

# UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OKLAHOMA

## GUIDELINES FOR TAXATION OF COSTS

### INTRODUCTION

In some instances, Bill of Costs involve small amounts which may include only a filing fee and perhaps less than a hundred dollars in copying costs. In many cases that go to trial, costs are much higher, requiring a fair amount of time by attorney and paralegal to document the expenses. Occasionally, in protracted, complex cases, the costs may require several days' work. In all cases, counsel must expend valuable time to research this somewhat obscure area of post-trial work. These guidelines will enable counsel in most cases to determine proper costs and minimize the amount of time required for such determination.

### I. FEDERAL RULE 54 (d)

The basis for awarding costs in Federal Court comes from Rule 54(d), Federal Rules of Civil Procedure, which provides that:

Except when express provision therefor is made either in a statute of the United States or in these rules, costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs.

Federal Rule 54(d) creates a presumption that the prevailing party shall recover costs. Most judgments expressly state that the party in whose favor judgment was rendered shall recover costs of the action. However, if a judgment fails to state that costs are allowed, the presumption that costs will be awarded to the prevailing party remains because Rule 54(d) directs that costs shall be allowed "unless the court otherwise directs." Thus, Rule 54 (d)'s presumption remains unless the Court affirmatively states in the judgment that a party should not be awarded costs or that parties should bear their own costs.

### II. 28 U.S.C. § 1920

Allowable items of costs are set forth in 28 U.S.C. § 1920, which reads as follows:

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.

Pursuant to § 1920, a clerk of court may tax costs. In the Northern District of Oklahoma, pursuant to Local Rule 54-1, the judges have delegated taxing the Bill of Costs to the clerk's office. Therefore, counsel must file the

Bill of Costs to the court clerk. After the Bill of Costs and any response is filed, the clerk's office will either tax costs or set a hearing date and give notice to all counsel of record by CM/ECF email service.

### **III. WHEN AND WHAT TO FILE**

Local Rule 54-1 requires that a Bill of Costs be filed within fourteen days after the entry of judgment. A Bill of Costs shall be filed on the form provided by the clerk's office, along with a brief in support. A copy of the form can be found on the Court's website at [www.oknd.uscourts.gov](http://www.oknd.uscourts.gov). The bill of costs and brief shall be separate documents from the motion for legal fees and its brief.

A Verification of the Bill of Costs is also required by statute which states:

Before any bill of costs is taxed, the party claiming any item of cost 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 and that the services for which fees have been charged were actually and necessarily performed.

28 U.S.C. § 1924.

Copies of invoices and receipts or an affidavit are also required by Local Rule 54.1 (b), which states: "The prevailing party shall provide either receipts or documents (or, if unavailable, an affidavit) in support of the requested itemized costs." These may be attached to the Bill of Costs as an exhibit. It is helpful if the exhibit summarizes on one or two pages the items and amounts followed by the receipts and invoices or affidavit.

### **IV. WHEN TO OBJECT, WHEN TO APPEAR, AND WHEN TO SEEK A MOTION TO REVIEW**

Local Rule 54-1(b) provides in part:

Objections to the allowance of costs must be filed within 21 days from the date the bill of costs was filed. Local Rule 54-1(b) provides: Objections to the allowance of costs must be filed within twenty-one days from the date the bill of costs was filed.

If no objection is filed, costs will be taxed pursuant to applicable law and it will not be necessary to appear. When written objections are filed, per Local Rule 54-1(c) setting a hearing is at the discretion of the clerk of court. The Clerk of Court can either tax costs based on the documents filed, or set a cost hearing. Counsel may request an appearance by telephone. The clerk's office makes every effort to grant requests for appearance by telephone unless persuaded by an objection from opposing counsel or the matters in the Bill of Costs are so complex or paper intensive as to make a telephone appearance unfeasible.

Upon proper motion to review taxation of costs, the clerk's ruling will be reviewed by the district court: At this juncture, no supplementation by receipts, documents or affidavit will be allowed, even if the bill of costs is referred to a Magistrate Judge and reviewed via an objection to the Magistrate's Report and Recommendation.

### **V. PREVAILING PARTY AND ENTITLEMENT TO COSTS**

As stated in Federal Rule 54(d), there is a presumption in favor of awarding costs to the prevailing party. Sometimes there is a dispute as to who prevailed. Thus, entitlement to costs is the first determination in a cost hearing.

A. Prevailing party is one in whose favor judgment is rendered. The rule of thumb is that the prevailing party is one in whose favor judgment is rendered. See Roberts v. Madigan, 921 F.2d 1047, 1058 (10th Cir. 1990) cert. denied, 505 U.S. 1218 (1992); Compare Howell Petroleum Corp. v. Samson Resources Co., 903 F.2d. 778, 783 (10th Cir. 1990).

B. Economic Hardship - Notwithstanding the presumption in favor of a prevailing party, indigency of a losing party may avoid costs. The award of costs rests in the sound discretion of the court. Therefore, arguments have been made that the economic disparity between the parties would render award of costs unfair to the losing party. Generally, to avoid costs it must be shown that the losing party is indigent and the suit neither frivolous nor brought in bad faith. These arguments are equitable in nature and, therefore, better reserved for judicial determination rather than for administrative determination by the clerk. Thus, the clerk of court for the Northern District of Oklahoma routinely denies economic hardship arguments, leaving that determination for the District Court if the parties seek review of the taxation of costs.

