

# UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

## GUIDELINES FOR BILLS OF COSTS



*EFFECTIVE SEPTEMBER 10, 2021*

The Clerk's Office provides the *Guidelines* to assist parties in properly filing Bills of Costs with this Court. Litigants are encouraged to review this document thoroughly. They are subject to exception and modification as needed in the interests of justice, and nothing in the *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 the *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

Under 28 U.S.C. § 1920 and Fed.R.Civ.P. 54(d), a prevailing party—the one in whose favor judgment is entered—may request the Clerk of Court to tax allowable costs in a civil action as part of a judgment or decree. The prevailing party begins this procedure by filing a Bill of Costs on form A0 133, available on the Court’s website, <https://www.nynd.uscourts.gov/guidelines-bill-costs> or in the Clerk’s Office.

In this Court, the taxation of costs is entrusted to the Clerk in the first instance, but the Clerk’s discretion to award costs is limited. In the exercise of this discretion, the Clerk must deny costs not permitted by statute, case law, or the most recent version of the Clerk’s *Guidelines for Bills of Costs*, even if the opposing party has failed to file an objection to taxation.

Because the Clerk’s authority to tax costs does not include any equitable authority, the Clerk cannot deny costs based on undue hardship or difficulty to the taxed party. The presiding Judge, however, has discretion in assessing costs. A party may file a motion with the Court requesting that the Judge review the Clerk’s taxation of costs. See Section I.G., below, for additional information.

### B. WHAT TO FILE

**1. *Bill of Costs Form (A0133) and the Required Supporting Documentation using the event **Motion for Bill of Costs*****

Supporting documentation includes materials—such as copies of vouchers, bills, and canceled checks—clearly showing the amount of costs and their purpose.

**2. *Affidavit***

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.

**3. *Certificate of Service***

## C. WHEN TO FILE

### 1. Trial Costs

Within thirty (30) days after entry of final judgment, a party entitled to recover costs shall file with the Court a verified Bill of Costs on form A0133, available on the Court's website, <http://www.nynd.uscourts.gov/>, or in the Clerk's Office. See Local Rules of Practice 54.1

### 2. Appellate Costs

See Fed.R.App.P. 39.

**Note 1:** Non-compliance with these time limits constitutes a waiver of costs.

**Note 2:** Standard rules for calculation of dates under the Federal Rules of Civil Procedure apply. See Fed.R.Civ.P. 6.

## D. WHEN TO FILE AN OBJECTION

The opposing party must file any memorandum in opposition to any costs within fourteen (14) days of service of the Bill of Costs using the event **Response to Motion for Bill of Costs**.

The prevailing party must file any reply to the objection within seven (7) days of service of the opposing memorandum using the event **Reply to Response to Motion for Bill of Costs**.

## E. CASES INVOLVING MULTIPLE PARTIES

In cases involving more than a single plaintiff and 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 the situation, the party should provide an explanation as to why the parties should be treated differently and how.

Where different counsel represent multiple prevailing parties or multiple losing parties, the Clerk assumes they should be treated as separate parties for purposes of taxing costs. In this situation, the party filing the Bill of 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 BILL OF COSTS

After receiving the Bill of Costs and the time has expired for filing any opposition memoranda, the Clerk, or Clerk's designee, will apply the *Guidelines* and tax costs without additional notice or hearing on the issue.

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

Regardless of whether any party files an opposition, 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 Bill of Costs until after the Court rules on the post-judgment motion. Assuming the judgment remains in effect, the Clerk may then tax costs in accordance with these guidelines.

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

Unless otherwise ordered by the District Court, or the Circuit Court of Appeals pursuant to Fed.R.App.P. 8, the filing of an appeal shall not stay the taxation of costs, entry of judgment thereon, or the judgment.

