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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
16-SO-2


JULIE RICHARDS JOHNSTON, CLERK  
US. DISTRICT COURT, EDNC  
BY BRH DEP CLK

IN RE: )  
APPLICATION FOR COSTS )  
GUIDELINES )

**STANDING ORDER**

With the concurrence of the court, the undersigned approves the *Application for Costs Guidelines* which sets forth the recommended practices for filing applications for costs in the Eastern District of North Carolina. The Clerk is directed to maintain this standing order on the court's website.

SO ORDERED. This 18 day of March, 2016.

  
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JAMES C. DEVER III  
Chief United States District Judge

**United States District Court**  
**Eastern District of North Carolina**



**Application for Costs Guidelines**  
**March 2016**

These guidelines are provided by the clerk's office to assist parties in properly filing applications for costs with this court. Litigants are encouraged to review this document thoroughly. These guidelines are not to be considered legal advice and they should not be cited as binding legal authority. They are subject to exception and modification as needed in the interests of justice, and nothing in these guidelines is meant to expand or limit the authority of this court or the clerk to tax costs under 28 U.S.C. § 1920. Please use these guidelines in conjunction with the Federal Rules of Civil and Appellate Procedure and the Local Rules of this court.

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## I. Taxation of Costs by the Clerk

### A. Background

This guide has been prepared to assist parties in the preparation of applications for costs in this district. The procedure for taxing costs under [Fed. R. Civ. P. 54\(d\)](#) and the clerk's authority to tax costs vary widely between district courts. The clerk's office encourages parties to review this guide thoroughly and consult all applicable law when preparing an application for costs in the United States District Court for the Eastern District of North Carolina.

Under [28 U.S.C. § 1920](#) and [Fed. R. Civ. P. 54\(d\)](#), a prevailing party<sup>1</sup> may request the clerk to tax allowable costs in a civil action as part of a judgment or decree.<sup>2</sup> The prevailing party begins this process by filing an application for costs.

In this court, the clerk ordinarily taxes costs in the first instance.<sup>3</sup> The clerk's discretion to award costs, however, is limited. The clerk must deny costs not permitted by statute or case law, even if the opposing party has failed to file an objection to taxation.

The clerk's authority to tax costs does not include any equitable authority.<sup>4</sup> Accordingly, the clerk cannot deny costs based on undue hardship, difficulty to the taxed party, or other equitable considerations. If a party believes equitable considerations counsel against awarding of the costs, the party should move for review after the clerk enters an order taxing costs.

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<sup>1</sup> "A 'prevailing party' is 'a party in whose favor a judgment is rendered' or 'one who has been awarded some relief by the court.'" *Silicon Knights, Inc. v. Epic Games, Inc.*, 917 F. Supp. 2d 503, 509 (E.D.N.C. 2012) (quoting *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Servs.*, 532 U.S. 598, 602 (2001)).

<sup>2</sup> Under Rule 54(d)(1), there is a "presumption that costs are to be awarded to a prevailing party" *Cherry v. Champion, Int'l Corp.*, 186 F.3d 442, 446 (4th Cir. 1999), and therefore "it is incumbent upon the unsuccessful party to show circumstances sufficient overcome the presumption favoring an award of costs to the prevailing party." *Ellis v. Grant Thornton LLP*, No. 10-1509, 434 F. App'x 232, 235, 2011 WL 2356855, at \* 2 (4th Cir. 2011) (per curiam) (citing *Teague v. Bakker*, 35 F.3d 978, 996 (4th Cir. 1994)).

<sup>3</sup> *Shipman v. United Parcel Service, Inc.*, No. 5:12-CV-589-F, 2015 WL 3407437, at \*1 (E.D.N.C. May 26, 2015) (explaining that under Rule 54 the clerk taxes costs, and a party may seek review of the clerk's ruling by filing a timely motion); Local Civil Rule 54.1(a) (providing that a prevailing party may request the clerk to tax allowable costs).

<sup>4</sup> *Taniguchi v. Kan Pacific Saipan, Ltd.*, \_\_\_ U.S. \_\_\_, 132 S. Ct. 1997, 2006 (2012) (describing the taxation of costs by the clerk as a "clerical matter").

## B. What to File

1. *Bill of Costs form (AO 133) and required supporting documentation.*

Supporting documentation includes materials—such as copies of vouchers, bills and canceled checks—clearly showing the amount of costs and their purpose. Where appropriate, the *Guidelines* explain what materials must be submitted.

**Note:** The Bill of Costs form is available [here](#) and in the clerk’s office.

2. *Affidavit and supporting memorandum*

The affidavit should verify (a) the items claimed in the bill of costs are correct, (b) the costs have been necessarily incurred in the case, and (c) the services for which fees have been charged were actually and necessarily performed.

