

United States District Court
EASTERN DISTRICT *of* TENNESSEE



GUIDELINES ON PREPARING BILLS OF COSTS

November 2019

The Clerk's Office has created these *Guidelines* to assist parties in properly preparing and filing bills of costs with this Court. Absent controlling authority, the Clerk will strictly apply the *Guidelines* when considering requests for costs. However, nothing in the *Guidelines* is meant to expand or limit the authority of this Court or the Clerk to tax costs under 28 U.S.C. § 1920. Parties should use these *Guidelines* in conjunction with the Federal Rules of Civil and Appellate Procedure, the Local Rules of this Court, and applicable case law.

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I. INTRODUCTION

A. BACKGROUND

1. E.D. Tenn. L.R. 54.1 establishes the procedure for filing a bill of costs in this Court:

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 21 days from entry of judgment. A copy of the bill of costs shall be served upon opposing counsel. The opposing counsel shall file written objections within 21 days from the date of service. The bill of costs, and any objection, must be prepared and filed in accordance with the Court's *Guidelines on Preparing Bills of Costs*. The prevailing party may file a reply to any objections within 14 days from the date of service. The Clerk shall then assess the costs in accordance with the Court's Guidelines on Preparing Bill of Costs.

2. All claims for costs must be adequately supported by documentation to enable the Clerk to determine whether the costs claimed comply with these *Guidelines*.
3. **Note: Costs that are not permitted under law, do not comply with these *Guidelines*, or are not supported by adequate documentation will not be taxed, regardless of whether the opposing party files an objection to the bill of costs.**

B. AUTHORITY TO TAX COSTS

1. The Clerk's authority to tax costs is derived from Fed. R. Civ. P. 54(d)(1) and 28 U.S.C. §§ 1821 and 1920.
2. Fed. R. Civ. P. 54(d)(1) provides that "costs—other than attorney's fees—should be allowed to the prevailing party" and that the Clerk may tax costs on 14 days' notice.
3. 28 U.S.C. §§ 1821 and 1920 set forth the expenses that the Clerk may tax as costs.
4. The general policy of this Court is that only those items set forth in 28 U.S.C. §§ 1821 and 1920 may be taxed as costs under Fed. R. Civ. P. 54(d)(1). 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.

5. The Clerk will deny any costs that are not properly taxable or which lack proper documentation, even if no objection is filed.

II. PROCEDURES FOR FILING BILLS OF COSTS

A. WHAT TO FILE

1. A completed Bill of Costs Form AO-133 (available on the Court's website) and supporting documentation.
2. Supporting documentation may include a memorandum or affidavit explaining the amount of the costs and their purpose, as well as copies of vouchers, invoices, cancelled checks, or any other documentation clearly showing the amount of costs and/or their purpose.

i. **NOTE: Requested costs that lack supporting documentation will be denied.**

B. ELECTRONIC CASE FILING PROCEDURES FOR BILL OF COSTS

1. All parties who are filing electronically must file Bill of Costs Form AO-133 in CM/ECF using the "Bill of Costs" event and upload all supporting documentation as attachments. The following is a list of CM/ECF events, in order of their use, related to filing a bill of costs:
 - i. Bill of Costs. Use this event to file your completed Form AO-133. Accompanying memoranda and exhibits should be submitted as attachments.
 - ii. Objection to Bill of Costs. Use this event when a non-taxing party does not agree with the submitted bill of costs. See LR 54.1.
 - iii. Response – Non-Motion. Use this event to file a response to an objection to a bill of costs.
 - iv. Letter. Use this event when filing a letter to notify the Clerk that the parties have reached an agreement as to costs or to withdraw a bill of costs.
 - v. Motion (Miscellaneous Relief). Use this event when filing an appeal from a decision of the Clerk. See Fed. R. Civ. P. 54(d)(1).

C. OBJECTIONS TO A BILL OF COSTS

1. Objections filed within 21 days after service of the bill of costs shall be considered by the Clerk in taxing costs. The prevailing party may file a reply to any objections within 14 days from the date of service.
2. If no objections are filed within 21 days after service of the bill of costs, the opposing party waives any right to object to the taxation of costs and the Clerk shall tax the costs which appear properly claimed.
3. Even if an opposing party does not file an objection, the Clerk nevertheless will review the application for costs and deny any requested costs that are not permitted by 28 U.S.C. § 1920 and other applicable law, or which lack proper documentation.

