



**UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF NORTH CAROLINA**

**BILL OF COSTS GUIDE
JANUARY 2019**

These guidelines are provided by the clerk's Office to assist parties in properly filing Bills of 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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INTRODUCTION

This guide has been prepared to assist parties in the preparation of bills of cost 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 a bill of costs in the U.S. District Court for the Middle District of North Carolina.

Federal Rule of Civil Procedure 54(d)(1), states that "costs—other than attorney's fees—should be allowed to the prevailing party." The costs that may be taxed are generally outlined at 28 U.S.C. § 1920.

In this District, Local Rule ("LR") 54.1 prescribes the procedure for taxation of costs. Under LR 54.1(a)(1), a bill of costs must be filed within 30 days after either (1) the expiration of time allowed for appeal of a final judgment or decree, or (2) after receipt by the clerk of an order terminating the action on appeal. An adverse party has 14 days to file an objection to the bill of cost, and, within seven days after the filing of any objection, the prevailing party may file a response. LR 54.1(b)(1). Unless otherwise directed by the court, the clerk of court will then tax costs. Within seven days of the filing of the clerk's ruling, any party may file a motion to review the clerk's decision with the presiding judge. LR 54.1(b)(2).

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.

PROCEDURES FOR FILING BILLS OF COST

A. HOW TO FILE A BILL OF COSTS

1. Local Rule 54.1(c)

Local Rule 54.1 outlines the procedure for taxing costs in this District. LR 54.1(a)(1) states that “a prevailing party may request the clerk to tax allowable costs in a civil action as a part of a judgment or decree by filing a bill of costs.” The approved form is AO 133, which is available in a PDF fillable format at <http://www.uscourts.gov/sites/default/files/ao133.pdf>.

2. Verified bill of costs

Under 28 U.S.C. § 1924, all bills of cost must be verified. Attached to the bill of costs should be copies of any vouchers, bills, canceled checks, or other documentation (i.e. explanatory memorandum or affidavit) showing the amount of the costs and/or their purpose.

Generally, an invoice is sufficient documentation of a cost. It is not necessary to submit multiple forms of documentation for a single cost.

- ❖ **Important:** The clerk will generally not tax costs unless sufficient documentation is provided, including costs that were not objected to by the opposing party.

3. Filing the bill of costs

All parties who are filing electronically must file the bill of costs in CM/ECF, using the “Bill of Costs” event. All supporting documentation should be filed as attachments in that same event. More information on the [CM/ECF Procedures related to Bills of Cost](#) is provided below.

- ❖ **Important:** Redact all personal identifiers, such as financial account numbers and tax identification numbers, from all documentation submitted in relation to a bill of costs in accordance with Fed. R. Civ. P. 5.2.

B. WHEN TO FILE A BILL OF COSTS

1. District Court costs

Under LR 54.1(a)(1), a bill of costs must be filed within 30 days of either (1) the expiration of time allowed for appeal of a final judgment or decree, or (2) after receipt by the clerk of an order terminating the action on appeal.

2. Effect of an appeal

If an appeal has been filed, the bill of cost should be filed after the order terminating the action on appeal. The clerk of court will promptly enter any costs taxed in the mandate of the Court of Appeals under Fed. R. App. P. 39(d). Appeal costs taxable in the district court under Fed. R. App. P. 39(e) will be taxed in accordance with this rule.

C. FILING AN OBJECTION TO THE BILL OF COSTS

Within 14 days of the filing of the bill of cost, an adverse party may file an objection. LR 54.1(b)(1). Such objection should be filed in the form of a motion for disallowance and accompanied by a supporting brief. Within seven days of the filing of any objection, the prevailing party may file a response and brief. LR 54.1(b)(1).

D. ONLY PREVAILING PARTIES ARE ENTITLED TO TAX COSTS

Under Fed. R. Civ. P. 54(d), costs “should be allowed to the prevailing party.” Generally, a party is considered a “prevailing party” when a judgment has been entered in its favor. There are circumstances, however, when it is not clear whether a party prevailed for purposes of taxing costs. If it is unclear whether the party who filed a bill of costs is a “prevailing party,” an adverse party can object to the bill of cost by filing a motion for disallowance with the supporting brief, and the motion for disallowance will be referred to the court for consideration.

