BILL OF COSTS GUIDE

This guide is provided by the Clerk's Office to assist parties in properly filing a Bill of Costs with the Middle District of Georgia. Parties are encouraged to review it thoroughly. However, the guide is NOT to be considered legal advice, nor should it be cited as legal authority, and is subject to exception and modification. Please use the guide as a guide in conjunction with the federal rules and the local rules of this court.

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I. INTRODUCTION

Pursuant to Rule 54(d) of the Federal Rules of Civil Procedure, costs incurred by the prevailing party may be assessed against the non-prevailing party. Not all costs incurred during litigation can be reimbursed, however. The types of costs that may be taxed against the non-prevailing party are identified in 28 U.S.C. § 1920. The district court may only award the costs authorized by this statute. ***See Crawford Fitting Co. v. JT Gibbons, Inc.***, 482 U.S. 437, 442, 107 S. Ct. 2494, 2497-98, 96 L.Ed.2d 385 (1987). Section 1920, however, does not create an absolute right to recover those costs: For example, failure to provide adequate detail or supporting documentation of the costs incurred can be grounds for denial of costs. ***See id***; M.D. Ga. Loc. R. 54.2.1.

II. PROCEDURE

A prevailing party seeking to tax costs must file a bill of costs on the Form AO 133, available on this Court's website. ***See*** M.D. Ga. Loc. R. 54.2. As discussed below, the prevailing party is required to attach documentation to support all claims made. ***Id.*** The prevailing party should also file a memorandum to explain the purpose or necessity of certain claimed costs.

The request for taxation of costs by the prevailing part must be made within 30 days after entry of judgment. M.D. Ga. Loc. R 54.2.2. A party may file objections to any item within 21 days after service of the Bill of Cost. ***Id.***

III. TAXABLE COSTS & DOCUMENTATION SUGGESTED

Pursuant to 28 U.S.C. § 1920, the clerk may tax the following as costs: (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 28 U.S.C. § 1923; and (6) compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under 28 U.S.C. § 1828.

The general rule followed by this Court is that the prevailing party bears the initial burden of proving that the expenses it seeks to have taxed as costs are allowable under section 1920. Documentation should include itemized copies of receipts, invoices, orders, and/or stipulations of the parties. Failure to attach sufficient documentation to support a claimed cost may result in the disallowance of that particular item of cost.

It is also recommended that any vendor invoices be itemized. Amounts shown on non-itemized invoices may be disallowed entirely, even if part of the cost is recoverable, if it is unclear, from the prevailing party's submissions, whether the amount invoiced includes non-taxable expenses. A party who intends to recover its costs is therefore encouraged to require its vendors to provide itemized invoices at the time the costs are incurred so that the clerk and/or the court can distinguish between the amounts that are recoverable and those that are not.

The types of documentation suggested for each category of costs are listed below. This list is provided only as an aid for litigants and/or counsel in the preparation of a bill of costs. This is not an exclusive or all-encompassing list of required items. Taxation of costs is decided on a case-by-case basis. The court is thus not bound to award or deny costs by any of the explanations or suggestions provided herein.

1. Fees of the Clerk. Section 1920(1).

The filing fees paid to the Clerk either for an original filing or for removal are recoverable.

A party seeking to recover the costs of such fees should provide documentation that identifies both the court in which the cost was paid and the nature of the fee charged, i.e., whether it was a filing or removal fee. *Pro hac vice* fees and fees charged for certificates of good standing are not taxable costs.

2. Fees of the Marshal. Section 1920(1).

Marshal Fees are recoverable for service of summons and other process. The costs of private process servers are also taxable under section 1920(1), but only to the extent that the costs do not exceed the amounts charged by the U.S. Marshal Service for the same work. ***EEOC v. W&O, Inc.***, 213 F.3d 600, 623-24 (11th Cir. 2000). The U.S. Marshal presently charges $65 per hour for each item served, "plus travel costs and any other out-of-pocket expenses." 28 C.F.R. § 0.114(a)(3), *amended by* 78 Fed.Reg. 59,817, 59,819 (Sept. 30, 2013); ***see also*** 28 U.S.C. § 1921(a)(1); http://www.gsa.gov/mileage.

