

Rule 139. Costs and Disbursements**139.01 Costs**

Unless otherwise ordered by the appellate court, the prevailing party shall recover costs as follows:

- (1) upon a judgment on the merits, costs in the amount of \$300;
- (2) upon a dismissal, \$10.

(Amended effective September 15, 1994; amended effective March 1, 2001.)

139.02 Disbursements

Unless otherwise ordered by the appellate court, the prevailing party shall be allowed that party's disbursements necessarily paid or incurred. The prevailing party will not be allowed to tax as a disbursement the cost of preparing informal briefs or submissions designated in Rule 128.01, subd. 2.

(Amended effective for appeals taken on or after January 1, 1992; amended effective March 1, 2001.)

139.03 Taxation of Costs and Disbursements; Time

Costs and disbursements shall be taxed by the clerk of the appellate courts upon five days' written notice served and filed by the prevailing party. The costs and disbursements so taxed shall be inserted in the judgment. Failure to file and serve a notice of taxation of costs and disbursements within 15 days after the filing of the decision or order shall constitute a waiver of taxation, provided that upon reversal in the Supreme Court, a prevailing party in that Court who did not prevail in the Court of Appeals may file and serve a notice for costs and disbursements incurred in both appellate courts within 15 days after the filing of the decision of the Supreme Court, separately identifying costs and disbursements incurred in each court.

(Amended effective March 1, 2001.)

139.04 Objections

Written objections to the taxation of costs and disbursements shall be served and filed with the clerk of the appellate courts within five days after service of the notice of taxation. Failure to serve and file timely written objections shall constitute a waiver. If no objections are filed, the clerk may tax costs and disbursements in accordance with these rules. If objections are filed, a person designated by the appellate courts, after conferring with the appropriate appellate court, shall determine the amount of costs and disbursements to be taxed. There shall be no appeal from the taxation of costs and disbursements.

(Amended effective March 1, 2001.)

Comment - 1983

No appeal may be taken from the taxation of costs.

Advisory Committee Comment - 2000 Amendment

The amendment to Rule 139.01 clarifies the rule and, by deleting the statutory reference, makes an award of costs available in a greater variety of appellate proceedings. The amendment to Rule 139.03 allows a party who did not prevail in the Court of Appeals but obtains a reversal in the Supreme Court to seek costs and disbursements related to proceedings in both appellate courts.

The notice must be served and filed within 15 days after the Supreme Court's decision. This allows the party who ultimately prevails in the Supreme Court to receive an award of costs and disbursements related to both appellate proceedings, whether or not the party initially prevailed in the Court of Appeals.

139.05 Disallowance of Costs and Disbursements

The appellate court upon its own motion may disallow the prevailing party's costs or disbursements or both, in whole or in part, for a violation of these rules or for other good cause. The prevailing party will not be allowed to tax as a disbursement the cost of reproducing parts of the record which are not relevant to the issues on appeal.

(Amended effective July 1, 2014.)

Advisory Committee Comment - 2014 Amendments

Rule 139.05 is amended to change a reference to the appendix to refer to the addendum. The use of an appendix as it formerly existed is no longer either required or permitted in any appellate proceedings.

Rule 139.06 Attorneys' Fees on Appeal - Procedure

Subdivision 1. Request for Fees on Appeal. A party seeking attorneys' fees on appeal shall submit such a request by motion under Rule 127. The court may grant on its own motion an award of reasonable attorneys' fees to any party. All motions for fees must be submitted no later than within the time for taxation of costs, or such other period of time as the court directs. All motions for fees must include sufficient documentation to enable the appellate court to determine the appropriate amount of fees.

Subd. 2. Response. Any response to a motion for fees shall state the grounds for the objections with specificity and shall be filed within ten days of the date the motion is served, unless the appellate court allows a longer time. On the court's own motion or the request of a party, a request for attorneys' fees may be remanded to the district court for appropriate hearing and determination.

Subd. 3. Applications for Pre-Decision Awards of Fees. Where allowed by law, a pre-decision application for fees, and any response to such an application, may be made by motion as provided by Rule 127.

(Added effective January 1, 1999.)

Advisory Committee Comment - 1998 Amendments

The rule has been amended to provide a procedure for seeking attorneys' fees in the appellate courts. The amendments are procedural only, and do not provide a substantive basis for claiming fees on appeal.

*Attorneys' fees on appeal may be allowed as a matter of substantive law or as a sanction. If a party seeks an award of attorneys' fees for work done on the appeal, as opposed to seeking appellate court affirmance of an award made below, the party should seek the award in the appellate court. *Johnson v. City of Shorewood*, 531 N.W.2d 509, 511 (Minn. App. 1995). The appellate court may choose to remand the issue to the trial court for a determination of the fees, see *Richards v. Richards*, 472 N.W.2d 162, 166 (Minn. App. 1991); *Katz v. Katz*, 380 N.W.2d 527, 531 (Minn. App. 1986), *aff'd*, 408 N.W.2d 835, 840 (Minn. 1987); or may refuse such a suggestion, and make the determination itself. See *State Bank v. Ziehwein*, 510 N.W.2d 268, 270 (Minn. App. 1994); *Norwest Bank Midland v. Shinnick*, 402 N.W.2d 818 (Minn. App. 1987).*

The request for fees must include sufficient information to enable the appellate court to determine the appropriate amount of fees. This generally will include specific descriptions of the work performed, the number of hours spent on each item of work, the hourly rate charged for that work, and evidence concerning the usual and customary charges for such work, or if the basis for the fees is other than hourly, information by which the court can judge the propriety of the request. Where appropriate, copies of bills submitted to the client, redacted if necessary to preserve privileged information and work-product, may be submitted with the motion.