action brought by Santora from other suits he had filed. She was cross-examined at her deposition by Santora's counsel. These [billing] statements were clearly admissible as business records. Moreover, although some of the work billed was that of associates and paralegals, lead counsel testified at her deposition that she supervised them and had personal knowledge of and was very familiar with the work they were doing. We hold that because the billing statements were admissible as business records, sufficient proof of the actual cost of the work performed by others in the firm was presented. The actual cost of the legal services was therefore proved.

Santora, 225 Ga. App. at 775, 395 S.E.2d at 38.

As explained in this quoted passage from *Santora*, since billing records are admissible as business records, an attorney may testify about the work performed by the attorneys and paralegals he or she supervised. *Id*. Therefore, it should not be necessary for the other attorneys and paralegals who worked on the case to testify at a hearing or trial. *Id*.; *Fulton County Board of Assessors v. Greenfield Investment Group, LLC*, 314 Ga. App. 523, 526, 724 S.E.2d 828, 830 (2012); *Oden v. Legacy Ford-Mercury, Inc.*, 222 Ga. App. 666, 668-69, 476 S.E.2d 43, 45 (1996); *Mitcham v. Blalock*, 214 Ga. App. 29, 32, 447 S.E.2d 83, 86 (1994).

PRACTICE NOTE: *Southern Co. v. Hamburg* ("*Hamburg I*"), 220 Ga. App. 834, 842, 470 S.E.2d 467 (1996), has been cited for the proposition that "billing and expense summaries" showing work performed by persons who did not testify at trial are hearsay and are not admissible. However, *Hamburg I* was decided one year before *Santora*. In *Santora*, the Court of Appeals acknowledged the ruling in *Hamburg I*, but

pointed out that in *Hamburg I*, there was no evidence that the billing summaries were properly introduced into evidence. *Santora*, 225 Ga. App. at 775, 395 S.E.2d at 38.

After *Santora* was decided, the *Hamburg* case went back to the Court of Appeals. In *Southern Co. v. Hamburg* ("*Hamburg II*"), 233 Ga. App. 135, 503 S.E.2d 383 (1998), the Court noted that "[w]hile *Santora* held that legal billing sheets are admissible under Georgia's statutory business records exception to the hearsay rule, *Santora* injects this conclusion without overruling *Southern Co. v. Hamburg*, 220 Ga. App. 834, 842[5] . . ." Faced with this conflict unresolved by the *Santora* decision, the Court in *Hamburg II* directed the trial court to conduct an evidentiary hearing to establish the amount of attorney's fees and expenses of litigation rather than accept the proffer rejected by the Court prior to the *Santora* decision. *Hamburg II*, 233 Ga. App. at 136-37, 503 S.E.2d at 384-85.

2. Reasonableness of Fees

In evaluating a request for attorney's fees, Georgia cases will look at the amount of fees that would result by multiplying a reasonable number of hours expended by a reasonable rate. *See In re Estate of Boss*, 293 Ga. App. 769, 771, 668 S.E.2d 283, 285 (2008) (fee award based on reasonable hours times reasonable rate). A "naked assertion that the fees are 'reasonable,' without any evidence of hours, rates or other indication of the value of the professional services actually rendered is inadequate." *Hsu's Enters., Inc. v. Hospitality Int'l, Inc.*, 233 Ga. App. 309, 310, 502 S.E.2d 776, 777-78 (1998) (citing *Hercules Auto. v. Hayes*, 194 Ga. App. 135, 136-37, 389 S.E.2d 571, 572-73 (1989)).

"It is well-settled 'that a party's attorney himself is competent to testify as to his opinion on reasonable fees.'" *Jones v. Unified Government of Athens-Clarke County*,

312 Ga. App. 214, 221, 718 S.E.2d 74, 80 (2012) (quoting *Johnston v. Correale*, 285 Ga. App. 870, 871, 648 S.E.2d 180 (2007)).