The supporting memorandum should explain the “grounds and authorities” supporting each request. For example, a request for the cost of a deposition should be supported by both a reference to [28 U.S.C. § 1920\(2\)](#) and an explanation of why that particular deposition was necessary to the case.

**Note:** An affidavit and supporting memorandum are not required when the prevailing party seeks only the court’s filing fee.

3. *Certificate of Service*

## C. When to File

### 1. Trial Costs

Unless otherwise ordered, an application for costs and supporting materials must be filed within 14 days of the entry of judgment. See [Local Civil Rule 54.1](#).

### 2. Appellate costs.

An application for costs including costs incurred on appeal and taxable in this court should be filed within 14 days of the issuance of the mandate of the Court of Appeals or, in the event of review by the Supreme Court, within 14 days of the entry of judgment by the Supreme Court.

**Note:** Non-compliance with these time limits constitutes a waiver of costs. See [Local Civil Rule 54.1\(a\)\(3\)](#).

## D. When to File an Objection

The opposing party must file any motion for disallowance of costs with a supporting memorandum within 14 days of service of the application for costs. See [Local Civil Rule 54.1\(b\)\(1\)](#).

The prevailing party must file any response within 7 days of service of the motion for disallowance. See [Local Civil Rule 54.1\(b\)\(2\)](#).

**Note:** Even if an opposing party does not file an objection, the clerk nevertheless will review the application for costs and deny any requested costs that are not permitted under [28 U.S.C. § 1920](#) and applicable case law.

## E. Cases Involving Multiple Parties

In cases involving more than a single plaintiff or more than a single defendant, the clerk will not award the same cost more than once.

Generally, where the same counsel represents multiple prevailing parties or multiple losing parties, it is assumed that the parties may be treated as a single party for purposes of taxing costs. If this is not that situation, a party must provide an explanation as to why and how the parties should be treated differently.

Where different counsel represent multiple prevailing parties or multiple losing parties, the clerk assumes that they should be treated as separate parties for purposes of taxing costs. In this situation, the party filing the application for costs or the opposing party should provide an explanation as to which costs are attributable to each party and how they should be apportioned.

**Note:** If there are multiple parties involved and an insufficient explanation is provided as to how to apportion costs, the clerk may deny all costs and the party may file a motion with the presiding judge to review the clerk's decision.

## **F. Procedures After Filing the Application for Costs**

After receiving the application for costs, and after the time has expired for filing any motions for disallowance and/or responses thereto, the clerk, or her designee, will apply the *Guidelines* and tax costs. Unless otherwise ordered by the clerk, the ruling will be made on the record without a hearing.

### *1. Effect of a Pending Post-Judgment Motion*

Regardless of whether any party files a motion for disallowance, if a party files a post-judgment motion under Fed. R. Civ. P. 50(b), 52(b), or 59, the clerk will—without additional notice—defer consideration of any pending application for costs until after the court rules on the post-judgment motion. The filing of a post-judgment motion, however, does not relieve a party from filing a timely motion for disallowance under [Local Civil Rule 54.1\(b\)](#). Assuming the judgment remains in effect after the court rules on the post-judgment motion, the clerk may then tax costs without additional notice or hearing.

### *2. Effect of a Pending Appeal*

Absent a filed opposition, the clerk may tax trial costs regardless of whether an appeal is pending in the case. However, if a party files a timely motion for disallowance of costs either before or after any party files an appeal from the judgment serving as the basis for the application for costs, the clerk will



typically deny taxation without prejudice to the prevailing party filing a new application for costs if judgment is affirmed on appeal.

**Note:** When the interests of justice so require or when the issue of taxation requires a factual determination, the clerk will forward an application for costs to the assigned judge for resolution of taxation issues.

## G. Procedures After Costs are Taxed by the Clerk

### 1. *Motion to Review the Clerk's Order Taxing Costs*

Under [Fed. R. Civ. P. 54\(d\)\(1\)](#), a party may move for review of the clerk's taxation of costs within 7 days of taxation.

### 2. *Payment for Costs*

Once the court has ruled on a motion for review or after the time for seeking review has expired, the amount of the cost judgment should be paid directly to the prevailing party.

A taxed party must file a satisfaction of judgment once the cost judgment is satisfied.

**Note:** Costs are not processed through the clerk's office.

## II. Taxable Costs

### A. Background

Only those costs specifically enumerated in [28 U.S.C. § 1920](#) are taxable.<sup>5</sup> The clerk will deny all other requested costs, even if the opposing party has failed to file a motion for disallowance.

Prevailing parties are responsible for providing the required documentation to support their applications for costs, and must explain how the documents support each requested item.

**The clerk will deny costs submitted without documentation or with an unclear explanation in the supporting memorandum.**

**Note 1:** Certain costs that are not taxable under [28 U.S.C. § 1920](#) may be taxable in a motion for attorney's fees.

