Taxation of Costs Guidelines

Approved and adopted by the Court on March 27, 2007, and amended pursuant to the Time Period Technical Amendments Act of 2009, and the Local Rules of the United States District Court for the District of Puerto Rico (2009)

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I. Introduction

Costs, other than attorneys' fees, shall be taxed by the Clerk of Court pursuant to Rule 54(d), Federal Rules of Civil Procedure. These guidelines have been prepared to assist counsel and/or litigants in the preparation of bills of costs. The District Court encourages counsel and/or litigants to review them thoroughly.

The party entitled to recover costs shall file, within fourteen (14) days after entry of judgment, a verified bill of costs on an appropriate form. The opposing party shall have fourteen (14) days from the bill of costs' filing date to file a response. Absent a response, costs which appear properly claimed will be taxed by the Clerk. Local Civil Rule 54 (b).

A. Before any bill of costs is taxed, it must be submitted on the appropriate form. Appropriate form is AO Form 133, which may be obtained from the Clerk's Office Intake Counter or on our home page at *www.prd.uscourts.gov*, or a form substantially similar. A party claiming any item of costs of disbursement must attach thereto an affidavit that such item is correct, has been necessarily incurred in the case and that services for which fees have been charged were actually and necessarily performed. 28 U.S.C. § 1924. A bill of costs filed without proper verification will not be taxed. Also, supporting documentation and a succinct memorandum of law **must** be attached to the bill of costs. **Failure to comply with the abovementioned requirements may entail the disallowance of a particular item or all items of costs.**

B. Documentation may include, but is not limited to, receipts, invoices, copies of orders and stipulations of the parties. Any document must be self-explanatory (i.e. receipts for service shall include the names of the individuals, why and where they were served, and the cost of the service). **The Clerk will disallow any expenses that fail to include this supporting information.**

C. After the Clerk of Court has taxed costs, counsel for either side may, within seven (7) days, file a motion to review the taxation of costs with the Court. Fed.R.Civ.P. 54 (d) (1).

D. Once the matter of costs has been determined, costs should be paid directly to the prevailing party.

E. The Clerk of Court will deny without prejudice bills of costs in cases under appeal, unless otherwise directed by the Court. Once judgment on appeal is

entered and the appellate mandate becomes final, within the next fourteen (14) days the prevailing party shall file a bill of costs for adjudication by the Clerk. Fed. R. App. P. 39; Fed. R. Civ. P. 54(d).

F. Bill of costs papers **must** be electronically filed under the event "Bill of Costs". Responses (oppositions) to bill of costs **must** be filed under the event "Response to Bill of Costs". Bill of Costs should not be filed as a motion. Improper filing may delay the taxation of costs.

G. **If costs are denied without prejudice due to an appeal, and the relevant party wishes to pursue the taxation of costs after the appeal process, it must refile the bill of costs within fourteen (14) days after the issuance of the mandate rather than file a motion requesting reinstatement of the original pleading.**

H. If the parties settle a case before or during trial, counsel should include all costs in the settlement agreement.

I. If the parties resolve the taxing of costs prior to the taxation, counsel must file a stipulation to that effect.

II. Taxable Costs

The Clerk of the Court will review and tax costs in the following categories. **Counsel is responsible** for providing the required copies of receipts, invoices, orders, stipulations or other documentation to support bill of costs. The Clerk **may deny** costs that lack adequate and proper supporting documentation and/or explanation.

A. FEES OF THE CLERK

It is the policy of the Office of the Clerk that fees of the Clerk are taxable as follows:

A. Filing fee of complaint, removal and habeas corpus petitions are taxable as costs.

2. Fee charged by out-of-district federal courts for filing notice of taking deposition.

B. **FEES FOR SERVICE OF SUMMONS AND SUBPOENA**

Fed.R.Civ.P. 4 (c) allows service of process by the United States Marshal or by a person specially appointed for that purpose or by any person who is not a party and is not less than 18 years of age. Therefore, service of process by individuals other than the Marshal may properly be taxed as cost against the non-prevailing party.