In assessing the reasonableness of a party's request for attorney's fees, Georgia courts may consider the amount of fees that would have been generated by a contingency fee contract as evidence of usual and customary fees. *Southern Cellular Telecom v. Banks*, 209 Ga. App. 401, 403, 433 S.E.2d 606, 608 (1993) (*citing Walther v. Multicraft Constr. Co.*, 205 Ga. App. 815, 816, 423 S.E.2d 725, 726 (1991)). When a party seeks fees based on a contingent fee arrangement, "the party must show that the contingency fee percentage was a usual or customary fee for such case and that the contingency fee was a valid indicator of the value of the professional services rendered." *Brock Built, LLC v. Blake*, 316 Ga. App. 710, 714-15, 730 S.E.2d 180, 184-85 (2012).

However, "[w]hile certainly a guidepost to the reasonable value of the services the lawyer performed, the contingency fee agreement is not conclusive, and it cannot bind the court in determining that reasonable value, nor shall it bind the opposing party required to pay the attorney's fees, who had no role in negotiating the agreement." *Georgia Dep't of Corrections v. Couch*, 295 Ga. 469, 484, 759 S.E.2d 804, 816 (2014). Therefore, a court is not bound to award fees pursuant to a contingency fee contract, and the existence of such a contingent fee arrangement, standing alone, is inadequate to support an award of attorney's fees. *Id.*; *Hsu's Enters., Inc.*, 233 Ga. App. at 310, 502 S.E.2d at 778.

Instead, a plaintiff must provide documentation, in addition to the contingency fee contract, to support an award of attorney's fees. *Hardy v. Cauthen*, 2009 WL 1154105 (S.D. Ga. 2009). This documentation should provide evidence of hours, rates,

and other indication of the value of the attorney's services. *Blake*, 316 Ga. App. at 714-15, 730 S.E.2d at 184-85.

Oftentimes, a defendant opposing a fee request will complain that multiple lawyers worked on the plaintiff's case. It should be noted that the Eleventh Circuit has acknowledged that the use "of a team of attorneys who divide up the work is common today for both plaintiff and defense work." *African American Patrolmen's League v. City of Atlanta*, 817 F.2d 719, 726 (11th Cir. 1987). "An award for time spent for two or more attorneys is proper as long as it reflects the distinct contribution of each lawyer to the case and the customary practice of multiple-lawyer litigation." *Johnson v. Univ. Coll.*, 706 F.2d 1205, 1208 (11th Cir. 1983). Therefore, a reduction in the requested fee award "is warranted only if the attorneys are unreasonably doing the same work." *Id.*

Also, several federal cases state that a party can recover a paralegal's fees provided that the paralegal was performing work "that has traditionally been done by an attorney." *See Jones v. Armstrong Cork Co.*, 630 F.2d 324, 326, n. 1 (5th Cir. 1980); *Jean v. Nelson*, 863 F.2d 759, 778 (11th Cir. 1988) (affirming an award that included clerk and paralegal fees). It does not appear that Georgia courts have explicitly ruled on this issue. However, several Georgia cases have discussed the award of paralegal fees without questioning the propriety of whether paralegal fees may be awarded. *See, e.g., Ellis v. Stanford*, 256 Ga. App. 294, 298, 568 S.E.2d 157, 161 (2002) (mentioning the recovery of paralegal fees in connection with a claim under O.C.G.A. § 9-15-14(b)); *Santora*, 225 Ga. App. at 774, 485 S.E.2d at 40 (1997) (same).

Evidence of the attorney's fees incurred by the party opposing the fee award can be used to show the reasonableness of the requested fees. *Circle Y Constr., Inc. v. WRH Realty Services, Inc.*, 721 F. Supp.2d 1272, 1282 n. 3 (N.D. Ga. 2010) (citing *NDT, Inc. v.*

Connor, 196 Ga. App. 314, 316, 395 S.E.2d 901, 904 (1990)). On the other hand, however, there may be many reasons why parties' respective counsel devoted disparate amounts of time and resources to the same lawsuit. *Gowen Oil Co., Inc. v. Abraham*, 2012 WL 1098568 (S.D. Ga. 2012) *7. Therefore, it has been said that the amount of fees incurred by the losing party may be of little or no relevance to the fees incurred by the prevailing party. *Id*. (citing *Johnson*, 706 F.2d at 1208 (11th Cir. 1983) (noting that both the hourly rate and number of hours of one party is of little use in determining a reasonable award to the opposing side)).