E. CASES INVOLVING MULTIPLE PARTIES

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

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

Where multiple prevailing parties or multiple losing parties are represented by different counsel, it is assumed 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.

TAXABLE COSTS

Under 28 U.S.C. § 1920, the clerk may tax the following as costs:

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

1. Taxable fees of the clerk

Taxable fees of the clerk most commonly refers to the initial filing fee and/or appeal filing fee paid to the clerk of court. Any other fee paid to the clerk of court for the Middle District of North Carolina may be taxed.

2. Documentation

There is no need to submit receipts for filing fees paid to the clerk of this court. For fees other than filing fees that were paid to the clerk of court, provide receipts for the cost or a reference to the applicable docket entry in the case.

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

Fees of the marshal may be taxed. Reasonable costs for service by private process servers are not taxable.

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

1. Trial transcripts necessarily obtained for use in the case are taxable by the clerk. The filing party must provide an explanation as to why the transcript was reasonably necessary

2. Deposition transcripts (printed or electronically recorded) are taxable by the clerk if the transcript was reasonably necessary to the party's case in light of the particular situation at the time of its taking. The clerk may tax deposition transcripts when:

- i. The deponent testified at trial;
- ii. The deposition was admitted into evidence; or
- iii. The deposition was submitted in connection with an event that terminated the litigation (e.g., summary judgment).

If the deposition does not meet one of the categories above, the filing party must provide an explanation as to why the transcript was reasonably necessary at the time of its taking.

❖ **Important:** The clerk will generally *not* tax the costs of both an electronically recorded deposition transcript and the printed deposition transcript. In order to tax the costs for an electronically recorded and printed deposition transcript, the party taxing the cost must explain why the expenditures of both were necessary for use in the case.

3. If the deposition transcript cost is taxable, the following fees of the court reporter may be taxed:
 - i. Court reporter attendance.
 - ii. Cost of the original transcript and one copy of the transcript, providing that the cost of the extra copy is built into the price (not separate charge).
 - iii. Costs of copies of papers obtained as exhibits in the deposition.
 - iv. Electronic media depositions used at trial, such as DVD, video file or audio recording.
4. The following fees of the court reporter are *not* taxable by the clerk:
 - i. Cost of daily copy unless prior court approval was obtained.
 - ii. Attorneys' fees and expenses incurred while taking the deposition.
 - iii. Court reporter postage or delivery charges for a transcript.
 - iv. Deposition cancellation fees.
 - v. ASCII files for copies of deposition transcripts.
5. Documentation to be provided:
 - i. Transcript and/or deposition invoices should be submitted, indicating:
 - a. The case name or number;
 - b. The party being deposed;
 - c. The date of the deposition; and
 - d. An itemized bill of the court reporter's fee.
 - ii. An explanatory memorandum or affidavit should be provided to explain how each transcript was used or why it was necessary

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

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

E. WITNESS FEES, 28 U.S.C. § 1920(3)

The allowable witness fees are set forth in 28 U.S.C. § 1821.

1. Taxable witness fees

- i. Statutory attendance fee, 28 U.S.C. § 1821(b).
 - a. The attendance fee is \$40.00 per day. 28 U.S.C. § 1821(b).
 - b. The attendance fee includes the time the witness was “necessarily occupied in going to and returning from the place of attendance at the beginning and end of such attendance.” 28 U.S.C. § 1821(b).
- ii. Mileage, 28 U.S.C. § 1821(c)(2).
 - a. Mileage must be calculated at the rate for official government travel in effect at the time the travel took place. 28 U.S.C. § 1821(c)(2). Visit www.gsa.gov for the current and historical official privately owned vehicle mileage reimbursement rates.
 - b. Provide the date(s) of travel and the applicable mileage rate with the bill of costs.
- iii. Subsistence, 28 U.S.C. § 1821(d)(1).
 - a. 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).
 - b. 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). Visit www.gsa.gov for the current and historical subsistence per diem allowances by geographical area.
- iv. Common carrier, 28 U.S.C. § 1821(c)(1).

The witness must use a common carrier at the most economical rate reasonably available, and the actual expenses must be substantiated by a receipt or other evidence of the cost.

- v. 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. 28 U.S.C. § 1821(c)(3).