It is the policy of the Office of the Clerk that service of process fees are taxable as follows:

1. Service fees for summons and complaint.

2. Service fees for trial subpoenas for witnesses who **have** testified at trial.

3. Service fees for deposition subpoenas **when** the deposition transcript has been taxed as costs.

4. United States Marshal fees pursuant to 28 U.S.C. § 1921.

5. Service by publication.

The following costs are not taxable expenses:

1. Service fees for discovery subpoenas.

2. Service fees for trial subpoenas if the witness **does not** testify.

A. FEES OF THE COURT REPORTER FOR ALL OR ANY PART OF THE TRANSCRIPT NECESSARILY OBTAINED FOR USE IN THE CASE

The general rule is that costs incurred in taking depositions will be taxed in favor of the prevailing party when the depositions are introduced as evidence, used at trial or in a successful motion for summary judgment.[1] When a deposition transcript is not introduced as evidence but special circumstances warrant it, deposition costs may be taxed as costs. [2] Absent introduction into evidence of the deposition, the prevailing party must show that the deposition was relied upon for cross-examination or impeachment purposes, or show that the deposition was necessary at the time it was taken. [3] The costs incurred will normally not be allowed unless the prevailing party furnishes evidence that the deposition was reasonably necessary to the development of the case at the time the deposition was taken. Depositions taken solely for discovery or preparation purposes are not taxable as costs.[4]

Generally, daily transcripts of court proceedings are not taxable as costs. However, in lengthy and complex cases, or cases showing special circumstances, where the transcript is essential to counsel for effective performance or when ordered by Court (unless ordered without charge), the transcription fee and/or the transcription reproduction may be taxed as costs.[5] Transcripts obtained for the convenience of counsel will not be allowed as costs.[6]

Counsel is directed to attach to the bill of costs a copy of the court's order directing preparation of transcript, if applicable. If the transcript/deposition was used in support of a motion, counsel is required to provide the Clerk of Court with the title of the motion and the date it was filed. If the

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[1] Templeman v. Chris Craft Corp., 770 F. 2d 245, 249 (1st Cir. 1985), *cert. denied*, 474 U.S. 1021, 106 S. Ct. 571, 88 L. Ed. 2d 556 (1985); Donnelly v. Rhode Island Board of Governors for Higher Education, 946 F. Supp. 147, 151 (D.R.I. 1996); United States v. Davis, 87 F. Supp. 2d 82, 87 (D.R.I. 2000).

[2] Chris Craft Corp., 770 F. 2d at 249; Davis, 87 F. Supp. 2d at 87 (D.R.I. 2000).

[3] Pan American Grain Mfg. Co. v. Puerto Rico Ports Authority, 193 F.R.D. 26, 38 (D.P.R. 2000); *affirmed* 295 F. 3d 108 (1st Cir. 2002).

[4] Emerson v. National Cylinder Gas Co., 147 F.Supp. 543, 545 (D.Mass. 1957); Walters v. President and Fellows of Harvard College, 692 F. Supp. 1440, 1442 (D.Mass. 1988).

[5] *Cf.*, Paul N. Howard Co. V. Puerto Rico Aqueduct and Sewer Authority, 110 F.R.D. 78, 81 (D.P.R. 1986), Davis, 87 F. Supp. 2d at 88; 10 Wright, Miller & Kane, Federal Practice Procedure: Civil 3d, § 2677, pp. 438-448 (1998).

[6] Paul N. Howard Co., 110 F.R.D. at 81.

transcript/deposition was used at trial, the date the transcript was read into the record is to be provided.

It is the policy of the Clerk that fees of the court reporter will be taxed as follows:

1. Transcription costs and appearance fee when a deposition is introduced as evidence at trial in lieu of live testimony, used for impeachment purposes or in connection with a successful motion for summary judgment.

2. Generally, the costs of either a videotape or a deposition transcript are taxable, but not both.[7]

3. Generally, costs of daily or expedited copy of a trial transcript produced in lengthy and complex cases or when it is essential to counsel for effective performance, or when ordered by Court.

The following expenses are not taxable as costs:

1. Computer disks and condensed transcripts of depositions are generally not taxable as costs.[8]

2. Cost of daily or expedited copy of trial transcripts produced solely for the convenience of counsel.

3. Transcripts used primarily for trial preparation or discovery.

4. Attorneys' fees and expenses incurred while taking a deposition.

5. Transcripts ordered for appeal purposes.

D. FEES AND DISBURSEMENTS FOR PRINTING

[7] Davis, 87 F. Supp. 2d at 88; Brown v. Kemper National Insurance Companies, 1998 WL 472586 at 2 (E.D.Pa.); Marcario v. Pratt & Whitney Canada, Inc., 1995 WL 649160 at 2 (E.D.Pa.).
[8] Fields v. General Motors Corp., 171 F.R.D. 234, 236 (N.D. Ill. 1997).