**Note 2:** The clerk will not deny costs solely for a lack of a supporting memorandum; however, the lack of a memorandum or supporting documentation will result in a denial of any unexplained costs.

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

The following fees of the clerk are taxable:

1. Filing fee for a complaint, removal, or habeas corpus petition filed in federal court, as well as any administrative fee assessed at the time of filing and required pursuant to 28 U.S.C. § 1914(b).
2. Appellate fees pursuant to [Fed. R. App. P. 39\(e\)](#).

**Note:** Supporting documentation is not needed for fees paid to the clerk of this court.

<sup>5</sup> *Country Vintner of North Carolina, LLC v. E. & J. Gallo Winery, Inc.*, No. 5:09-CV-326-BR, 2012 WL 3202677, at \*1 (E.D.N.C. Aug. 3, 2012), *aff'd*, 718 F.3d 249 (4th Cir. 2013).

### C. Fees of the Marshal, 28 U.S.C. § 1920(1)

Fees of the marshal may be taxed. Fees for private process servers may be taxed only to the extent that they do not exceed the costs that would have been incurred had the marshal's office effected service.<sup>6</sup>

**Note:** Generally the clerk will tax reasonable service fees for (a) summonses, (b) trial subpoenas for witnesses who actually testified at trial, (c) deposition subpoenas where the cost of the deposition has also been taxed, and (d) subpoenas for materials submitted at trial or in support of a motion terminating the case. Absent good cause shown or prior court approval, the clerk will not tax charges related to expedited service.

### D. Fees for Printed and Electronically Recorded Transcripts Necessarily Obtained for Use in the Case, 28 U.S.C. § 1920(2)

#### 1. Taxable

To be taxable, a transcript cost, including copies of transcripts, must be “necessarily obtained for use in the case,” [28 U.S.C. § 1920\(2\)](#), and “reasonably necessary at the time of its taking,” *LaVay Corp. v. Dominion Federal Savings & Loan Ass’n*, 830 F.2d 522, 528 (4th Cir. 1987).<sup>7</sup> The following fees of the court reporter are taxable. Requests for taxation must include, in addition to the documentation listed in Documentation Requirements for Transcript costs, the following documentation and information stated in each category:

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<sup>6</sup> See *Arista Records LLC v. Gaines*, 635 F. Supp. 2d 414, 418-19 (E.D.N.C. 2009) (“In making the fees of the Marshal taxable as costs in 28 U.S.C. § 1920, Congress exhibited an intent to make service of process a taxable item.”); see also *U.S. E.E.O.C. v. W&O, Inc.*, 213 F.3d 600, 624 (11th Cir. 2000) (quoting *Collins v. Gorman*, 96 F.3d 1057, 1060 (7th Cir. 1996)) (finding persuasive “the reasoning that § 1920(1) ‘refers to the fees “of” the marshal but does not require payment “to” the marshal’ and, accordingly, that the ‘fees of the marshal’ refers to fees authorized by § 1921, rather than fees collected by the marshal”).

<sup>7</sup> “It is not necessary for depositions to be used in trial or dispositive motion briefing for a party to recover those costs [under §1920(2)].” *Ray Commc'ns, Inc. v. Clear Channel Commc'ns*, No. 2:08-CV-24-BO, 2011 WL 3207805, at \*3 (E.D.N.C. July 26, 2011); cf. *Country Vintner of N.C., LLC v. E.&J. Gallo Winery, Inc.*, 718 F.3d 249, 257-58 (4th Cir. 2013) (explaining that the phrase “necessarily obtained for use in the case” in § 1920(4) did not preclude taxation of materials obtained for use in discovery or for trial preparation).

- a. Transcript procured at the direction of the court.
  - ❖ Attach the order.
- b. Transcript prepared under the stipulation of parties to tax as costs.
  - ❖ Include the stipulation.
- c. Transcript of deposition of a party to the case.
- d. Transcript of deposition of person who testified at trial.
  - ❖ Note the date(s) the person testified at trial.
- e. Transcript admitted into evidence or used at trial to impeach a witness or witnesses.<sup>8</sup>
  - ❖ Note the date(s) the transcript was read into the record.
- f. Transcript used in support of a motion.
  - ❖ Note the title and docket entry number of the motion.
- g. Electronic media depositions used at trial, such as a videotape, DVD, or audio recording.<sup>9</sup>
  - ❖ Note the date(s) the deposition was presented into the record.
- h. Court reporter fees for attendance and travel for depositions.
- i. Transcript ordered for purposes of appeal.

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<sup>8</sup> See *Herold v. Hajoca Corp.*, 864 F. 2d 317, 319 (4th Cir. 1988) (explaining that depositions that were used to impeach witnesses, although not introduced as evidence, were used at trial within the meaning of § 1920(2)).

