

## Guidelines on Preparing Bills of Costs<sup>1</sup>

(a) *Filing of Bill of Costs.* If counsel for the litigants in a civil case are able to agree on costs, they need not file a bill of costs with the Clerk. If counsel cannot agree, a bill of costs shall be filed by the prevailing party with the Clerk within 30 days from the entry of judgment. The bill of costs must be filed on Form AO-133 available on the Court's web site along with a statement that the costs claimed were actually and necessarily incurred. It is the responsibility of counsel to file adequate supporting documentation to enable the Clerk to determine whether the costs claimed comply with these *Guidelines*.

(b) *Objections to Bill of Costs.* If no objections are filed within 30 days after service of the bill of costs, the Clerk shall tax the costs which appear properly claimed. If objections are filed, the Clerk shall consider the objections and shall tax costs subject to review by the Court as provided by Fed. R. Civ. P. 54(d)(1).

(c) *Items Taxable as Costs.* It shall be the policy of the Court to allow certain items of costs and disallow other items as specified in any special order of the Court. It is the general policy of this Court that only those items set forth in 28 U.S.C. §§ 1821 and 1920 may be taxable as costs under Fed. R. Civ. P. 54(d)(1). *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437 (1987). *See also Sales v. Marshall*, 873 F.2d 115, 119 (6th Cir. 1989). Items not set forth in 28 U.S.C. §§ 1821 and 1920 will not be taxed absent specific authorization set forth in another statutory provision or a contract between the parties. When costs are sought for items not listed in 28 U.S.C. §§ 1821 and 1920, the procedure best followed is an application to the Court for an approving order made before the costs are incurred.

The Court's general policy on the taxation of items set forth in 28 U.S.C. §§ 1821 and 1920 is as follows:

(1) *Fees of the Clerk and United States Marshal.* The filing fees paid to the Clerk either for an original filing or for removal shall be taxable. Fees for attorney admission *pro hac vice* shall not be taxable. *Schmitz-Werke GmbH Co. v. Rockland Indus., Inc.*, 271 F. Supp.2d 734, 735 (D. Md. 2003). Fees of the United States Marshal as set forth in 28 U.S.C. §1921 shall be taxable. The costs for service by a sheriff or other authorized person shall be taxable, except that counsel have the duty to mitigate costs by having process served by a person located as close as possible to the person to be served in order to minimize legal fees. Costs for service by a private process server may be taxed provided that the private process server fees do not exceed the U.S. Marshal's fees. *Arrambide v. Wal-Mart Stores, Inc.*, 33 Fed. Appx. 199, 2002 WL 531137 at \*\*3 (6<sup>th</sup> Cir. 2002); *Tinch v. City of Dayton*, 199 F. Supp.2d 758, 770 (S.D. Ohio 2002) (citing 28 C.F.R. § 0.114).

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<sup>1</sup> Absent controlling authority to the contrary, the Clerk of Court will tax disputed costs strictly in accordance with Fed. R. Civ. P. 54 (d) and these *Guidelines*.

(2) *Fees of the Court Reporter.* The fees of a court reporter for any or all of a printed or electronically recorded transcript may be taxed provided that the transcript was necessarily obtained for use in the case. When a transcript is obtained for purposes of appeal, the cost of the original is taxable if the appeal is successful.

(i) Transcripts of trial proceedings obtained for the purposes of preparing proposed findings of fact and conclusions of law, when directed by the Court in a bench trial, shall be taxable as a matter of course to the successful party.

(ii) Daily transcripts of trial proceedings obtained for the convenience of counsel are not taxable as costs unless advance authority has been sought and obtained from the Court.

(iii) Transcripts of pretrial hearings may be taxed if necessarily obtained for use in the case and not merely for the convenience of counsel. *Glastetter v. Sandoz Pharm. Corp.*, 2000 WL 34017154 at \*3 (E.D. Mo. 2000); *Board of Directors, Water's Edge v. Anden Group*, 135 F.R. D. 129, 137 (E.D. Va. 1991).

