



SUCCUMBENTIAL FEES IN THE SCOPE OF MUNICIPAL PUBLIC ADVOCACY: OWNERSHIP, DIVISION AND ADMINISTRATIVE DISCRETION

HONORÁRIOS SUCUMBENCIAIS NO ÂMBITO DA ADVOCACIA PÚBLICA MUNICIPAL: TITULARIDADE, REPARTIÇÃO E DISCRICIONARIEDADE ADMINISTRATIVA

TASAS SUCUMBENCIALES EN EL ÁMBITO DE LA ABOGACÍA PÚBLICA MUNICIPAL: PROPIEDAD, DIVISIÓN Y DISCRECIÓN ADMINISTRATIVA



<https://doi.org/10.56238/edimpecto2025.057-011>

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ABSTRACT

This article analyzes the legal nature, ownership, and distribution criteria of attorneys' fees (honorários sucumbenciais) within municipal public advocacy. The research is based on Article 85, §19, of the 2015 Civil Procedure Code and examines how different federative entities have regulated the allocation of these amounts to public attorneys. The study, of bibliographic and documentary character, includes legislation from municipalities in Tocantins (Palmas, Gurupi, and Araguaína), as well as laws from other states, highlighting the plurality of possible models: from full allocation to the public treasury to distribution among active and retired public attorneys and even legal analysts. State courts confirm that these fees originally belong to the public entity, with local legislation determining the criteria for their allocation. The article concludes that the regulation of attorneys' fees is a matter of municipal legislative policy, which must observe the principles of legality, proportionality, and transparency, without disregarding the recognition and appreciation of the public attorneys' career.

Keywords: Attorneys' Fees. Municipal Public Advocacy. Ownership. Distribution. Legislative Policy.

RESUMO

O presente artigo analisa a natureza jurídica, a titularidade e os critérios de destinação dos honorários sucumbenciais no âmbito da advocacia pública municipal. A pesquisa parte da previsão do art. 85, §19, do Código de Processo Civil de 2015 e examina como diferentes entes federativos regulamentaram o repasse desses valores aos procuradores. A investigação, de caráter bibliográfico e documental, abrange legislações de municípios do Tocantins (Palmas, Gurupi e Araguaína), bem como normas de outros estados, evidenciando a pluralidade de modelos possíveis: desde a destinação integral ao erário até o rateio entre

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procuradores, ativos, inativos e até mesmo analistas jurídicos. Os tribunais estaduais confirmam que os honorários pertencem originariamente ao ente público, cabendo à legislação local definir critérios de repasse. Conclui-se que a disciplina dos honorários sucumbenciais é questão de política legislativa municipal, devendo observar princípios de legalidade, proporcionalidade e transparência, sem desconsiderar a valorização da carreira dos procuradores.

Palavras-chave: Honorários Sucumbenciais. Advocacia Pública Municipal. Titularidade. Rateio. Autonomia Legislativa.

RESUMEN

Este artículo analiza la naturaleza jurídica, la titularidad y los criterios de asignación de los honorarios de los abogados en el contexto de los abogados públicos municipales. La investigación se basa en las disposiciones del Artículo 85, §19, del Código de Procedimiento Civil de 2015 y examina cómo diferentes entidades federativas han regulado la transferencia de estos fondos a los abogados. La investigación bibliográfica y documental abarca la legislación de los municipios de Tocantins (Palmas, Gurupi y Araguaína), así como la normativa de otros estados, destacando la variedad de modelos posibles: desde la asignación íntegra al tesoro público hasta la distribución entre abogados, tanto en activo como jubilados, e incluso analistas jurídicos. Los tribunales estatales confirman que los honorarios pertenecen originalmente a la entidad pública, y la legislación local define los criterios de transferencia. De ello se desprende que la regulación de los honorarios de los abogados es una cuestión de política legislativa municipal y debe atenerse a los principios de legalidad, proporcionalidad y transparencia, sin descuidar la promoción profesional de los abogados.

Palabras clave: Honorarios de Abogados. Defensoría Pública Municipal. Titularidad. Prorratio. Autonomía Legislativa.

