

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

**Bill of Costs Guide
Taxation of Costs by the Clerk**



This guide was prepared by the Office of the Clerk of Court to assist parties in properly filing Bills of Costs and associated documentation with this Court. These guidelines do not necessarily represent the views of any Judge of this Court. This guide is not legal advice or legal authority and should not be cited as authority in any filing in this Court. Nothing in this guide will create or add to any rights, claims, or causes of action. This guide is subject to exception and modification and is to be used in conjunction with the Federal Rules of Civil 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 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 Eastern District of Washington.

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.

Any party seeking costs allowed under 28 U.S.C. § 1920 must file a bill of costs in accordance with the local rules of this Court within 14 days after the entry of judgment. The procedure for taxing costs in civil cases in the United States District Court for the Eastern District of Washington is set forth in [Local Rule 54.1](#).

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(a)

Local Rule ("LR") 54.1(a) outlines the procedure for taxing costs in this District. LR 54.1(a) states that "The party in whose favor a judgment is rendered, and who is entitled to claim his/her costs, shall within 14 days after the date of entry of judgment, serve on the attorney for the adverse party and file with the Clerk of the Court a verified bill of costs on a form which will be furnished by the Clerk of the Court upon request." The Clerk's form is the AO 133, which is available on the Court's website on the [forms page](#).

Attached to the bill of costs should be copies of any vouchers, invoices, canceled checks, or other documentation (i.e. explanatory memorandum or affidavit) showing the amount of the costs and/or their purpose.

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.

2. Statement of Notice, LR 54.1(a)

Attached to the bill of costs shall be a statement of notice to the adverse party specifying the date when the costs will be taxed, which shall not be less than 14 days from the date of service of the notice.

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 CM/ECF-related procedures is provided in the last section of this guide.

- ❖ 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

A party seeking costs must file an AO Form 133, Bill of Costs, and supporting documentation within 14 days after the entry of judgment. Any objections to the bill of costs shall be made in writing on or before the date specified in the notice.

The Clerk will tax costs even if the case is appealed unless, upon motion of the parties or the Court's own motion, the Court grants a stay pending appeal. Post-trial motions do not extend the time within which a party must file a bill of costs absent a Court-issued stay.

The Clerk will make a determination based on the bill of costs, the written arguments made by the parties (if any), and the documentation submitted to support the claimed costs. The Clerk shall allow only such items as are properly chargeable as costs. The Clerk may require and consider further affidavits as necessary to determine allowable costs.

The taxation of costs made by the Clerk shall be final unless modified on appeal.

C. 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. If a judgment is silent as to costs, costs will be allowed only if no doubt exists as to who is the prevailing party.

D. 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 they should be treated differently.

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.

E. WITHDRAWING A BILL OF COSTS

If the parties reach an agreement on the costs to be taxed after the prevailing party has already filed a bill of costs, the bill of costs may be withdrawn by the filing party at any time before the costs are taxed by the Clerk. To withdraw a bill of costs, file in ECF a letter to the Clerk stating that the bill of costs is withdrawn. The letter should identify the docket number of the bill of costs being withdrawn.

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 for the complaint or petition, or the removal of a case to the Eastern District of Washington. Other fees paid to the Clerk may also 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.

3. Not taxable

Attorney admission fees and fees for applications to proceed *pro hac vice*.

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

1. Taxable fees of the Marshal

Taxable fees of the marshal most commonly refer to fees for service of summons and subpoena. Fees for summons and subpoena may include:

- a. Service fees for summons and other initial process (whether served by the U.S. Marshal or other persons authorized by Fed. R. Civ. P. 4);
- b. Service fees for trial subpoenas for witnesses who testified at trial;
- c. Service fees for deposition subpoenas if the deposition transcript is taxed as costs; and
- d. Cost of postage if service is executed by mail.

2. Not taxable

- a. Service fees for discovery subpoenas; and
- b. Service fees for trial subpoenas if the witness did not testify.

3. Documentation to be provided

- a. When a private process server is used, a copy of the invoice should be attached. Include an explanation of who was served; what documents they were served with; for witnesses, the date of the trial or depositions; and for trial witnesses, whether they actually testified.
- b. If extra costs were incurred for expedited or special service, an explanation of why they were necessary should be included.

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

1. Trial or hearing transcripts are taxable by the Clerk if the transcript was:

- a. Procured at the direction of the Court; or
- b. Prepared pursuant to stipulation of parties to tax as costs.

2. Deposition transcripts (printed or electronically recorded) are taxable by the Clerk only when the deposition is used at trial or hearing for substantive, or in the Court's discretion, for impeachment purposes. Only the cost of the original deposition shall be taxed. SEE: LR 54.1 (f)(2). The Clerk may tax deposition transcripts when:

- a. The deponent testified at trial;
- b. The deposition was admitted into evidence; or
- c. 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:
 - a. Court reporter fees for attendance at and travel for depositions;
 - b. Cost of the original transcript and one copy for a transcript if the prevailing party requested the deposition and incurred the stenographic costs; and
 - c. Costs of copies of papers obtained as exhibits in the deposition.
4. The following fees of the court reporter are not taxable by the Clerk:
 - a. Cost of expedited copy produced solely for the convenience of counsel, unless prior court approval was obtained;
 - b. Transcript used primarily for trial preparation or discovery;
 - c. Attorneys' fees and expenses incurred while taking the deposition;
 - d. Long distance phone charges for telephonic deposition; and
 - e. Court reporter postage or delivery charges for a transcript.