<sup>9</sup> A party may recover the costs of both stenographic transcription of a deposition and videographer services provided that the party shows that both costs were “necessarily obtained for use in the case.” See *Cherry v. Champion Int’l Corp.*, 186 F.3d 442, 449 (4th Cir. 1999). Where a party notices a deposition to be recorded by both electronic and stenographic means, and the other party raises no objection at that time, the court will award the costs of both recordings. See *Silicon Knights, Inc. v. Epic Games, Inc.*, 917 F. Supp. 2d 503, 511 (E.D.N.C. 2012) (awarding the prevailing party costs of both audiovisual videotaping and stenographic transcription of depositions where the other party failed to object after receiving notice that both methods of recording would be used and where the court found “that transcribing and videotaping the depositions were ‘necessarily obtained for use in the case’”).

- j. Cost of copies of an opposing party's noticed depositions.

**Note 1:** Only the cost of one transcript is taxable if the transcript is otherwise taxable under categories a-j. See [Local Civil Rule 54.1\(c\)\(2\)\(B\)](#).

**Note 2:** The clerk may tax the costs of both an electronic media deposition and the printed deposition transcript provided the prevailing party explains why both were necessary for use in this case. Where a party notices a deposition to be recorded by both electronic and stenographic means, and the other party raises no objection at that time, the court will award the costs of both recordings. Accordingly, a party seeking costs for both an electronic and stenographic recording of a deposition should attach the notice of deposition. Where a party fails to attach the notice of deposition, the clerk will tax the cost of the printed deposition over the cost of an electronic media deposition.

**Note 3:** Absent a motion for disallowance in opposition, the clerk will tax the actual rate charged by the court reporter.

2. *Not Taxable*

The following fees of the court reporter are not taxable:

- a. Costs of daily or expedited copy produced solely for the convenience of counsel, absent prior court approval.<sup>10</sup>
- b. ASCII diskettes for copies of deposition transcripts.<sup>11</sup>
- c. Long-distance phone charges for telephonic depositions, or costs incurred in teleconferencing a deposition.
- d. Attorney's fees and expenses incurred while taking the deposition, including attorney travel expenses.
- e. Court reporter postage, shipping/handling, or delivery charges for a transcript.

<sup>10</sup> See Local Civil Rule 54.1(c)(2)(C); see also *Fulmore v. United Parcel Service*, 7:11-CV-18-F, 2013 WL 5969715, at \*1 (E.D.N.C. Nov. 18, 2013) (disallowing costs for expedited transcript).

<sup>11</sup> See *Boykin Anchor Co., Inc. v. AT&T Corp.*, No. 5:10-CV-591-FL, 2014 WL 4798726, at \*2 (E.D.N.C. Sept. 26, 2014) (disallowing costs for ASCII diskettes).

- f. Copies of deposition exhibits obtained at depositions.<sup>12</sup>
- g. “Read and sign” charges.<sup>13</sup>
- h. Litigation support packages.<sup>14</sup>

3. *Documentation Requirements for Transcript Costs*

Any request for transcript costs must include itemized invoices indicating:

- a. The party being deposed;
- b. The date of the deposition;
- c. The number of pages in the transcript;
- d. The per page rate; and
- e. The total cost.

**E. Fees and Disbursements for Printing, 28 U.S.C. § 1920(3)**

These fees are typically taxed by the court of appeals in its mandate.

**F. Witness Fees, 28 U.S.C. § 1920(3)**

1. *Taxable*

The allowable witnesses fees are set forth in 28 U.S.C. § 1821. Requests for taxation of the following categories of witness fees must include the noted additional documentation or information:

- a. Statutory Attendance Fee, 28 U.S.C. § 1821(b). Witnesses are entitled to \$40.00 per day of testimony. This includes days during which the witness was deposed, days reasonably spent in attendance at trial waiting to be called, and the time the witness was “necessarily occupied in going to and returning from the place of

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<sup>12</sup> See *Dutton v. Wal-Mart Stores East, L.P.*, No. 4:11-CV-94-BO, 2015 WL 1643025, at \*2 (E.D.N.C. March 13, 2015) (“In construing 28 U.S.C. §1920 and Local Civil Rule 54.1, this court has also denied fees for copies of deposition exhibits, read and sign, rough drafts, litigation support packages, ASCII disks, shipping, handling and expedited processing.”).

<sup>13</sup> See *Dutton v. Wal-Mart Stores East, L.P.*, No. 4:11-CV-94-BO, 2015 WL 1643025, at \*2 (E.D.N.C. March 13, 2015).

<sup>14</sup> See *Dutton v. Wal-Mart Stores East, L.P.*, No. 4:11-CV-94-BO, 2015 WL 1643025, at \*2 (E.D.N.C. March 13, 2015).

attendance at the beginning and end of such attendance.” 28 U.S.C. § 1821(b).<sup>15</sup>

➤ *Provide the name of the witness and date(s) of attendance.*

- b. Mileage, 28 U.S.C. § 1821(c)(2). Mileage must be calculated at the rate for official government travel in effect at the time the travel took place as set by the General Services Administration. Visit [www.gsa.gov/mileage](http://www.gsa.gov/mileage).

