



United States District Court
Western District of Pennsylvania

GUIDELINES GOVERNING THE
TAXATION OF COSTS BY THE
CLERK OF COURT

Effective Date: February 28, 2022

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GUIDELINES GOVERNING THE TAXATION OF COSTS BY THE CLERK OF COURT

I. PRELIMINARY STATEMENT OF SCOPE AND APPLICABILITY

These Bill of Costs Guidelines (the “Guidelines”) are intended to inform parties of the proper procedures for filing a Bill of Costs in this Court pursuant to 28 U.S.C. § 1920, the Federal Rules of Civil and Appellate Procedure, the Local Rules of this Court, and applicable caselaw. Prior to filing a Bill of Costs, or any objection thereto, litigants should review these Guidelines thoroughly. Failure to follow the Guidelines may result in denial, in whole or in part, of a Bill of Costs by the Clerk of Court. Any deadline set forth in these Guidelines may be excused or extended by the Clerk of Court. These Guidelines apply when the Clerk of Court is making a determination on a Bill of Costs; they do not control once the Clerk’s decision on a Bill of Costs has been submitted to the Court for review, but may be considered advisory, at the presiding judicial officer’s discretion. These Guidelines have no impact on the Court’s statutory authority to tax costs without prior action by the Clerk of Court.

Nothing in the Guidelines should be construed as legal advice. The Guidelines are not binding legal authority. Caselaw cited in these Guidelines is for illustrative purposes only. These Guidelines are not a complete survey of all possibly applicable caselaw. Parties must conduct independent legal research as necessary prior to submitting a Bill of Costs. The Guidelines 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 the Clerk of Court or the Court to tax costs under 28 U.S.C. § 1920.

II. TAXATION OF COSTS BY THE CLERK

A. Background

Under 28 U.S.C. § 1920, Federal Rule of Civil Procedure 54(d), Federal Rule of Appellate Procedure 39(e), and Local Civil Rule 54, a Prevailing Party¹ may request that the Clerk of Court² tax allowable costs in a civil action as part of a judgment or decree. The Prevailing Party begins this process by filing [Form AO 133](#) on the docket of the civil action. The Form is available on the United States Courts website or in the Clerk’s Office. The taxation of costs is made by the Clerk in the first instance but is subject to *de novo* review by the Court.

¹Ordinarily, a party in whose favor judgment is rendered is the Prevailing Party for purposes of Rule 54(d). *Tyler v. O’Neill*, 112 Fed. Appx. 158, 161 (3rd Cir. 2004); *Institutionalized Juveniles v. Sec. of Public Welfare*, 758 F.2d 897, 910 (3rd Cir. 1985). These Guidelines refer to the party that is seeking a taxation of costs as the Prevailing Party for ease of reference, but whether a party requesting a taxation of costs, in fact, qualifies as a Prevailing Party is a legal determination that may be in dispute in a particular case.

²Any references in these Guidelines to the Clerk of Court include either the Clerk or his or her designee.

Although a Prevailing Party is presumed to be entitled to costs, the processing of a Bill of Costs is not a purely ministerial act by the Clerk of Court. The Clerk can only award those costs that are permitted by federal statute or rule, as interpreted by applicable caselaw. The Clerk cannot tax a cost that is not allowable. For this reason, an opposing party's failure to file an objection to an expense listed in the Bill of Costs or its affirmative consent to the Bill of Costs as filed does not mean that the Clerk is required to tax all requested costs. Unless the Bill of Costs is withdrawn, the Clerk must conduct an independent review of the Bill of Costs and deny any requested costs that are not permitted under 28 U.S.C. § 1920. Taniguchi v. Kan Pacific Saipan, Ltd., 566 U.S. 560, 573 (2012); Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437, 441–42 (1987).

To enable the Clerk to engage in the required independent review, there are certain procedural requirements that a Prevailing Party must follow. These include filing Form AO 133 and attaching the required affidavits, itemizations and supporting documentation required by applicable law and as set forth in these Guidelines.

