

## JUDGMENTS AND COSTS

54.01: *Assessment of Jury Costs.* Whenever any civil action scheduled for a jury trial is settled or otherwise disposed of in advance of the actual trial, then, except for good cause shown, all juror costs, including Marshal's fees, mileage, and per diem, may be assessed equally against the parties or otherwise assessed as determined by the Court, unless the Clerk of Court is notified at least one full business day prior to the date on which the action is scheduled for trial or in sufficient time to notify jurors that their presence will not be required.

54.02: *Petition for and Interest on Attorney's Fees.*

- (A) *Petition for attorney's fees.* Any petition for attorney's fees shall comply with the requirements set forth in *Barber v. Kimbrell's, Inc.*, 577 F.2d 216 (4th Cir. 1978), and shall state any exceptional circumstances and the ability of the party to pay the fee. Any memorandum in opposition to a petition for attorney's fees must be filed with the Clerk of Court within fifteen (15) days of the service of the petition. *See also* Local Civil Rule 83.VII.07 (attorney's fees in social security cases).

*[Prior time limits located in this section were deleted effective December 1, 2000. Counsel should note that the time limits for attorney fee applications found in Fed. R. Civ. P. 54 are significantly shorter than previously set by the predecessor to this Local Civil Rule.]*

- (B) *Interest on attorney's fee awards entered after judgment.* When attorney's fees are granted by order entered after entry of judgment and unless otherwise directed by the Court, the Clerk of Court shall: (a) apply the same interest rate to the attorney's fee award as applies to the underlying judgment; and (b) run interest from the date of entry of the order awarding fees. *See* Fed. R. Civ. P. 58(a)(1)(C) (a separate judgment is not required for an order disposing of a motion for attorney's fees).

54.03: *Application for Costs.* The items set forth below detail the costs normally allowed in the District when filing Bill of Costs pursuant to 28 U.S.C. § 1920 and Fed. R. App. P. 39(e) and are subject to final approval by the Court. Bill of costs shall be filed within the time limits set by Fed. R. Civ. P. 54(d)(2)(B) for applications for attorney's fees. Noncompliance with this time limit shall be deemed a waiver of any claim for costs.

(A) *Fees of the Clerk of Court* (28 U.S.C. §§ 1914, 1917, and 1920(1); Fed. R. App. P. 39(e)).

(1) *Taxable:*

- (a) Filing fee of complaint;
- (b) Filing fee of notice of appeal;
- (c) Filing fee in state court in a removal case;
- (d) Costs for preparation of record on appeal;
- (e) Fee charged by out-of-district court for filing notice to take *de bene esse* depositions;
- (f) Premium paid to supply cost bond required for removal of a case to a federal court;
- (g) Service fees for summons and complaint with attachments thereto;
- (h) Service fees for trial subpoenas for witnesses taxed as costs; and
- (i) Service fees for deposition subpoenas for depositions taxed as costs.

(2) *Not taxable:*

- (a) Miscellaneous fees not listed above; and
- (b) Filing fee in case instituted by the United States.

(B) *Fees of the United States Marshal* (28 U.S.C. §§ 1921 and 1920(1)).

(1) *Taxable:*

- (a) Service fees for summons and complaint, attachment, and other process;
- (b) Service fees for trial subpoenas;

- (c) Service fees for deposition subpoenas for depositions taxed as costs;
  - (d) Expenses of caring for property attached, etc. (actual amount incurred, not necessarily the amount of the required deposit);
  - (e) Sales commission; and
  - (f) Insurance premium for indemnity of Marshal required for maritime attachments.
- (2) *Not taxable:* Service fees for discovery subpoenas.
- (C) *Fees of Court Reporter* for all or any part of the transcript necessarily obtained for use in the case (28 U.S.C. §§ 1920(2) and 1915(e); Fed. R. App. P. 39(e)).
- (1) *Taxable:*
- (a) The costs of the original of a trial transcript, daily transcript, and of a transcript of matters prior or subsequent to trial are taxable:
    - (i) When requested by the Court (which is rare). Mere acceptance by the Court does not constitute a request;
    - (ii) At trial stage when, prior to incurring expense, the Court determines that it is necessary;
    - (iii) When prepared pursuant to stipulation of parties with agreement to tax as costs; and
    - (iv) When used on appeal.
  - (b) If an *in forma pauperis* party prevails and the United States paid for the transcript, it is taxed in favor of the United States.

- (2) *Not taxable:*
  - (a) Costs of copies;
  - (b) Costs of daily copy solely for convenience of counsel.

When there is no appeal, the trial transcript is rarely taxed unless necessity is shown because of the facts and complexities of a particular controversy.

