

## Guidelines on Preparing Bills of Costs

- (a) *Filing of Certificate of Costs.* After entry of the final judgment allowing costs to the prevailing party, said party within thirty (30) days shall prepare a certificate of costs that shall contain an itemized schedule of costs incurred and a statement that such schedule is correct and that the charges were actually and necessarily incurred. The original certificate shall be filed with the clerk and a copy served upon opposing counsel.
- (b) *Objections to Cost Bill.* If no objections are filed within thirty (30) days after service of the cost bill, 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 Rule 54(d)(1), *Fed. R. Civ. P.*
- (c) *Witnesses and Experts.* 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. 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.
- (d) *Clerk Taxing Witness Fees.* 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.
- (e) *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.

Guidance on 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 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 will not be taxed.

(2) *Fees of the Court Reporter.* The fees of a court reporter for any or all of the stenographic transcript necessarily obtained for use in the case causes the most confusion in taxation of costs. 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) Costs of depositions are taxable if the depositions were reasonably necessary in light of the circumstances at the time they were taken. 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. The attendance fee of the reporter is taxable but no mileage or per diem costs shall be taxed. In this regard, this court deems that \$125.00 for ½ days and \$250.00 for full days are reasonable maximum attendance fees and those sums are hereby set as the maximum attendance fees 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.

(iv) Extra fees charged by reporters for attendance, mileage, per diem, expeditious handling, 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 and need not be a subject of this policy statement.

(4) *Witness Fees.* Witness fees are allowed pursuant to testimony and necessary attendance at trial and for each day of necessary travel. 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. Witness fees are taxable whether or not a subpoena was issued.

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 one hundred (100) mile limitation of subpoena power. Inasmuch as it seems that the one hundred (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 five hundred (500) miles one way, 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 Copies of Papers.* Section 1920 (4) provides for the taxation of the cost of producing copies of papers 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 as exhibits at trial or were furnished to and used by the court or opposing counsel. See e.g., Sun Publishing Co. v. Mecklenburg News, Inc., 594 F. Supp. 1512, 1524 (E.D. Va. 1984). 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, eight (8) x ten (10) inches in size or less, is taxable if the photographs are admitted into evidence. Enlargements greater than eight (8) x ten (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.

(f) *Computer Assisted Legal Research.* Section 1920 does not provide for the recovery of Computer Assisted Legal Research (CALR). While some courts have allowed them, the majority hold that they are not taxable. See, e.g., Leftwich v. Harris-Stowe State College, 702 F.2d 656,695 (8th Cir. 1983); Ortega v. Kansas City, 659 F. Supp. 1201, 1219 (D. Kan. 1987). Charges for CALR are, like costs for manual legal research, incidental to an attorney's services and are not properly taxed as costs. Wolfe v. Wolfe 570 F. Supp. 826, 828 (D.S.C. 1983).

(g) *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.

(h) *Costs Taxed by Appeals Court (Rule 39(d), Federal Rules of Appellate Procedure).* Any costs taxed in the mandate of the circuit court of appeals shall be forthwith entered by the clerk.

(i) *Costs on Appeal in District Court (Rule 39(e), Federal Rules of Appellate Procedure).* All costs taxable under Rule 39(e), Federal Rules of Appellate Procedure, will be deemed waived unless the party entitled thereto files a bill of costs in accordance with paragraph (a) of this rule within twenty (20) days of the issuance of the mandate by the circuit court.