D. WHEN TO FILE A BILL OF COSTS

1. If counsel cannot agree on costs, a bill of costs must be filed within 21 days of the entry of judgment.
2. Any objections must be filed within 21 days of the date of service of the bill of costs.

E. CASES INVOLVING MULTIPLE PARTIES

1. In cases involving more than a single plaintiff or a single defendant, the Clerk will not award the same cost more than once.
2. Generally, multiple prevailing or losing parties are treated as a single party for purposes of taxing costs if they are represented by the same counsel, unless a party provides explanation as to why and how the parties should be treated differently.
3. Similarly, multiple prevailing parties or multiple losing parties are treated as separate parties for purposes of taxing costs if they are represented by different counsel. The parties should provide an explanation as to which costs are attributable to each party and how they should be apportioned.

F. EFFECT OF POST-TRIAL MOTIONS AND APPEALS

1. The filing of post-trial motions and appeals does not extend the time for filing a bills of costs.
2. Unless otherwise ordered by the Court, the Clerk will defer consideration of any pending bill of costs in the following situations:
 - i. *A Pending Post-Judgment Motion*

When a Fed. R. Civ. P. 50(b), 52(b), or 59 post-judgment motion is pending, the Clerk will—without additional notice—delay taxing costs

until resolution of the post-judgment motion. Should the judgment remain in effect after the Court rules on the post-judgment motion, the Clerk will then tax costs without additional notice or hearing after the time period for filing an appeal has expired.

ii. *A Pending Appeal*

When an appeal is pending, the Clerk will delay taxing costs pending resolution of the appeal. Once judgment 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. Alternatively, if the appeal is dismissed, the parties must, within 14 days of the dismissal, file with the Clerk a report on the status of costs and/or file supplemental briefs. If no such filing is made, costs shall be deemed to have been waived.

G. PROCEDURES AFTER FILING THE BILL OF COSTS

1. After the Clerk has received the bill of costs and the time has expired for filing any opposition and response thereto, the Clerk, or the Clerk's designee, absent controlling authority, will strictly apply these *Guidelines* and tax costs without additional hearing or notice on the issue.
2. Costs taxed by the Clerk are subject to review by the Court as provided by Fed. R. Civ. P. 54(d)(1).

III. ITEMS TAXABLE AS COSTS

A. BACKGROUND

1. 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) unless specific authorization set forth in another statutory provision, a contract between the parties, or any special order of the Court indicates otherwise..

B. FEES OF THE CLERK

1. The filing fees paid to the Clerk—either for an original filing or for removal—are taxable.
 - i. Receipts should be provided for filing fees paid to other courts, but need not be provided for filing fees paid to the Clerk of this Court.
2. **Attorney admission fees and fees for applications to proceed *pro hac vice* are not taxable.**

C. FEES OF THE UNITED STATES MARSHAL

1. Fees of the United States Marshal as set forth in 28 U.S.C. § 1921 are taxable.
2. 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.
3. 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.

D. FEES OF THE COURT REPORTER

1. Costs of printed or electronically recorded transcripts are taxable if (1) the transcripts were necessarily obtained for use in the case and (2) the deposition was reasonably necessary at the time of its taking. The following are commonly taxable fees for transcripts and depositions:
 - i. Transcripts procured at the direction of the Court.
 - ii. A transcript of the deposition of a party to the case.
 - iii. A transcript of the deposition of a person who testified at trial, or who a party had reason to believe would testify at trial.
 - iv. Transcripts obtained to support a successful motion for summary judgment.
 - v. Transcripts obtained for purposes of appeal, if the appeal is successful.
 - vi. Transcripts of pretrial hearings, if necessarily obtained for use in the case and not merely for the convenience of counsel.
 - vii. Electronic media depositions used at trial, such as video or audio recordings.
2. This Court adopts the rates established by the Judicial Conference of the United States as the maximum taxable transcription fees notwithstanding what fees may have been charged to the party by the court reporter. These rates may be viewed on the Court's website at www.tned.uscourts.gov.
 - i. **NOTE: Costs of deposition transcripts that do not set forth the number of pages or rate per page will not be taxed.**

3. The attendance fee of the reporter is taxable.
 - i. Pursuant to [SO-18-03](#), \$175 per half-day, and \$350 per full day, are the maximum attendance fees taxable as costs.
 - ii. **NOTE: Costs for attendance fees that do not identify whether the fee is for a half or full-day will be denied.**
4. **Extra fees** charged by reporters, such as for mileage, per diem, expeditious handling, condensed transcripts, ASCII disks, postage, deposition exhibits, etc., **shall not be taxed**, unless advance authorization was sought and received from the Court.
 - i. NOTE: If advanced authorization was sought and received from the Court, the relevant order should be attached to the bill of costs as supporting documentation.

