

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
VIRGINIA**

**TAXATION OF COSTS
GUIDELINES**

The following statement does not purport to be a unanimous practice of this court. It is for the judge who rendered the judgment to decide whether the costs were “necessarily incurred in the case.” The court will not determine the party entitled to costs in actions terminated by settlement; parties must reach agreement of taxation of costs, or bear own costs. The bill of costs form (AO 133) may be obtained from the Clerk’s Office or from the court’s website at www.vaed.uscourts.gov. A bill of costs must be filed within the time prescribed by Local Rule 54(D). Counsel is requested to furnish a statement that a good-faith effort to narrow the areas of disagreement has been made pursuant to Local Rule 7(E).

Your attention is directed to 28 USC 1924 which reads as follows: “Verification of bill of costs. Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed.” Also see Rule 54(d) FRCivP.

Objections to a bill of costs must be filed within the time prescribed by Local Rule 54(D). In the absence of objection, any item listed may be taxed in the discretion of the Clerk. On the date set for taxation, neither the parties nor their attorneys shall appear as costs will be taxed on the record. Within fourteen days of the date set for taxation, or as soon thereafter as practicable, the Clerk shall proceed to tax the costs.

The following are specific examples of taxable and non-taxable costs:

1. **Fees of the Clerk** [28 USC 1914, 1917, 1920(1); FRAP 39(e)].

A. Taxable -

1. Filing fee of complaint. Refer to the Clerk’s Office Fee Schedule at <http://www.vaed.uscourts.gov/formsandfees/schedule.htm> for current filing fees.
2. Filing fee in case instituted by the United States. [28 USC 2412(a)(2)].
3. Filing fee of notice of appeal (\$5.00). Docket fee (~~\$~~450.00).
4. Filing fee in state court in a removal case.
5. Fee charged by out-of-district court for filing notice to take *de bene esse* deposition.

B. Not taxable –

1. Miscellaneous fees except 5 above.

2. **Service Fees [28 USC 1921, 1920(1)].**

A. Taxable -

1. Service fees of the U.S. Marshal.

B. Not taxable -

1. Service fees for depositions which are not allowed.
2. Private process server fees.

3. **Marshal's Fees**

A. Taxable -

1. Expenses for caring for property attached, etc. (actual amount incurred not necessarily the amount of required deposit).
2. Sales commission.
3. Insurance premium for indemnity of Marshal required for maritime attachments.
4. Publication fees.
5. Service fees.

B. Not taxable -

4. **Fees of court reporter for all or any part of transcript necessarily obtained for use in the case [28 USC 1920(2), 1915(f); FRAP 39(e)].**

A. Taxable -

1. The cost of the original of a transcript of a court proceeding, either the original or one copy:
 - a. When prepared pursuant to stipulation of parties with agreement to tax as costs.
 - b. When used on appeal.
2. Court transcripts are taxed at the standard rate unless there is an advance determination by the court or an agreement of the parties to tax at a higher rate (daily or real-time transcripts).

B. Not taxable -

1. Costs of copies.

2. Costs of transcript prepared solely for convenience of counsel.
3. Computer diskettes.

5. **Fees and disbursements for printing [28 USC 1920(3); FRAP 39(c); Fourth Circuit Local Rule 39].**

Not usually involved in trial court proceedings. Taxed by the U.S. Court of Appeals and allowance added to costs recoverable in the trial court. [28 USC 1923(c) superseded by FRAP 39(c)].

6. **Fees of witnesses (itemized on reverse of AO 133 Bill of Costs Form) [28 USC 1821, 1920(6); Local Rule 30(E)]**

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.

A. Taxable -

1. Attendance fee is allowed for each day in attendance and each day necessarily occupied in going to and returning from the place of attendance. Necessary trial witnesses' fees are taxed even though they did not testify.
2. Travel. When subsistence is allowed, only one round trip is allowed unless the court adjourns for a weekend or for some other appropriate reason.
 - a. By car - round trip mileage allowed at the GSA mileage rate.
 - b. Common carrier - actual expenses paid to and from witnesses' residence by shortest route within subpoena jurisdiction.
 - c. "Costs of travel" for witnesses beyond subpoena jurisdiction is limited to 100 miles from place of trial or hearing. [Local Rule 30(E)].
3. Miscellaneous allowances. Toll charges, bridges, tunnels, ferries, taxicab between places of lodging and carrier terminals, and parking fees within subpoena jurisdiction.
4. Subsistence. Reasonable subsistence is allowed for witnesses who live too far to be expected to travel to and from their residence daily while in attendance. (Itemized documentation required.) Per diem rates are set by the General Services Administration and approved by the Director of the Administrative Office of the United States Courts. [A.O. Memo dated 12/26/96]. For actual rates, contact the Clerk's Office.
5. Corporate parties. Witness fees for officers, directors, stockholders and employees of a corporation are taxable if the officers are not defendants and recovery is not sought against the officers individually.

Per diem and mileage rates can be obtained at www.gsa.gov. Current Witness fee obtainable from the Clerk's Office Fee Schedule at <http://www.vaed.uscourts.gov/formsandfees/schedule.htm>

B. Not taxable -

1. Discovery witness fees are not taxed, except when the deposition is allowed.
2. Expert witness fees above the standard witness rate.

7. **Fees for exemplification and copies of papers necessarily obtained for use in case [28 USC 1920(4)].**

A. Taxable -

1. The reasonable cost of copies of papers necessarily obtained from third-party records custodians is taxable. The reasonable cost of documentary exhibits admitted into evidence at hearing or trial is also taxable, including the provision of additional copies for the Court and opposing parties.
2. The fee of an official for certification or proof re: non-existence of a document.
3. The cost of securing translation if the document translated is taxable or the translation is necessary for exemplification of matters before the court.
4. The reasonable costs of maps, charts and photographs admitted into evidence.
5. The cost of patent file wrappers and prior art patent are taxable at the rate charged by the patent office.

B. Not taxable -

1. Expenses for services of persons checking patent office records to determine what should be ordered.
2. Costs of compiling summaries, computations, and statistical comparisons.
3. The salaries and time of persons who prepare copies and exhibits.
4. The cost of copies submitted in lieu of originals because of the convenience of offering counsel or his or her client.
5. Costs of models, unless previously authorized by order, even though admitted as an exhibit.

8. **Docket fees under 28 USC 1923 [28 USC 1920(5)].**

A. Taxable -

1. Prevailing party is entitled to \$20.00 on trial or final hearing (including a default whether entered by court or clerk).
2. \$2.50 is allowed for each deposition admitted into evidence.

B. Not taxable -

9. **Costs incident to taking depositions [28 USC 1920(2)]**

This includes reasonable (1) stenographer's fees, (2) costs of original transcription or copy of transcription, and (3) reasonable delivery fees when accompanied by supporting itemized documentation.)

A. Taxable -

1. Depositions reasonably necessary for preparation for trial or admitted into evidence. [Jop v. City of Hampton, 163 FRD 486, EDVA __ 1995].

B. Not taxable -

1. The costs of a videotaped deposition, unless an authorizing order or stipulation provides for taxing of these costs.
2. Computer diskettes.

10. **Costs as directed on mandate of Court of Appeals [FRAP 39; Fourth Circuit Local Rule 39(c)]**

11. **Other costs [28 USC 1920(6), 1828; FRCivP 43(f); Local Rules 54(C); LAR (e)(11)].**

A. Taxable -

1. Court-appointed experts.
2. Compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under 28 USC 1828.
3. Appraiser's fee. [LAR (e)(11)].
4. Bond premiums. [Local Rule 54(C)].

B. Not taxable -