The Clerk is not vested with equitable authority when taxing costs. Factors such as undue hardship, unclean hands, or similar circumstances cannot be considered by the Clerk of Court when determining a Bill of Costs. Only the Court has the authority to consider the equities of an award of costs. In re Paoli R.R. Yard PCB Lit., 21 F.3d 449, 468 (3d Cir. 2000). Any party seeking relief based upon such considerations, therefore, must seek review of the Clerk's taxation of costs by the Court. In the absence of a specific objection, the Clerk of Court will not reduce the amount of any cost on the ground that it is unreasonable or exceeds rates otherwise charged, either in a particular case or geographic region.

B. What to File

1. Form AO 133: Any party seeking to recover costs in a civil action must initiate the taxation of costs process by filing Form AO 133, entitled Bill of Costs, on the docket of the civil action. The Clerk may deny, without prejudice, any request for taxation of costs that is not filed using this Form. Form AO 133 requires that "an itemization and documentation for requested costs in all categories" be attached to the form. The Clerk may deny, without prejudice, any request for taxation of costs that does not include the itemization and documentation required by Form AO 133. Michael J. Benenson Assoc., Inc. v. Orthopedic Network of N.J., 54 Fed. Appx. 33, 37-38 (3d Cir. 2002).

a. Itemization: The itemization should separately list each category on Form AO 133 for which costs are being requested and a) state the total amount requested for that category, b) detail each individual expense claimed within that category, and c) cross-reference each individual expense to the applicable supporting documentation.

b. Supporting Documentation: Examples of supporting documentation include an invoice, voucher, cancelled check, or receipt. These Guidelines will specify where a particular kind of documentation must be submitted in order for the Clerk to tax a

particular cost. The documentation should clearly show the date of service, the kind of service provided or reason for the charge, the amount actually paid, and all components of the total charge. It is the parties' responsibility to ensure that vendors provide itemized bills that will allow the Clerk, and possibly the Court upon *de novo* review, to determine what portion of the total amount charged is taxable under applicable law.

Example 1: Certain charges associated with transcript costs are not taxable in this Court, such as expedited service fees, delivery charges, litigation packages and rough transcripts. Court reporter invoices, therefore, should clearly itemize each component of the total cost for the transcript. If the party's documentation does not reflect the necessary information, the requested cost may be disallowed in its entirety or reduced, as appropriate based upon the entirety of the record, to ensure that the Clerk does not tax costs that are not allowable.

Example 2: The Court of Appeals for the Third Circuit's decision in Race Tires America, Inc. v. Hoosier Racing Tire Corp., 674 F.3d 158, 167 (3d Cir. 2012) directs that only "the conversion of native files to TIFF... and the scanning of documents to create digital duplicates" are taxable eDiscovery costs under § 1920(4). Supporting documentation under these circumstances may include detailed billing statements, or description of services materials or affidavits from a party's eDiscovery vendor that would allow the Clerk to determine if the requested eDiscovery fees are properly taxable under the rule set forth in Race Tires. Without such evidence, the Clerk is prohibited from taxing costs. Camesi v. Univ. of Pittsburgh Med. Ctr., 673 Fed. Appx. 141 (3d Cir. 2016) (remanding where record before Clerk and Court failed to include sufficient evidence from which to determine whether the requested eDiscovery costs were properly taxable under Race Tires). If the party's documentation does not reflect the necessary information, the requested cost may be disallowed in its entirety or reduced, as appropriate based upon the entirety of the record, to ensure that the Clerk does not tax costs that are not allowable.

2. **Affidavit:** "The party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by 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." 28 U.S.C. § 1924. Form AO 133 includes

a section entitled “Declaration,” which must be completed by the attorney representing the Prevailing Party and satisfies this requirement.

3. **Notice of Consent or Agreement:** Where the parties reach an agreement or settlement about the payment of Costs at any time after a Bill of Costs is filed and the parties do not want the Clerk to issue any taxation of costs, the party that filed the Bill of Costs must file a notice on the docket withdrawing the Bill of Costs. LCvR 54B(4). If an opposing party concedes that costs should be taxed in the amount requested, the opposing party may file a Notice of Consent prior to the deadline for objections. If the opposing party fails to file any document by the deadline for objections, the Clerk will presume that the Bill of Costs is consented to as filed. Consent, however, is not dispositive. In this circumstance, the Clerk must still conduct an independent review of the Bill of Costs and deny any requested costs that are not allowable under federal statute, rule, or caselaw.

