

# UNITED STATES DISTRICT COURT DISTRICT OF NEBRASKA

April 2014



## BILLS OF COSTS HANDBOOK Taxation of Costs by the Clerk

Disclaimer: This handbook was prepared by the clerk's office and does not have any precedential or binding effect on the court. This handbook is subject to exception and modification, and should be used in conjunction with relevant case law, the Federal Rules of Civil Procedure, and the local rules of this court.

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# I. Introduction

This handbook was prepared to assist parties with their preparation of bills of costs in this district. The clerk's office encourages parties to review this handbook carefully, and also consult all applicable law when preparing bills of costs in this court. The parties should also consult the [local rules](#) for this court, as well as applicable federal law.

[Federal Rule of Civil Procedure 54\(d\)\(1\)](#) states, "Unless a federal statute, [the Federal Rules of Civil Procedure], or a court order provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing party." The costs referred to in Rule 54(d)(1) are those charges the prevailing party has incurred and is permitted to have reimbursed by the opponent as part of the judgment in the action. Only those items listed in the taxation of costs statute, [28 U.S.C. § 1920](#), may be taxed.

A judge or clerk of any court of the United States has the discretion to tax costs in civil cases. The procedure for taxing costs in civil cases in the United States District Court for the District of Nebraska is set forth in [Nebraska Civil Rule 54.1\(b\)](#) and this handbook. Any party seeking costs allowed under 28 U.S.C. § 1920 must file a [bill of costs](#) in accordance with the local rules of this court and this handbook within thirty days after the entry of judgment.

The same general principles that govern the taxing of costs in civil cases apply in criminal cases. "Whenever any conviction for any offense not capital is obtained in a district court, the court may order that the defendant pay the costs of prosecution." [28 U.S.C. § 1918\(b\)](#). The costs taxable under § 1918(b) are those listed in 28 U.S.C. § 1920, which applies in both civil and criminal cases. A judge or clerk of any court of the United States may tax costs in criminal cases. The procedure for taxing costs in criminal cases in this court is set forth in [Nebraska Criminal Rule 31.2](#) and this handbook.

The clerk's authority to tax costs is limited by statute, rule, case law, and local practice. In general, the clerk will deny costs that are beyond the clerk's authority to tax or where the authority to tax such costs is unclear; the clerk may also ask the presiding judge to rule on bills of costs. Once a decision has been reached, the taxation clerk will issue a taxation of costs. If either party disagrees with the clerk's determination, that party may seek court review of that decision within seven days after the clerk enters the award of costs.

## II. Procedure for Filing Bills of Costs in Civil Cases

Costs are allowed only to the prevailing party. If a judgment is silent about costs, costs will be allowed only if no doubt exists as to who is the prevailing party.

### A. HOW TO FILE BILLS OF COSTS

When the court enters judgment for a party, it will state the relief to which the prevailing party is entitled and may also state that the prevailing party is entitled to costs. If the parties can agree on the amount of costs, the prevailing party does not need to file a bill of costs.

When the parties are unable to reach an agreement, the prevailing party must complete the following steps:

#### 1. [Form AO 133](#)

A party seeking costs must file a bill of costs on the Form AO 133, Bill of Costs. This form is available on the court's Web site on the [forms page](#) (<http://www.ned.uscourts.gov/forms>), and may also be obtained in person from the clerk's office.

#### 2. Verified bills of costs

All bills of costs must be verified by affidavit. [28 U.S.C. § 1924](#). The Form AO 133 includes a declaration paragraph at the bottom of the first page that contains the statutory language from § 1924. A party who signs this declaration meets the "verified" requirement. However, as noted in section IV of this handbook, the prevailing party is encouraged, and in many cases required, to submit a separate affidavit or memorandum to explain the purpose or necessity of certain claimed costs.

A party seeking costs must attach to a bill of costs copies of invoices, vouchers, bills, cancelled checks, or other documentation showing the amount of the costs and their purposes. The clerk will not tax costs unless the party provides sufficient documentation to support a claimed cost.

#### 3. Filing bills of costs

A party who is filing electronically must file a bill of costs in CM/ECF using the "bill of costs" event. All supporting documentation should be filed as attachments in the same event. More information on CM/ECF-related procedures is provided in the last section of this handbook.

Note: Parties and their attorneys are responsible for redacting all personal identifiers, such as financial account numbers and tax identification numbers, from all documentation filed with the court. The clerk does not review case filings for compliance with the E-Government Act or independently redact or seal noncomplying filings.

## B. WHEN TO FILE BILLS OF COSTS, OBJECTIONS, AND RESPONSES

A party seeking costs must file an AO Form 133, Bill of Costs, and supporting documentation within thirty days after the entry of judgment. Once a party files a bill of costs, the clerk's office will issue a scheduling order. Generally, a party opposing a bill of costs has fourteen days after the entry of the clerk's scheduling order to file an objection. If no objection is filed, the clerk will tax costs. If an objection is filed, the party seeking costs generally has seven days to file a response to the objection.