(D) *Fees and Disbursements for Printing* (28 U.S.C. § 1920(3); Fed. R. App. P. 39(c); Fourth Circuit Local Civil Rule 12). These are not usually involved in trial court proceedings, but rather are taxed by the United States Court of Appeals and allowance added to costs recoverable in trial court (28 U.S.C. § 1923(c), superseded by Fed. R. App. P. 39(c)).

(E) *Fees of Witnesses* (itemized on reverse side of AO133 (28 U.S.C. §§ 1821 and 1920(3))). Fees provided by statute at the rate in effect when the witness appeared are strictly adhered to. No distinction is made between fact and expert witnesses. Allowances for mileage and subsistence are set by the Administrator of General Services and are available from the Financial Administrator, Clerk's Office at Columbia, or from the divisional offices.

- (1) *Attendance Fee.* A fee as set out at 28 U.S.C. § 1821(b) is allowed for each day (1) in attendance and (2) necessarily occupied in going to and returning from the place of attendance.
- (2) *Travel.* When subsistence is allowed, only one round trip is allowed unless the Court adjourns for a weekend or for some other reason.
  - (a) By car -- round trip at the authorized rate.
  - (b) By common carrier -- actual expenses paid to and from witness's residence by shortest route.

The maximum amount of mileage allowed for a nonresident witness appearing at a deposition is one hundred (100) miles each way (Fed. R. Civ. P. 45(b)(2)).

- (3) *Miscellaneous Allowances.* Toll charges, bridges, tunnels, ferries, taxicab between place of lodging and carrier terminals, and parking fees.

- (4) *Subsistence Allowance.* As authorized by the Administrator of General Services. High-cost area claims require receipts for lodging and, when practicable, other items of subsistence (other than meals) which are in excess of ten dollars (\$10).

Subsistence is allowed for witnesses who live too far to be expected to travel to and from their residence daily while in attendance. When the hearing or trial begins at 9:30 a.m. or earlier, the evening before is allowed. When the witness is released late in the day, the evening of the day the witness testifies is allowed.

- (5) *Corporate Parties.* Stockholders, directors, officers, and employees of a corporate party are taxed unless the witness is the real party in interest.

- (6) *Not taxable:*

- (a) Discovery witness fees and the subpoena service fees;
- (b) Expert witness fees.

- (F) *Fees for Exemplification and Copies of Papers* (necessarily obtained for use in case) (28 U.S.C. § 1920(4)).

- (1) *Taxable:*

- (a) Cost of *one* copy of a document is taxed when introduced into evidence in lieu of original (which is either not available for introduction into evidence or not introduced at request of opposing counsel);
- (b) The fee of an official for certification or proof regarding nonexistence of a document is taxable;
- (c) The cost of securing translation if the document translated is taxable or the translation is necessary for exemplification of matters before the Court;
- (d) Maps and one copy of photographs introduced into evidence;

- (e) The cost of patent file wrappers and prior art patent are taxable at the rate charged by the patent office. *But see* (F)(2)(a) below.
- (2) *Not taxable:*
- (a) Expenses for services of persons checking patent office records to determine what should be ordered are not taxable;
  - (b) Costs of compiling summaries, computations, and statistical comparisons;
  - (c) The salaries and time of persons who prepare copies and exhibits;
  - (d) Copies of exhibits obtained for counsel's own use; and
  - (e) Costs of models are not taxable unless previously authorized by order even though introduced as an exhibit.
- (G) *Docket Fees* (under 28 U.S.C. § 1923 (28 U.S.C. § 1920(5))).
- (1) The prevailing party is entitled to twenty dollars (\$20) on trial or final hearing (includes a default whether entered by Court or Clerk).
  - (2) Two and 50/100 dollars (\$2.50) is allowed for each deposition (in whole or in part) read into evidence.
  - (3) Additional attorney's fees. The Clerk of Court taxes only the fees provided by 28 U.S.C. § 1923. The Court in its discretion allows the attorney's fees authorized by statute or rule and determines what is reasonable. If attorney's fees are allowed, they are included in the taxable costs.
- (H) *Costs Incident to Taking Depositions* (28 U.S.C. § 1920(2)). This includes stenographer's fee, costs of original transcription, and postage.
- (1) Depositions used at trial in lieu of live witness;
  - (2) Discovery depositions introduced as part of the record on motion for summary judgment if the prevailing party in the case prevails on summary judgment;

- (3) Depositions used during trial for impeachment purposes where the party using the deposition for impeachment prevails;
- (4) Depositions not admitted at trial but which were “reasonably necessary” at the time of their taking. *See, e.g., LaVay Corporation v. Dominion Federal Savings & Loan Association*, 830 F.2d 522, 528 (4th Cir. 1987).