4. **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 parties, it is assumed that the parties may be treated as a single party for purposes of taxing costs. If this is not the case, the party should provide an explanation as to why the parties should be treated differently and indicate what amount(s) should be taxed to each party. Where different counsel represents multiple parties, the Clerk assumes the parties should be treated as separate parties for purposes of taxing costs. In this situation, the party filing the Bill of Costs should provide an explanation as to which costs are attributable to each party (listing specific amounts) or how total costs should be apportioned. If there are multiple parties involved and an insufficient explanation is provided as to how to apportion costs, the Clerk may award costs with or without apportionment, and any party objecting to that award will be required to file a motion with the Court seeking review of the Clerk’s decision.

5. **Filing and Service:** Filing and service of a Bill of Costs, and related objections and briefing shall be made in accordance with this Court’s Local Civil Rules, the Standing Order regarding Electronic Case Filing Policies and Procedures, and the ECF User Manual. The Bill of Costs-specific CM/ECF Events listed, *infra*, in Section IV shall be used.

C. When to File

1. **Computation of Time:** Federal Rule of Civil Procedure 6 shall govern the computation of time for all deadlines involving a Bill of Costs, unless a communication from the Clerk of Court or the Court to the parties states otherwise.

2. Deadlines:

- a. **Bill of Costs:** Pursuant to Local Rule, a Bill of Costs must be filed within “a reasonable period of time, which should be no later than 45 days after a final judgment is entered by the District Court.” LCvR 54B(2). If an appeal has been filed, counsel may defer filing a Bill of Costs until 30 days after the appellate court has filed the mandate in the District Court, or after an appeal has been withdrawn. Id.; see also Section II.C.3, *infra*, for the effect of any appeals on this deadline.
- b. **Objections:** After a Bill of Costs is filed, any party opposing the taxation of any costs must file its objection within 14 days. See Section II.C.3, *infra*, for the effect of any appeals on this deadline
- c. **Reply:** If the Prevailing Party wishes to file a reply to an objection, the reply shall be filed within 7 days. See Section II.C.3, *infra*, for the effect of any appeals on this deadline. A Prevailing Party is not required to file a Reply, and one should only be filed to address specific matters raised in the Objections. The Prevailing Party may not request additional costs in the Reply.
- d. **Further Submissions:** Further submissions in support of or in opposition to a Bill of Costs are not routinely permitted. Any party wishing to make a further submission prior to the taxation of costs by the Clerk must file a request on the docket directed to the Clerk of Court, not the presiding judge, explaining why additional filings are required. See Section IV.D., *infra*. If permission to make the filing is granted, the Clerk of Court will set a schedule for the additional submission(s) that are permitted. See Section IV.E., *infra*. The parties should expect short deadlines and page limits to apply.

Once the last applicable filing listed in this subsection has been made, or the latest applicable deadline has expired, the Clerk may tax costs at any time, without further notice or proceedings.

3. Appeal:

- a. **Deferral Pending Appeal:** Absent extenuating circumstances, the Clerk of Court will tax costs in favor of a Prevailing Party only after the time for filing an appeal has expired. LCvR 54B(1). If a party believes there is a reason why there should be an immediate taxation in a particular case, that party may make a written request for taxation prior to resolution of the appeal. Id.

Generally, costs will not be taxed while an appeal is pending because of the possibility that the judgment may be reversed. Id. If any party files a Notice of Appeal after a Bill of Costs has been filed, the Clerk will, without additional notice, defer decision on the pending Bill of Costs until after the appellate court issues its mandate. Any deadlines related to a Bill of Costs that occur after the

Notice of Appeal is filed are automatically cancelled without further action by the Clerk and the Post-Appeal Proceedings listed below will thereafter apply. If a Bill of Costs deadline is scheduled to occur before the time period for filing a Notice of Appeal expires, a party may request an extension of the Bill of Costs deadline until after the Notice of Appeal deadline expires by filing a request on the docket directed to the Clerk, not the presiding judge. See Section IV.D., *infra*.