➤ *Provide the name of witnesses, the date(s) of travel and the applicable mileage rate.*

- c. Subsistence, 28 U.S.C. § 1821(d)(1). A subsistence allowance may be paid to a witness “when an overnight stay is required at the place of attendance because such a 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 as set by the General Services Administration. *Id.* § 1821(d)(2). Visit [www.gsa.gov/perdiem](http://www.gsa.gov/perdiem) for the current and historical subsistence per diem allowances by geographic area.

➤ *Provide the name of the witness, an explanation of why an overnight stay was required, receipts for relevant expenses, and the applicable per diem rate.*

- d. Common carrier, 28 U.S.C. § 1821(c)(1). The actual expenses of travel by common carrier must be substantiated by a receipt or other evidence of cost.

➤ *Provide the name of the witness, the date(s) of travel, and the receipt from the common carrier.*

- e. Other travel expenses, 28 U.S.C. § 1821(c)(3). “Toll 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)” may be taxed.

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<sup>15</sup> See *Mercer v. N. Carolina Dep't of Transp.*, No. 5:09-CV-379-FL, 2012 WL 3996844, at \*2 (E.D.N.C. Sept. 7, 2012) (observing that “[u]nder 28 U.S.C. § 1821(a)(1), a witness may be paid for attendance at court or for a deposition”).

- Provide the name of the witness, the date(s) of travel, and the receipt for travel expenses.

## 2. Non-Taxable

The following witness fees are not taxable.

- a. Fees and expenses for individual parties, real parties in interest, parties suing in representative capacities, and the officers and directors of corporate parties.<sup>16</sup>
- b. Fees paid to any witness, including expert witnesses, beyond the statutory daily attendance fee.<sup>17</sup>
- c. Fees and expenses to deponents when the cost of the deposition is not taxed by the clerk.
- d. Witness expenses for rental vehicles.

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

Exemplification costs typically include the costs for producing a demonstrative aid as an exhibit.<sup>18</sup> Requests for taxation of the costs of producing a demonstrative aid must include an itemized invoice and an explanation of the purpose and use of the demonstrative aid(s).

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<sup>16</sup> Local Civil Rule 54.1(c)(2)(a).

<sup>17</sup> See *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 439 (1987) (“[W]hen a prevailing party seeks reimbursement for fees paid to its own expert witnesses, a federal court is bound by the limit of § 1821(b), absent contract or explicit statutory authority to the contrary.”); see also *Silicon Knights, Inc. v. Epic Games, Inc.*, 917 F. Supp. 2d 503, 522 (E.D.N.C. 2012) (“Expert witness fees . . . are typically limited under 28 U.S.C. § 1821 to ‘an attendance fee of \$40 per day for each day’s attendance.’”).

<sup>18</sup> Circuit courts of appeal have disagreed on the definition of “exemplification.” The Federal Circuit, applying Sixth Circuit law, defined “exemplification” by the definition set forth in Black’s Law Dictionary: “an official transcript of a public record, authenticated as a true copy for use as evidence.” *Kohus v. Cosco, Inc.*, 282 F.3d 1355, 1358-59 (Fed. Cir. 2002). The Seventh Circuit has construed “exemplification” as meaning “the act of illustration by example,” which includes exhibits and demonstrative aids. *Cefalu v. Village of Elk Grove*, 211 F.3d 416, 427 (7th Cir. 2000). Courts in this district generally have adopted the latter view. See, e.g., *Silicon Knights, Inc. v. Epic Games, Inc.*, 917 F. Supp. 2d 503, 514 (E.D.N.C. 2012) (allowing the prevailing party’s costs for producing four demonstrative exhibits used in closing arguments). The Fourth Circuit has yet to reach the issue. *Country Vintner of N.C., LLC v. E.&J. Gallo Winery, Inc.*, 718 F.3d 249, 262 (4th Cir. 2013).



## H. Costs of Making Copies of Any Materials Where the Copies are Necessarily Obtained for Use in the Case, 28 U.S.C. § 1920(4)

### 1. Taxable

Copies are taxable if they were “necessarily obtained for use in the case,” [28 U.S.C. § 1920\(4\)](#).<sup>19</sup> The following copy fees are taxable. Requests for taxation must include, in addition to the documentation listed in Documentation Requirements for Transcript costs, the following documentation and information stated in each category.