A party seeking to recover the cost of service must submit copies of the returned summons or subpoena. The prevailing party should also provide detailed information including the server's hourly rate and the costs associated with serving *each* summons or subpoena (*i.e.*, where service was accomplished, the time involved, and the mileage). If such information is not provided, part or all of the costs incurred may be disallowed. The submission of general invoices or billing statements showing only a flat rate charged by a third party vendor is thus not recommended.

3. <u>Fees for printed or electronically recorded transcripts necessarily obtained for use in the case</u>. Section 1920(2).

The cost of obtaining any printed or electronically recorded transcript is taxable if it was "necessarily obtained for use in the case." 28 U.S.C. § 1920(2). As to deposition transcripts, the test of recovery is whether the taking of the deposition was reasonably necessary in light of the particular situation existing at the time of taking. ***See Watson v. Lake County***, 492 F. App'x 991, 996-97 (11th Cir. Oct. 25, 2012) (citing ***United States E.E.O.C.***, 213 F.3d at 620)). Deposition expenses can thus be taxed even if the deposition was not introduced into evidence. ***Allen v. United States Steel Corp***., 665 F.2d 689, 697 (5th Cir. 1982). However, transcript costs incurred for "the prevailing parties' convenience, such as to aid in thorough preparation or for the purposes of investigation only" are not recoverable. ***Watson***, 492 F. App'x at 996 (citing ***United States E.E.O.C.***, 213 F.3d at 620).

Typically, the costs of a video deposition will be taxed only when a party notices a deposition to be recorded by videotape (or by both stenographic means and videotape), and the opposing party raises no objection at that time to the method of recording. ***See Morrison v. Reichhold Chems., Inc***., 97 F.3d 460, 464–65 & n.5 (11th Cir. 1996) (per curiam). The use of Real Time services and transcription during a court proceeding or trial is almost always deemed a convenience cost and, unless justified as necessary, such costs may be disallowed. It is also likely that other convenience costs such as those for rough drafts, condensed transcripts, expedited transcripts, e-transcripts, litigation support disks, summaries, and expedited shipping or delivery will be disallowed.

A prevailing party seeking to recover deposition or other transcript costs must submit court reporter invoices for *each* transcript or deposition and should explain how each transcript was used and why it was reasonably necessary for use in a case. Invoices should also indicate the case name, the party being deposed, and an itemization of the costs of each transcript or deposition. If the invoice is not itemized and it is unclear, from the prevailing party's submissions, whether the amount invoiced includes unrecoverable convenience items, the entire amount invoiced may be disallowed. If the parties have agreed that a specific cost associated with obtaining a transcript can be recovered, a copy of the stipulation should be provided.

4. <u>Witness Fees</u>. Section 1920(3).

Fee and disbursements associated with the appearance of witnesses in the case are recoverable. "A witness who appears before a federal court 'or before any person authorized to take his deposition pursuant to any rule or order of a court of the United States is entitled to fees and allowances, including an attendance fee of $40 per day for each day's attendance.'" ***Morrison***, 97 F.3d at 463 (***quoting*** 28 U.S.C. § 1821(a)(1) &

(b)). Witnesses may also be paid a "travel allowance equal to the mileage allowance … for official travel of employees of the Federal Government," 28 U.S.C. § 1821(c)(2), and a "subsistence allowance … in an amount not to exceed the maximum per diem allowance prescribed by the Administrator of General Services … for official travel in the area of attendance by employees of the Federal Government." 28 U.S.C. § 1821(d)(2).

Federal courts may tax expert witness fees only when the expert witness is court appointed. ***See e.g., Crawford Fitting Co.***, 482 U.S. at 439 ("[W]hen, a prevailing party seeks reimbursement for fees paid to its own expert witnesses, a federal court is bound by the limits of § 1821(b), absent contract or explicit statutory authority to the contrary."). Otherwise, the cost of the appearance of an expert witness is taxed just as any other witness.

