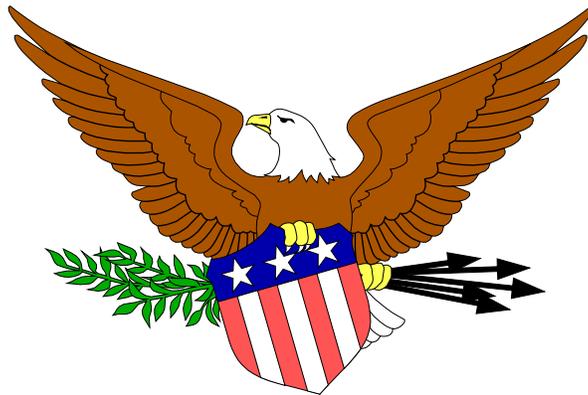


**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEBRASKA**

United States District Court



TAXATION OF COSTS BY THE CLERK

BILL OF COSTS HANDBOOK

OCTOBER 2004

BILL OF COSTS HANDBOOK

TABLE OF CONTENTS

TAXATION OF COSTS BY THE CLERK	<u>1</u>
<u>INTRODUCTION</u>	<u>1</u>
DISCUSSION OF TAXABLE COSTS	<u>2</u>
FEES OF THE CLERK	<u>2</u>
FEES OF THE COURT REPORTER	<u>3</u>
FEES FOR WITNESSES	<u>5</u>
FEES FOR SERVICE OF SUMMONS AND SUBPOENA	<u>7</u>
FEES AND DISBURSEMENTS FOR PRINTING	<u>7</u>
FEES FOR EXEMPLIFICATION AND COPIES OF PAPERS	<u>8</u>
OTHER COSTS	<u>8</u>
ADDITIONAL INFORMATION	<u>9</u>

I. TAXATION OF COSTS BY THE CLERK

INTRODUCTION

Costs shall be taxed by the clerk pursuant to Rule 54(d), Federal Rules of Civil Procedures.

This handbook has been prepared to assist counsel and/or litigants in the preparation of bills of costs. We encourage counsel and/or litigants to review it thoroughly. Section II should prove especially valuable.

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, or the clerk's designee, to tax all allowable costs to be included in the judgment upon the filing of a proper request for taxation of costs. If the judgment does not specifically award costs, the clerk will proceed in the taxation of costs in accordance with Fed. R. Civ. P. 54(d) in favor of the prevailing party, unless otherwise ordered by the Court.

The party entitled to recover costs shall file, within 30 days after entry of judgment, a verified bill of costs upon a form provided by the clerk. The responding party shall have ten (10) days from the date of the letter to file a response. Absent a response, the costs will be taxed by the Clerk. The party filing the Bill of Costs shall have five (5) days following the filing of a response to file a reply. The taxation of costs hearing will be scheduled by the Clerk's Office by the mailing of a Notice of Hearing to counsel. The date on which the party will appear before the Clerk for taxation of the costs and proof of service of a copy upon the party liable for the costs shall be endorsed thereon. Post-trial motions shall not serve to extend the time within which a party must file a verified bill of costs as provided by NELR 54, except on order extending the time.

Before any bill of costs is taxed, it must be submitted on the proper form. Forms may be obtained from the office of the clerk or our home page at www.ned.uscourts.gov. A party claiming any item of costs of disbursement shall attach thereto an affidavit that such item is correct and has been necessarily incurred in the case and that services for which fees have been charged were actually and necessarily performed. A copy of invoices or proofs of payment shall also be attached to the bill of costs. Failure to attach proofs of payment shall result in the disallowance of that particular item of cost.

It is counsel's responsibility to serve opposing counsel, provide the taxation clerk with a certificate of service and attach a separate itemization and the documentation to support

the claims made. Documentation may include copies of receipts, invoices, orders and stipulations of the parties. Please be advised that counsel must ensure that any receipts are self-explanatory (i.e. receipts for service shall include the names of the individuals, why they were served, where they were served, and the cost for service). Claims for docket fees under 28 U.S.C. § 1923 shall be broken down by fee. **The taxation clerk will disallow any expenses that do not have this supporting information.**

The bill of costs shall be filed in the clerk's office, in the appropriate place of holding court. After the taxation clerk has taxed costs, counsel for either side may, within five (5) days, file a motion to review the action of the taxation clerk and request review by the court.

If the matter of costs is settled prior to the taxation of costs hearing, counsel shall notify the taxation clerk that the matter has been settled and shall file a stipulation stating that the issue has been resolved.

Once the matter of costs has been determined, those costs are included in the judgment and should be paid directly to the prevailing party, except in criminal cases, suits for civil penalties for violations of criminal statutes, and government cases not handled by the Department of Justice. NELR 54.1(c)

As to criminal cases, the taxation clerk will tax the costs and will then send to the sentencing judge a memo stating that a determination has been made as to the amount of costs. A copy of the Bill of Costs will be attached to the memo. It will be the judge's discretion to allow or not allow the costs to be included as part of the sentence and for inclusion into the judgment and commitment. NELR 54.1(b)

The taxation clerk will tax costs even if the case is appealed, unless a stay pending appeal has been granted by the court.

