

TAXATION OF COSTS IN A CIVIL CASE  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

Exhibit

I. AUTHORITY FOR CLERK TO TAX COSTS

A. Title 28, United States Code, Section 1920

A Judge or Clerk of any Court of the United States may tax as costs the following:

1. Fees of the Clerk and Marshal;
2. Fees of the Court Reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
3. Fees and disbursements for printing and witnesses;
4. Fees for exemplification and copies of papers necessarily obtained for use in the case;
5. Docket fees under Section 1923 of this Title;
6. Compensation of Court appointed experts, compensation of interpreters, and salaries, fees, expenses and costs of special interpretation services under Section 1828 of this Title.

A Bill of Costs shall be filed in the case and, upon allowance, included in the Judgment or Decree.

B. Federal Rule of Civil Procedure 54(d)

Except when express provision therefore is made, either in a statute of the United States or in these Rules, costs shall be allowed as of course to the prevailing party unless the Court otherwise directs; but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the Clerk on one day's notice. On Motions served within five (5) days thereafter, the action of the Clerk may be reviewed by the Court.

## II. TAXATION OF COSTS BY THE CLERK

RULE 54(d) ENTRUSTS THE TAXATION OF COSTS IN THE FIRST INSTANCE TO THE CLERK. IT IS CLEAR, HOWEVER, THAT WHILE JUDGES HAVE WIDE DISCRETION IN DETERMINING WHETHER TO ALLOW A PREVAILING PARTY HIS COSTS, THE CLERK'S DISCRETION IS LIMITED.

### A. Introduction

Rule 54(d) of the Federal Rules of Civil Procedure provides generally that "costs shall be allowed as of course to the prevailing party unless the Court otherwise directs." Not every expense of litigation, however, is recoverable.

When a judgment is entered for a party in this Court, it may merely state that the party recover a sum certain with costs. These costs are not itemized at this point. If counsel are unable to agree as to the amount of costs, it will be the duty of the Clerk to tax all allowable costs to be included in the judgment upon the filing of a proper request for taxation.

The procedures being utilized by the various U. S. District Courts vary to a great extent. When and how taxation takes place depends upon local practice, statutes, case decisions and local Court rules. The Clerk in this district will ordinarily tax costs after expiration of the time for filing an appeal. Costs will not be taxed during the pendency of any appeal. This Court has one local rule dealing with taxation of costs. The rule is set forth as follows:

#### LOCAL RULE 109.1

Unless otherwise ordered by the Court, a bill of costs shall be filed within twenty days of the entry of judgment or of the entry of an order denying a motion filed under Fed.R.Civ.P.50(b), 52 (b) or 59. A bill of costs incurred on appeal taxable in this Court should be filed within twenty days of the issuance of the mandate by the Court of Appeals or, in the event of review by the Supreme Court, within twenty days of the entry of judgment by the Supreme Court. Non-compliance with these time limits shall be deemed a waiver of costs.

In any case where any costs other than the fee for filing the action are being requested, the bill of costs shall be supported by affidavit and accompanied by a memorandum setting forth the grounds and authorities supporting the request. Any vouchers or bills supporting the cost being requested shall be attached as exhibits.

A party objecting to any requested costs shall submit a memorandum in opposition to the request within the time permitted by L.R. 105.2. If no such memorandum is filed within the required time, the Clerk may without notice or hearing tax all of the requested costs.

As mentioned under Title 28 U.S.C. Section 1920, counsel must file a Bill of Costs in an action in order to have costs taxed. The Bill of Costs form, which may be picked upon from the Office of the Clerk, contains the necessary verification as set forth in Title 28 U.S.C. Section 1924 as follows:

"Before any Bill of costs is taxed, the party claiming any item of costs or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case in that the services for which fees have been charge were actually and necessarily performed."

Counsel may complete the form, filling in the blanks as necessary, or they may follow the format, complete the form as a pleading, terming it a "Bill of Costs", include the necessary verification and certificate of service. A memorandum in support and exhibits may be attached.

The original of the Bill of Costs, together with all attachments, should be filed in the Office of the Clerk, and copies served upon all parties. A party objecting to any requested costs shall submit a memorandum in opposition to the request within the time permitted to L/R 105. If no such memorandum is filed within the required time, the Clerk may, without notice or hearing, tax all of the requested costs for inclusion in the judgment.

