§ 44A-35. Attorneys' fees.

(a) In any suit brought or defended under the provisions of Article 2 or Article 3 of this Chapter, the presiding judge or arbitrator may allow a reasonable attorneys' fee to the attorney representing the prevailing party. This attorneys' fee is to be taxed as part of the court costs with the final judgment or arbitration award.

(b) The court or arbitrator shall determine the prevailing party based on the principal amount in controversy between the parties as of the commencement of the trial, arbitration, or hearing resulting in a judgment or arbitration award, considering all relevant facts and circumstances.

(c) If a party serves (i) an offer of judgment in accordance with G.S. 1A-1, Rule 68, or (ii) a written settlement offer, so that the offer is received at least 30 days before the commencement of the trial, arbitration, or hearing resulting in a judgment or award resolving all matters in controversy between the parties, the last offer shall be deemed to be that party's monetary position for purposes of determining the amount in controversy.

(d) In determining the amount of reasonable attorneys' fees and expenses under this section, the court or arbitrator may consider all relevant facts and circumstances, including, without limitation, the following:

(1) The amount in controversy and the results obtained.
(2) The reasonableness of the time and labor expended, and the billing rates charged, by the attorneys.
(3) The novelty and difficulty of the questions raised in the action.
(4) The skill required to perform properly the legal services rendered.
(5) The relative economic circumstances of the parties.
(6) Settlement offers made prior to the commencement of the trial, arbitration, or hearing.
(7) Offers of judgment pursuant to Rule 68 of the North Carolina Rules of Civil Procedure and whether judgment finally obtained was more favorable than such offers.
(8) Whether a party unjustly exercised superior economic bargaining power in the conduct of the action or withheld payment of undisputed amounts.
(9) The timing of settlement offers.
(10) The extent to which the party seeking attorneys' fees prevailed in the action.
(11) The amount of attorneys' fees awarded in similar cases.

(e) A party may submit evidence relating to an award of attorneys' fees by affidavit or declaration. The court or arbitrator may admit other evidence, including, without limitation, live or deposition testimony. A party may submit expert testimony to support an award, but the court or arbitrator shall not require expert testimony.

(f) For purposes of this section, "prevailing party" is the party whose monetary position at the commencement of the trial, arbitration, or hearing is closest to the amount of the judgment or arbitration award. The court or arbitrator shall determine the prevailing party based upon the principal amount in controversy between the parties as of the commencement of the trial, arbitration, or hearing resulting in a judgment or arbitration award, considering all relevant facts and circumstances. (1991 (Reg. Sess., 1992), c. 1010, s. 3; 1993 (Reg. Sess., 1994), c. 763, s. 1; 2022-1, s. 4(a).)