

REPORTER'S NOTES

MASSACHUSETTS RULES OF APPELLATE PROCEDURE

Rule 25. Appellate Attorney's Fees and Costs

Reporter's Notes—2026

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—including for appeals (interlocutory or otherwise) where a party's ultimate entitlement to appellate fees may not be resolved until after proceedings on remand. See *Brown v. F.L. Roberts & Co., Inc.*, 452 Mass. 674, 688-689 (2008); *T & D Video, Inc. v. City of Revere*, 450 Mass. 107, 114-116 (2007). 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), 30(c)(8)(B), and 30(c)(9) (providing in each case that fees and costs shall be “paid on the order of the trial court upon the entry of the rescript or the denial of the application”), 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.