Once the Clerk has taxed costs, counsel for either side may, within five (5) days, file a motion for review or exceptions to the action of the Clerk and request review by the Court. It is very important that there be timely filing of the motion for review/exceptions. Once the Court has ruled on the motion for review/exceptions, filed by any party, and the matter of costs has finally been determined, those costs should be paid directly to the prevailing party. These costs are not processed through the Office of the Clerk. To record the fact of payment, counsel may file an order of satisfaction.

B. Discussion of Taxable Costs

1. Fees of the Clerk

Some of the more common types of Clerk's fees include the following:

- a. Filing fee of complaint.
- b. Filing fee of Notice of Appeal. The docket fee in the Court of Appeals is taxed by that Court.
- c. Fee charged by out of District Court for filing Notices to Take Depositions.

2. Fees of the Marshal

Title 28, United States Code, Section 1921 sets forth the U. S. Marshal's fees. Some of the more common fees of the U. S. Marshal are as follows:

- a. Service fees for summons and other initial process.
- b. Service fees for trial subpoenas as to witnesses who have testified at trial.
- c. Service fees for deposition subpoenas as to depositions taxed as costs.

3. Fees of Private Process Servers

With the amendment of Rule 4, F.R.Civ.P. in January of 1982, most services of a civil summons and complaint could be handled by "any person who is not a party and is not less than 18 years of age." Local Rule 103.2.b. also provides that "unless otherwise ordered by the Court, the United States Marshal shall not serve any process or subpoenas."

Although 28:1920 does not specifically provide for taxation of these fees, the Clerk will tax reasonable process fees of a private process server. The fee will, of course, change from time to time.

The Clerk will tax reasonable private process server fees as to the following:

- a. Service fees for summons and other initial process.
  - b. Service fees for trial subpoenas as to witnesses who have testified at trial.
  - c. Service fees for deposition subpoenas as to depositions taxed as costs. **Service fees for discovery subpoenas are not taxable by the Clerk.**
4. Fees of the Court Reporter for All or Any Part of the Transcript Necessarily Obtained for Use in the Case  
(28:1920(2); F.R.A.P. 39(e))

a. TRANSCRIPT The Clerk does not ordinarily tax the cost of any hearing or trial transcript except the Court's copy, and then only when the transcript has been specifically requested or approved by a Judge. To avoid questions of taxability, it may be advisable to obtain a prior order in connection with the preparation of a transcript. Mere acceptance by the Court does not constitute a request or approval. See Advance Business Systems & Supply Co. v. SCM Corporation, 287 F.Supp.143 (Md. 1968), aff'd as modified, 415 F.2d 55 (4th Cir. 1969), cert. denied, 397 U.S. 920 (1970).

The Court's copy of a transcript may also be taxed by the Clerk under the following circumstances:

- a. When prepared pursuant to stipulation of parties with agreement to tax as costs.
- b. When used on appeal. (F.R.A.P. 39(e))

(1) The maximum page rate at which a transcript will be taxed is as follows unless the Court has determined in advance that the rate is to be higher or the parties have agreed to a higher rate. If the actual page rate is less than the below stated amounts, the transcript will be taxed at that rate.

- (a) Ordinary transcript - Original \$3.50 per page
- (b) Expedited transcript - Original \$4.50 per page
- © Daily transcript - Original \$5.50 per page
- (d) Copy of Transcript - \$1.25 per page

The costs of copies of transcript, and the costs of daily copy solely for the convenience of counsel are not taxable by the Clerk.

## B. DEPOSITIONS

By implication, depositions are included within the phrase "stenographic transcript" within the statute permitting the taxing of costs for stenographic transcripts, even though the reporter/stenographer taking the deposition is not an official court reporter. (United States v. Kolesar, 313 F2d 835)