1 INTRODUCTION

The performance of public advocacy is indispensable to the defense of the public interest and administrative legality, under the terms of article 131 of the Federal Constitution. At the municipal level, prosecutors play a central role in the judicial and extrajudicial representation of the federated entity, being subject to a peculiar legal regime that distinguishes them from private lawyers. In view of this specificity, the debate emerges about the ownership and destination of the loss fees resulting from the judicial action of these professionals.

With the advent of the new Code of Civil Procedure (Law No. 13,105/2015), especially paragraph 19 of article 85, the provision for the transfer of fees to public lawyers was strengthened. However, the legal nature of these amounts, the original ownership and the possibility of local regulation of the transfer are still controversial issues that require in-depth analysis in light of constitutional principles and dominant jurisprudence.

The purpose of this article is to examine the legal regime applicable to the loss fees within the scope of municipal public advocacy, with special attention to the definition of their ownership, the normative criteria that govern the transfer to attorneys and the extent of administrative discretion in setting the amount allocated to the category. It seeks to evidence that such fees constitute revenue originating from the Municipality, the winning party in the lawsuit, and may, however, be directed, partially or entirely, to municipal attorneys, as well as to legal advisors or analysts, provided that they are supported by a specific legal provision and in strict compliance with the principles that govern the Public Administration, notably those of legality, impersonality, morality, publicity and efficiency.

The methodology used will be bibliographic and documentary research, with analysis of legislation, doctrine and jurisprudence.

2 LOSS FEES: LEGAL NATURE AND LEGAL PROVISION

The attorney's fees for loss constitute a procedural portion fixed in favor of the winning party, to be borne by the losing party, pursuant to article 85 of the Code of Civil Procedure of 2015. It is an institute that, historically, has always been associated with private advocacy, but which gained peculiar contours with the express provision of its extension to public advocacy.

Article 85 of the CPC/2015, in its *paragraph 19*, established that "*public attorneys shall receive loss fees, under the terms of the law*". The rule opened space for specific laws, in each federated entity, to discipline the form of perception and distribution of these values within the scope of public advocacy.



This provision broke with the previous paradigm, in which it was understood that fees belonged only to private lawyers. In the public field, its attribution gained prominence from specific regulations, such as **Law No. 13,327/2016**, applicable to federal public lawyers, and state and municipal legislation, as observed in Tocantins, Palmas, Gurupi and Araguaína.

As for the legal nature of the loss fees, we can observe the strict remunerative nature, as they remunerate the work developed in court or administratively. The thesis of a nature more closely linked mainly to private law.

The legal nature of the loss fees in the scope of public advocacy is, originally, of a public nature, with entry into the coffers of the federative entity that wins the lawsuit — whether Municipality, State or Union — as bound public revenue. However, its allocation, in whole or in part, to public prosecutors is admitted, provided that there is a specific normative provision.

Municipal prosecutors and other public attorneys perform functions of judicial representation and legal advice to federated entities, being constitutionally recognized as part of the essential functions of justice. Their main remuneration is given through a subsidy, under the terms of the legal regime applicable to each career.

With regard to the ownership of the loss fees, this originally falls on the public entity that wins the dispute. Thus, such amounts enter the public patrimony, being subject to the budgetary-financial regime. Only after the enactment of an authorizing local law is it possible to transfer it to the attorneys, observing objective criteria of apportionment and limits established by the Administration⁵.

Thus, the conception that the loss fees "belong" directly to the public attorney is restricted by the constitutional and administrative order, since its destination is conditioned to an act of legislative policy of the federative entity, which may establish the full or partial transfer of the funds, in accordance with the principles of legality, proportionality and transparency. In the meantime, Didier explains "The loss fees are an expression of retribution for the lawyer's work, but when it comes to public advocacy, they must be understood as public revenue, subject to allocation according to law."⁶

2.1 LEGISLATION IN THE STATE OF TOCANTINS

The selection of the municipalities of Palmas, Gurupi and Araguaína as the central object of the study did not occur randomly, but obeyed criteria of population, political and

⁵ "The legal-administrative regime imposes on the Administration the duty to always act guided by the principle of legality, which means that its action depends on prior normative authorization." MELLO, Celso Antônio Bandeira de. *Administrative Law Course*. 34. ed. São Paulo: Malheiros, 2019, p. 121.