(iv) Costs of printed or electronically recorded depositions, including videotaped depositions, are taxable if the depositions were reasonably necessary in light of the circumstances at the time they were taken. *BDT Prods., Inc. v. Lexmark Int'l, Inc.*, 405 F.3d 415, 420 (6<sup>th</sup> Cir. 2005). Costs of the taxing party's copies of depositions will be taxable, if reasonably necessary for use in the case, whether or not used at trial. *McCombs v. Meijer*, 395 F.3d 346, 361 (6<sup>th</sup> Cir. 2005). Costs of depositions used in support of a successful summary judgment motion will be taxable. *Abbs v. Con-Way Cent. Exp., Inc.*, 2007 WL 1017364 at \*3 (E.D. Mich. 2007). The attendance fee of the reporter is taxable but no mileage or additional per diem costs shall be taxed. In this regard, this Court deems that \$125 per day is a reasonable maximum attendance fee and that sum is hereby set as the maximum attendance fee taxable as costs. The Judicial Conference of the United States has established rates for transcripts that are chargeable for official transcripts in this Court. Those fees are hereby adopted as the maximum taxable transcription fees notwithstanding what fee may have been charged to the party by the court reporter. A schedule of fees is available from the Clerk's Office. Costs of deposition transcripts that do not set forth the number of pages or rate per page will not be taxed. *Mihailovich v. Laatsch*, 2002 WL 91897 at \*2 (N.D. Ill. 2002); *Pan American Grain Mfg. Co. v. Puerto Rico Ports Auth.*, 193 F.R.D. 26, 39 (D. Puerto Rico 2000).

(v) Extra fees charged by reporters for attendance, mileage, per diem, expeditious handling, condensed transcripts, ASCII disks, postage, deposition exhibits, etc., shall not be taxable unless advance authorization was sought and received from the Court.

(3) *Disbursements for Printing.* Fees and disbursements for printing are generally not involved at the trial court level absent documented justification or court order.

(4) *Witness Fees.* Where witnesses, expert and otherwise, appear voluntarily or are subpoenaed by the regular service of subpoena within the district, or outside the district as allowed by law, they shall be entitled to fees provided by statute to be taxed as costs in the case. 28 U.S.C. § 1821. In all civil cases, witness fees will be taxed only upon the certificate by counsel for the prevailing party requesting the same. Said certificate shall contain the following information:

- (1) the name of the witness;
- (2) the place of residence, or the place where subpoenaed, or the place from which the witness voluntarily traveled without a subpoena to attend upon said case;
- (3) the number of days the witness actually testified in court;
- (4) the number of days the witness traveled to and from the place of trial or hearings and the exact number of miles traveled; and
- (5) the manner of travel, that is, whether by air, railroad, bus or private automobile.

The Clerk shall tax the witness fees after the certificate is filed, provided the information contained therein corresponds with the facts upon the records of the Court. If, however, there is a discrepancy between the certificate and the Court records, the Clerk shall tax the witness fees in accordance with the official records.

Witness fees are allowed pursuant to testimony and necessary attendance at trial and for each day of necessary travel. Witness fees may be allowed for depositions taken in support of a successful summary judgment motion. *Haroco v. American Nat'l Bank & Trust Co. of Chicago*, 38 F.3d 1429, 1442 (7<sup>th</sup> Cir. 1994). Counsel will be expected to justify the witness fee for any day that a particular witness has not testified, as reflected in the courtroom minutes. In addition, a subsistence fee may be allowed for each day that the witness is so far removed from his residence as to prohibit return thereto from day to day. Such subsistence shall be determined pursuant to the governmental rate in effect at that time. The subsistence per diem rate may be obtained from the Clerk's Office.

Taxation may be made for the cost of each day the witness is necessarily in attendance and is not limited only to those costs incurred for the actual day upon which the witness testified. Fees will be limited, however, to the days of actual testimony and the days required for travel if no showing is made that the witness necessarily attended for a longer time.

Fees for mileage of witnesses have long been a subject of debate in the courts. There is a split of decisions as to whether or not travel expenses for witnesses coming from outside the jurisdiction are allowable in an amount which is in excess of that equal to mileage fees for the 100 mile limitation of subpoena power. Inasmuch as it seems that the 100 mile

rule is somewhat unfair in this day of modern transportation, the following travel expenses policy is adopted:

(i) Any witness attending in this Court or before any person authorized to take his or her deposition, if within the jurisdiction of this Court, is entitled to a mileage fee for going to and from his or her place of residence. The mileage fee shall be equal to the mileage fee that government employees would be entitled to at the time the expense was incurred by the witness. The government mileage rate may be obtained from the Clerk's Office.

(ii) A witness attending from outside the jurisdiction shall be allowed the same mileage fee as set forth in (i) above, up to the maximum amount of 500 miles one way (1000 miles round trip), which is the approximate maximum mileage that may be assessed within the jurisdiction;

(iii) Provided, however, that witnesses shall be allowed the cost of common-carrier transportation if that cost does not exceed the maximum amount allowable for mileage;

(iv) In all other cases where parties expect to call a witness who would incur expenses in an amount greater than above, authorization from the Court prior to commencement of the trial must be sought and received before such expenses may be taxed.

