

Rule 7.07

APPELLATE COSTS AND FEES AND ATTORNEY FEES

- (a) **Generally.**
- (1) **Fees and Expenses Separately Assessed When Applicable.** In an appellate case there will be separately assessed, when applicable, all fees for service of process, witness fees, reporter's fees, fees and expenses of a master or commissioner appointed by the appellate court, and any other proper fees and expenses.
 - (2) **Court Approval or Statutory Authority Required.** An appellate court must approve fees and expenses assessed under this rule unless specifically fixed by statute.
 - (3) **Appellate Court May Require Advance Deposit.** An appellate court may require a party to make a deposit in advance to secure the payment of anticipated fees and expenses under this rule.
 - (4) **Fees and Expenses May Be Apportioned.** An appellate court may apportion and assess a part of the original docket fee, the expenses for transcripts, and any additional fees and expenses allowed in the case, against one or more of the parties as justice may require.
 - (5) **Recovery of Docket and Transcript Fees on Reversal of District Court.** When a decision of the district court is reversed, the mandate will direct that appellant recover the original docket fee and expenses for transcripts, if any.
- (b) **Attorney Fees.**
- (1) **Generally.** An appellate court may award attorney fees for services on appeal in a case in which the district court had authority to award attorney fees.
 - (2) **Motion for Attorney Fees.** A motion for attorney fees on appeal must be made under Rule 5.01 and be filed no later than 14 days after oral argument. If oral argument is waived, the motion must be filed no later than 14 days after the day argument is waived or the date of the letter assigning the case to a non-argument calendar, whichever is later. An affidavit must be attached to the motion specifying:
 - (A) the nature and extent of the services rendered;
 - (B) the time expended on the appeal; and
 - (C) the factors considered in determining the reasonableness of the fee. (See KRPC 1.5 Fees.)
- (c) **Frivolous Appeal.** If an appellate court finds that an appeal has been taken frivolously, or only for the purpose of harassment or delay, it may assess against the appellant or appellant's counsel, or both, the

cost of reproduction of the appellee's brief and a reasonable attorney fee for the appellee's counsel. A motion for attorney fees under this subsection must comply with subsection (b)(2). If the motion is granted, the mandate must include a statement of the assessment, and execution may issue on the assessment as for any other judgment, or in an original case the clerk of the appellate courts may issue an execution.

- (d) **Unnecessary Transcript.** An appellate court—on its own or on the motion of an aggrieved party filed no later than 14 days after an assessment of costs under this rule—may assess against a party or the party's counsel, or both, all or part of the cost of the trial transcript that the court finds was prepared as the result of an unreasonable refusal to stipulate under Rule 3.03 to the preparation of less than a complete transcript of the proceedings in the district court.

[**History:** Am. effective March 22, 1989; Am. effective February 8, 1994; Am. (b) effective May 9, 2005; Am. (d) effective July 1, 2010; Restyled rule and amended effective July 1, 2012.]