II. DISCUSSION OF TAXABLE COSTS

The taxation clerk 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 their bill of costs. The taxation clerk **will deny** costs without supporting documentation.

A. FEES OF THE CLERK

1. Taxable

- a. Filing fee of complaint, removal and habeas corpus petitions. When the United States is the prevailing party, it can recover docket fees under 28 U.S.C. § 1923, and filing fees under § 1914, even if these costs were never actually incurred.
- b. Fee charged by out of district federal courts for filing notice of taking deposition.
- c. Docket fees pursuant to 28 U.S. C. § 1923.

B. FEES OF THE COURT REPORTER FOR ALL OR ANY PART OF THE TRANSCRIPT NECESSARILY OBTAINED FOR USE IN THE CASE FOR BOTH DEPOSITION COSTS AND THE COSTS OF TRIAL TRANSCRIPTS

Counsel is directed to attach to the bill of costs, a copy of the court's order directing preparation of transcript or the stipulation of parties agreeing to its preparation, if applicable. If the transcript/deposition was used in support of a motion, counsel is required to provide the taxation clerk with the title of the motion and the approximate date it was filed. If the transcript/deposition was used at trial, the date the transcript was read into the record is to be noted on the supporting documentation.

The general rule is that the costs incurred in taking depositions will be taxed in favor of the prevailing party if the taking of the depositions was reasonably necessary at the time it was taken, even though they may not have been used at trial. 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 a showing that the deposition was useful, "in assisting a resolution of the contested issues." 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 are not taxable as costs. If the depositions were introduced in evidence or used at trial, then it is proper to conclude they were necessarily obtained for use in the case. The clerk should normally tax the costs of depositions introduced into evidence or otherwise used at trial. Any other depositions may only be taxed at the taxation clerk's discretion, if special circumstances warrant.

1. Taxable

- a. Transcript procured at the direction of the court.

- b. Transcript prepared pursuant to stipulation of parties with agreement to tax as costs.
- c. Transcript used at trial to impeach witness(es).
- d. Transcript used in support of a motion.
- e. Deposition videotapes, audio tapes and transcripts used at trial.
- f. Court reporter fees for attendance and travel for depositions.
- g. Postage or delivery charges by court reporter.
- h. Cost of original transcript and one copy.
- i. Costs of copies of papers obtained as exhibits in the deposition.
- j. Disk support

***The cost of the transcript and one copy will be allowed, if the transcript falls into categories b-e above. If the prevailing party did not request the deposition and did not incur stenographic costs, they may recover costs of one copy of the deposition with postage costs.**

****Filing of all deposition material shall be only in written form. If audiotaped or videotaped, a written transcript will be accepted for filing.**

2. Not Taxable

- a. Cost of daily or expedited copy produced solely for the convenience of counsel, unless prior court approval is obtained.
- b. Transcript used primarily for trial preparation or discovery.
- c. Discovery depositions.
- d. Attorneys' fees and expenses incurred while taking a deposition.
- e. Long distance phone charges for telephonic deposition.

- f. Transcript ordered for appeal purposes.

C. FEES FOR WITNESSES

If a witness is subpoenaed for trial, but does not testify, or if a witness is deposed, but the transcript is not used at trial or in support of a motion the taxation clerk **will not** tax the fees and disbursements as to that witness.

1. Taxable

- a. Attendance fees. The attendance fee is currently taxed at \$40.00 per day. See 28 USC § 1821.
- b. Mileage fees for use of a privately owned automobile, if applicable. The mileage fee is:

Effective 01/01/04	\$.375
From 10/1/03 to 12/31/03	\$.360
From 1/21/02 to 9/30/03	\$.365
From 1/22/01 to 1/21/02	\$.345
From 1/14/00 to 1/21/01	\$.325
From 4/1/99 to 1/13/00	\$.31
From 9/8/98 to 3/31/99	\$.325
From 6/7/96 to 9/7/98	\$.31
From 1/1/95 to 6/6/96	\$.30
From 6/30/91 to 12/31/94	\$.25
From 9/17/89 to 6/29/91	\$.24
From 8/14/88 to 9/16/89	\$.225

- c. Common carrier - Actual expenses of travel on the basis of the means of transportation reasonably utilized and the distance necessarily traveled to and from such witness's residence by the shortest practical route. 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.
- d. Subsistence is allowed for witnesses who live too far to be expected to travel to and from their residence daily 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. No

BILL OF COSTS HANDBOOK

itemization of expenses is required. Said expenses are not limited to the day the witness testifies but include those days in which the witness necessarily attends trial.