3. The Right to Cross-Examination

A party "has the right to cross-examine each witness on the amount and reasonableness of the fees and costs requested." *Santora,* 225 Ga. App. at 775, 485 S.E.2d at 38; *NDT, Inc.*, 196 Ga. App. at 316, 395 S.E.2d at 903. Therefore, an award of attorney's fees should be made only after the party opposing the fee request has had the opportunity to cross-examine the counsel for the party requesting fees at a hearing or trial. *See Fulton County Board of Assessors v. Greenfield Investment Group, LLC*, 314 Ga. App. 523, 526, 724 S.E.2d 828, 830 (2012) ("[A]t a hearing held to determine the amount of attorney's fees recoverable, each attorney for whose services compensation is sought must provide admissible evidence of fees in the form of personal testimony, or through the testimony of the custodian of the applicable billing records, as an exception to the hearsay exclusion . . . It is clear, however, that the witness need not be the attorneys or paralegals who performed the work).

4. Apportionment

A party may recover only those attorney's fees attributable to the claims on which he successfully prevailed. *United Cos. Lending Corp. v. Peacock*, 267 Ga. 145, 147, 475

S.E.2d 601, 602-03 (1996) (award must be limited to attorney's fees attributable to claim on which plaintiffs prevailed); *Terrell v. Pippart*, 314 Ga. App. 483, 485, 724 S.E.2d 802, 805 (2012); *Magnus Homes, L.L.C. v. DeRosa*, 248 Ga. App. 31, 32, 545 S.E.2d 166, 169 (2001). Consequently, Georgia law typically requires that a party seeking attorney's fees segregate the claims for which attorney's fees are recoverable from those claims for which attorney's fees are not recoverable. *Paulding County v. Morrison*, 316 Ga. App. 806, 809, 728 S.E.2d 921 (2012); *Monterrey Mexican Restaurant of Wise v. Leon*, 282 Ga. App. 439, 453-54, 638 S.E.2d 879, 891 (2006). Accordingly, where a plaintiff does not apportion the attorney's fees attributable to successful versus unsuccessful claims, the attorney's fees award may be vacated. *Terrell v. Pippart*, 314 Ga. App. 483, 485, 724 S.E.2d 802, 805 (2012).

However, apportionment may not be required (or even possible) where claims on which the plaintiff prevailed are similar to or intertwined with the claims on which the plaintiff did not prevail. *Campbell v. Beak*, 256 Ga. App. 493, 498, 568 S.E.2d 801, 806 (2002). Therefore, when a plaintiff's claims for relief "involve a common core of facts or will be based on related legal theories, [m]uch of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis. Such a lawsuit cannot be viewed as a series of discrete claims. Instead, the district court should focus on the significance of the overall relief obtained by the Plaintiff in relation to the hours reasonably expended on the litigation." *Hensley v. Eckerhart*, 461 U.S. 424, 435, 103 S. Ct. 1933, 1940 (1983). In that situation, a plaintiff may recover for all of the hours his attorney spent on the case, even though he did not succeed on one or more of his claims. *Campbell*, 256 Ga. App. at 498, 568 S.E.2d at 806-07.

- ***NOTE EXCEPTION***: The Georgia offer of settlement rule, O.C.G.A. § 9-11-68 mandates that a court award attorney's fees to winners and losers who make offers of settlement when authorized by the parameters of that rule. "As such, the Georgia offer of settlement rule plainly contemplates awards of attorney's fees on unsuccessful legal work." *Gowen Oil Co., Inc. v. Abraham*, 2012 WL 1098568 (S.D. Ga. 2012) at *6 (*citing Essex Builders Group, Inc. v. Amerisure Ins. Co.*, 2007 WL 2948581 at *1, n. 4 (M.D. Fla., 2007) ("[I]t makes no sense to limit fee awards under [Florida's offer of judgment rule] to 'successful' arguments. For the same reason, [plaintiff's] argument that [defendant] cannot recover for the hours expended on an unfiled motion to dismiss must fail.").

5. Examples

Examples where evidence was found ***sufficient*** to support an award of attorney's fees:

- *Santora v. American Combustion, Inc.*, 225 Ga. App. 771, 774 (1997) (discussed above).

- *Jones v. Unified Government of Athens-Clarke County*, 312 Ga. App. 214, 718 S.E.2d 74 (2012) (attorneys testified as to reasonableness of hourly rates based on their education, background and experience).

