

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA**

BILL OF COSTS GUIDELINES



AUGUST 2017

INTRODUCTION

This guide has been prepared to assist parties in the preparation of Bills of Cost in the Southern District of Iowa. 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. Additionally, costs not sufficiently supported by proper documentation will also be denied. Finally, the Clerk will decline to tax costs where specific knowledge of the trial or legal issues of the case are required. Pursuant to Federal Rule of Civil Procedure 54(d)(1), the requesting party may seek review by the presiding judge.

Prior to submitting a Bill of Cost, the parties shall review, at a minimum, 28 U.S.C. § 1920, Federal Rule of Civil Procedure 54, and Local Rule 54. These statutes/rules provide the framework for all Bills of Cost determinations in the Southern District of Iowa. Accordingly, they shall be used by the parties to determine appropriate cost claims.

I. PROCEDURES FOR FILING BILLS OF COST

A. How to File a Bill of Costs

1. CM/ECF Procedures

To file the Bill of Costs, the prevailing party shall select the “Bill of Costs” event under Other Filings > Other Documents. The parties should utilize the AO133 Form, which is available at: <http://www.iasd.uscourts.gov/?q=forms/all-forms/civil>. Supporting documentation should be filed as attachments to that same event. Parties are responsible for compliance with Federal Rule of Civil Procedure 5.2 regarding redaction of personal identifiers.

Any objection to the Bill of Costs should be filed as “Objections to Bill of Costs”, which can be found under Other Filings > Other Documents.

Any Reply/Response to the Objections to the Bill of Costs should be filed as a Reply, which can be found under Other Filings > Other Documents.

A Motion to Review the Clerk’s Taxation of Costs should be filed as a “Motion for Miscellaneous Relief”, which can be found under Motions and Related Filings > Motions.

2. Verification

All Bills of Cost must be verified. Attached to the Bill of Cost should be copies of any vouchers, invoices, bills, canceled checks, or other documentation showing the amount of the costs and/or their purpose.

The Clerk will not tax costs unless sufficient documentation is provided, including costs that were not objected to by the opposing party. Please see the Required Documentation section of this Manual for details.

Pursuant to 28 U.S.C. § 1924, before any Bill of Costs is taxed, the party claiming the costs shall attach an affidavit that the items are true and correct and were actually and necessarily performed.

B. When to File a Bill of Costs

1. Time Limits

- a) Within 14 days after entry of judgment, the Bill of Costs (AO133) shall be filed on CM/ECF. Fed. R. Civ. P. 54(d)(1), LR 54(a)(1)(A). **Failure to do so constitutes a waiver of the right to have costs taxed.** *Id.*
- b) Any resistance to the Bill of Costs shall be filed within 14 days of the service of the form. Fed. R. Civ. P. 54(d)(1), LR 54(a)(1)(C).
- c) Replies to the resistance are not to be filed unless requested by the Clerk of Court. LR 54(a)(1)(D).
- d) The Clerk of Court will enter the taxation of costs on or after 21 days after service of the AO133 form. LR 54(a)(1)(E).
- e) Within seven days of the entry of the taxation of costs, any Motion to Review the Clerk’s Taxation of Costs shall be filed with the District Court. Fed. R. Civ. P. 54(d)(1).

2. Interaction with Appellate Rules

Federal Rule of Appellate Procedure 39 governs appellate costs. Parties should consult said rule regarding which appellate costs are taxable in the district court.

C. Who Can File a Bill of Costs

1. Prevailing Party

Federal Rule of Civil Procedure 54(d) provides that only a prevailing party can file a Bill of Costs. A party is considered “prevailing” when judgment had been entered in its favor.

2. Cases with Multiple Parties

In cases involving more than a single plaintiff or single defendant, the Clerk will not award the same cost more than once. Where multiple parties are represented by the same counsel, they will be treated as a single party for taxing of costs purposes. Any request for deviation from this rule should be provided in writing.