- b. Post-Appeal Proceedings – District Court’s Judgment is Affirmed:** Within 14 days after the mandate issued by the appellate court is docketed in this Court, the Prevailing Party may file: i) a Bill of Costs if one has not yet been filed, ii) a notice withdrawing a previously filed Bill of Costs, or iii) a supplement or amendment to a Bill of Costs that was filed prior to or during the appeal process. The Clerk of Court will not issue a notice concerning this deadline.
- i. If a Bill of Costs is filed for the first time in a case after the mandate is issued, then the deadlines and procedures set forth in Section II.C.2(b)-(d), *supra*, shall apply.
 - ii. If the Prevailing Party does not wish the Clerk of Court to issue any taxation of costs on a previously filed Bill of Costs, then the Prevailing Party should file a notice withdrawing the Bill of Costs. The Clerk of Court will conduct no further proceedings as to the taxation of costs in the matter.
 - iii. If the Prevailing Party wishes to update or add to a previously filed Bill of Costs, e.g., change an amount requested or add supporting documentation, then the Prevailing Party should file a supplement or amendment to the Bill of Costs. Any party opposing the updated Bill of Costs will have 14 days thereafter to file objections and the Prevailing Party will have 7 days thereafter to file any reply.
 - iv. If the Prevailing Party does not withdraw or file a supplement or amendment to a previously filed Bill of Costs within 14 days after the mandate is docketed in this Court, then any party that has not yet filed objections to that Bill of Costs may do so within 28 days after the mandate is issued. The Prevailing Party may file any reply 7 days after an objection is filed.
 - v. If additional appellate proceedings are planned, the party pursuing those further proceedings must notify the Clerk, who will continue to defer decision on the Bill of Costs until after all appellate proceedings are resolved. Following the conclusion of those additional appellate proceedings, it is the Prevailing Party’s responsibility to proceed in accordance with the deadlines set forth immediately above. The Clerk of Court will not issue a notice concerning the deadlines. Any party needing procedural clarification under these

circumstances shall file a request for clarification (See Section IV.D., *infra* (Bill of Costs Request to Clerk)).

- c. **Post-Appeal Proceedings – District Court’s Judgment is not Affirmed:** If the District Court’s judgment is not affirmed in its entirety by the appellate court, the Clerk of Court will deny summarily any previously filed Bill of Costs. The parties may file any post-appeal Bill of Costs appropriate under 28 U.S.C. § 1920, at al., Federal Rule of Civil Procedure 54(d), Federal Rule of Appellate Procedure 39(e), Local Civil Rule 54, and these Guidelines any time after the mandate is docketed in this Court. Any party needing procedural clarification under these circumstances shall file a request for clarification (see Section IV.D., *infra* (Bill of Costs Request to Clerk)).
- d. **Inclusion of Appellate Costs:** Certain costs on appeal are taxable in the District Court and will be included in the appellate court’s mandate, or, upon the request of the appellate court’s clerk, will be added to the mandate after it is issued. Fed. R. App. P. 39(d)(3).

4. **Post-Judgment Motions:** If a party files any of the post-judgment motions listed in Federal Rule of Appellate Procedure 4(a)(4)(A), then the Clerk will, without notice, defer decision on any pending Bill of Costs until after the Court rules on the last of said motion(s) and the time for filing an appeal from that ruling has expired. Any deadlines relating to a Bill of Costs occurring while a post-judgment motion is pending will be automatically cancelled. Any party unsure about whether a Bill of Costs deadline is cancelled due to the pendency on a motion should file a request on the docket directed to the Clerk of Court, not the presiding judge, seeking clarification or an appropriate extension, see Section IV.D., *infra*. If no appeal from the Court’s ruling on any post-judgment motions is filed and the original judgment remains in effect, then the deadlines set forth in Section II.C.3(b), *supra*, shall apply (with the Court’s docketing of its ruling on the last of the post-judgment motions being treated as the docketing of the appellate court’s mandate). Should an appeal be filed following adjudication of post-judgment motion(s), Section II.C.3(a), *supra*, shall apply.

D. **Action on the Bill of Costs by the Clerk** After the Bill of Costs has been filed, and the latest applicable deadline has passed, the Clerk will tax costs in accordance with these Guidelines, and applicable statute, rule, and caselaw, without additional notice or hearing on the issue.