- *Fulton County Board of Assessors v. Greenfield Investment Group, LLC*, 314 Ga. App. 523, 526, 724 S.E.2d 828, 830 (2012) (firm's managing partner testified as to the reasonableness of his partner's rate and the work performed by the firm and introduced the firm's billing records).

- *Mecca Constr., Inc. v. Maestro Invs., LLC*, 320 Ga. App. 34, 45, 739 S.E.2d 51, 61 (2013) (fee award upheld where attorney testified as to the number of hours

his firm worked on case and the hourly rate charged, and stated that fees were reasonable and "in line with the community standard").

- *City of Stockbridge v. Stuart*, 329 Ga. App. 323, 329, 765 S.E.2d 16, 20-21 (2014) (Counsel testified that he was lead counsel, that the legal services were provided by him and his firm, that he had personal knowledge of the number of hours of work performed by the members of his firm, that the amount of time spent on the case was reasonable and necessary in relation to the dispute, and authenticated invoices accounting for the time spent, the resulting fees, and the expenses incurred).

Examples where evidence was found ***insufficient*** to support an award of attorney's fees:

- *Hardnett v. Ogundele*, 291 Ga. App. 241, 245, 661 S.E.2d 627, 630 (2008) (evidence insufficient to support an award of fees where a lawyer gave only a general and approximate proffer of time spent, failed to present billing records showing how the attorney's time was spent, and failed to provide any evidence as to the reasonableness of his fees).

- *Patton v. Turnage*, 260 Ga. App. 744, 748, 580 S.E.2d 604 (2003) (held, "[a] party's testimony as to the approximate cost of legal fees is insufficient").

- *4WD Parts Center v. Mackendrick*, 260 Ga. App. 340, 346, 579 S.E.2d 772 (2003) (attorney's fee award vacated where attorney failed to specifically articulate how his time was spent).

- *Gray v. King*, 270 Ga. App. 855, 858, 608 S.E.2d 320 (2004) (vacating award of attorney's fees where "there was no testimony by any witness as to the reasonableness of the fees").

- *Paul v. Destito*, 250 Ga. App. 631, 640, 550 S.E.2d 739, 749 (2001) (affirming trial court's refusal to award attorney's fees where plaintiff offered "no billing records or other evidence describing, with any particularity, how the attorneys spent their time").

- *Southern Cellular Telecom v. Banks*, 209 Ga. App. 401, 402 433 S.E.2d 606, 607 (1993) (award of attorney's fees was unauthorized where plaintiff's lawyer's time sheets contained broad and non-specific entries concerning work performed and failed to distinguish between time attributable to successful and unsuccessful claims).

- *Rimmer v. Tinch*, 324 Ga. App. 65, 70, 749 S.E.2d 236, 241 (2013) (award vacated where counsel merely stated the amount he charged, but did not indicate the total number of hours spent on the case or testify that the fees incurred were reasonable).

B. Proving Attorney's Fees in Federal Courts Based on Georgia Law

Where a party's claim for attorney's fees is based on Georgia law and the case is pending in federal court on diversity jurisdiction, Georgia law will determine whether attorney's fees are available and whether attorney's fees should be awarded. *Gowen Oil Co., Inc. v. Abraham*, 2012 WL 1098568 at *3, n. 7 (S.D. Ga. 2012); *Otero v. Vito*, 2007 WL 1390721 at *3 (M.D. Ga. 2007) (*citing Trans Coastal Roofing Co. v. David Boland, Inc.*, 309 F.3d 758, 760 (11th Cir. 2002)). However, the procedure for proving attorney's fees is governed by federal law, and federal standards shall be applied for determining the reasonableness of the requested attorney's fees. *Gowen Oil*, 2012 WL 1098568 at *3, n. 7 (citing *Columbus Mills, Inc. v. Freeland*, 918 F.2d 1575, 1577, 1580 (11th Cir. 1990)); *JVC America, Inc. v. Guardsmark, LLC*, 2007 WL 2872454 at *9 (N.D. Ga. 2007).