E. DISBURSEMENTS FOR PRINTING

1. Fees and disbursements for printing are generally not involved at the trial court level absent documented justification or court order.

F. WITNESS FEES

1. The following witness fees may be taxed for any witness who attended trial or a hearing, or who appeared before anyone authorized to take his or her deposition:
 - i. The daily attendance fees paid to each witness pursuant to 28 U.S.C. § 1821(b).
 - a. 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. Fees will be limited 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.
 - ii. The travel expenses paid to each witness pursuant to 28 U.S.C. § 1821(c) and § 1821(d).
2. The Clerk shall not tax witness fees unless the party or the party's counsel submits a certification providing the following information:
 - i. The name of the witness;
 - ii. The place of residence, or the place where subpoenaed, or the place from which the witness voluntarily traveled without a subpoena to attend said case;

- iii. The number of days the witness actually testified in court;
 - iv. The number of days the witness traveled to and from the place of trial or hearings and the exact number of miles traveled; and
 - v. The manner of travel, that is, whether by air, railroad, bus or private automobile.
3. **Completion of the witness fees section of Form AO-133 meets the certification requirement, and a separate certification is not required.**
- i. The witness fees section of Form AO-133 will be considered complete when counsel has completed the section on witness fees in its entirety and signed the declaration.
4. Witness fees shall be taxed in accordance with the information provided by the certificate, provided the information contained therein corresponds with the facts upon the records of the Court. If there is a discrepancy between the certificate and the Court records, the Clerk shall tax the witness fees in accordance with the official records.

G. EXPENSES OF COUNSEL AT DEPOSITIONS

1. Fees of counsel for traveling to and attending depositions are not taxable unless prior approval has been obtained from the Court.

H. EXPERT WITNESS FEES

1. The fee for an expert witness is limited to the statutory fee for witnesses unless prior authorization is received from the Court.

I. EXEMPLIFICATIONS AND COSTS OF MAKING COPIES

1. 28 U.S.C. § 1920 provides for “exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case.”
2. Duplicating expenses are properly taxable only to the extent that the copies were used in support of a successful motion for summary judgment or as exhibits at trial, or were furnished to and used by the Court or opposing counsel.
3. A party will not be taxed for multiple copies of documents, attorney correspondence, or any other copying expense accrued merely for counsel’s own use or convenience.
4. The fee of an official for certification or proof of non-existence of a document is taxable.

J. MAPS, CHARTS, MODELS, PHOTOGRAPHS, SUMMARIES, COMPUTATIONS AND STATISTICAL SUMMARIES

1. The costs 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.
2. Costs of models are not taxable except by prior order of the Court.
3. The cost of compiling summaries, computations, and statistical comparisons is not taxable.

K. ATTORNEY'S FEES

1. Statutory docket fees and costs of briefs will be taxed pursuant to 28 U.S.C. § 1923.
2. Attorney fees are not taxable except by order of the Court. Attorneys' fees must be requested by separate motion to the Court pursuant to Fed. R. Civ. P. 54(d)(2).

L. FEES TO MASTERS, RECEIVERS AND COMMISSIONERS

1. Fees to masters, receivers, and commissioners are not 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.

M. FEES TO MEDIATORS OR ARBITRATORS

1. Fees to mediators or arbitrators are not taxable as costs, unless otherwise ordered by the Court.

N. COMPUTER ASSISTED LEGAL RESEARCH

1. 28 U.S.C. § 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.

O. JURY COSTS AND FEES IN SETTLED CASES

1. 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.

P. COSTS TAXED BY APPEALS COURT (FED. R. APP. P. 39(E))

1. Any costs taxed in the mandate of the circuit court of appeals shall be entered by the Clerk.
2. All costs taxable under Fed. R. App. P. 39(e) will be deemed waived unless the party entitled thereto files a bill of costs in accordance with this rule within 21 days of the issuance of the mandate by the circuit court.