- a. Copies directed by the court.
- b. Exhibits that were conventionally filed with the clerk.
  - Note the name of the exhibit(s) and associated docket number(s).
- c. Any courtesy copies required to be provided to the presiding judge under that judge’s practice preferences in effect at the time the copies were provided.
  - Note the name of the document(s) and associated docket number.
- d. Documents that cannot be filed in CM/ECF that were required to be served on the opposing party.
  - Note the name of the document(s) and the date(s) of filing.
- e. Documents that were required to be served on the opposing party and were conventionally served on the opposing party because the party did not have a CM/ECF account.
  - Note the name of the document(s) and associated docket number(s).

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<sup>19</sup> Section 1920(4) applies not only to costs related to materials attached to dispositive motions or produced at trial, but also to costs related to copies in discovery. *See Country Vintner of N.C., LLC v. E.&J. Gallo Winery, Inc.*, 718 F.3d 249, 257-58 (4th Cir. 2013) (explaining that the phrase “necessarily obtained for use in the case” in § 1920(4) did not preclude taxation of materials obtained for use in discovery or for trial preparation).

- f. Expenses for producing electronically stored information, limited to converting electronic files to non-editable formats and burning the files onto discs.<sup>20</sup>
- g. Other copies that were necessarily obtained for use in the case provided that the requesting party provides an explanation as to why the copies were necessarily obtained.

2. *Non-Taxable*

The following copy costs are not taxable.

- a. Copies retained by counsel for counsel's use.<sup>21</sup>
- b. Copies provided to clients.

3. *Documentation Requirements for Copy Costs*

Any invoice or bill must clearly indicate (or be attached to a document explaining) the following:

- a. The document copied, including the docket number;
- b. The number of pages in the document;
- c. The number of copies made;
- d. The per page rate; and
- e. The total cost

**Note 1:** For in-house copies, billing records may be submitted.

**Note 2:** The clerk will not tax copy costs if the submitted materials do not clearly show whether all or a specific number of copies are taxable.

**Note 3:** Absent a motion for disallowance in opposition, the clerk will tax the actual copy rate, provided it is reasonable.

<sup>20</sup> See *Country Vintner of N.C. LLC v. E.&J. Gallo Winery, Inc.*, 718 F.3d 249, 260-61 (4th Cir. 2013) (finding that in the context of electronically stored information, the phrase "making copies" as used in §1920(4) is limited to "the conversion of native files to TIFF and PDF formats, and the transfer of files onto CDs").

<sup>21</sup> See *Manion v. Nitelines Kuhuna JV, LLC*, No. 7:12-CV-247-BO, 2015 WL 902479, at \*2 (E.D.N.C. March 3, 2015) ("The cost of copies made solely for the convenience of counsel are generally not taxable under 28 U.S.C. § 1920(4).").

**I. Docket Fees, 28 U.S.C. § 1920(5)**

Under [28 U.S.C. §1923\(a\)](#), the following attorney and proctor fees are taxable.

1. \$20.00 on trial or final hearing, including the entry of default judgment.
2. \$5.00 on discontinuance of a civil motion.
3. \$5.00 on motion for judgment and other proceedings on recognizances.
4. \$2.50 for each deposition admitted into evidence.

**Note:** The supporting memorandum should identify the amount of the fee and the docket number to which the requested fee relates.

**J. Court-Appointed Services, 28 U.S.C. § 1920(6)**

The clerk may tax the “[c]ompensation of court-appointed experts, compensation of interpreters, and salaries, fees, expenses and costs of special interpretation services under [28 U.S.C. §] 1828.”

1. *Court Appointment*

When the court appoints an expert or interpreter, (1) the court may direct one or more of the parties to compensate the interpreter, as well as ultimately order the interpreter’s compensation be taxed as costs, or (2) the court may direct that the taxed costs be used to reimburse the court for providing such special interpretation services.

**Note:** Include a copy of the order.

2. *No Court Appointment*

When the prevailing party procured interpretation services without prior approval by the court, costs will be assessed only for those expenses necessarily incurred. The prevailing party bears the burden of showing both that interpretation services were necessary at the time the services were

received, and that the amount requested is reasonable. Document translations are not included in interpretation costs.<sup>22</sup>

## **K. Costs on Appeal, Fed. R. App. P. 39**

The following appellate costs are taxable.

1. Costs inserted in the mandate under Fed. R. App. P. 39(d).
2. Costs taxable in this court under [Fed. R. App. P. 39\(e\)](#):
  - a. Costs for the preparation and transmission of the record;
  - b. Costs for the reporter's transcript, if needed for the appeal;
  - c. Premiums paid for a supersedeas bond or other bond to preserve rights pending appeal; and
  - d. Filing fee for the notice of appeal.

**Note:** Supporting documentation is not needed for fees paid to the clerk of this court.

**Note 2.** Review [Fed. R. App. P. 39\(a\)](#) to determine against whom appellate costs will be assessed.

## **L. Special Proceedings**

When the action has had proceedings in courts other than this court or the action is a type of special proceeding in this court, the following rules on taxation apply.