E. **Procedures After Costs are Taxed by the Clerk**

1. **Review Procedures:** Under Federal Rule of Civil Procedure 54(d)(1), “on motion served within the next 7 days, the court may review the clerk’s” taxation of costs.

2. Payment of Costs:

a. Procedure: After the Court has ruled on a motion for review of the Clerk’s taxation of costs or after the time for seeking such review has expired, the amount of the cost judgment should be paid directly to the Prevailing Party. Cost payments are not processed through the Clerk’s Office.

b. Satisfaction: A taxed party must file a satisfaction of judgment once the cost judgment has been paid in full.

III. TAXABLE COSTS

A. Background

Taxation of costs is typically made by the Clerk in the first instance, but the Clerk’s discretion to award costs is limited. Only those costs specifically permitted by 28 U.S.C. §§ 1920, 1921, and 1923, and such other provisions of law that may be applicable are taxable.

Although there is a “strong presumption” that costs are to be awarded to a Prevailing Party in this jurisdiction, In re Paoli, 221 F.3d 449, 462 (3d Cir. 2000), this does not mean that a Prevailing Party is automatically entitled to an award of every cost requested in its Bill of Costs. The Clerk of Court has an independent duty to ensure that the costs are supported by proper documentation and are taxable under governing principles.

Objections to a Bill of Costs are an important factor in the Clerk’s review, but they are not the only factor. The Clerk is obligated to deny costs not permitted by statute, rule, caselaw, or the most recent version of these Guidelines, *even if the opposing party has failed to object to their taxation*.

The Prevailing Party is responsible for providing documentation sufficient to clearly demonstrate that each requested cost is properly taxable. *The Clerk may deny any cost request that is submitted without supporting documentation demonstrating that the cost is a taxable cost.*

B. Fees of the Clerk, 28 U.S.C. § 1920(1)

The following fees of the Clerk are taxable:

- 1.** The filing fee for a complaint, or 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).
- 2.** Appellate fees pursuant to Federal Rule of Appellate Procedure 39(e).

3. Any fee charged by out-of-district federal courts for filing a notice of taking deposition.

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

“The Third Circuit has not addressed whether [*pro hac vice*] fees are taxable costs and other federal circuits are divided on this issue.” Warner Chilcott Labs. Ireland Ltd. v. Impax Labs., Inc., Civil No. 08-6304, 2013 WL 1716468, at *3 (D.N.J. Apr. 18, 2013) (citing cases). The Supreme Court, however, has indicated that Section 1920 is to be applied restrictively, not expansively. Taniguchi v. Kan Pac. Saipan, Ltd., 566 U.S. 560, 572-73 (2012). The Clerk considers *pro hac vice* fees to be an expense of and convenience to counsel who elect not to be generally admitted to the bar of this Court and does not tax them. Sheffer v. Experian Info. Sols, Inc., 290 F.Supp.2d 538, 552 (E.D. Pa. 2003); Montgomery Cnty. v. Microvote Corp., Civil No. 97-6331, 2004 WL 1087196, at *3 (E.D. Pa. May 13, 2004). This decision, like all decisions of the Clerk about taxation of costs, is reviewable by the Court.

C. Fees of the Marshal, 28 U.S.C. § 1920(1)

Only those fees paid to the U.S. Marshal are taxable pursuant to 28 U.S.C. § 1920(1). Fees for the service of summonses and subpoenas are allowed at the rates set by regulation. See, 28 U.S.C. § 1921 and 28 C.F.R. § 0.114. In order to secure taxation of such fees, the party requesting taxation should demonstrate the relevancy of the Marshal’s service to the case, e.g., the dates on which a subpoenaed witness appeared at trial, or the use of a deposition transcript or submission of subpoenaed documents at trial or in support of or opposition to a dispositive motion.

There is presently no statutory basis for the taxation of costs of private process servers. Until the Court of Appeals for the Third Circuit decides this issue, because the language of Section 1920(1) is clear, the Clerk does not tax costs paid to private process servers. This decision, like all decisions of the Clerk about taxation of costs, is reviewable by the Court.