Multiple prevailing or losing parties represented by different counsel will be treated as separate parties for taxing of costs purposes. The party filing the Bill of Costs shall provide an explanation as to which costs are attributable to each party and how they should be apportioned. Failure to provide sufficient explanation may result in the Clerk denying all costs.

3. Agreements Between Parties

Parties may reach an agreement regarding the amount of costs to be paid at any time prior to the Clerk issuing the Taxation of Costs. If the parties reach an agreement, the parties shall file in CM/ECF a letter to the Clerk notifying the Clerk of the agreement. The letter shall include the case number.

II. COMMON CATEGORIES OF COSTS

A. Fees of the Clerk, 28 U.S.C. § 1920(1)

What is Taxable?

Only fees paid to the Clerk of the United States District Court for the Southern District of Iowa are taxable. This most commonly refers to the initial filing fee; however, any other fee paid to this Clerk of Court may be taxed. In a removal case, or any other case first initiated in state court, fees paid to the state clerk of court are not taxable.

B. Fees for Service of Process, 28 U.S.C. § 1920(1)

Service of Process fees of the United States Marshals Service are taxable. Fees paid to private process servers, including county sheriffs, are not taxable as costs. Cruses v. KFC Corp., 768 F.3d 230, 234 (8th Cir. 1985). Further guidance regarding United States Marshals Service fees can be found in 28 U.S.C. § 1921.

C. Transcripts, 28 U.S.C. § 1920(2)

1. Trial and/or Hearing Transcripts

Trial and/or hearing transcripts are taxable if the transcript was:

- a) Procured at the direction of the Court;
- b) Prepared pursuant to the stipulation of the parties to tax as costs; or
- c) Necessary for use in the case and the requesting party explains why the trial or hearing transcript was necessarily obtained.

Taxation will not be allowed if the transcript was procured primarily for counsel's convenience. McDowell v. Safeway Stores, 758 F.2d 1293 (8th Cir. 1985). Additionally, the transcript must have a direct relationship to the determination and result of the trial. *Id.*

2. Deposition Transcripts

Deposition transcripts (printed or electronically recorded) are taxable by the Clerk if the transcript was necessarily obtained for use in the case. The Clerk may tax deposition transcripts when:

- a) The deponent testified at trial;
- b) The deposition was admitted into evidence;
- c) The deposition was submitted in connection with an event that terminated the litigation (e.g., summary judgment); or
- d) The requesting party explains why the transcript was necessarily obtained.

Ordinarily, parties may only tax the costs for either an electronically recorded or printed deposition. If a party is requesting costs for both formats, it must explain why both types of transcripts were necessarily obtained for use in the case. Stanley v. Cottrell, Inc., 784 F.3d 454, 467 (8th Cir. 2015).

When a deposition is not actually used at trial or as evidence on a successful preliminary motion, whether its cost may be taxed generally is determined by deciding if the deposition reasonably

seemed necessary at the time it was taken. *See, e.g., Zotos v. Lindbergh School Dist.*, 121 F.3d 356 (8th Cir. 1997); *Koppinger v. Cullen-Schiltz and Associates*, 513 F.2d 901, 911 (8th Cir. 1975). The cost of depositions that simply are investigative or preparatory in character, rather than for the presentation of the case, are typically not taxable. *Zotos v. Lindbergh School Dist.*, 121 F.3d 356 (8th Cir. 1997); *Yarvis v. Special School Dist. of St. Louis County*, 604 F. Supp. 914 (E.D. Mo. 1985), decision *aff'd per curiam*, 780 F.2d 724 (8th Cir. 1986).

D. Court Reporter Fees

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

1. Fees for attendance at, and travel for, depositions;
2. Cost of the original transcript and a copy if the prevailing party requested the deposition and incurred the stenographic costs;
3. Cost of one copy if the prevailing party did not request the deposition and did not incur the stenographic costs;
4. Costs of copies for papers obtained as exhibits in the deposition; and
5. Electronic media support (e.g., disk, CD-ROM).