The clerk will tax costs even if the case is appealed unless, upon motion of the parties or the court's own motion, the court grants a stay pending appeal. Post-trial motions do not extend the time within which a party must file a bill of costs absent a court-issued stay.

The clerk will make a determination based on the bill of costs, the arguments made by the parties (if any), and the documentation submitted to support the claimed costs.

## C. MULTI-PARTY LITIGATION

The clerk will not allow an award of the same cost more than once. If multiple prevailing parties or multiple losing parties are represented by different counsel, and unless instructed to do otherwise, the clerk will treat the parties as separate for the purposes of taxing costs. In such cases, the multiple prevailing parties must provide an explanation as to how the costs should be apportioned. If the multiple prevailing parties or losing parties are represented by the same counsel respectively, and unless instructed to do otherwise, the multiple parties will be treated as a single party for the purposes of taxing costs.

## D. COSTS ARE PAYABLE DIRECTLY TO PREVAILING PARTY

Except in (1) suits for civil penalties for violations of criminal statutes, and (2) government cases not handled by the Department of Justice, all taxed costs are payable directly to the entitled party and not to the clerk unless the court orders otherwise.

## E. WITHDRAWING A BILL OF COSTS

If the parties reach an agreement on the amount of costs to be taxed after the prevailing party has already filed a bill of costs, the prevailing party may withdraw the bill of costs at any time prior to the clerk entering a taxation order. The withdrawing party should file a notice instructing the clerk's office of the withdrawal.

### **III. Procedure for Filing Bills of Costs in Criminal Cases**

A party seeking costs in a criminal case may file a bill of costs at any time after fourteen days following trial or any other proceeding in which costs are to be taxed, but must file a bill of costs no later than thirty days before sentencing.

The clerk will calculate costs, and then notify the sentencing judge so that he or she may consider the taxation at sentencing.

### **IV. Taxable Costs**

Under [28 U.S.C. § 1920](#), the clerk may tax the following as costs:

#### **A. FEES OF THE CLERK, 28 U.S.C. § 1920(1)**

##### **1. Taxable**

Taxable fees of the clerk most commonly refer to the filing fee for the complaint or petition, or the removal of a case to the District of Nebraska.

Other fees paid to the clerk may also be taxed.

##### **2. Documentation**

For filing fees paid to the clerk: no receipts need to be submitted.

For other fees paid to the clerk: receipts or references to the applicable docket entry in the case should be submitted.

#### **B. FEES OF THE MARSHAL, 28 U.S.C. § 1920(1)**

##### **1. Taxable**

Taxable fees of the marshal most commonly refer to fees for service of summons and subpoena. Fees for service of summons and subpoena may include:

- a. Service fees for summons and other initial process;

- b. Service fees for trial subpoenas for witnesses who testified at trial;
- c. Service fees for deposition subpoenas if the deposition transcript is taxed as costs; and
- d. Cost of postage if service is executed by mail.

See [28 U.S.C. § 1921](#) for an explanation of U.S. Marshal fees.

## 2. Documentation

Service fees must be documented on the returned summons or subpoena.

## 3. Not Taxable

Fees paid to special process servers are not taxable as costs.

## C. FEES FOR PRINTED OR ELECTRONICALLY RECORDED TRANSCRIPTS NECESSARILY OBTAINED FOR USE IN THE CASE, 28 U.S.C. § 1920(2)

### 1. Costs incurred for obtaining trial or hearing transcripts

These costs are taxable if they were:

- a. Procured at the direction of the court;
- b. Prepared pursuant to a stipulation of the parties to tax as costs;
- c. Used at trial to impeach a witness; or
- d. Used in support of a motion, including post-trial motions.

### 2. Fees incurred in taking a deposition

The clerk will tax costs incurred in taking a deposition (printed or video recorded) that was reasonably necessary to the development of the case at the time the deposition was taken. The best evidence the deposition was necessary for use in the case is that:

- a. The deposition was admitted into evidence at trial;
- b. The deposition was cited in a contested motion;
- c. The deposition was used for cross-examination or impeachment at trial; or
- d. The deposed individual appears on either parties' trial witness list.

Absent such direct evidence, the clerk may also tax costs if the prevailing party explains in the memorandum or affidavit required by section C(4)(d) of this handbook how the deposition was otherwise useful in resolving the contested issues at the time the deposition was taken.