⁶ *Civil Procedural Law Course*, v. 1. 20. ed. Salvador: JusPodivm, 2022, p. 634.



institutional relevance in the State of Tocantins. These are the three largest cities in the state, which concentrate a significant portion of the population, economic activity and the state administrative structure.

Palmas, as a capital, plays the role of political-administrative center and frequently inaugurates normative models that influence other municipal entities. Araguaína, the second largest municipality, has notorious regional relevance, functioning as an economic and legal center in the north of Tocantins. Gurupi, the third largest municipality, is a reference in the south of the state, standing out for its legislative innovation by adopting a hybrid model for the allocation of fees, including legal analysts in the apportionment.

The analysis of these three municipalities allows us to capture different legislative perspectives within the same state, while ensuring the representativeness of the study as a function of the population density and institutional importance of each locality. Thus, the comparative methodology adopted ensures greater scientific robustness to the work, making it possible to identify convergences and normative divergences in relevant contexts of Tocantins, in addition to providing subsidies to understand how municipal autonomy manifests itself in entities with different political and administrative profiles.

Within the scope of the case study, the analysis of normative diplomas emanating from these three main municipalities of the State of Tocantins was carried out, as well as the examination of jurisprudential precedents from other federative entities. The objective was to assess the normative and judicial guidance on the ownership and legal regime applicable to public loss fees, especially regarding the recognition of their "belonging" to the state entity or the possibility of passing it on to the attorneys.

At the municipal level, it is observed that the normative discipline on the destination of the loss fees follows a common line of recognition of the original ownership of the public entity, with subsequent legal authorization for the distribution of the funds among the members of the legal career.

In the case of the Municipality of Gurupi, the local law provides that "the loss fees due to the Municipality of Gurupi will be allocated 95% to the Municipal Attorneys, 2% to the Legal Analysts and 3% to the structuring of the Attorney General's Office". The provision shows that the primary ownership remains with the Municipality, which, by virtue of a specific law, proceeds to divide the amount among attorneys, analysts and the administrative structure of the Attorney General's Office itself.

Similarly, the normative diploma of the Municipality of Palmas establishes that "the loss fees due to the Municipality of Palmas, when it is the winning party, belong to the Municipal Attorneys, active and inactive, under the terms of this Law". In this case, although

the funds initially enter as municipal public revenue, the law transfers the final ownership to the attorneys, through regulated apportionment, including the participation of inactive employees.

The Municipality of Araguaína, on the other hand, provides that "the attorney's fees due to the Municipality of Araguaína will be apportioned among the Municipal Attorneys in effective exercise, through their own fund linked to the Attorney General's Office". Unlike the Palmas rule, the Araguainense legislation restricts the benefit only to active attorneys, expressly excluding inactive attorneys from the apportionment.

The comparative analysis of the legal diplomas shows, therefore, a common point: the original ownership of the loss fees is the municipal entity, but the local legislation regulates the destination of the amount, which may include active and inactive attorneys, legal analysts and even the administrative structuring of the Attorney General's Office, according to criteria of municipal legislative policy

Table 1

Comparative Table of Municipal and State Laws

Local	Inclusion of Inactive Persons	Legal Analysts	Structural Fund	Management
Tocantins	Yes (indefinitely)	No	Yes	Council of Attorneys
Palms	Yes (5 years)	No	Yes	Steering Committee + APROMP
Gurupi	No	Yes (2%)	Yes (3%)	Internal Committee (PGM) + Management Group
Araguaína	No	No	No	Fund linked to PGM

Source: prepared by the authors

In the State of Tocantins, the only municipality that aligned itself with a hybrid and innovative model is the one that included analysts in the apportionment was Gurupi, promoting gains in efficiency, but excluding inactive people, which could generate breaks in expectations.

If not, let's see as explained in article 18 of Complementary Law 39/2023:

Art.18. The loss fees originating from lawsuits in which the Municipal Administration, including indirect ones, except for the UNIRG Foundation, are held by the Attorney General of the Municipality, Judicial Deputy Attorney General, Administrative Deputy Attorney General and effective Municipal Attorneys, and will have the following destination:

I -3% (three percent) exclusively allocated to the structuring of the Attorney General's Office of the Municipality, with a view to improving the body, which will be deposited in a specific account and managed by the Attorney General of the Municipality;



II - 2% (two percent) to the Legal Analysts of the Attorney General's Office of the Municipality, as a form of incentive to the work performed;

III - 95% (ninety-five percent) to the payment of attorneys' fees to the Attorney General of the Municipality, Judicial Deputy Attorney General, Administrative Deputy Attorney General and effective Municipal Attorneys, on an equal basis.

