

United States District Court  
MIDDLE DISTRICT of TENNESSEE



## GUIDELINES for PREPARING BILLS OF COSTS

April 10, 2024

The Clerk's Office has created these *Guidelines* to assist parties in properly preparing and filing bills of costs in the Middle District of Tennessee. 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 the Clerk to tax costs under Federal Rule of Civil Procedure 54(d)(1), 28 U.S.C. §1821, 28 U.S.C. § 1920, Local Rule of Court 54.01(a), or other applicable law. Applicable law shall control in the event a conflict exists with any provision of these *Guidelines*.

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## I. AUTHORITY TO TAX COSTS

1. The Clerk's authority to tax costs is derived from Federal Rule of Civil Procedure 54(d)(1), 28 U.S.C. §1821, and 28 U.S.C. §1920.
  2. [Fed. R. Civ. P. 54\(d\)\(1\)](#) provides that "costs—other than attorney's fees— should be allowed to the prevailing party." "The clerk may tax costs on 14 days' notice."
  3. [28 U.S.C. §1821](#) sets forth taxable witness fees and expenses.
  4. [28 U.S.C. §1920](#) authorizes recovery of the following costs:
    - Fees of the clerk and marshal;
    - Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;
    - Fees and disbursements for printing and witnesses;
    - Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;
    - Docket fees under [28 U.S.C. § 1923](#); and
    - Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.
28. U.S.C. §1920.
5. The Clerk will not tax costs outside of those enumerated in 28 U.S.C. §§ 1821 and 1920 absent the prevailing party's citation to other applicable authority or written stipulation of the parties agreeing to the taxation of such costs.
  6. Out-of-pocket expenses recoverable pursuant to [42 U.S.C. §1988](#) should be requested as part of any motion for attorneys' fees pursuant to Local Rule 54.01(b). *Hawkins v. Ctr. for Spinal Surgery*, No. 3:12-CV-01125, 2017 WL 6389679, at \*9 (M.D. Tenn. June 21, 2017) *citing Sigley v. Kuhn*, 205 F. 3d 1341, 2000 WL 14587 at 9 (6th Cir. 2000) (Expenses authorized by section 1988 are included in the concept of attorney's fees.)

## II. BILLS OF COSTS

### A. FILING PROCEDURES - GENERALLY

1. Counsel need not file a Bill of Costs with the Clerk if they are able to agree

on costs. L.R. 54.01(a).

2. If counsel cannot agree, the prevailing party must file via CM/ECF a completed [Bill of Costs Form AO-133](#), with supporting documentation, within thirty (30) days from entry of judgment. *Id.*
  - a. Supporting documentation should include copies of itemized invoices, evidence of payment (i.e., cancelled checks, accounting records, etc.), or any other documentation supporting recovery of the amount sought. **See Section III** below for additional information regarding required supporting documentation.
  - b. Supporting documentation may also include a memorandum of law, declaration, or affidavit explaining the legal basis for recovery of items not expressly included in 28 U.S.C. §§ 1821 or 1920, and how items for which taxation of costs are sought were “necessarily obtained for use in the case.”

**NOTE:** Bills of Costs that do not include supporting documentation will be denied.

3. A copy of the Bill of Costs and supporting documentation must be served on the opposing counsel or opposing party if *pro se*. L.R. 54.01(a).
4. A Bill of Costs, whether filed by opposing counsel or a *pro se* party, must include a Certificate of Service that complies with Local Rule 5.01.
5. The filing of a bill of costs via CM/ECF shall constitute the commencement of the 14-day notice period required under Fed. R. Civ. P. 54(d)(1). L.R. 54.01(a).
6. In the case of a hardcopy filing by *pro se* parties, the 14-day notice period required under Fed. R. Civ. P. 54(d)(1) commences upon the filing and service of the Bill of Costs upon the opposing party. L.R. 54.01(a).
7. Upon expiration of the 14-day period, the Clerk shall tax [allowable] costs as sought by the prevailing party unless an objection is filed by the opposing party. L.R. 54.01(a).

**NOTE:** Regardless of whether objections are filed, the Clerk will evaluate whether the expenses sought are allowable under 28 U.S.C. §1821, 28 U.S.C. § 1920, or other applicable authority, and whether the amounts are reasonable and necessary.

8. If objections are filed within the 14-day period, the Clerk shall review the objections and determine whether and in what amount the costs should

be taxed. L.R. 54.01(a).

**NOTE:** After reviewing objections filed, the Clerk may contact counsel to schedule an informal, non-binding settlement conference in an effort to facilitate an agreement between the parties regarding taxable costs.

9. If the parties are unable to reach an agreement regarding taxable costs after a settlement conference, the Clerk will issue a Notice of proposed Taxation of Costs. L.R. 54.01(a).
10. Any exceptions to the proposed taxation must be filed within fourteen (14) days from the filing of the Notice of Taxation. L.R. 54.01(a).
11. Following consideration of the exceptions, the Clerk shall issue a Taxation of Costs assessing the costs.
12. Any motion seeking court review of the Clerk's Taxation of Costs must be filed within seven (7) days from the date of the filing of the Taxation of Costs by the Clerk.