It is within the discretion of the Clerk to tax costs of depositions under F.R.Cv.P.54(d) where they are necessary for the case. See generally Crawford Fitting Co. V. J.T. Gibbons, Inc., 482 U.S. 437 (1987). To determine if a deposition expense is taxable, the Clerk must "consider the extent of actual use of each deposition and whether the taking was reasonably necessary to the party's case in light of the particular situation existing at the time of taking. It is not necessarily fatal to taxation that a deposition was not introduced or otherwise used at the trial." See Advance Business Systems & Supply Co. V. SCM Corporation, 287 F.Supp. At 165; see also Lavay Corp. v. Dominion Fed.Sav. & Loan Ass'n, 830 F.2d 522, 528 (4th Cir. 1987), cert. denied, 484 U.S. 1065 (1988). While the court may allow a deposition expense if the taking of that deposition was "reasonably necessary" in "light of the particular situation existing at the time of the taking," the Clerk's authority is more limited. In this district, the Clerk has traditionally allowed the costs associated with deposing the parties in the case and has allowed the costs of those depositions that were actually used in connection with the event that terminated the litigation. Costs of depositions of witnesses not called to testify but used for the purpose of investigation/preparation only are not taxable against the losing party. (330 F.Supp. 1202, Fed. S. & Mark L. Ins. Corp. Vs. Szar Abajka)

The general rule in this District is that deposition costs are taxable in favor of the prevailing party if the deposition is actually used at trial for any purpose, including cross-examination or impeachment. The justification for taxing the expense of a deposition that is introduced into evidence also supports the taxing of the expense of a deposition employed on a successful motion. (Jeffries v. Georgia Prudential, 90 F.R.D. 62)

Depositions used primarily for trial preparation or discovery are not taxable within the discretion of the Clerk. The Clerk is not in a position to determine whether or not a deposition not used during a proceeding was necessary for trial preparation. Costs incurred for the convenience of a party, for the purpose of investigation or simply to aid a party in a more thorough preparation of the case are not recoverable. (Hall v. Superior Trucking Co., 532 F.Supp. (985 N.D. Ga. 1982))

1. The page rates at which a deposition will be taxed are the same as those used in taxing a transcript of proceedings. These rates are set forth under Section II.B.4.b.(1).

If the deposition is held taxable, the prevailing party is entitled to recover any appearance fee charged as well as the modest statutory fee provided for each deposition taken as set forth in 28:1923. It is not within the Clerk's discretion to tax postage, delivery fees, notary fees, etc., incurred in connection with the deposition.

5. Fees and Disbursements for Printing  
28 USC 1920(3); F.R.A.P.39(c)

These fees/disbursements do not usually become involved in trial court proceedings. They are taxed by the Court of Appeals and inserted in the mandate. These taxed costs may then be added to the costs recoverable in the trial court.

6. Fees of Witnesses (Itemized on Reverse Side of  
Taxation Form - A.O. 133 - 28:1821; 1920(3))

Attendance fees, mileage, toll fees, etc., and parking fees as well as a reasonable service fee and subsistence, if applicable, will be allowed for witnesses who testified at trial. These requested fees may also be allowed as to witnesses deposed when their deposition has been taxed as costs in the case.

a. Generally, if a witness has testified at trial, the prevailing party may recover the fees and disbursements as to that witness. This means the recovery of the witness attendance fee, the statutory mileage allowance and a subsistence allowance for overnight stays. A subsistence allowance for a witness shall be paid in an amount not to exceed the maximum per diem allowance prescribed by the Administrator of General Services, pursuant to section 5702(a) of title 5, for official travel in the area of attendance by employees of the Federal Government. Federal employees are not entitled to an attendance fee; they are entitled to the statutory mileage allowance and a subsistence allowance for overnight stays. The rules governing the payment of witness fees to officers and employees of the United States are found in Sections 5537 and 5751 of Title 5 of the U. S. Code.

If a witness is subpoenaed to the trial, but does not testify, the Clerk will not tax the fees and disbursements as to that witness. Counsel may file a Motion for Review of the Taxation within five (5) days pursuant to Rule 54(d). The Court is in the best position to determine if the witnesses who did not testify were necessarily present and that the fees are just under the facts

and circumstances of the particular case.

b. Parties - The expenses of witnesses who are themselves parties are not taxable. Real parties in interest or parties suing in a representative capacity are not entitled to fees and allowances as witnesses. (10 Wright, Miller and Kane, Fed. Practice and Procedure, Civil 2d Section 2678)

A party is not deemed a witness and cannot recover fees, etc., in connection with discovery or trial. (Heverly v. Lewis, 99 FRD 135, 136)

c. Expert Witness Fee - The compensation paid to an expert witness in excess of the statutory fees is not taxable by the Clerk. Only statutory fees will be taxed.

d. Witness Beyond Subpoena Jurisdiction - If a witness is beyond subpoena jurisdiction, the Clerk will reduce claims for mileage to a two hundred (200) mile round trip under F.R.Cv.P.45(e).