1. *Suits in Admiralty*

Under [Local Admiralty Rule E\(13\)](#), if costs are awarded to a party, the reasonable premium or expenses paid on all bonds or stipulations or other security by that party may be taxed. Additionally, reasonable expenses paid by the prevailing party incidental to or arising out of the attachment or arrest

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<sup>22</sup> *Taniguchi v. Kan Pacific Saipan, Ltd.*, \_\_\_ U.S. \_\_\_, 132 S. Ct. 1997, 2007 (2012) (“Because the ordinary meaning of ‘interpreter’ is someone who translates orally from one language to another, we hold that the category ‘compensation of interpreters’ in §1920(6) does not include costs for document translation.”).

of any property in the proceedings or while the property is in *custodial legis* may be taxed as costs.

2. *Courts of Appeals*

See [II.K. Costs on Appeal](#)

3. *United States Supreme Court*

Taxable costs are limited to the fees of the clerk and costs of printing the joint appendix. When the Supreme Court allows costs, an itemization of the costs will be inserted into the body of the mandate sent to the court below.<sup>23</sup>

### III. Non-Taxable Costs

The following costs are generally not taxable.

1. Travel and fee expenses of counsel,<sup>24</sup> including investigation expenses.
2. Fees for computerized legal research.<sup>25</sup>
3. Secretarial services, including word processing, typing charges, copy charges, and scanning charges that are incidental to an attorney's services.
4. Paralegal or investigative services.
5. Prejudgment and post-judgment interest.
6. Mediation costs.<sup>26</sup>

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<sup>23</sup> See Sup. Ct. R. 43.

<sup>24</sup> See *Hexion Spec. Chems., Inc. v. Oak-Bark Corp.*, No. 7:09-CV-105-D, 2012 WL 2458638, at \*6 (E.D.N.C. June 27, 2012) (denying recovery for counsel's travel costs associated with depositions and mediations); *Jacobs v. Central Transp., Inc.*, Nos. 92-17-CIV-7, 92-478-CIV-5, 1995 WL 408741, at \*1 (E.D.N.C. June 9, 1995) ("Travel expenses are not taxable costs, but are incidental expenses of litigation.").

<sup>25</sup> See *Christian v. Vought Aircraft Indus., Inc.*, No. 5:09-CV-186-FL, 2010 WL 5477235, at \*2 (E.D.N.C. Dec. 29, 2010) ("Although computerized legal expenses may be considered part of an award of 'attorneys' fees,' they are not 'costs' under §1920.").

<sup>26</sup> See *Hexion Spec. Chems., Inc. v. Oak-Bark Corp.*, No. 7:09-CV-105-D, 2012 WL 2458638, at \*6 (E.D.N.C. June 27, 2012) ("Mediator fees are not recoverable under section 1920 or Local Civil Rule 54.1(c).").

7. Fees for postage,<sup>27</sup> delivery (including overnight and courier services), or notary.
8. Long-distance telephone calls and fax charges.<sup>28</sup>
9. Damage surveys.
10. Office overhead.<sup>29</sup>
11. Translation services.<sup>30</sup>

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<sup>27</sup> See *Hexion Spec. Chems., Inc. v. Oak-Bark Corp.*, No. 7:09-CV-105-D, 2012 WL 2458638, at \*6 (E.D.N.C. June 27, 2012) (determining that shipping and postage costs are not taxable).

<sup>28</sup> See *Jacobs v. Central Transp., Inc.*, Nos. 92-17-CIV-7, 92-478-CIV-5, 1995 WL 408741, at \*1 (E.D.N.C. June 9, 1995) (“Long distance telephone calls and postage are not recoverable as costs, but are incidental costs of litigation.”).

<sup>29</sup> See *Hexion Spec. Chems., Inc. v. Oak-Bark Corp.*, No. 7:09-CV-105-D, 2012 WL 2458638, at \*7 (E.D.N.C. June 27, 2012) (denying recovery of costs for office supplies).

<sup>30</sup> See *Taniguchi v. Kan Pacific Saipan, Ltd.*, \_\_\_ U.S. \_\_\_, 132 S. Ct. 1997, 2007 (2012) (“Because the ordinary meaning of ‘interpreter’ is someone who translates orally from one language to another, we hold that the category ‘compensation of interpreters’ in §1920(6) does not include costs for document translation.”).

## IV. CM/ECF Procedures Related to Application for Costs

The following is a list of CM/ECF events, in order of their use, related to filing an application for costs.

1. *Application for Costs*

Use this event to file the bill of costs, on [AO form 133](#). All documentation, explanatory memoranda, and affidavits should be provided as attachments in the same event.

2. *Motion for Disallowance of Costs*

Use this event when an adverse party objects to the application for costs or any item claimed by a prevailing party.

3. *Response in Opposition to Motion*

Use this event if the prevailing party desires to file a response and brief to the adverse party's motion for disallowance of costs.

