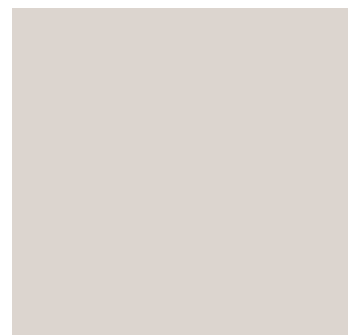
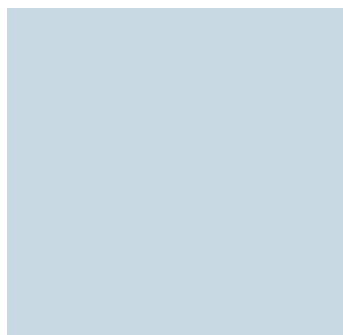
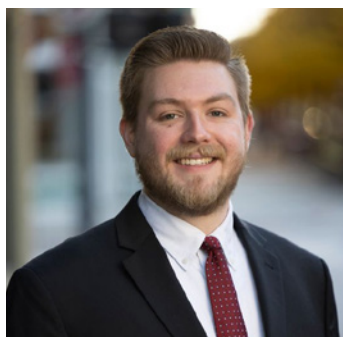


MICHIGAN DEFENSE QUARTERLY

Volume 42, No. 1 | 2025



Reports

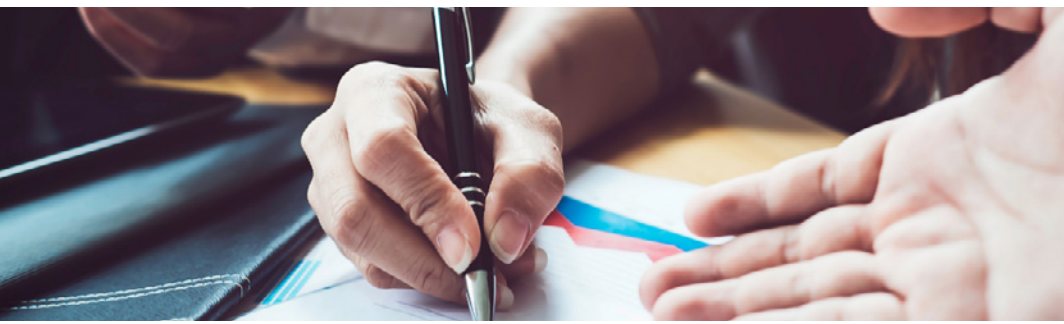
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Appellate Practice Report

By: **Phillip J. DeRosier**, *Dickinson Wright*
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Michigan Supreme Court Amends Court Rules on Taxation of Costs on Appeal

The prevailing party in a civil appeal may be entitled to tax costs. See MCR 7.115 (appeals to circuit court); MCR 7.219 (Court of Appeals); MCR 7.318 (Michigan Supreme Court). Costs are precluded only if the court expressly states that a prevailing party is not entitled to costs. The process for seeking costs has changed somewhat under court rule amendments that took effect on January 1, 2025.

In the Supreme Court and Court of Appeals, a certified or verified bill of costs must be filed “[w]ithin 49 days after the dispositive order, opinion, or order denying reconsideration is mailed.” MCR 7.219(B); MCR 7.319(A) (directing that the procedure for taxing costs in the Supreme Court “is as provided in MCR 7.219”). Formerly it was 28 days, and it remains 28 days for appeals to circuit court. MCR 7.115(B).

Another new wrinkle in the Court of Appeals is that “[i]f the Supreme Court reverses the decision of the Court of Appeals, then within 28 days of the Supreme Court decision, the new prevailing party may file a certified or verified bill of costs with the Court of Appeals clerk and serve a copy on all other parties.” MCR 7.219(B).

The opposing party may file an objection within 7 days after service of the bill of costs. MCR 7.219(C); MCR 7.115(C). The clerk must “promptly” verify the prevailing party’s costs and tax as appropriate. MCR 7.219(D); MCR 7.115(D). A party wishing to challenge the clerk’s action may file a motion “within 7 days from the date of taxation.” MCR 7.219(F); MCR 7.115(F). Review, however, is limited to “those affidavits or objections which were previously filed with the clerk.” Id.

The most significant change to the procedure for taxing costs, which applies equally in appeals to the circuit court and to the Court of Appeals, is that the enforcement of any award of costs is now stayed pending any further appellate review that may be sought, including by application for leave to appeal. MCR 7.219(E); MCR 7.115(E). In the Supreme Court, if the Court “retains jurisdiction in a case, the clerk must stay the enforcement of an award taxing costs until the Supreme Court no longer has jurisdiction over the case.” MCR 7.319(C).