C. Costs May Be Denied to Prevailing Party in Diversity Action Where Jurisdictional Amount Is Not Obtained. Although Federal Rule 54(d) creates a presumption in favor of the prevailing party, an express provision in a United States statute may rebut that presumption. An example of this may be found in diversity cases in which the prevailing party obtains less than the jurisdictional amount. The statute states:

--  
Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of \$75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

## VI. ALLOWABLE ITEMS

Once entitlement to costs is determined, allowable costs must then be ascertained. Section 1920 sets forth the permitted categories of costs. Costs outside the items enumerated in § 1920 are viewed askance and with a narrow eye.

A. **Fees of Clerk** - The filing fee is recoverable by the prevailing plaintiff. The removal fee is recoverable by the prevailing defendant.

B. **Fees for service of summons and subpoena** - Reasonable service fees for summons, attachments and other process are allowed. Fees of either the marshal or a private process server are allowed. Fees for trial subpoenas and deposition subpoenas are allowed assuming the witness was called to testify or the transcript of the deposition was necessarily obtained for use in the case.

C. **Fees of the Court Reporter for all or any part of the transcript necessarily obtained for use in the case** -

1. **Transcripts**. Transcripts may be found to be necessarily obtained if the court ordered the transcript or if the need arose for purpose of preparation or response to certain motions. For example, a hearing before a magistrate judge which is later appealed to a district judge may require a transcript. Also, certain portions of a trial transcript may be necessarily obtained for post-trial motions. Costs of transcripts ordered by counsel in preparation for the next day of trial are not allowed.

2. Depositions. Costs of depositions are allowed if necessarily obtained for use in the case. A deposition of a witness who testifies at trial will be allowed. If a deposition is read into evidence, it will be allowed. All other depositions are generally disallowed.

Costs of a copy of a deposition will be allowed (e.g., an original and one copy) if the prevailing party conducted the deposition. If the prevailing party defended the deposition, costs of a copy is allowed if such deposition is found to be necessarily obtained for use in the case.

Costs of video depositions and a transcript are recoverable if used during the trial.

If the case was determined by summary judgment, depositions utilized by the court to determine summary judgment are allowed.

**D. Fees for Witnesses are allowed under 28 U.S.C. § 1821 -**

1. Witness Fee. No distinction is made between a fact witness and an expert witness. The allowable costs are \$40.00 for each day that it is necessary for the witness to attend trial (usually the day of trial on which the witness testifies). 28 U.S.C. § 1821 (b). If a witness is subpoenaed for trial and paid a witness fee, but is not called as a witness, such expense will not be recoverable.

2. Subsistence. Subsistence allowance is allowed for witnesses who live too far to be expected to travel to and from their residence daily while in attendance at trial. 28 U.S.C. § 1821 (d) (1). Subsistence rates, as well as mileage rates below, are calculated annually by the Administrator for General Services for the federal government. These rates may be obtained by calling the financial officer in the clerk's office.

3. Travel Allowance. By car, round trip mileage is allowed. Witnesses traveling by common carrier will be reimbursed for actual expenses on the basis of reasonably utilized transportation and the most economical rate.

4. Miscellaneous Allowance. Toll charges for roads, bridges and tunnels, and costs for ferries and taxi cab fares between lodging and the carrier terminals, and parking fees will be paid in full upon proper proof of expense.

**E. Fees for Exemplification and Copies of Papers Necessarily Obtained for Use in the Case** - Copies of papers necessarily obtained in the case are those papers which help bring about the disposition of the case. In other words, those papers related to the actual trial (or summary judgment). For example, trial notebooks, trial exhibits, motions in limine and jury instructions are papers and pleadings related to the trial.

Expenses for demonstrative evidence such as blow ups, models, charts, photographs and other graphic aids may be recoverable if the demonstrative evidence was actually used in the trial.

Charge for in-house copies of papers should be at a rate which is charged to the client normally, but in no event should exceed 15¢ per page. Copies printed outside the law practice should be reimbursed on the basis of actual expense, excluding expedited charges.

In regards to the documentation required, a generic listing of copying charges is insufficient. Documentation is required that identifies the purpose of the charges. At a minimum, a party requesting copying costs must identify the type (or at least category) of documents related to the requested charge. While it is recognized that it is nearly impossible to cite and identify the purpose of every copy made by a prevailing party, the documentation or attestation must be sufficient to make a meaningful evaluation of the request.

F. **Other** Costs - Costs not enumerated in § 1920 are rarely awarded. Costs from an appeal which are taxable in the District Court are often included in the “Other Costs” category and may be found in Fed. R. App. P. 39(e). This rule includes the premiums paid for costs of the supersedeas bond and the fee for filing notice of appeal.

Under the category “Other Costs” some lawyers include attorney fees. Attorney fees are not recoverable under § 1920, and should be sought under a motion for attorney fees filed with the Court.

Sometimes travel costs of a lawyer to a deposition or other case-related travel are sought as recoverable under “Other Costs.” Lawyers’ travel costs are not recoverable. Other items not recoverable are: Westlaw research costs, postage, phone bills and secretarial or paralegal help. These and other items traditionally absorbed in the “overhead” of a law practice will not be allowed.

## CONCLUSION

These basic guidelines should enable lawyers to prepare a proper Bill of Costs with a minimum amount of time and effort. As always, in the practice of law, there may be issues which do not fall within the parameters of basic guidelines. In those instances, lawyers must review case law and make their best arguments.

## REVISION HISTORY

<b>Date:</b>	<b>Description:</b>
04/14/2021	Simplified instructions, removed unneeded case cites, and added copy cost documentation requirements.