**Note:** When the interests of justice so require or when the issue of taxation requires a factual determination, the Clerk will forward a Bill of 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 Taxation of Costs*

Under Fed.R.Civ.P. 54(d)(1), a party may move for review of the Clerk's taxation of costs by the presiding judge within seven (7) days of taxation. The Judge has discretion to set aside part of the full taxation of costs against a party. Factors that a party may want to bring to the Judge's attention in a motion include the relative financial situation of the parties, ability to pay costs in the future, good faith in bringing the litigation, public importance of the case, reasonableness of particular costs that have been taxed and any other issues of equity and fairness.

### 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 has been satisfied.

**Note:** Costs are not processed through the Clerk's Office.

\* \* \*

## II. TAXABLE COSTS

### A. BACKGROUND

Only those costs specifically mentioned in 28 U.S.C. §§ 1920, 1921, and 1923 are taxable. The Clerk will deny all other requested costs, even if the opposing party has failed to make an objection. Taxation of costs is entrusted to the Clerk in the first instance, but the Clerk's discretion to award costs is limited. In the exercise of this discretion, the Clerk must deny costs not permitted by statute, case law, or the most recent version of the Clerk's *Guidelines for Bills of Costs*, even if the opposing party has failed to file an objection to taxation.

Prevailing parties are responsible for providing the required documentation to support their Bills of Costs, including clearly demonstrating how the documents support each item.

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

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

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

The following fees of the Clerk are taxable.

- a. 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).
- b. Appellate fees pursuant to Fed.R.App.P. 39(e). *See* II.K Costs on Appeal.
- c. Fee charged by out-of-district federal courts for filing notice of taking deposition.

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

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

The following fees of the Marshal are taxable.

- a. Fees under 28 U.S.C. § 1920(1).

**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. Parties need not demonstrate necessity of process server fees, only that the service fees were reasonable.

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

#### 1. *Taxable*

The following fees of the court reporter are taxable and requests for taxation must include the additional documentation and information stated in each category. 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). The following list includes the most commonly taxable court reporter fees.

In addition to the documentation explained below in Documentation Requirements for Transcript Costs, requests for taxation must also include the documentation and information stated in each category.

- a. Transcript procured at the direction of the Court.
  - *Attach the order or minute entry.*
- b. Transcript prepared under 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.
  - *Note the date(s) the transcript was read into the record.*

- f. Transcript used in support of a motion.
  - *Note the title of the motion, the date it was filed, and where in the motion the transcript was used.*
- g. Electronic media depositions used at trial, such as a videotape, DVD, or audio recording.
  - *Note the date(s) the deposition was presented into the record.*
- h. Court reporter fees for attendance and travel for depositions.
- i. Costs of copies of papers obtained as exhibits in the deposition.
- j. Transcript ordered for purposes of appeal.
- k. Cost of copies of transcripts of an opposing party's noticed depositions.
- l. Costs related to failure to attend a noticed deposition (e.g., reporter fee, cancellation fee). *See Fed.R.Civ.P. 30(g).*
- m. "Read and sign" charges related to transcript preparation. *See Fed.R.Civ.P. 30(e).*

**Note 1:** Only the cost of one transcript is taxable if the transcript is otherwise taxable under categories a-m.

**Note 2:** Court reporter fees should be reasonable, and as a guide, the Court takes into account the existing maximum rates for transcript fees for official court reporters as set by the Judicial Conference of the United States and adopted by this Court. The transcript fees for official court reporters are presumed reasonable and listed on the Court's website, <http://www.nynd.uscourts.gov/>.

**Note 3.** Absent an objection from the opposing party, the Clerk will tax the actual rate.

## 2. *Not Taxable*

The following fees of the court reporter are not taxable.

- a. Cost of daily or expedited copy produced solely for the convenience of counsel, absent prior court approval.
- b. Long-distance phone charges for telephonic depositions, or costs incurred in teleconferencing a deposition.
- c. Attorneys' fees and expenses incurred while taking the deposition, including attorney travel expenses.
- d. Court reporter postage or delivery charges for a transcript.



- e. Deposition cancellation fees, except as otherwise permitted under § II.D of the *Guidelines*.