When it comes to available costs, they are relatively limited. In appeals to circuit court, the following costs on appeal may be taxed:

- (1) printing of briefs, or if briefs were typewritten, a charge of \$1 per original page;
- (2) obtaining any stay bond;



Phillip J. DeRosier

Phil DeRosier has more than 20 years’ experience representing industry-leading corporations, banks, insurance companies, and individuals in the Michigan Supreme Court, Michigan Court of Appeals, and U.S. Courts of Appeals. Phil has briefed and argued a wide variety of appeals, ranging from commercial contracts to insurance to business torts. He also devotes a significant part of his practice to briefing dispositive motions and working with trial counsel on pre- and post-trial motions, jury instructions, and preserving issues for appeal.

Phil is a past Chair of the Governing Council of the State Bar of Michigan’s Appellate Practice Section, and is consistently recognized in Best Lawyers and Michigan Super Lawyers in the area of appellate practice. Phil is co-chair of the Michigan Appellate Bench Bar Conference and a contributing author to the Institute for Continuing Legal Education’s *Michigan Appellate Handbook*. Before joining the firm, Phil served as a law clerk for former Michigan Supreme Court Chief Justice Robert P. Young, Jr., and was a staff attorney at the Michigan Court of Appeals.



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- (3) the transcript and necessary copies of it;
- (4) documents required for the record on appeal;
- (5) fees paid to the clerk or to the trial court clerk incident to the appeal;
- (6) taxable costs and fees allowed by law in appeals under MCL 600.2441;
- (7) the additional costs incurred when a party to an appeal under the Administrative Procedures Act unreasonably refused to stipulate to shortening the record as provided in MCL 24.304(2); and
- (8) other expenses taxable under applicable court rules or statutes.

MCR 7.115(G).

In the Court of Appeals, the taxable costs on appeal include:

- (1) a charge of \$1 per original page for the prevailing party's costs associated with preparation of appellant's brief, appellee's brief, a supplemental brief or a reply brief, not including any attachments or appendices;
- (2) any appeal or stay bond;
- (3) the transcript and necessary copies of it;
- (4) documents required for the record on appeal;
- (5) fees paid to the clerk or to the trial court clerk incident to the appeal;
- (6) taxable costs allowed by law in appeals to the Supreme Court (MCL 600.2441); and
- (7) other expenses taxable under applicable court rules or statutes.

MCR 7.219(G).

Finally, the following costs on appeal are taxable in the Supreme Court:

- (1) \$375 for an application for leave to appeal or an original action;
- (2) \$150 for a motion for immediate consideration or a motion to expedite appeal, except that a prosecuting attorney is exempt from paying a fee under this subdivision in an appeal arising out of a criminal proceeding if the defendant is represented by a court-appointed lawyer;
- (3) \$75 for all other motions;
- (4) 50 cents per page for a certified copy of a paper from a public record or a copy of an opinion;

- (5) \$5 for certified docket entries; and
- (6) \$1 for certification of a copy presented to the clerk.

MCR 7.319(D). Under the Supreme Court's internal operating procedures, the prevailing party may also tax "\$1.00 per original page at the application stage. No amount may be taxed for attachments to the application. For briefs in cases where leave was granted or argument was held on the application, the prevailing party may tax \$2.00 per original page of the brief and the appendixes." MSC IOP 7.319(B)(1).

In addition to the costs incurred on appeal, prevailing parties on appeal in the circuit court and Court of Appeals may also tax any "costs awarded in the court below as permitted by MCL 600.2445(4)." MCR 7.219(G); MCR 7.115(G). This is another new provision effective May 1, 2025.

In some appeals, the recoverable costs will be less than the attorney fees for compiling a bill of costs—which means that pursuing costs may not be worthwhile economically. Still, costs in some appeals may be large enough to justify their pursuit. When an attorney receives an order allowing a client to tax costs incurred in an appeal, they should provide their client with a realistic picture of the likely expense of pursuing costs, as well as the likely recovery, before pursuing an order taxing costs. Doing these calculations upfront allows a client to make an informed judgment about whether pursuit of costs is worthwhile.

MDTC Schedule of Events

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2025

Golf Outing

Friday, September 12, 2025

8:00 a.m. – 3:00 p.m. @ Mystic Creek Golf Course

Winter Meeting

Friday, November 7, 2025

8:00 a.m. – 5:00 p.m. @ Sheraton Detroit Novi Hotel

Legal Excellence Awards

Thursday, March 19, 2026

6:00 – 9:00 p.m. @ Gem Theatre

Annual Meeting & Summer Conference 2026

Friday, June 12, 2026

9:00 a.m. – 5:30 p.m. @ Double Tree Hotel, Detroit

Winter Meeting

Friday, November 6, 2026

8:00 a.m. – 5:00 p.m. @ Sheraton Detroit Novi Hotel