1. Procedure

Federal Rule of Civil Procedure 54 and local District Court rules set forth the procedure for filing a motion for attorney's fees.[1] Federal Rule 54(d)(2) states:

> (2) *Attorney's fees.*
>
> (A) *Claim to Be by Motion.* A claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.
>
> (B) *Timing and Contents of the Motion.* Unless a statute or a court order provides otherwise, the motion must:
>
> (i) be filed no later than 14 days after the entry of judgment;
>
> (ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;
>
> (iii) state the amount sought or provide a fair estimate of it; and
>
> (iv) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.
>
> (C) *Proceedings.* Subject to Rule 23(h), the court must, on a party's request, give an opportunity for adversary submissions on the motion in accordance with Rule 43(c) or 78. The court may decide issues of liability for fees before receiving submissions on the value of services. The court must find the facts and state its conclusions of law as provided in Rule 52(a).
>
> (D) *Special Procedures by Local Rule; Reference to a Master or a Magistrate Judge.* By local rule, the court may establish special procedures to resolve fee-related issues without extensive evidentiary hearings. Also, the court may refer issues concerning the value of services to a special master under Rule 53 without regard to the limitations of Rule 53(a)(1), and may refer a motion for attorney's fees to a magistrate judge under Rule 72(b) as if it were a dispositive pretrial matter.

[1] Rule 54 also governs the assessment of taxable costs, a subject which is beyond the scope of this paper which exclusively examines the issue of attorney's fees.

(E) *Exceptions*. Subparagraphs (A)-(D) do not apply to claims for fees and expenses as sanctions for violating these rules or as sanctions under 28 U.S.C. § 1927.

The time for filing and content of the motion for attorney's fees is further governed by the local rules of the District Court where the action is pending.

2. Reasonableness of the Requested Fees

Like state court, the fee applicant in federal court bears the burden of establishing entitlement and documenting the appropriate hours and hourly rates. *Norman v. Housing Authority of City of Montgomery*, 836 F.2d 1292, 1303 (11th Cir. 1988) (*citing Hensley v. Eckhart*, 461 U.S. 424, 437 103 S.Ct. 1933, 1941 (1983)). This burden includes providing records to the court "to show the time spent on different claims, and the general subject matter of the time expenditures ought to be set out with sufficient particularity so that the district court can assess the time claimed for each activity." *ACLU v. Barnes*, 168 F.3d 423, 427 (11th Cir. 1999). The burden also includes "supplying the court with specific and detailed evidence from which the court can determine the reasonable hourly rate." *Id.*

The starting point for determining the reasonableness of the requested attorney's fees is "to multiply the number of hours reasonable expended by a reasonable hourly rate." *Circle Y Constr.*, 721 F. Supp.2d at 1282. This is known as the "lodestar calculation," and the product of these two numbers is known as the "lodestar." *Id.*; *Gowen Oil*, 2012 WL 1098568 at *3. There is a "'strong presumption' that the lodestar is the reasonable sum the attorneys deserve." *Bivins v. Wrap It Up, Inc.*, 548 F.3d 1348, 1350 (11th Cir. 2008).

An evidentiary hearing is not required on a request for an attorney's award, and "[i]t is perfectly proper to award attorney's fees based solely on the affidavits in the

record." *Norman*, 836 F.2d at 1303. Nevertheless, an evidentiary hearing may be appropriate or necessary if there is a disagreement over "historical fact[s]," such as whether a case could have been settled or whether attorneys were duplicating each other's work. *Id.*

A reasonable hourly rate is "the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation." *Norman,* 836 F.2d at 1303. "The general rule is that the 'relevant market' for purposes of determining the reasonable hourly rate for an attorney's services is 'the place where the case is filed.'" *ACLU*, 168 F.3d at 437 (*citing Cullens v. Dep't of Transp.*, 29 F.3d 1489, 1494 (11th Cir. 1994)). The most critical factor in determining a reasonable fee is the "going rate" in the community. *Martin v. Univ. of S. Alabama,* 911 F.2d 604, 610 (11th Cir. 1990).