D. Fees for Printed and Electronically Recorded Transcripts Necessarily Obtained for Use in the Case, 28 U.S.C. § 1920(2)

To be taxable, a transcript cost must be “necessarily obtained for use in the case,” 28 U.S.C. § 1920(2). *It is the Prevailing Party’s duty to demonstrate that the cost was necessary so that the Clerk can determine whether it is a taxable cost.* A Prevailing Party who elects to ignore its obligation to demonstrate necessity by providing an explanation of how a transcript was used in a case or who fails to attach the required supporting documentation set forth below runs the risk of the requested transcript cost being disallowed, in whole or in part, by the Clerk. The Clerk will not independently review the record in order to assess the necessity of a requested transcript fee. If necessity is not obvious, e.g., the deposition of a named party, the transcript fee will be denied.

Court reporter fees should be reasonable, and as a guide, the Clerk will consider 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. Absent an objection from the opposing party on the ground of unreasonableness, the Clerk will tax the actual regular rate charged by the court reporter.

For any transcript, the invoice should reflect, at least, the date of the event transcribed, a description of the event transcribed (name of witness, type of court proceeding, etc.), whether the charge is for an original or a copy of a transcript, and either a per-page cost or a total cost with the number of pages identified. If the transcript cost includes surcharges, such as for daily or expedited transcription, these additional fees should be identified separately, as they are not taxable costs.

As a general rule, if a transcript is taxable, The Clerk will tax only the cost of one transcript. If, however, the record reflects a practice in a particular case or geographical market of court reporters issuing a single charge for a “transcript and one copy,” the Clerk will allow this aggregate charge. Otherwise, in order to be taxed, additional copies of transcripts must have been necessary, beyond convenience to counsel or the parties, such as, for example, submission to the Court.

The parties are reminded to review the Guidelines applicable to charges incurred by multiple parties to ensure that requests for transcript costs are not duplicative. In other words, if parties have agreed to split the cost associated with a deposition transcript, this arrangement should be disclosed in any Bill of Costs related thereto.

The following fees of a court reporter are generally taxable. Requests for taxation of these fees must include the supporting documentation or other information stated in each category.

1. Transcript procured at the direction of the Court.
→ *Supporting Documentation:* The Court order
2. Transcript prepared under stipulation of the parties to be taxed as costs.
→ *Supporting Documentation:* The parties’ stipulation
3. Transcript of the deposition of a party to the case.
→ *Supporting Documentation:* The case caption. If a witness’s name does not appear on the docket as a party, the Prevailing Party must include further explanation if claiming costs for a transcript on this basis.

4. Transcript of deposition of a person who testified at trial.

→ *Supporting Documentation*: Document reflecting the date on which the witness testified, such as pertinent pages of the trial transcript, a trial witness list prepared by the Court and filed on the docket, or a minute entry that includes the names of witnesses testifying on a given date of trial.

Identification of the Supporting Documentation by CM/ECF docket number, with page numbers if applicable, is sufficient. Copies of materials filed on the docket need not be attached. Failure to include Supporting Documentation will result in denial of the request to tax the transcript. The Clerk of Court will not search the trial record for evidence that the witness testified.

5. Transcript admitted into evidence or used at trial to impeach a witness.

→ *Supporting Documentation*: Document reflecting the date on which the transcript was used at trial, such as pertinent pages of the trial transcript, a witness list prepared by the Court and filed on the docket, or a minute entry that includes the names of witnesses testifying on a given date.

Identification of the Supporting Documentation by CM/ECF docket number, with page numbers if applicable, is sufficient. Copies of materials filed on the docket need not be attached. Failure to include this Supporting Documentation will result in denial of the request to tax the transcript. The Clerk of Court will not search the trial record for evidence that a transcript was used at trial.

6. Any transcript used in support of a successful dispositive motion.

→ *Supporting Documentation*: The relevant brief, including citation to pertinent pages or exhibits, a hearing transcript, or opinion of the Court.

Identification of the Supporting Documentation by CM/ECF docket number, with page numbers if applicable, is sufficient. Copies of materials filed on the docket need not be attached. Failure to include this Supporting Documentation will result in denial of the request to tax the transcript. A Prevailing Party should not presume that the Clerk of Court will be aware of, or independently research, the history and content of motions practice in a case.