The normative model adopted by the Municipality of Araguaína, by excluding from the apportionment inactive attorneys and those removed from their functions, presents the risk of fostering internal litigation and creates obstacles to functional mobility within the Public Administration itself.

This is because, by prohibiting the perception of the funds when the member of the Attorney General's Office assumes another position of a political or administrative nature – such as that of Municipal Secretary – the attractiveness for the effective public servant to move to other spaces of public management is reduced, due to the direct damage to his remuneration advantage.

In the comparative examination of municipal legislation, it is observed that the normative diplomas converge on an essential point: the fees for loss are originally due to the Municipality, and it is up to the public entity, in the exercise of its legislative competence, to define the criteria and parameters of distribution among the members of its legal career, according to administrative policy choices.

2.2 RELATED LEGISLATION IN OTHER STATES AND JURISPRUDENCE

In addition to the main focus on Tocantins, we opted for the analysis of related legislation from other municipalities in the country, in order to give greater comparative density to the study. The selection criterion took into account emblematic and contrasting normative experiences, capable of evidencing the plurality of possible models in the treatment of loss fees in the scope of municipal public advocacy.

In the Municipality of São Paulo, one of the pioneer municipalities for the theme, through Municipal Law No. 9,402/1981 instituted, more than four decades ago, a model of universal apportionment of attorneys' fees among all members of the career, without imposing conditions on the exclusive exercise of functions in the Attorney General's Office. Article 3 of the aforementioned rule provides that, after the deduction of up to 5% intended for institutional improvement, the remaining amount must be distributed, equally and monthly, among all attorneys, whether they are active or retired.

Thus, since 1981, São Paulo legislation expressly contemplates the maintenance of the benefit to attorneys assigned to management functions in the Municipality itself, a



normative solution that is similar to the model established by Complementary Law No. 45/2025, of the Municipality of Gurupi.

In the same sense, the Municipality of Rio de Janeiro, through Complementary Law No. 132, of December 20, 2023, is a paradigmatic example of the understanding that the discipline of loss fees falls within the scope of local legislative policy, and it is up to each federative entity, in the exercise of its autonomy, to define the distribution criteria and the respective beneficiaries of the funds.

In an equally innovative way, the Municipality of João Pessoa/PB, through Law No. 11,995, of December 10, 2010, expanded the subjective scope of the apportionment of the attorneys' fees of the Attorney General's Office of the Municipality, expressly including, in addition to the Municipal Attorneys, also the legal analysts (advisors), broadening the spectrum of beneficiaries and revealing a legislative option aimed at recognizing the collaborative nature of the functions of legal support. The rule provides:

"Article 2 (...) X – apportionment of attorneys' fees among the Attorney General, the Deputy Attorney General, the Internal Affairs, the Chief of Staff, the Municipal Attorneys, the Special Advisors and the Assistant Attorneys of the Attorney General's Office of the Municipality of João Pessoa."

Thus, it can be seen that in the Municipality of João Pessoa, the normative discipline of the loss fees is not limited to career prosecutors, but also reaches civil servants invested in management, advisory and support functions, such as the Chief of Staff, Special Advisors and Assistant Attorneys.

Such a model shows that the expansion of the list of beneficiaries of the apportionment, beyond the typical State career, does not constitute an isolated practice nor does it constitute an affront to the constitutional order. On the contrary, it is a legitimate political choice of the municipal legislator, supported by the normative autonomy ensured by article 30, I, of the Federal Constitution, which gives municipalities the power to legislate on matters of local interest, including the organization of their Attorney General's Office and the allocation of funds of an honorary nature.