These fees and disbursements usually do not become involved in trial court proceedings. The Circuit Court of Appeals taxes these fees and disbursements and includes them in its mandate. These taxed costs are in addition to those recoverable in the trial court.

D. FEES FOR WITNESSES

Witnesses, including expert witnesses, are only entitled to the statutory attendance amount of $40.00 per appearance, plus transportation expenses for those days in which trial testimony is given or when a deposition is allowable as cost.[9] Absent explicit statutory authority to the contrary, the recovery of costs for privately-retained expert witnesses are not allowable in excess of $40.00 per appearance, except when the witness is court appointed or when specifically approved by the Court prior to trial.[10]Fees paid to witnesses must be itemized on AO Form 133 or substantially similar form.

It is the policy of the Clerk of Court that witness fees will be taxed as follows:

1. The attendance fee for those days on which trial testimony is actually given or when a deposition is an allowable costs is $40.00 per day.

2. Actual expenses of travel to and from the witness' residence by the shortest practical route is taxable. A witness is required to utilize a carrier at the most economical rate reasonably available and furnish a receipt or other evidence of actual cost.

[9] 28 U.S.C. § 1821; Davis, 87 F. Supp. 2d at 88.

[10] 28 U.S.C. § 1920 (6); Davis, 87 F. Supp. 2d at 88.

3. Mileage fees for use of a privately owned automobile, if applicable, are also taxable as cost.[11]

4. Subsistence is allowed for witnesses who live too far to be expected to travel, on a daily basis, to and from their residence while in attendance. The daily amount is not to exceed the maximum per diem allowance prescribed by the Administrator of General Services, pursuant to 5 U.S.C. § 5702 (a), for official travel in the area of attendance by employees of the Federal Government.[12]

5. Miscellaneous toll charges, taxicab fares between places of lodging and carrier terminals, and parking fees are allowable as costs.

The following expenses are not taxable as costs:

1. The expenses of witnesses who are themselves parties in the case.

2. Compensation paid to an expert witness in excess of the statutory fees, without prior order of the Court.

3. Rental of vehicles.

4. Federal employees testifying in their official capacity are not entitled to attendance fees, but may receive the mileage and subsistence allowance for overnight stays.

[11] For current mileage rates please click on *US Government Rates, https://secureapp2.hqda.pentagon.mil/perdiem*

[12] For current mileage rates please click on *US Government Rates, https://secureapp2.hqda.pentagon.mil/perdiem*

F. FEES FOR EXEMPLIFICATION AND COPIES OF PAPERS NECESSARILY OBTAINED FOR USE IN THE CASE

Exemplification covers demonstrative evidence, such as models, charts, photographs, illustrations, films and other similar graphic aids.[13] As a general rule, demonstrative evidence has rarely been considered indispensable and taxed as costs, absent prior approval from the Court.[14] However, absence of Court approval does not necessarily bar the reimbursement of these expenses.[15]

A party may claim up to fifteen (15) cents per copy of papers necessarily obtained for use in the case. Copying expenses for papers "necessarily obtained" for use in the case include copies of briefs, court documents, and trial exhibits, provided, however, that the copies were received as evidence, prepared for use in presenting evidence, obtained for service on the other parties in the litigation and the Court, or were necessary to the maintenance of the action.[16] Photocopying costs for the convenience, preparation, research or records of counsel may not be recovered.[17] Yet, photocopying expenses may be considered necessary even if the copies are not used at trial.[18]

It is the policy of the Office of the Clerk that fees for exemplification and copies of papers is to be taxed as follows:

1. The cost of demonstrative evidence is taxable as costs when prior Court approval is obtained. In cases, where prior Court approval was not obtained, the prevailing party must establish that such demonstrative evidence was a material aid to the Court in resolving disputed questions of fact. The expenses of such exhibits are not allowable when they are merely illustrative or repetitive of otherwise adequate evidence.

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[13] Johnson v. State of R.I., Dept of Corrections, 2000 WL 303305, p. 15 (D.R.I.); Davis, 87 F. Supp. 2d at 88.

[14] Paul N. Howard Co. , 110 F.R.D. at 82.

[15] *Id*.

