

RECOVERING APPELLATE ATTORNEY'S FEES IN STATE AND FEDERAL COURT

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Federal Court

Federal Rule of Civil Procedure 54:

“[U]nless the substantive law requires [attorneys’] fees to be proved at trial as an element of damages,” fees are to be sought by motion, which typically must be filed “no later than 14 days after the entry of judgment.”

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Federal Court

“If an appeal on the merits of the case is taken, the court may rule on the claim for fees, may defer its ruling on the motion, or may deny the motion without prejudice, directing under subdivision (d)(2)(B) a new period for filing after the appeal has been resolved.

A notice of appeal does not extend the time for filing a fee claim based on the initial judgment, but the court under subdivision (d)(2)(B) may effectively extend the period by permitting claims to be filed after resolution of the appeal.”

Advisory Committee Notes for the 1993 Amendments

Federal Court – Trial Courts

- Award fees (most often when uncontested)
- Lack power to award conditional attorneys' fees
- “Typically disfavored”
- Denied “in the interest of judicial economy”
- Denied without prejudice for lack of sufficient evidence

Federal Court

- Not an abuse of discretion to defer consideration of appellate fees or deny appellate fees without prejudice
- No need to appeal or cross appeal this decision

Federal Court - Quality of the evidence

- It is insufficient to simply offer a total and then state that the total is reasonable and necessary.
- The courts want a specific estimate of
 - how many hours the work would take and
 - The hourly rates of the individuals involved.”

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First appeared as part of the conference materials for the
31st Annual Conference on State and Federal Appeals session
"Recovering Appellate Attorney's Fees"