1. With Lodging:

Prior to 1/1/00

\$93.00 - Omaha

\$84.00 - Lincoln

\$80.00 - North Platte

1/1/00-09/30/02

\$101.00 - Omaha

\$ 85.00 - Lincoln

\$ 85.00 - North Platte

10/01/02 - 09/30/03

\$105.00 - Omaha

\$ 85.00 - Lincoln

\$ 85.00 - North Platte

10/01/03 and after

\$106.00 - Omaha

\$ 86.00 - Lincoln

\$ 86.00 - North Platte

10/01/04 and after

\$111.00 - Omaha

\$ 91.00 - Lincoln

\$ 91.00 - North Platte

2. Without Lodging (last day & return to residence):

\$38.00 - all court locations

- e. Federal employees are not entitled to attendance fees, but may receive the mileage and subsistence allowance for overnight stays.
- f. Real parties in interest or parties suing in a representative capacity are not entitled to fees or allowances as witnesses.
- g. Miscellaneous toll charges, taxicab fares between places of lodging and carrier terminals, and parking fees.

2. Not Taxable

- a. The expenses of witnesses who are themselves parties in the case.
- b. Compensation paid to an expert witness in excess of the statutory fees, without prior order of the court.
- c. Rental vehicles.

D. FEES FOR SERVICE OF SUMMONS AND SUBPOENA

1. Taxable

- a. Service fees for summons and other initial process.
- b. Services fees for trial subpoenas for witnesses who **have** testified at trial.
- c. Service fees for deposition subpoenas of which the deposition transcript has been taxed as costs.
- d. Cost of postage if service is executed by mail.
- e. United States Marshal fees pursuant to 28 U.S.C. § 1921.
- f. The court is authorized to award costs for private process service (28 USC § 1921).

*Service fees must be documented on the returned summons or subpoena and a copy provided as an attachment to the bill of costs.

2. Not Taxable

- a. Service fees for discovery subpoenas.
- b. Service fees for trial subpoenas if the witness **did not** testify.

E. FEES AND DISBURSEMENTS FOR PRINTING

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

F. FEES FOR EXEMPLIFICATION AND COPIES OF PAPERS OBTAINED FOR USE IN THE CASE (28 U.S.C. § 1921)

This category covers the cost of prosecution in the courtroom, and includes documents and exhibits used at trial.

Fees for exemplification are **not** recoverable within the discretion of the taxation clerk unless counsel has previously secured an order authorizing the recovery of these costs. Exemplification covers demonstrative evidence, such as models, charts, photographs, illustration, and other similar graphic aids.

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, or obtained for service on the other parties in the litigation and the court. Costs of copies shall not exceed the fees as set forth in 28 U.S.C. § 1914.

Routine copy expenses, those made for service, filing or for convenience of counsel are **not** taxable within the discretion of the taxation clerk, absent prior court approval.

G. OTHER COSTS

1. Taxable

- a. Bond premiums.
- b. Interpreter fees upon order of the court.
- c. Video and audio tapes of depositions upon order of the court. *(See also Section B, fees of the court reporter for any and all transcripts necessarily obtained for use in the case).*

2. Not Taxable

- a. Attorney fees and travel expenses incurred in attending depositions, conferences and trial, as well as expenses incurred by investigations.

- b. Word processing, typing charges, and copy charges which are incidental to an attorney's services.
- c. Exhibit notebooks or binders which can be reused.
- d. Computerized legal research charges.
- e. Paralegal expenses.
- f. Prejudgment and post-judgment interest.
- g. Mediation fees.
- h. ASCII, CD-ROM, computerized indices or optical discs produced for counsel.
- i. Fees for postage (other than summons/subpoenas), delivery and notary fees; Federal express charges
- j. Long-distance telephone calls and fax charges
- k. Damage surveys
- l. Accountant's expenses
- m. Office overhead

III. ADDITIONAL INFORMATION

If no one appears before the clerk for the scheduled hearing, the clerk may strike any erroneous costs and will refrain from adding any items of cost not previously requested by the party submitting the Bill of Costs.

If a case is settled before or during trial, costs will not be taxed. Counsel in preparing a settlement should include all costs in the settlement agreement.

If there are no objections the taxation clerk shall be notified as soon as possible. The clerk will tax the costs as shown on the Bill of Costs on file.

If the matter of taxing of costs has been resolved, counsel shall notify the taxation clerk as much as possible in advance of the date set for taxation and shall file a stipulation stating that the issue has been resolved or an agreement of the amount to be taxed.

When convenient to counsel, the taxation clerk encourages the use of tele-conferencing for the taxation hearing as a means of reducing costs to the litigant. The tele-conference should be arranged by the requesting party.

Fees for interpretation services are assessed in much the same manner as expert fees. When an interpreter is appointed and compensation fixed by the court, the court may direct that such compensation be paid by one or more of the parties and such compensation may ultimately be taxed as costs, at the discretion of the court. A judge may direct the taxation clerk to tax as costs the compensation of interpreters and costs of special interpretation services under 28 U.S.C. § 1828, directing that such costs may be used to reimburse the Administrative Office of the United States Courts for providing such special interpretation services. Where interpretation or translation services are employed by the prevailing party without prior court approval, costs will be assessed of those expenses necessarily incurred. The party requesting costs has the burden to show that the interpretation or translation service was necessary at the time the services were received.

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