

# Recovering Attorney Fees in a Minnesota Divorce

**Tired of paying for the “pleasure” of divorcing?**

## **Recovering Attorney Fees in a Minnesota Divorce**

For a variety of reasons, most states in America follow what is called the American Rule regarding the payment of each party’s attorney fees in litigation: Which means each party must pay their own attorney fees. This is in



One Way To Get Attorney Fees (Note: Not Preferred Method)

contrast to the English Rule, which generally requires the losing party to pay the winning party’s attorney fees. The American Rule, however, can bring hours of frustration (and a huge expense) when your ex makes yet another motion seeking to be awarded some obscure item of property and you realize you will soon be forking over even more money to have your attorney respond to that motion.

However, states which follow the American Rule generally have several exceptions to that rule. In Minnesota, those exceptions can include attorney fees incurred by a party in a divorce or child support proceeding (i.e., there’s hope!), but these are only available in fairly limited circumstances.

### **Necessary fees**

A court can require either the husband or wife to pay the other party’s attorney fees if the court finds that is necessary for the other party to fully assert his or her rights during the divorce. “Necessary” means that the party receiving an award of fees does not have the means to pay those fees. Further, the other party must actually have the means to pay the fees. The court must also find that awarding fees will not contribute unnecessarily to the length or expense of the proceedings; that is, it can’t award fees, for example, to the wife to allow her to pursue an argument that has little chance of success and would only lead to an even more drawn-out battle.

### **Conduct-based fees**

There is some scope for an award of attorney fees even if the award isn’t necessary. A court can award attorney fees in favor of either the husband or wife if it finds that the other party has unreasonably contributed to the length or expense of the proceeding. This wording of the law is fairly broad; hands up all who think their ex has done this! Fees awarded in this way can include costs and disbursements, which means you can be awarded reimbursement for items such as court filing fees.

Sadly, conduct-based fees can't be awarded based on your ex's conduct outside of litigation, no matter how childish or despicable they have been. However, on the bright side, if your ex's poor conduct does extend to the litigation, the court may order conduct-based attorney fees without consideration of your ex's ability to pay.

While the the law allows for recovery, you should know that outside the metro area it is much less common to get attorney fees during a divorce.

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*While we appreciate our readers (we really do!) a few things to know before you send me an email with a "quick question" I'm a Minnesota only lawyer. I can't give any advice about the laws in any other state except Minnesota. Also, while I am a believer that clients needs to know as much information as they can (that's why I do these blogs) I do make my living as a divorce lawyer and generally can't give advice to you via email and unless we sign a retainer agreement.*