7. Transcript not identified above.

→ *Supporting Documentation*: Sufficient explanation from which the Clerk can assess whether the transcript was “reasonably necessary to the parties in light of the particular situation existing at the time it was taken.”

The fact that a witness does not testify at trial or that his or her deposition transcript is not otherwise used during trial, motion practice or at a hearing is not dispositive of the taxability of the transcript. It is sufficient for purposes of taxing costs that a deposition appears reasonably necessary to the parties in light of the particular situation existing at the time it was taken, regardless whether the transcript was actually used. Stevens v. D.M. Bowman, Inc., No. 07-cv-2603, 2009 WL 117847, at *3 (E.D. Pa. Jan. 15, 2009) (citing Microvote, 2004 WL 1087196); Smith v. Crown Equip. Corp., No. 97-cv-541, 2000 WL 62314, at *3 (E.D. Pa. Jan. 13, 2000). Examples of situations demonstrating necessity of deposing a witness include inclusion of the individual in a party’s initial disclosures, presence of the witness’ name in key documents, or identification of the witness during another individual’s deposition. It is the Prevailing Party’s duty to explain the circumstances demonstrating necessity under the circumstances. All requirements explained in these Guidelines concerning Supporting Documentation for taxation of transcript fees are incorporated here by reference.

8. Electronic media deposition used at trial, such as a videotape, DVD, digital media, or audio recording.

→ *Supporting Documentation*: Document reflecting the date on which the electronic media was used at trial, such as a trial transcript, or a trial witness list prepared by the Court or a minute entry, if these documents reflect the manner in which each witness appeared at trial.

The Clerk generally does not allow recovery of the costs of *both* a printed transcript and an electronically recorded transcript for the same deposition without a showing of why both were necessarily obtained for use in the case. Warner, 2013 WL 1876441, at *5-6; Fitchett v. Stroehmann Bakeries, Inc., No. 95-cv-284, 1996 WL 47977, at *7 (E.D. Pa. Feb. 5, 1996). Convenience to counsel or a desire to have as many options as possible available during case preparation do not demonstrate necessity. Where a transcript was used during motion practice or at trial, the Clerk will tax the transcript in the format it was used. Where the Prevailing Party fails to include Supporting Documentation that identifies the format in which the transcript was used in a case, the Clerk will tax the cost of the printed transcript only. As a general rule, electronically recorded depositions will not be taxed in cases terminated via dispositive motion.

9. Attendance fees charged by the court reporter.
 - *Supporting Documentation*: The court reporter’s invoice should clearly and separately identify these charges so that it is readily apparent to the Clerk that they are for the reporter’s appearance.
10. Costs of copies of exhibits used during a deposition.
 - *Supporting Documentation*: The court reporter’s invoice should clearly and separately identify these charges.
11. Transcript ordered for purposes of appeal.
 - *Supporting Documentation*: The docket number of the Notice of Appeal.
12. Cost of copies of transcripts of an opposing party’s noticed depositions.
 - *Supporting Documentation*: The Prevailing Party should include information with its itemization explaining which party noticed the deposition and the court reporter’s invoice should reflect that the charge is for a copy of a transcript for a deposition noticed by a party other than the one being invoiced.
13. Costs charged by the court reporter for failure to attend a noticed deposition. See Fed. R. Civ. P. 30(g).
14. “Read and Sign” charges related to transcript preparation. See Fed. R. Civ. P. 30(e).

There are a myriad of fees charged by court reporters that are not taxable, such as expedited service fees, increased per-page fees for expedited preparation of a transcript, fees for rough or condensed transcripts, ASCII diskettes, teleconference charges, “litigation package” fees, delivery or shipping fees, and handling, processing, or administrative fees. Collins v. Kindred Hosps. East, LLC, No. 2:14-cv-17, 2017 WL 607740, at *2 (W.D. Pa. Feb. 15, 2017); Warner, 2013 WL 1876441, at *6; Montgomery Cnty., 2004 WL 1087196, at *6. If the court reporter’s invoice lists non-taxable fees, the Prevailing Party must remove them from its request for taxation. Failure of the Prevailing Party to excise these non-taxable charges from its Bill of Costs may result in denial of all fees charged by the reporter for that transcript.