4. *Order on Application for Costs*

The clerk uses this event to enter an order on the application for costs and any associated motions.

5. *Motion to Review the Clerk's Order Taxing Costs*

Use this event to request review of the clerk's ruling by the presiding judge. A supporting memorandum should be provided as an attachment in the same event.

## V. Appendix

### A. 28 U.S.C. § 1920

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.

### B. 28 U.S.C. § 1923(a)

(a) Attorney's and proctor's docket fees in courts of the United States may be taxed as costs as follows:

\$20 on trial or final hearing (including a default judgment whether entered by the court or by the clerk) in civil, criminal, or admiralty cases, except that in cases of admiralty and maritime jurisdiction where the libellant recovers less than \$50 the proctor's docket fee shall be \$10;

\$20 in admiralty appeals involving not over \$1,000;

\$50 in admiralty appeals involving not over \$5,000;

\$100 in admiralty appeals involving more than \$5,000;

\$5 on discontinuance of a civil action;

\$5 on motion for judgment and other proceedings on recognizances;

\$2.50 for each deposition admitted into evidence.



**C. Fed. R. Civ. P. 54(d).****(d) Costs; Attorney's Fees.****(1) Costs other than Attorney's Fees**

Unless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing party. But costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law. The clerk may tax costs on 14 days' notice. On motion served within the next 7 days, the court may review the clerk's action.

**D. Fed. R. App. P. 39(a)****(a) Against Whom Assessed.**

The following rules apply unless the law provides or the court orders otherwise:

- (1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;
- (2) if a judgment is affirmed, costs are taxed against the appellant;
- (3) if a judgment is reversed, costs are taxed against the appellee;
- (4) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the court orders.

**Cross-reference:** [Local Civil Rule 54.1](#)

**E. Fed. R. App. P. 39(e)**

(e) Costs on Appeal Taxable in the District Court.

The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs under this rule:

- (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.

## F. Local Civil Rule 54.1

### Applications for Costs

All applications for costs must be made 14 days after the entry of judgment. Objections to applications for costs must be filed within 14 days after service of the application for costs.

#### (a) Filing Bill of Costs

- (1) A prevailing party may request the clerk to tax allowable costs, other than attorney's fees, in a civil action as part of a judgment or decree by filing a bill of costs, on AO Form 133, available on the court's internet website:

<http://www.nced.uscourts.gov/forms/Default.aspx>.

- (2) The original bill of costs shall be filed with the clerk, with copies served on adverse parties.
- (3) The failure of a prevailing party to timely file a bill of costs shall constitute a waiver of any claim for costs.

#### (b) Objections to Bill of Costs.

- (1) If an adverse party objects to the bill of costs or any item claimed by a prevailing party, that party must state its objection in a motion for disallowance with a supporting brief within 14 days after the filing of the bill of costs. Within 7 days thereafter, the prevailing party may file a response and brief. Unless a hearing is ordered by the clerk, a ruling will be made by the clerk on the record.
- (2) A party may request review of the clerk's ruling by filing a motion within 7 days after the action of the clerk. The court's review of the clerk's action will be made on the existing record unless otherwise ordered.

#### (c) Taxable Costs.

- (1) Items normally taxed include, without limitation:
  - (a) those items specifically listed on the bill of costs form. The costs incident to the taking of depositions (when allowable as necessarily obtained for use in the litigation) normally include only the reporter's fee and charge for the original transcript of the deposition;
  - (b) premium on required bonds;

- (c) actual mileage, subsistence, and attendance allowances for necessary witnesses at actual costs, but not to exceed the applicable statutory rates, whether they reside in or out of the district;
  - (d) one copy of the trial transcript for each party represented by counsel.
- (2) Items not normally taxed, without limitation:
- (a) witness fees, subsistence, and mileage for individual parties, real parties in interest, parties suing in representative capacities, and the officers and directors of corporate parties;
  - (b) multiple copies of depositions;
  - (c) daily copy of trial transcripts, unless prior court approval has been obtained.
- (d) Costs in Settlements.**
- The court will not tax costs in any action terminated by compromise or settlement. Settlement agreements must resolve any issue relating to costs. In the absence of a specific agreement, each party will bear its own costs.
- (e) Payment of Costs.**
- Costs are to be paid directly to the party entitled to reimbursement.

## **G. Local Admiralty Rule E(13)**

### **Taxation of Costs**

If costs shall be awarded to either or any party, then the reasonable premium or expenses paid on all bonds or stipulations or other security by the party in whose favor such costs are allowed shall be taxed as a part of the costs of the case. In addition, if costs shall be awarded to either or any party, then the reasonable expenses paid by a party incidental to or arising out of the attachment or arrest of any property in the proceedings or while said property is in *custodia legis* shall be taxed as a part of the costs of the case.