"Evidence of rates may be adduced through direct evidence of charges by lawyers under similar circumstances or by opinion evidence." *Norman,* 836 F.2d at 1299. The rate an attorney ordinarily charges "is powerful, and perhaps the best evidence of his market rate." *Dillard v. City of Greensboro,* 213 F.3d 1347, 1354 (11th Cir. 2000). However, "[s]atisfactory evidence at a minimum is more than the affidavit of the attorney performing the work." *Id.* Therefore, a party seeking an award of attorney's fees should obtain and submit an expert affidavit opining as to the reasonableness of the hourly rates, the hours expended, and the resulting fees.

In *Norman*, the Eleventh Circuit further stated, "fee counsel should have maintained records to show the time spent on the different claims, and the general subject matter of the time expenditures ought to be set out with sufficient particularity so that the district court can assess the time claimed for each activity. A well-prepared

fee petition also would include a summary, grouping the time entries by the nature of the activity or stage of the case." *Id.*

In determining the reasonableness of attorney hours and fees, "a court 'is itself an expert on the question [of attorney's fees] and may consider its own knowledge and experience concerning reasonable and proper fees and may form an independent judgment either with or without the aid of witnesses as to value.'" *Circle Y Constr.*, 721 F. Supp.2d at 1283 (quoting *Norman,* 836 F.2d at 1303).

In *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), *overruled on other grounds, Blanchard v. Bergeron*, 489 U.S. 87, 109 S.Ct. 939 (1989), the Court identified twelve factors that are useful in determining the reasonableness of an attorney's rate and determining the number of compensable hours that are reasonable. The twelve *Johnson* factors are: (1) the time and labor required; (2) the novelty and difficulty of the legal questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Id.*

In determining the reasonableness of the hours expended, "excessive, redundant, or otherwise unnecessary hours should be excluded from the amount claimed. *Hensley*, 461 U.S. at 434, 103 S.Ct. 1933. "Fee applicants must demonstrate 'billing judgment' meaning that the 'hours excluded are those that would be unreasonable to bill to a client and therefore to one's adversary *irrespective of the skill, reputation, and experience of*

counsel.'" Circle Y Constr., 721 F. Supp.2d at 1283 (quoting *Norman*, 836 F.2d at 1301 (emphasis in original)).

If a court decides that the number of hours claimed is unreasonably high, "the court has two choices: it may conduct an hour-by-hour analysis or it may reduce the requested hours with an across-the-board cut." *Bivins*, 548 F.3d at 1350. Such reductions are left to the court's discretion. *EEOC v. Enterprise Leasing Co.*, 2003 WL 21659097 at *3 (M.D. Fla, 2003) (citing *Norman*, 836 F.2d at 1301).

The fact that the party has paid his attorney's invoices for fees incurred "is a significant determinant of [the] reasonableness" of the fees incurred. *JVC America, Inc. v. Guardsmark, LLC*, 2007 WL 2872454 at *15 (N.D. Ga. 2007).

A party opposing a fee application is obligated to make specific and "reasonably precise" objections and proof regarding the hours they want to be excluded from the award. *Yule v. Jones*, 766 F. Supp. 2d 1333, 1341 (N.D. Ga. 2010) (*citing Hensley*, 461 U.S. at 428). A common objection is that the time entries are overly broad and vague and/or that the entries constitute "block billing."

Block billing occurs when an attorney records a large block of time for tasks without separating the tasks into individual blocks or elaborating on the time each task took. *Flying J Inc. v. Comdata Network, Inc.*, 322 Fed Appx. 610 (10th Cir. 2009). "Use of this imprecise practice may be strong evidence that a claimed amount of fees is excessive." *Id.* The Eleventh Circuit has approved across-the-board reductions in block-billed hours to offset the effects of block billing. *Ceres Environmental Services, Inc. v. Colonel McCrary Trucking, LLC*, 2012 WL 1414994 at *4 (11th Cir. 2012).

IV. Conclusion

Counsel for a party who seeks to recover his attorney's fees in a lawsuit should — from the very beginning of the case — keep detailed billing records of the legal fees and expenses incurred. The work entries reflected in these billing records should accurately and descriptively illustrate the legal work performed. To the extent possible, counsel are encouraged to assign a specific time allotment to each discrete task, rather than assign an aggregate amount of time to a group of tasks. Maintaining accurate and detailed billing records at the outset of a lawsuit will simplify the presentation of evidence on attorney's fees, reduce objections to the billing records, and improve the overall ability to have the attorney's fees awarded.