The following transcript/fees of the court reporter are NOT taxable by the Clerk:

1. Costs of expedited transcripts produced solely for the convenience of counsel;
2. Transcripts used primarily for trial preparation or discovery;
3. Attorneys' fees and expenses incurred while taking the deposition; and
4. Court reporter postage or delivery charges for a transcript. *See, e.g., Zotos v. Lindbergh School Dist.*, 121 F.3d 356 (8th Cir. 1997); *McDowell v. Safeway Stores*, 758 F.2d 1293 (8th Cir. 1985); *Koppinger v. Cullen-Schiltz and Associates*, 513 F.2d 901, 911 (8th Cir. 1975).

If counsel is requesting costs for an expedited, real-time, or hearing transcript feed, an explanation must be provided as to why the same was necessary.

E. Printing Fees

Fees and disbursements for printing are taxed by the Court of Appeals in its mandate.

F. Witness Fees, 28 U.S.C. § 1920(3)

The prevailing party is permitted to tax witness fees when the witness must appear at trial or a deposition AND the testimony of the witness was relevant to an issue in the case and reasonably necessary to its resolution. *Koppinger v. Cullen-Schiltz and Associates*, 513 F.2d 901, 911 (8th Cir. 1975).

Pursuant to 28 U.S.C. §§ 1821, 1920(3), the following are taxable witness (including expert witness) fees:

1. Attendance Fees—The allowable attendance fee for witnesses is \$40.00 per day. 28 U.S.C. 1821(b). Witnesses may claim a fee for the time he/she was “necessarily occupied in going to and returning from the place of attendance at the beginning and end of such attendance.” *Id.*
2. Mileage—Mileage shall be calculated at the rate for official government travel, which is determined at the time the travel took place. 28 U.S.C. § 1821(c)(2). The official government

mileage rate (both current and historical) can be found at: <https://www.gsa.gov/portal/content/100715> .

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. 28 U.S.C. § 1821(d)(2). The official government per diem rate (both current and historical) can be found at: <https://www.gsa.gov/portal/content/104877> .
4. Common Carrier—A witness who travels by common carrier shall be paid for the actual expenses of travel by the shortest practical route. 28 U.S.C. § 1821(c)(1). Witnesses shall utilize a common carrier at the most economical rate reasonably available.
5. Other Travel Expenses—Toll charges, taxicab fares between places of lodging and carrier terminals, and parking fees may be taxed. 28 U.S.C. § 1821(c)(3).

The following witness fees are NOT taxable by the Clerk:

1. Parties’ or attorneys’ fees/expenses, even when the party is a witness;
2. Fees paid to any witness, including experts, beyond the statutory daily attendance fee;
3. Fees and expenses paid to witnesses who do not testify at trial; and
4. Fees and expenses paid to deponents when the cost of the deposition is non-taxable.

G. Exemplification, 28 U.S.C. § 1920(4)

Exemplification costs typically include the costs of producing a demonstrative aid as an exhibit. The Clerk will not tax exemplification costs until the parties first seek permission from Court that these costs may be taxed as necessary in the case. 28 U.S.C. § 1920(4); Little Rock Cardiology Clinic PA v. Baptist Health, 591 F.3d 591, 601-02 (8th Cir. 2009).

H. Copies, 28 U.S.C. § 1920(4)

The following are taxable costs of copies:

1. Exhibits that were conventionally filed with the Court;
2. Courtesy copies required to be provided to the presiding judge;
3. Conventionally filed documents that were required to be served on the opposing party;
4. Demonstrative exhibits when necessarily obtained for use in the case and NOT merely illustrative of expert testimony or other adequate evidence; and
5. Other copies that were necessarily obtained for use in the case, and not mere convenience, provided that the requesting party provides an explanation as to why the copies were necessarily obtained, including discovery in the form of electronically stored information (ESI).