In this way, Maria Sylvia Zanella Di Pietro also teaches: "The municipal legislative autonomy, provided for in article 30 of the Constitution, legitimizes the discipline of fees, and it is up to the Municipality to choose the beneficiaries and criteria, provided that the principles of Administration are respected" ⁷

⁷ DI PIETRO, Maria Sylvia Zanella. *Administrative Law*. 36. ed. São Paulo: Atlas, 2024, p. 123.



The plurality of normative solutions adopted by municipal entities regarding the allocation of loss fees reinforces the thesis that the matter is of an eminently political and administrative nature, subject to local legislative autonomy

An elucidative example can be found in the Municipality of Arroio Grande/RS, whose Municipal Law No. 2,771/2014 provided in a manner diametrically opposed to the Gurupi model, determining that the loss fees are not destined to the Attorneys, but fully collected to the municipal public coffers:

"Article 19 – The members of the Municipality's Legal Attorney's Office shall not be entitled to the attorney's fees earned or fixed by arbitration, agreement or loss, in cases in which they act in defense of the interests of the Municipality of Arroio Grande/RS, and such funds shall be collected from the municipal public coffers, so that they may be used in accordance with the public policies of the Municipality." (Municipal Law No. 2,771/2014 – available at: Arroio Grande City Hall)

This normative paradigm demonstrates that there is no single or constitutionally imposed model for the allocation of the honorary amount. While some entities, such as São Paulo, Rio de Janeiro and João Pessoa, expand the list of beneficiaries, others, such as Arroio Grande, choose to allocate all fees exclusively to the treasury.

In short, the methodological approach of the legislative study of the Municipality of São Paulo was included because it is a pioneer in the matter, having instituted since 1981 a universal apportionment regime, with coverage to active and retired attorneys, a model that served as a national reference. The Municipality of Rio de Janeiro, in turn, was selected due to its recent normative update (2023), which reaffirms local legislative autonomy and presents contemporary solutions. João Pessoa, capital of Paraíba, was contemplated for adopting an innovative and inclusive model, by extending the apportionment not only to attorneys, but also to legal analysts, chiefs of staff and advisors, demonstrating the expansion of the list of beneficiaries. Finally, Arroio Grande/RS was chosen as the opposite paradigm, as its legislation fully allocated the fees to the treasury, without any transfer to the members of the legal career, representing a relevant counterpoint to the other models.

In our jurisprudence, it is common ground that in the sense that the fees due to municipal attorneys belong to the employing Public Entity, and do not constitute an autonomous asset of the municipal attorney.

TJ-SP - Interlocutory Appeal: AI 22654487220188260000 SP 2265448-72.2018.8.26.0000

Jurisprudence Judgment published on 05/22/2019

Summary: INTERLOCUTORY APPEAL. Action for compliance with a judgment, brought by municipal prosecutors, for the execution of attorneys' fees for loss in which



the Municipality was the winner. Decision that determined the amendment of the initial petition, so that the Municipality composes the active pole, considering that the attorney's fees of loss do not constitute an autonomous right of the judicial attorney, but are also part of the assets of the public entity. Decision in accordance with article 4 of Federal Law No. 9527/97 and the understanding settled by the Superior Court of Justice and the Federal Supreme Court (ADI No. 1194/DF). Article 85, paragraphs 14 and 19 of the NCPC do not alter this understanding, since they determine that the perception of loss fees by the public attorney will be made in accordance with the law. In the present case, the local law of the Tourist Resort of Ibiúna, Municipal Decree No. 2289/17 provides that the loss fees due to municipal legal attorneys by virtue of Federal Law No. 8,906/94 and article 20, paragraph 3 of the CPC will be accounted for as extrabudgetary revenue, with the opening of a specific bank account for receipt, called "Common Fund of Municipal Legal Attorneys", for receiving, apportioning and transferring attorneys' fees to the municipal public prosecutors described in article 7, on a monthly basis. Thus, the amount of loss of interest does not revert directly to the municipal attorneys, entering first the public assets and only then, passed on to the attorneys. Thus, the aggravating parties do not have an autonomous right to enforce the loss fees, and the legal entity governed by public law is legitimate to do so. Precedents of this C. 11th Chamber of Public Law. Decision upheld. Appeal dismissed.

