

**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**

**Subdivision 1. Time for Seeking Costs.** A prevailing party seeking taxation of costs and disbursements shall file and serve a notice of taxation of costs and disbursements within 14 days of the filing of the court's order or decision.

**Subd. 2. Costs in Supreme Court.** Upon reversal in the Supreme Court, a party prevailing in that Court who did not prevail in the Court of Appeals may file and serve separate notices for costs and disbursements in each appellate court within 14 days after the filing of the decision of the Supreme Court, separately identifying costs and disbursements incurred in each court.

**Subd. 3. Objections.** Written objections to any taxation of costs and disbursements shall be filed and served with the clerk of the appellate courts within 7 days after service of the notice of taxation. Failure to file and serve timely written objections shall constitute a waiver.

**Subd. 4. Decision on Costs.** If no objections are filed, the clerk may tax costs and disbursements in accordance with these rules. If objections are filed, 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; amended effective January 1, 2020.)

***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.*

### **139.04 Disallowance of Costs and Disbursements**

The appellate court upon its own initiative or the motion of any party 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; amended effective January 1, 2020.)

#### ***Advisory Committee Comment - 2014 Amendments***

*Rule 139.04 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 139.05 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 14 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; amended effective January 1, 2020.)

#### ***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.*

***Advisory Committee Comment - 2019 Amendments***

*Rule 139 is amended to clarify its operation. The changes include reorganization of Rules 139.03 and 139.04, replacing them with a new Rule 139.03, with four subdivisions. This rule is intended to describe the procedure used for taxation of costs with greater precision and to remove lack of clarity in the current rule.*

*Where a party prevails in the Supreme Court after not prevailing in the Court of Appeals, Rule 139.03, subd. 2, specifies that the party file separate notices of costs and disbursements that separately identify the costs incurred in each court. This permits the Supreme Court to review the costs incurred in that court and then to allow the Court of Appeals to determine the costs allowed in that court.*