

Wednesday

22nd

December, 2004.

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect be and they hereby are amended to become effective April 1, 2005.

Add Rule 1:1A to read as follows:

Rule 1:1A. Recovery of Appellate Attorney's Fees in Circuit Court.

a) Notwithstanding any provision of Rule 1:1, in any civil action in which an appeal lies from the circuit court to the Supreme Court and a petition for appeal is denied by the Supreme Court (and, if a petition for rehearing has been filed pursuant to Rule 5:20, such petition has been denied), an appellee who has recovered attorneys' fees, costs or both in the circuit court pursuant to a contract, statute or other applicable law may make application in the circuit court in which judgment was entered for attorneys' fees, costs or both incurred on appeal. The application must be filed within thirty (30) days after denial of the petition for appeal or of any petition for rehearing, whichever is later, and may be made in the same case from which the appeal was taken, which case shall be reinstated on the circuit court docket upon the filing of the application. The appellee shall not be required to file a separate suit or action to recover the fees and costs incurred on appeal, and the circuit court shall have continuing jurisdiction of the case for the purpose of adjudicating the application. The circuit court's order granting or refusing the application, in whole or in part, shall be a final order for purposes of Rule 1:1.

b) Nothing in this Rule shall restrict or prohibit the exercise of any other right or remedy for the recovery of attorneys' fees or costs, by separate suit or action, or otherwise.

Amend Rule 5:20 to read as follows:

Rule 5:20. Denial of Appeal; Petition for Rehearing.

* * *

(d) Upon denial of a petition for appeal and any petition for rehearing, any appellee who has received attorneys' fees and costs in the circuit court may make application in the circuit court for additional fees and costs incurred on appeal pursuant to Rule 1:1A.

A Copy,

Teste:

Clerk