5. Documentation to be provided:

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.

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)

The fees allowed under 28 U.S.C. § 1920(3) are not usually involved in trial court proceedings. 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.

Fees of witness who testify shall be allowed, whether their attendance was procured by subpoena or was voluntary. Fees to witnesses who attend, but do not testify shall be allowed only upon order of the Court. LR 54.1(f)(1).

1. Taxable witness fees

a. Statutory attendance fee, 28 U.S.C. § 1821(b).

- i. The attendance fee is \$40.00 per day.
- ii. 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 or at any time during such attendance.” 28 U.S.C. § 1821(b).

b. Mileage, 28 U.S.C. § 1821(c)(2).

- i. Provide the date(s) of travel and the applicable mileage rate with the bill of costs.
- ii. 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 the U.S. General Service Administration’s [website](#) for the current and historical official privately owned vehicle mileage reimbursement rates.

c. Subsistence, 28 U.S.C. § 1821(d)(1).

- i. 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).
- ii. 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 U.S. General Service Administration's [website](#) for the current and historical subsistence per diem allowances by geographical area.

- 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 the cost.
- e. Other travel expenses. 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.

2. Non-taxable witness fees

- a. Fees and expenses of witnesses who are themselves parties in the case;
- b. Fees paid to any witness, including experts, beyond the statutory daily attendance fee;
- c. Fees and expenses paid to witnesses who do not testify at trial;
- d. Fees and expenses paid to deponents when the cost of the deposition is not taxed by the Clerk;
- e. Witness expenses for rental vehicle; and
- f. Charter airfare for witnesses, including expert witnesses, unless agreed to by the parties and/or specifically allowed by the Court.

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

Exemplification costs typically include the costs for producing a demonstrative aid as an exhibit at trial. Exemplification costs may also include those charged by a third-party technology vendor to produce demonstrative evidence used at trial.

The Clerk will not tax exemplification costs unless the prevailing party received prior permission from the Court that these costs may be taxed.

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:
 - a. The courtesy copies required to be provided to the presiding judge under the Court's Local Rules and CM/ECF procedures;

- b. Conventionally filed documents that were required to be served on the opposing party;
 - c. 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;
 - d. Documents and exhibits entered into evidence at trial; and
 - e. Documents used as evidence to support a successful dispositive motion.
2. The Clerk will not tax costs of copies that were:
- a. Obtained for discovery purposes;
 - b. Retained by counsel for counsel's use; or
 - c. Provided to clients.
3. Documentation
- a. If copies are made by an outside service, a copy of the invoice should be submitted.
 - b. The costs of in-house copying may be documented by billing records or other documentation.
 - c. Any invoice or bill submitted should indicate or be attached to a document explaining:
 - i. The document copied, including its docket number;
 - ii. The number of pages in the document;
 - iii. The number of copies made;
 - iv. The per page rate; and
 - v. 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 action;
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 ECF 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

a. 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 services under [28 U.S.C. §] 1828” may be taxed.

b. 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.

2. Not taxable

Interpretation services that were procured without prior Court approval.

J. COSTS SHOWN ON THE MANDATE COURT OF APPEALS, FED. R. APP. P. 39(e)

The fees include printing done for an appeal (see Section D above), and any other costs inserted in the mandate under Fed. R. App. P. 39(d).

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. Secretarial services, including word processing, typing charges, copy charges, and scanning charges that are incidental to an attorney's services;
4. Paralegal and/or investigative services;
5. Prejudgment and post-judgment interest;
6. Mediation costs;
7. Fees for postage, delivery (including delivery services such as Federal Express), and notary;
8. Long-distance telephone calls and fax charges;
9. Damage surveys;
10. Accountant's expenses;
11. Office overhead; and
12. Translation services.

PROCEDURE AFTER COSTS ARE TAXED BY THE CLERK

1. Appeal from Decision of Clerk

LR 54.1 (e) states:

- a. An appeal from the decision of the Clerk in the taxation of costs may be taken to the Judge, by either party, by filing a motion to retax which shall be filed and served within 7 days after the costs have been taxed by the Clerk and which shall specify the rulings of the Clerk to which the party objects. The motion to retax shall be noted for hearing pursuant to LR 7.1(h)(1).

2. Payment for Costs

- a. Once the Court has ruled on a motion for review or after the time for seeking review has expired, costs should be paid directly to the prevailing party. Costs are not processed through the Clerk's Office.

CM/ECF PROCEDURES RELATED TO BILLS OF COST

The following is a list of CM/ECF events, in order of their use, related to filing a bill of costs. If you have any questions when submitting a bill of costs, please call the ECF Help Desk at 1-866-236-5100.

1. Bill of Costs – Proposed
Use this event to file your completed AO 133. Accompanying memoranda and exhibits should be submitted as attachments.
2. Objection
Use this event when a non-taxing party does not agree with the submitted bill of costs. See LR 54.1(c).
3. Response – Non-Motion
Use this event to file a response to an objection to bill of costs.
4. Letter
Use this event when filing a letter to notify the Clerk that the parties have reached an agreement as to costs or to withdraw a bill of costs.
5. Motion (Miscellaneous Relief)
Use this event when filing an appeal from decision of the Clerk. See LR 54.1(e).