A party seeking to recover witness fees and costs must provide receipts or other documentation of the costs and also explain why the costs were incurred (*i.e.*, pursuant to necessary attendance at trial or deposition). The prevailing party must also provide information regarding the days of attendance and the specific travel costs incurred, including itemized mileage and subsistence, if any. Such costs can be itemized on the second page of this Court's Bill of Costs Form AO 133.

Attorney fees and travel expenses incurred in attending depositions, conferences, and trial are not recoverable expenses.

5. Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case. Section 1920(4).

The cost of making copies of documents or photographs is taxable if such copies were necessarily obtained for use in the case. For costs to be awarded, an item must fit within one of two categories: "exemplification" or necessary "copies of any materials." The Eleventh Circuit has adopted a relatively narrow definition of "exemplification" as "an official transcript of a public record, authenticated as a true copy for use as evidence." ***Arcadian Fertilizer, L.P. v. MPW Industrial Svs., Inc.***, 249 F.3d 1293, 1297 (11th Cir. 2001).

As to copy costs, the prevailing party must establish that the copies were necessary to its case. The costs of any copies made for the convenience of counsel (*i.e.*, documents retained for counsel's file or documents provided to clients) and the cost of services and materials associated with labeling and organizing responsive documents (*i.e.*, electronic numbering, bates stamp labels, binders, etc.) are not taxable. Copies of documents filed electronically on CM/ECF are generally for the convenience of counsel and also may not be recovered.

A party moving for taxation of copy costs must present evidence "regarding the documents copied including their use or intended use." ***Cullens v. Georgia Dept. of Trans***., 29 F.3d 1489, 1494 (11th Cir. 1994). An invoice or breakdown of copies must explain the nature of the document copied, the number of pages in the document, the number of copies made, the per page rate, and the copies' use or intended use in the case. All services provided by an outside vender should be itemized on the invoice. This includes postage and shipping costs. If the invoice is not itemized and it is unclear whether the amount invoiced includes unrecoverable costs, the entire amount invoiced may be disallowed.

The Eleventh Circuit Court of Appeals has not determined the taxability of electronic discovery costs. If the parties have agreed to a specific format for electronic discovery - or if the court requires a specific format for electronic discovery - a copy of the relevant stipulation or order should be submitted with the bill of cost.

6. **Docket fees under section 1923 of this title. Section 1920(5).**

Attorneys' docket fees, as set forth in 28 U.S.C. § 1923, are allowable.

A party seeking to recover these costs must provide some documentation of the fee charged, specifying both the amount and nature of the fee.

7. Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title. Section 1920(6).

Fees paid to court-appointed experts and interpreters are generally recoverable, as are the costs of special interpretation services. The cost of document translation, however, is not a recoverable cost under this code section. ***See Taniguchi v. Kan Pacific Saipan, Ltd.,*** -- U.S. --, 132 S. Ct. 1997, 182 L.Ed.2d 903 (2012).

A party seeking to recover compensation paid to court-appointed experts or interpreters must provide the relevant invoices showing the case name and the proceeding in which the services were provided, any hourly rate, and number of hours the service was required. Where relevant, the invoice should also provide itemization of the types of charges made.

IV. NON-TAXABLE COSTS

The following costs are not taxable:

1. *Pro hac vice* fees and certificates of good standing;

2. Attorney fees and travel expenses incurred in attending depositions, conferences, trial, and during investigations;

3. Long distance telephone calls, facsimile, overnight express delivery, and computerized legal research;

4. Expedited rates (unless ordered by the Court);

5. PACER fees;

6. Physical exhibits such as models and charts (unless the prevailing party received pretrial authorization to produce said exhibits); and

7. Mediation fees.

V. INDIGENCE

"[A] non-prevailing party's financial status is a factor that a district court may, but need not, consider in its award of costs pursuant to Rule 54(d).... If a district court in determining the amount of costs to award chooses to consider the non-prevailing party's financial status, it should require substantial documentation of a true inability to pay. ***Chapman v. AI Transport***, 229 F.3d 1012, 1039 (11th Cir. 2000) (citations omitted).

Any objection to a bill of costs based on a party's indigence must, therefore, be supported by "substantial documentation" of indigency.