TJ-MG - Civil Appeal: AC 10000210983698001 MG

Jurisprudence Judgment published on 08/02/2022

Summary: SUMMARY: COMPLIANCE WITH JUDGMENT - LOSS FEES - MUNICIPAL ATTORNEY - ARTICLE 85, § 19, OF THE CPC - MUNICIPALITY OF MESQUITA - ACTIVE LEGITIMACY. According to the provisions of article 85, paragraph 19, of the CPC, public attorneys are entitled to the loss fees, as established by law. The fees due to municipal prosecutors must be allocated to the employing public entity, so that it promotes the apportionment, observing the municipal regulations and the salary ceiling of the Judge of the Court of Justice. According to the Superior Court of Justice, the attorney's fees for loss, when the direct Public Administration of the Union, the States, the Federal District and the Municipalities win, or indirectly, do not constitute an autonomous right of the judicial attorney, because they are part of the public assets of the entity, and the lawyer is an illegitimate party to claim such amount as an autonomous right.

The Courts of Appeals of São Paulo and Minas Gerais have repeatedly stated that the attorney's fees for loss do not constitute an autonomous right of the judicial attorney, but are part of the legal assets of the public entity. In the same sense, as Marçal Justen Filho teaches, "loss, as a procedural institute, is not to be confused with functional remuneration, but is a sum owned by the winner, here represented by the public entity".⁸ The assertion shows that the loss fees, in the context of public advocacy, are not of a salary or remuneration nature

⁸ JUSTEN FILHO, Marçal. *Administrative Law Course*. 18. ed. São Paulo: Thomson Reuters Brasil, 2025, p. 412.

In this same sense, Maria Sylvia Zanella Di Pietro understands "Fees, as a portion of a procedural nature, are not to be confused with salaries or allowances, but are inserted in the patrimonial sphere of the public entity, and it is up to it to define its destination." (DI PIETRO, Maria Sylvia Zanella. *Administrative Law*. 36. ed. São Paulo: Atlas, 2024, p. 651).

Fredie Didier Jr agrees with these authors "The loss fees are an expression of remuneration for the lawyer's work, but, in the case of public advocacy, they constitute public revenue subject to legal allocation." (DIDIER JR., Fredie. *Civil Procedural Law Course*. 23. ed. Salvador: JusPodivm, 2022, v. 1, p. 617.



stricto sensu, but are part of the legal assets of the federative entity that was successful in the lawsuit. Only through a specific legal provision is its partial or total allocation to prosecutors admitted, in accordance with the principles of legality and administrative morality.

3 FINAL THOUGHTS

The present study demonstrated that the loss fees, in the context of municipal public advocacy, have the original ownership of the public entity, as the winning party in the lawsuit. The public nature of the funds makes it impossible to characterize it as an immediate subjective right of the attorney, requiring, for eventual transfer, the enactment of a specific local law, in strict compliance with the principles of legality, morality, impersonality, publicity and administrative transparency.

The analysis of the municipal legislation of Palmas, Gurupi and Araguaína, as well as normative experiences in other federative entities, shows the inexistence of a single or cogent model. On the contrary, there is a space for municipal legislative conformation, in which each entity, in the exercise of its constitutional autonomy, defines the criteria for apportionment, the beneficiaries and the percentages of allocation. It was found, however, that more inclusive models — which include attorneys and legal analysts — tend to favor administrative efficiency and institutional cohesion, while those of a restrictive nature can generate corporate tensions and frustrate legitimate expectations.

From the jurisprudential point of view, the State Courts have consolidated the understanding that the loss fees are originally part of the public patrimony, and are only transferred to the attorneys upon express legal provision. Such a position reinforces that the allocation of funds does not constitute an immediate subjective right, but rather an act of legislative and administrative policy, conditioned to objective criteria compatible with the public interest.

It is concluded, therefore, that the regulation of the loss fees must seek a balance between the necessary valorization of the career of municipal public advocacy and the observance of the legal-administrative regime. The normative discipline, far from being a corporate privilege, must be understood as a legitimate instrument of professional recognition and institutional strengthening of the Attorney General's Office, in line with its essential function to Justice and good governance. It is therefore recommended that Municipalities develop clear, transparent and stable laws, capable of ensuring predictability, preventing internal litigation and consolidating public advocacy as a structuring function of the legal order and democratic administration.

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