2. Non-taxable witness fees

- i. Fees and expenses of parties and attorneys.
- ii. Fees paid to any witness, including experts, beyond the statutory daily attendance fee.
- iii. Fees and expenses paid to witnesses who do not appear at trial.

iv. Fees and expenses paid to deponents when the cost of the deposition is not taxed by the clerk.

❖ **Important: If fees for a witness who appeared at trial but did not testify are claimed, the party taxing the cost must explain why the witness was believed to be necessary.**

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

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

G. 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. In this District, the clerk will tax the costs of copies that were:

- i. Exhibits that were conventionally filed with the clerk;
- ii. Courtesy copies for the court provided under LR 5.1;
- iii. Conventionally filed documents that were required to be served on the opposing party; or
- iv. 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.

2. The clerk will *not* tax costs of copies that were:

- i. Obtained for discovery purposes;
- ii. Retained by counsel for counsel's use; or
- iii. Provided to clients.

3. Documentation

- i. If copies are made by an outside service, a copy of the invoice should be submitted.
- ii. The costs of in-house copying should be documented by billing records or other documentation, which includes a description of the nature of the copies.
- iii. 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; and
 - e. The total cost.

- ❖ Important: The clerk will not tax copy costs if it cannot be determined whether all or a specific number of copies claimed are taxable.

H. DOCKET FEES, 28 U.S.C. § 1920(5)

Under 28 U.S.C. § 1923(a), certain attorney and proctor fees may be taxed, including:

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; and
4. \$2.50 for each deposition admitted into evidence.

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

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

1. Court-appointed experts and interpreter services
 - i. Under 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.
 - ii. When the court appoints an expert or interpreter, the court may direct one or more of the parties to compensate the expert or interpreter and order the compensation paid to be taxed as costs, or the court may direct that the taxed costs be used to reimburse the Administrative Office of the United States Courts for providing such special interpretation services.
 - iii. Fees for interpreters are limited to the cost of oral translation and do not include the costs of document translation.
2. Failure to obtain court approval

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

J. COSTS ON APPEAL, FED. R. APP. P. 39(e)

Appeal costs that are taxable in the district court for the benefit of the party entitled to costs under Fed. R. App. P. 39(e) are:

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.

NON-TAXABLE COSTS

The following costs are generally not allowed by the clerk:

1. Travel and expenses of counsel, including investigation expenses;
2. Fees for computerized legal research;
3. Fees for collecting documents;
4. Secretarial services, including word processing, typing charges, copy charges, and scanning charges that are incidental to an attorney's services;
5. Paralegal and/or investigative services;
6. Document collection services;
7. Prejudgment and post-judgment interest;
8. Mediation costs;
9. Fees for postage, delivery (including delivery services such as Federal Express), and notary;
10. Long-distance telephone calls and fax charges;
11. Damage surveys;
12. Late fees
13. Accountant's expenses;
14. Office overhead; and
15. Translation services.

PROCEDURE AFTER COSTS ARE TAXED BY THE CLERK

1. Motion for review to the court
 - i. LR 54.1(b)(2) states: "A party may request review of the clerk's ruling by filing a motion within seven days after the action of the clerk."
 - ii. The court's review of the clerk's action will be made on the existing record unless otherwise ordered.

iii. The motion should be accompanied by a brief.

2. Payment for Costs

- i. 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.
- ii. A party must file a satisfaction of judgment once the cost judgment has been satisfied. Costs are *not* processed through the clerk's Office.

CM/ECF PROCEDURES RELATED TO BILLS OF COST

The following is the list of CM/ECF events, in order of their use, related to filing a Bill of Costs.

1. Bill of Costs
Use form AO 133. All documentation, explanatory memoranda, or affidavits may be provided as attachments in the same event.
2. Objections to Bill of Costs
Use this event when a non-taxing party does not agree with the submitted Bill of Costs.
3. Response to Objection to Bill of Costs
Use this event to file a response to an objection to bill of costs.
4. Costs Taxed/Bill of Costs
 - i. When there are objections to costs or a reduction of a cost, the clerk files a Taxation of Costs, which explains what costs were allowable.
 - ii. In instances where no objections are filed and the Bill of Costs appears proper to the clerk, the clerk will approve the costs by signing the bottom of the form AO 133.
5. Motion for Review of the Clerk's Taxation of Costs
Use the motion for Review of the Clerk's Taxation of Cost event when filing a motion to review the clerk's decision.