## B. EFFECT OF POST-TRIAL MOTIONS AND APPEALS

1. The filing of post-trial motions and appeals **does not** extend the time for filing Bills of Costs.
2. However, unless otherwise ordered by the Court, the Clerk will defer consideration of any pending bill of costs in the following situations:

- a. *Pending Post-Judgment Motions*

When a Fed. R. Civ. P. 50(b), 52(b), or 59 post-judgment motion is pending, the Clerk will not tax costs until resolution of any such post-judgment motion. Should the judgment remain in effect after the Court rules on a post-judgment motion, the Clerk will then tax costs after the time for filing an appeal has expired.

- b. *Pending Appeal*

When an appeal is pending, the Clerk will deny the Bill of Cost without prejudice. Upon resolution of the appeal, the prevailing party may file a Bill of Costs pursuant to Local Rule 54.01(a).

## C. HOW TO FILE

1. All CM/ECF registered counsel must file the Bill of Costs form 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:

- a. Select Civil Events -> Other Filings -> Other Documents:
  - i. Bill of Costs. Use this event to file your completed Form AO-133. Accompanying memoranda and exhibits should be submitted as attachments.
  - ii. Objections. Use this event to file objections to the Bill of Costs.
  - iii. Stipulation. Use this event when filing a stipulation to notify the Court that the parties have reached an agreement as to costs or to withdraw a bill of costs.
- b. Select Civil Events -> Other Filings -> Motions and Related Filings -> Motions:
  - i. Miscellaneous Relief. Use this event when filing an appeal from a decision of the Clerk. *See* Fed. R. Civ. P. 54(d)(1).

### III. ITEMS TAXABLE AS COSTS

#### A. FEES OF THE CLERK

1. The filing fees paid to the Clerk—either for an original filing or for removal—are taxable.
  - a. 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.

**NOTE:** Attorney *pro hac vice* admission fees are not taxable. *See Huntsville Golf Dev., Inc. v. Brindley Const. Co.*, No. 1-08-00006, 2011 WL 4960421, at \*4 (M.D. Tenn. Oct. 18, 2011); *see also Keatley v. Escape Game, LLC*, No. 3:21-CV-00230, 2022 WL 1432552, at \*9 (M.D. Tenn. May 5, 2022).

#### B. 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 private process server may be taxed provided that the private process server fees do not exceed the U.S. Marshal’s fees. [See 28 C.F.R. §0.114](#).

## C. FEES OF THE COURT REPORTER

1. Costs of printed or electronically recorded transcripts are taxable if (a) the transcripts were “necessarily obtained for use in the case” and (b) the deposition was reasonably necessary at the time it was taken. *See Baker v. First Tennessee Bank Nat. Ass’n*, 142 F.3d 431 (6th Cir. 1998)

**NOTE:** Daily trial transcripts are, more often than not, a convenience rather than a necessity and thus not taxable as costs. *See Med. Mut. of Ohio v. Air Evac EMS, Inc.*, No. 1:16 CV 80, 2020 WL 13454002, at \*3 (N.D. Ohio Sept. 1, 2020). Should a party seek to recover these costs, the request must be accompanied by a supporting declaration by counsel explaining why the daily trial transcript was necessary.

2. Costs of deposition transcripts that do not set forth the number of pages or rate-per-page will not be taxed.
3. The per diem attendance fee of the reporter is taxable.
4. Additional fees charged by reporters, such as for “litigation support packages” or electronic repositories, are not taxable.
5. The additional cost for expedited transcripts is not recoverable without a supporting declaration from counsel explaining why an expedited transcript was necessary.

## D. DISBURSEMENTS FOR PRINTING

Requests for fees and disbursements for printing must be accompanied by a supporting declaration by counsel explaining why the expense was necessary.

## E. 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:
  - b. The daily attendance fees paid to each witness pursuant to 28 U.S.C. § 1821(b).
    - i) 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.

- c. 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 and travel expenses unless the party or the party's counsel submits a certification providing the following information:
  - a. The name of the witness;
  - b. 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;
  - c. The number of days the witness actually testified in court;
  - d. The number of days the witness traveled to and from the place of trial or hearings and the exact number of miles traveled; and
  - e. 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.
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.

## F. EXPENSES OF COUNSEL AT DEPOSITIONS

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

## G. 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.

## H. 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.

#### I. 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.

#### J. ATTORNEYS' FEES

Attorneys' fees must be requested by separate motion to the Court pursuant to Fed. R. Civ. P. 54(d)(2) and Local Rule 54.01(b).

#### K. COMPUTER ASSISTED LEGAL RESEARCH

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.

#### L. 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.