

**Supreme Judicial Court
Standing Advisory Committee on the
Rules of Appellate Procedure**

Proposed amendment to Rule 25

[Current text of Mass. R. A. P. 25]

Rule 25. Damages for Frivolous Appeal in Civil Cases

If an appellate court determines that an appeal in a civil case is frivolous, it may award just damages and single or double costs to the appellee, and such interest on the amount of the judgment as may be allowed by law. The appellate court shall calculate the amount of any award after a separately filed motion or notice from the court and reasonable opportunity to respond.

[Proposed amendment to Mass. R. A. P. 25 – redline version]

Rule 25. ~~Damages for Frivolous Appeal in Civil Cases~~ Appellate Attorney's Fees and Costs

~~If an appellate court determines that an appeal in a civil case is frivolous, it may award just damages and single or double costs to the appellee, and such interest on the amount of the judgment as may be allowed by law. The appellate court shall calculate the amount of any award after a separately filed motion or notice from the court and reasonable opportunity to respond.~~

(a) Award of fees and costs. Where (i) a party makes a request for appellate attorney's fees and costs pursuant to Rule 16(a)(10), and (ii) the appellate court determines that such fees and costs are permitted or required by contract, statute, regulation, rule, or other law, or that an appeal in a civil case is frivolous, the appellate court may, or shall if required, award appellate attorney's fees and costs. If the appellate court determines that an appeal in a civil case is frivolous, the appellate court may also award double costs, or such interest as may be allowed by law, or both.

(b) Procedure. Within 14 days of a decision or order granting a request pursuant to Rule 25(a), or such other time as the appellate court may order, the party seeking appellate attorney's fees and costs shall file a written application, supported by affidavits and any appropriate supporting materials. Any other party may respond within 14 days of service of such application, or within such other time as the appellate court may order.

(c) Enforcement. Any proceedings to enforce an amount awarded under this rule shall be commenced in the lower court.

[Proposed amendment to Mass. R. A. P. 25 – clean version]

Rule 25. Appellate Attorney's Fees and Costs

(a) **Award of fees and costs.** Where (i) a party makes a request for appellate attorney's fees and costs pursuant to Rule 16(a)(10), and (ii) the appellate court determines that such fees and costs are permitted or required by contract, statute, regulation, rule, or other law, or that an appeal in a civil case is frivolous, the appellate court may, or shall if required, award appellate attorney's fees and costs. If the appellate court determines that an appeal in a civil case is frivolous, the appellate court may also award double costs, or such interest as may be allowed by law, or both.

(b) **Procedure.** Within 14 days of a decision or order granting a request pursuant to Rule 25(a), or such other time as the appellate court may order, the party seeking appellate attorney's fees and costs shall file a written application, supported by affidavits and any appropriate supporting materials. Any other party may respond within 14 days of service of such application, or within such other time as the appellate court may order.

(c) **Enforcement.** Any proceedings to enforce an amount awarded under this rule shall be commenced in the lower court.

DRAFT Reporter's Notes—2025

Rule 25 has been revised and broadened to encompass any situation in which attorney's fees and costs may be available in an appellate court (as defined in Rule 1(c), and thus not including single justice proceedings). This revision of Rule 25 reiterates the requirement of Rule 16(a)(10) that any request for appellate fees and costs must appear in the party's brief on appeal. The revision also codifies the procedures currently followed in the appellate courts, thereby obviating the need to refer to *Fabre v. Walton*, 441 Mass. 9 (2004) in cases where fees or costs may be available. Previously, Rule 25 addressed only frivolous appeals in civil cases, but appellate fees and costs may be available in a variety of other situations in civil cases, including when authorized by statute or contract. Such fees and costs may also be available in some criminal cases, *see, e.g.*, Mass. R. Crim. P. 15(d), 25(c)(2), and 30(c)(8)(B), yet until now the appellate rules have not addressed those situations. This revision of Rule 25 establishes standard procedures applicable across all appellate court cases for seeking such fees and costs.