### 3. Court reporter fees

If the deposition transcript cost is taxable, the following fees of the court reporter may also be taxed:

- a. Court reporter fees for attendance at and travel for depositions;
- b. Court reporter postage and delivery charges;
- c. Cost of the original transcript and one copy of the transcript if the prevailing party requested the deposition and incurred the stenographic costs;
- d. Cost of one copy of the transcript if the prevailing party did not request the deposition and did not incur the stenographic costs;
- e. Cost of copies of paper obtained as exhibits in the deposition; and
- f. Electronic media support (e.g., disk, CD-ROM).

Ordinarily, the clerk will not tax costs for both a video recorded deposition and the costs of a printed transcript absent a showing why both expenditures were reasonably necessary for use in the case.

#### 4. Required documentation

##### a. Transcript procured at court's direction

If the transcript was procured at the direction of the court, counsel should submit a copy of the court's order directing the preparation of the transcript or a reference to the applicable docket entry in the case.

##### b. Transcript prepared pursuant to parties' stipulation

If the transcript was prepared pursuant to stipulation by the parties, counsel should submit a copy of the stipulation or a reference to the applicable docket entry in the case.

##### c. Transcript and/or deposition invoices

Counsel should submit invoices indicating:

- i. Case name or number;
- ii. Party being deposed;
- iii. Date of deposition; and
- iv. Itemized bill of court reporter's fee.

##### d. Explanatory memorandum

Counsel should provide an explanatory memorandum or affidavit to explain how each transcript and/or deposition was used and why it was necessary. If applicable, the memorandum or affidavit should cite the filing numbers of any motions and/or supporting briefs to which the transcript and/or deposition was cited.



## 5. Non-taxable costs

The following may not be taxed:

- a. Cost of daily or expedited copies produced solely for the convenience of counsel, unless prior court approval was obtained;
  - i. If the prevailing party claims an expedited copy was necessary and was not obtained for the mere convenience of counsel, counsel must provide an explanation as to why the expedited copy was necessary.
- b. Transcript used primarily for trial preparation or discovery;
- c. Attorneys' fees and expenses incurred while taking a deposition;
- d. Long-distance phone charges for telephonic depositions; and
- e. Transcripts ordered for appeal purposes.

## D. FEES AND DISBURSEMENTS FOR PRINTING, 28 U.S.C. § 1920(3)

Fees and disbursements for printing are typically taxed by the court of appeals in its mandate.

## E. WITNESS FEES, 28 U.S.C. § 1920(3)

The allowable witness fees are set forth in [28 U.S.C. § 1821](#).

### 1. Attendance

The attendance fee is \$40.00 per day. The attendance fee may include the time the witness was "necessarily occupied in going to and returning from the place of attendance at the beginning and end of such attendance." 28 U.S.C. § 1821(b).

### 2. Mileage

Mileage must be calculated at the rate for official government travel in effect at the time the travel took place. 28 U.S.C. § 1821(c)(2). See [www.gsa.gov/mileage](http://www.gsa.gov/mileage) for the current mileage reimbursement rates for privately owned vehicles. Counsel should provide the date of travel and the applicable mileage rate.

### 3. Subsistence

A subsistence allowance may be paid to a witness "when an overnight stay is required at the place of attendance because such place is so far removed from the residence of such witness as to prohibit return thereto from day to day." 28 U.S.C. § 1821(d)(1). The subsistence allowance may not exceed the maximum per diem allowance for official government travel in effect at the time the stay took place. Visit [www.gsa.gov/perdiem](http://www.gsa.gov/perdiem) for the subsistence per diem allowances by geographical area. Itemization of expenses is not required. Expenses are not

limited to the day the witness testifies, but include those days on which the witness necessarily attends trial.

4. Travel by common carrier

A witness travelling by common carrier is paid for “the 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 in going to and returning from the place of attendance. Such a witness shall utilize a common carrier at the most economical rate reasonably available. A receipt or other evidence of actual cost must be furnished.” 28 U.S.C. § 1821(c)(1).

5. Other travel expenses

A witness will also be paid for “[t]oll charges for toll roads, bridges, tunnels, and ferries, taxicab fares between places of lodging and carrier terminals, and parking fees (upon presentation of a valid parking receipt).” 28 U.S.C. § 1821(c)(3).

6. Federal employees

Federal employees are not entitled to attendance fees, but may receive mileage and subsistence allowances for overnight stays.

7. Non-taxable witness fees include the following:

- a. Fees and expenses paid to witnesses who are subpoenaed for trial, but do not testify;
- b. Fees and expenses paid to deponents when the clerk does not tax the cost of the deposition;
- c. Fees and expenses of real parties in interest or parties suing in a representative capacity;
- d. Fees paid to expert witnesses in excess of the statutory fee without prior order of the court; and
- e. Witness expenses for rental vehicles.