(5) *Expenses of Counsel at Depositions.* Fees of counsel for traveling to and attending depositions are not taxable unless prior approval has been obtained as set forth in 4(iv) above.

(6) *Expert Witness Fees.* The fee for an expert witness is limited to the statutory fee for witnesses unless prior authorization is received from the Court as set forth in 4(iv) above.

(7) *Exemplification and Costs of Making Copies.* Section 1920(4) provides for the taxation of the cost of exemplification and making copies of any materials where the copies are necessarily obtained for use in the case. The general rule followed by this Court is that duplicating expenses are properly taxable only to the extent that the copies were used in support of a successful motion for summary judgment, as exhibits at trial, or were furnished to and used by the Court or opposing counsel. *See e.g., Board of Directors, Water's Edge v. Anden Group*, 135 F.R.D. 129, 138 (E.D. Va. 1991); *Scroggins v. Air Cargo, Inc.*, 534 F.2d 1124, 1133 (5<sup>th</sup> Cir. 1976). Although not required to submit a bill of costs so detailed as to make it impossible economically to recover copying costs, the prevailing party is required to provide the best breakdown obtainable from retained records. *See Northbrook Excess & Surplus Insurance Co. v. Proctor & Gamble Co.*, 924

F.2d 633, 643 (7th Cir. 1991). Furthermore, as stated by one court, the losing party "should be taxed for the cost of reproducing relevant documents and exhibits for use in the case, but should not be held responsible for multiple copies of documents, attorney correspondence, or any of the other multitude of papers that may pass through a law firm's xerox machines." *Fogleman v. ARAMCO*, 920 F.2d 278, 286 (5th Cir. 1991). The costs of copies obtained for counsel's own use or for counsel's convenience are not taxable. The fee of an official for certification or proof of non-existence of a document is taxable.

(8) *Maps, Charts, Models, Photographs, Summaries, Computations and Statistical Summaries.* The cost of photographs, 8 x 10 inches in size or less, is taxable if the photographs are admitted into evidence. Enlargements greater than 8 x 10 inches are not taxable except by prior order of the Court. Costs of models are not taxable except by prior order of the Court. The cost of compiling summaries, computations and statistical comparisons is not taxable.

(9) *Attorney's Fees.* The statutory fees for counsel are taxable costs. *See* 28 U.S.C. §1923. Attorney fees are not taxable except by order of the Court. Attorney's fees will not be taxed as costs under Fed. R. Civ. P. 54(d)(1) and this rule. Attorney's fees must be requested by separate motion to the Court pursuant to Fed. R. Civ. P. 54(d)(2).

(10) *Fees to Masters, Receivers and Commissioners.* Fees to masters, receivers and commissioners are taxable as costs, unless otherwise ordered by the Court. When costs are sought for items not listed in 28 U.S.C. §1920, counsel are advised to apply to the Court for approval in advance of trial.

(11) *Fees to Mediators or Arbitrators.* Fees to mediators or arbitrators are not taxable as costs, unless otherwise ordered by the Court. *Brisco-Wade v. Carnahan*, 297 F.3d 781, 782 (8<sup>th</sup> Cir. 2002).

(d) *Computer Assisted Legal Research.* Section 1920 does not provide for the recovery of Computer Assisted Legal Research (CALR). Charges for CALR, like costs for manual legal research, are incidental to an attorney's services and are not properly taxed as costs. *Sorbo v. United Parcel Serv.*, 432 F.3d 1169, 1180 (10<sup>th</sup> Cir. 2005).

(e) *Jury Costs and Fees in Settled Cases.* If any civil action is settled by the parties during trial or just prior to trial, the Court may assess all juror costs and fees equally against the parties and their counsel, or otherwise, as the Court may determine.

(f) *Costs Taxed by Appeals Court (Fed. R. App. P. 39(e)).* Any costs taxed in the mandate of the circuit court of appeals shall be forthwith entered by the Clerk.

(g) *Effect of Post-trial Motions and Appeals.* The filing of post-trial motions and appeals does not extend the time for filing bills of costs.

If a bill of costs is filed in a case under appeal, the Clerk will hold the matter in abeyance pending the appeal unless otherwise ordered by the Court. Once judgment on the appeal is entered and the appellate mandate becomes final, the parties must, within 14 days, file with the Clerk a report on the status of costs and/or file supplemental briefs in support of the bill of costs and any objections. If no such filing is made, costs shall be deemed to have been waived.

(h) *Costs on Appeal in District Court (Fed. R. App. P. 39(e))*. All costs taxable under Fed. R. App. 39(e) will be deemed waived unless the party entitled thereto files a bill of costs in accordance with paragraph (a) of this rule within 21 days of the issuance of the mandate by the circuit court.