The following are NOT taxable by the Clerk:

1. Copies obtained for discovery purposes;
2. Copies that were retained by counsel for counsel's use;
3. Copies that were provided to clients; and

I. Docket Fees, 28 U.S.C. § 1920(5)

Pursuant to 28 U.S.C. § 1920(5), certain attorney and proctor fees may be taxed, as provided in 28 U.S.C. § 1923(a). Parties requesting docket fees should include the amount of the fee. The docket number to which the requested fee relates should be noted in an explanatory memorandum or affidavit.

J. Court-Appointed Experts and Interpreters, 28 U.S.C. § 1920(6)

Pursuant to 28 U.S.C. § 1920(6), the “[c]ompensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation serviced under [28 U.S.C. §] 1828” may be taxed. However, when the prevailing party procures services without prior Court approval, costs will be assessed only for those expenses necessarily incurred.

K. Generally Non-Taxable Expenses

The following costs are not allowed by the Clerk:

1. Travel and expenses of counsel, including investigation expenses;
2. Fees for computerized legal research;
3. Secretarial services, including word processing, typing charges, copy charges, scanning charges, etc., that are incidental to an attorney's services;
4. Paralegal and/or investigator services;
5. Prejudgment and post-judgment interest;
6. Mediation costs;
7. Fees for postage, delivery (includes delivery services such as FedEx or UPS), and notary;
8. Long-distance telephone calls, fax charges, or cellular telephone charges;
9. Damage surveys;
10. Accountant expenses; and
11. Office overhead expenses.

III. REQUIRED DOCUMENTATION

A. Clerk of Court Fees

Supporting documentation regarding the filing fee is not required. For any other fees paid to this Clerk of Court, the requesting party shall provide receipts for the cost or a reference to the applicable docket entry in the case.

B. Service of Process Fees

Parties shall submit receipts or other documentation regarding fees paid to the United States Marshals Service.

C. Transcripts and/or Depositions

For transcripts and/or deposition costs, the following documentation shall be submitted:

1. Invoices containing the case name and number, the party being deposed, the date of the deposition, and an itemized bill of the court reporter's fees; and
2. An explanatory memorandum or affidavit explaining how each transcript was used and why it was necessary.

D. Court Reporter Fees

An itemized bill of the court reporter's fee with an explanatory memorandum or affidavit explaining the costs claimed.

E. Witness Fees

When claiming witness fees, the following documentation is required:

1. All mileage claims must include the date(s) of travel, the applicable mileage rate, the starting address, the ending address, and the total mileage claimed;
2. For subsistence claims, provide the date(s) of travel, the applicable per diem rate at the destination, and receipts reflecting the expense was paid;
3. For common carrier claims, a copy of the itinerary and a receipt from the common carrier and receipts reflecting the expense was paid;
4. For all other travel expenses, a copy of the receipt (parking, toll charges, taxicab, etc.); and
5. An explanatory memorandum regarding the date(s) the witness testified at trial/deposition, as well as verification that the witness testimony was relevant to an issue in the case and their testimony was reasonable necessary for the resolution of the case.

F. Exemplification and Copies

For exemplification and/or copies costs, the following documentation shall be submitted:

1. If copies are made by an outside service, a copy of the invoice;
2. The costs of in-house copying may be documented by billing or other records;
3. Any invoice or bill submitted should indicate or be attached to a document explaining:
 - a. The document copied, including its docket number;

- b. The number of pages in the document;
- c. The number of copies made;
- d. The per page rate;
- e. The total cost;
- f. An explanatory memorandum containing the permissible reason of the copies; and
- g. A copy of the order allowing the costs.

G. Docket Fees

Parties shall include the amount of the fee and the docket number to which the requested fee relates, as well as an explanatory affidavit or memorandum.

H. Court-Appointed Experts and Interpreters

When requesting court-appointed expert or interpreter fees, the prevailing party shall submit a copy of the order so appointing and the invoice.