[16] Rodriguez Garcia v. Davila, 904 F.2d 90, 100 (1st Cir. 1990).

[17] Davis, 87 F. Supp. 2d at 88; Grady v. Bunzl Packaging Supply Co., 161 F.R.D. 477, 479 (N.D.Ga. 1995).

[18] Davis, 87 F. Supp. 2d at 88.

2. All photocopies of documents filed with the Court which are served to other parties, that are received as evidence at trial or are proven to be necessary to the maintenance of the action shall be taxed as costs.

F. **DOCKET FEES**

Docket fees are taxable pursuant to 28 U.S. C. § 1923. Claims for docket fees under said section shall be broken down by fee.

F. COMPENSATION OF INTERPRETERS AND COSTS OF SPECIAL INTERPRETATION SERVICES UNDER 28 U.S.C. § 1828

Section 1920 (6) permits taxation of interpreters' fees.[19] Therefore, interpreter services rendered during trial or a deposition when it is a taxable expense, are allowable as costs.

All documents not in the English language which are presented to or filed in the District Court, whether as evidence or otherwise, shall be accompanied at the time of presentation or filing by an English translation thereof, unless the Court shall otherwise order. Local Civil Rule 10 (b). The costs incurred in the translation of all documents received, file or presented to the Court as evidence, shall be taxed as costs. The claimant **must** identify the documents translated, including copy of the invoice, translator's name, title/name of document, number of pages and cost per page. Failure to comply with this requirement may entail the disallowance of the translation costs.

It is the policy of the Office of the Clerk that compensation of interpreters and interpretation services be taxed as follows:

1. Interpreter's fees for services provided during trial or a deposition when the same is a taxable expense, are taxables costs.

2. The costs of translating into the English language all documents filed with the District Court or presented as evidence at trial are allowable as costs.

[19] Mastrapas v. New York Life Insurance Co., 93 F.R.D. 401, 404-405 (E.D.Mich. 1982).

I. OTHER COSTS

Other expenses not specifically allowed by statute but necessary for the case may be taxed as costs only with prior authorization granted by the Court. Notwithstanding, miscellaneous expenses such as messenger services, facsimiles, telephone charges, postage, stamps, parking and computerized legal research charges are all out-of-pocket expenses and are not generally allowable as costs.[20]

III. APPELLATE COSTS

Rule 39 of the Federal Rules of Appellate Procedure provides that if a judgment issued by the District Court is reversed, costs are taxed against the appellee. In general, the taxation of costs incurred in an appeal are taxed by the Clerk of the United States Circuit Court of Appeals, except for the following costs which are to be taxed by the District Court:

A. the preparation and transmission of the record;

B. the reporter's transcript, if needed to determine the appeal;

C. premiums paid for a *supersedeas* bond or other bond to preserve rights pending appeal; and

D. the fee for filing the notice of appeal. Fed. R. App. P. 39(e).

[20] Ramos v. Davis & Geck, Inc., 968 F. Supp. 765, 783 (D.P.R. 1997); In re San Juan Dupont Plaza Hotel Fire Litigation, 994 F. 2d 956, 964 (1st Cir. 1993); Riofrio Anda v. Ralston Purina Co., 772 F. Supp. 46, 54 (D.P.R. 1991), *aff'd on other grounds*, 959 F. 2d 1149 (1st Cir. 1992).

The District Court has discretion in determining and awarding trial costs under Federal Rule of Civil Procedure 54 (d), but it may not award costs on appeal beyond those authorized by Appellate Rule 39.[21]

IV. ATTORNEY'S FEES

Attorneys' fees are not taxable costs absent an exercise of judicial discretion and must be filed separately from the bill of costs. Attorneys' fees are generally expenses that must be borne by the litigants and do not qualify as statutory fees or reimbursable costs.[22] Accordingly, the Clerk of Court cannot tax attorneys' fees.

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[21] Johnson v. Pacific Lightning Land Co., 878 F. 2d 297, 298 (9th Cir.), *cert. denied*, 493 U.S. 965, 110 S. Ct. 407, 107 L. Ed. 2d 373 (1989); Lamborn v. Dittmer, 726 F. Supp. 510, 520 (S.D.N.Y. 1989).

[22] Grider v. Kentucky & Indiana Terminal Railroad Company, 101 F.R.D. 311, 313 (W.D.Ky. 1984).