(1) Witness fees and allowances are fixed by provisions of 28 USC 1821 as follows:

(a) Attendance Fee - \$40.00 for each day in attendance. 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.

(b) Travel - Mileage. for use of a privately owned automobile, is at a fixed rate. (5 USC 5704(a)) Check with the Clerk for the current rate. The maximum amount of mileage allowed for a witness testifying at a trial or hearing in this Court is one hundred (100) miles, each way. The maximum amount of mileage allowed for a witness appearing at a deposition is also one hundred (100) miles, each way.

NOTE: The Clerk allows mileage up to the maximum mileage that a witness may be subpoenaed under F.R.Cv.P.45. Additional allowance for more miles than allowed by the Clerk is within the discretion of the trial Court.

(1) Miscellaneous toll charges, ferry fees and parking fees may also be allowed by the Clerk.

7. Fees For Exemplification And Copies Of Papers Necessarily Obtained For Use In A Case

The cost of securing translations for exemplification of matters before the Court, copies of papers necessarily obtained for use in a case, and the cost of obtaining charts, models, photographs, etc., are not recoverable within the discretion of the Clerk unless counsel has previously secured an order authorizing the recovery of costs as to these items. In the absence of a previous order, the trial Judge is the one to determine if these items were necessarily obtained for use in a case. Counsel will have the right to file for review of the taxation as noted under Rule 54(d), F.R.Civ.P.

Historically, copy work has been viewed as general office overhead and has not been allowed by the Clerk as a reimbursable cost. Advance Business Systems & Supply Co. v. SCM Corporation, 287 F.Supp. At 165. Two opinions of Judges of this Court have caused the Clerk to reconsider this position. In the case of Stratton v. Equitable Bank, Civil No. HAR 88-1485, Senior Judge John Hargrove found that "(P)hotocopying charges for pleadings are taxable only to the extent that the copies are used as court exhibits or are furnished to the court or opposing counsel pursuant to procedural rules." c.f. Sun Publishing Company, Inc. v. Mecklenburg News, Inc., 594 F. Supp. 1512, 1524 (E.D. Va. 1984). See also Purity Products, Inc. v. Tropicana Products, Inc., Civil No. H 87-2319. Counsel should provide sufficient information as to the nature of the copywork as well as vouchers or billing statements which would verify these particular costs. Failure to provide the aforementioned information may result in a denial of this cost item.

#### 8. Docket Fees Under 28 U.S.C. 1923

The provisions under this section permit the prevailing party to recover as costs an attorney's fee of twenty dollars (\$20.00) on trial or final hearing (including a default judgment whether entered by the Court or the Clerk), five dollars (\$5.00) if an action is otherwise discontinued, and two dollars and fifty cents (\$2.50) for each deposition admitted into evidence.

#### 9. Other Costs

##### a. Bond Premiums

(1) Removal Bonds - Amount paid to supply costs bond required for removal of case is taxable since the posting of such a bond was required by statute until November 18, 1988.

(2) Supersedeas Bond - Amount paid to supply this bond or other bonds to preserve rights pending appeal is taxable in this Court as costs of the appeal.

b. Interpreter Fees

When an interpreter is appointed and his compensation is fixed by the Court, the Court may direct that such compensation be paid by one or more of the parties and such compensation may be taxed ultimately as costs in the discretion of the Court. (F.R.Civ.P. 43(f))

c. Attorney's Fees

With the exception of the docket fee as provided in 28 U.S.c. 1923(a), the statutory definition of the term "cost" does not include attorney's fees, except as expressly stated by statute. Attorney's fees are determined by the Court.

The following expenses of litigation will **NOT** be taxed as costs by the Clerk.

(1) Travel expenses incurred in attending depositions conferences and trial, as well as expenses incurred in making investigations.

(2) Word processing and typing charges, which are presumably incidental to attorney's services.

(3) Computerized legal research charges.

(4) Paralegal services.

All costs mentioned above are subject to exception and Court order.

III. RESOLUTION OF TAXATION

When a taxation has been resolved by counsel, they should file a notice in the case so indicating. Upon docketing of the notice, the taxation request will be removed from the open docket.