F. FEES FOR EXEMPLIFICATION, 28 U.S.C. § 1920(4)

Exemplification costs include the costs of producing demonstrative evidence used at trial, such as models, charts, photographs, illustrations, etc. Exemplification costs may also include those charged by a third-party technology vendor to produce demonstrative evidence used at trial. The clerk generally will not tax exemplification costs without a prior order from the court approving the taxation of costs associated with producing demonstrative evidence.

G. COSTS OF MAKING COPIES NECESSARILY OBTAINED FOR USE IN THE CASE, 28 U.S.C. § 1920(4)

1. Taxable

The clerk will tax the following costs for document copies obtained for use in the case:

- a. Costs for copying documents and exhibits entered into evidence;
- b. Costs of copies of documents that the court otherwise required at trial;
- c. Costs of copies required to be served on the opposing party through non-electronic means; and
- d. Costs associated with copying documents used as evidence to support a successful dispositive motion.

Costs of making copies may include the scanning and converting of electronically stored information (ESI) so that those documents may be used at trial or in support of an ultimately successful dispositive motion.

2. Non-taxable

The clerk will not tax the following:

- a. Routine expenses for copies made for discovery purposes, including discovery costs associated with scanning or converting ESI to a useable format; or
- b. Costs for copies made for the convenience of counsel, such as documents retained by counsel for counsel's use or documents provided to clients.

3. Documentation

An invoice or bill for copies must indicate or be attached to a document explaining:

- a. Document copied, including its docket number;
- b. Number of pages in the document;
- c. Number of copies made;
- d. Per page rate; and
- e. Total cost.

H. DOCKET FEES, 28 U.S.C. § 1920(5)

Certain attorney and proctor fees may be taxed under [28 U.S.C. § 1923](#).

To recover docket fees, the amount of the fee and the docket number to which the requested fee relates should be noted in an explanatory memorandum or affidavit.

I. COURT-APPOINTED EXPERTS AND INTERPRETER SERVICES, 28 U.S.C. § 1920(6)

The clerk may tax compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under [28 U.S.C. § 1828](#).

When the court appoints an interpreter and fixes compensation, the court may direct one or more of the parties to pay the compensation and ultimately order it taxed as costs. When special interpretation services provided under § 1828 are taxed as costs, a judge may direct that the taxed costs be used to reimburse the Administrative Office of the United States Courts for providing such special interpretation services.

Where the prevailing party procured interpretation or translation services without prior court approval, costs will be assessed only for those expenses necessarily incurred. The party requesting costs has the burden to show that the interpretation or translation services were necessary at the time the services were received.

J. COSTS ON APPEAL, [Fed. R. App. P. 39](#)

For the taxation of costs associated with an appeal, the parties should consult Federal Rule of Appellate Procedure 39. The clerk will enter any costs taxed in the mandate of the Eighth Circuit Court of Appeals. Fed. R. App. P. 39(d). With limited exceptions, other costs associated with an appeal are generally not taxable in the district court.

The following appeal costs are taxable in the district court. Fed. R. App. P. 39(e).

1. The preparation and transmission of the record;
2. The reporter's transcript, if needed to determine the appeal;
3. Premiums paid for a supersedeas bond or other bond to preserve rights pending appeal; and
4. The fee for filing the notice of appeal.

## V. Non-Taxable Costs

The clerk will generally not allow the following costs:

- A. Attorney fees and travel expenses incurred in attending depositions, conferences, and trial, as well as expenses incurred during investigations.
- B. Charges for word processing, typing, copying, and scanning that are incidental to an attorney's services.
- C. Expenses for reusable exhibit notebooks or binders.
- D. Computerized legal research charges.

- E. Paralegal expenses.
- F. Mediation fees.
- G. Fees for postage, delivery, and notary, except where provided elsewhere in this handbook.
- H. Long-distance telephone calls and fax charges.
- I. Damage surveys.
- J. Accountant's expenses.
- K. Office overhead.

## **VI. Review of the Court**

Within seven days after the clerk taxes costs, a party may file a motion for review of the clerk's taxation. Unless otherwise ordered by the presiding judge, any motion requesting a review of the clerk's taxation and any accompanying brief, supporting evidence, and any response shall be filed in accordance with [Nebraska Civil Rule 7.1](#).

## **CM/ECF Procedures Related to Bills of Cost**

### A. BILL OF COSTS

Use [Form AO 133](#). All documentation, explanatory memoranda, and affidavits may be filed as attachments in the same event.

### B. OBJECTION

Use the “Objection” event to file an objection to the submitted bill of costs.

### C. RESPONSE TO OBJECTION

Use the “Response” event to file a response to an objection.

### D. MOTION TO REVIEW THE CLERK’S DECISION

To request that the presiding judge review the clerk’s taxation, use the “Miscellaneous Relief” motion event and title the document a “Motion to Review Taxation of Costs.”