3. *Documentation Requirements for Transcript Costs*

Any invoice or bill should clearly indicate (or include an attached explanation of) the following:

- a. The transcript prepared (or copied),
- b. The number of pages in the transcript,
- c. The per-page rate, and
- d. 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:** See 28 U.S.C. . § 1920(2).

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 following witness fees are permitted under 28 U.S.C. § 1821. Requests for taxation should also include the documentation and information stated in each category.

- a. Statutory attendance fee: Witnesses are entitled to \$40.00 per day of testimony.

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

**Note:** Witness fees for a corporate representative are taxable so long as the witness was appearing as a fact witness and not advising counsel.

- b. Mileage: Calculated at the rate for official government travel in effect at the time the travel took place as set by the General Services Administration. See 28 U.S.C. § 1821(c)(2); <http://www.gsa.gov/mileage>.

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

- c. Subsistence: For “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.” See 28 U.S.C. § 1821(d)(1). The 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. See 28 U.S.C. § 1821(d)(2); <http://www.gsa.gov/perdiem>.
- *Provide the name of the witness, an explanation of why the overnight stay was required, receipts for relevant expenses, and the applicable per diem rate.*
- d. Travel by Common Carrier: Cover the actual expenses of travel based on the means of transportation reasonably utilized and the distance necessarily traveled to and from such and witness's residence by the shortest practical route. A witness is required to utilize a carrier at the most economical rate reasonably available and furnish a receipt or other evidence of actual cost. See 28 U.S.C. § 1821(c)(1).
- *Provide the name of the witness, the date(s) of travel, and the receipt from common carrier.*
- e. Miscellaneous Expenses: Witnesses' toll charges, taxicab fares between places of lodging and carrier terminals, and parking fees may be taxed with proper supporting documentation. See 28 U.S.C. § 1821(c)(3).
- *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 of parties.
- b. Fees paid to any witness, including expert witnesses, beyond the statutory daily attendance fee.
- c. Fees and expenses to witnesses who do not testify at trial, or whose depositions were not used in the motion that terminated the litigation (such as a summary judgment motion).
- d. Fees and expenses paid to deponents when the cost of the deposition is not taxed by the Clerk.
- e. Witness expenses for rental vehicles.

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

Exemplification costs typically include the costs for preparing a demonstrative aid as an exhibit.

Generally, the Clerk will not tax exemplification costs unless the prevailing party received prior permission from the Court, or the parties agree that these costs may be taxed.

**Note:** Attach the order to the receipt or voucher.

**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,” and the following copy costs are taxable at the lesser of the actual cost or the copy fee rates in the Court’s schedule of fees, as established under 28 U.S.C. § 1914 and listed on the Court’s website, <https://www.nynd.uscourts.gov/court-fees-rates>

In addition to the documentation explained below in Documentation Requirements for Copy Costs, requests for taxation must also include the documentation and information stated in each category.

- a. Copies directed by the Court.
- b. Exhibits that are conventionally filed with the Clerk.
  - *Note the name of the exhibit, any associated docket number, and the date of filing.*
- c. Any courtesy copies required to be provided to the presiding judge.
  - *Note the name of the document and the date of filing.*
- d. Documents that cannot be filed in CM/ECF and 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 an opposing party because the party did not have a CM/ECF account.
  - *Note the name of the document(s) and the date(s) of filing.*

- f. Bates stamping related to otherwise taxable copies.
  - *Note the relevant document(s).*
- g. Discovery-related copy costs.
  - *Explain why copies were necessarily obtained for use in the case.*

## 2. *Non-Taxable*

The following copy costs are not taxable.

- a. Copies retained by counsel for counsel's use.
- b. Copies provided to clients.
- c. Costs related to preparing exhibit binders, absent prior court approval, prior agreement between the parties, or a showing of necessity.

## 3. *Documentation Requirements for Copy Costs*

Any invoice or bill should clearly indicate (or include an attached explanation) 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:** Copy cost fees should be reasonable, and as a guide, the Court takes into account the existing photocopying rates on the Court's Fee Schedule, as established under 28 U.S.C. § 1914 and listed on the Court's website, <https://www.nynd.uscourts.gov/court-fees-rates>, in effect at the time the copying costs were incurred. Moreover, the photocopying rates on the Court's Schedule of Fees are presumed reasonable.

**Note 4:** Absent an objection from the opposing party, the Clerk will tax the actual copy rate.

**Note 5:** A party may not recover the cost of additional copies of taxable transcripts, absent a showing that the copies were necessarily obtained.

## I. DOCKET FEES, 28 U.S.C. § 1920(5)

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

- a. \$20.00 on trial or final hearing, including the entry of default judgment.
- b. \$5.00 on discontinuance of a civil action.
- c. \$5.00 on motion for judgment and other proceedings on recognizances.
- d. \$2.50 for each deposition admitted into evidence.

**Note:** Identify the item docketed.

## 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. Document translations are not included in “interpretation” costs.

**Note:** The requesting party has the burden of showing that the interpretation services were necessary at the time the services were received.

## K. COSTS ON APPEAL, FED.R.APP.P. 39

See Fed.R.App.P. 39

**Note:** 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 special type of proceeding in this Court, the following rules on taxation apply.

### 1. *Suits in Admiralty*

Costs incurred in posting a bond may be taxable if deemed a reasonable expense. The prevailing party must have obtained the lowest available rate.

**Note:** Refer to 28 U.S.C. § 1923 for docket fee costs in admiralty.

### 2. *Court of Appeals*

See . § II.K Costs on Appeal

### 3. *United States Supreme Court*

Taxable costs are limited to 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 in the body of the mandate sent to the court below.

### 4. *State Courts*

For removed cases, any costs incurred in state court prior to removal are taxable in federal court, so long as the costs were taxable under state law. An affidavit and supporting documentation of costs incurred while proceeding in state court, along with the applicable state law, must accompany the Bill of Costs.

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## III. NON-TAXABLE COSTS

The following costs are generally not taxable.

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, and scanning charges that are incidental to an attorney's services.*
4. *Paralegal or investigative services.*
5. *Prejudgment and post-judgment interest.*
6. *Northern District of New York Mediation costs.*

7. *Fees for postage, delivery (including overnight and courier services), or notary.*
8. *Long-distance telephone calls and fax charges.*
9. *Damage surveys.*
10. *Accountant's expenses.*
11. *Office overhead.*
12. *Admission fees for attorneys admitted pro hac vice.*
13. *Late fees.*

\* \* \*

#### IV. CM/ECF PROCEDURES RELATED TO BILLS OF COSTS

The following CM/ECF events are related to filing a Bill of Costs. They are listed in their order of use.

**1. *Motion for Bill of Costs***

Use this event to file the Bill of Costs. All documentation, explanatory memoranda, and affidavits should be provided as attachments in the same event.

**2. *Response to Motion for Bill of Costs***

Use this event when a non-taxing party does not agree with the submitted Bill of Costs. An opposition memorandum and any supporting documentation should be provided as attachments in the same event.

**3. *Reply to Response to Motion for Bill of Costs***

Use this event when the taxing party files a response to an objection. A memorandum and any supporting documentation should be provided as attachments in the same event.

**4. *Clerk's Costs Taxed***

The Clerk uses this event to enter a taxation of costs.

**5. *Motion to Review the Clerk's Taxation of Costs***

Use this event to file the motion for review by the presiding judge. A supporting memorandum should be provided as an attachment in the same event.

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## 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 for printed or electronically recorded transcripts necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and the costs of making copies of any materials where the copies are 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. FED.R.CIV.P. 54(D)

(d) Costs; Attorneys' Fees.

(1) Costs Other than Attorneys' 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.



**C. 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.

**D. 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.

## E. LOCAL RULE 54

## Rule 54. COSTS

- (a) Within thirty (30) days after entry of final judgment, a party entitled to recover costs shall submit to the Clerk a verified Bill of Costs on the form provided by the Court.
- (b) Parties should consult the Court's "Guidelines for Bills of Costs" located on the Court's website at <http://www.nynd.uscourts.gov/>.

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