E. Fees and Disbursements for Printing, 28 U.S.C. § 1920(3)

These fees are typically incurred in connection with appeal from the district court’s judgment and are taxed by the court of appeals in its mandate.

F. Witness Fees, 28 U.S.C. § 1920(3)

The following witness fees are permitted under 28 U.S.C. § 1821. Request for taxation of fees related to witnesses should include the Supporting Documentation and information as stated in each category.

1. **Statutory attendance fee.** Witnesses are entitled to \$40.00 per day. Witnesses are entitled to an attendance fee for days on which a witness is actually deposed or testifies at trial, days reasonably spent in attendance at trial waiting to be called, and days a witness was “necessarily occupied in going to and returning from the place of attendance at the beginning and end of such attendance.” See, 28 U.S.C. § 1821(b). Such fees are available whether such attendance was voluntary or procured by subpoena.
 - *Supporting Documentation:* Provide the name of the witness, the date(s) of attendance and explain the purpose of the attendance (e.g., deposition, trial, etc.) and the circumstances of any pertinent travel days.
2. **Mileage.** Mileage is calculated at the rate for official government travel in effect at the time the travel took place. Government rates are set by the General Services Administration. See 28 U.S.C. § 1821(c)(2); <http://www.gsa.gov/mileage>.
 - *Supporting Documentation:* Provide the name of the witness, the purpose of the travel, the dates of travel, the departure and destination locations, total miles travelled, and the applicable mileage rate.
3. **Subsistence.** Subsistence expenses are taxable “[w]hen 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 therefore from day to day” See 28 U.S.C. § 1821(d)(1). Although not dispositive, the Clerk will consider if the distance from the Court to the residence of the witness is such that mileage fees would be greater than subsistence fees if the witness were to return to the residence from day to day. 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 18 U.S.C. § 1821(d)(2); <http://www.gsa.gov/perdiem>.
 - *Supporting Documentation:* Provide the name of the witness, the purpose of the travel, the dates of travel, an explanation of why an overnight stay was required, pertinent receipts, and the applicable per diem rate.
4. **Common carrier expenses for travel.** See 28 U.S.C. § 1821(c)(1).
 - *Supporting Documentation:* Provide the name of the witness, the purpose of the travel, the dates of travel, pertinent receipts, and any information from which the Clerk of Court can assess the

reasonableness of the expense under the circumstances should there be an objection on this basis.

5. **Other travel expenses.** “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)” are taxable. 28 U.S.C. §1821(c)(3).
→ *Supporting Documentation:* Provide the name of the witness, the purpose of the travel, the dates of travel, and pertinent receipts.

Witness fees are taxable if an individual’s deposition was used in the pleading that terminated the litigation, e.g., summary judgment motion. If the Clerk denies a request to tax the cost of the witness’s deposition, then fees and expenses incurred by that deponent will also not be taxed.

Parties are not entitled to witness fees associated with their attendance at a deposition or trial. Greene v. Fraternal Order of Police, 183 F.R.D. 445 (E.D. Pa. 1998). Corporate employees and even officers may be entitled to witness fees if “their interest in the litigation is no more than a natural concern for the welfare of the corporation as opposed to actual participation in the litigation.” Schmitz-Werke GmbH & Co. v. Rockland Indus., Inc., 271 F.Supp.2d 734, 736 (D. Md. 2003). Where, however, a corporate representative is a real party in interest, fees are improper. In addition, if a corporate representative is present at a deposition or trial in order to advise counsel rather than to appear as a fact witness, witness fees are improper. Id.; Battenfeld of Am. Holding Co., Inc. v. Baird, Kurtz & Dobson, 196 F.R.D. 613, 619 (D. Kan. 2000); NLFC, Inc. v. Devcom Mid-America, Inc., 916 F.Supp. 751, 764 (N.D. Ill. 1996); Ezelle v. Bauer Corp., 154 F.R.D. 149, 155 (S.D. Miss. 1994).

Witness fees are taxable for non-party witnesses who testified at trial. If a witness attends trial but does not actually testify, associated fees “are properly taxed when there is a good faith expectation that [the] witness[] might be called and had to be made available for that eventuality.” Microvote, 2004 WL 1087196, at *7.

Unless the expert is appointed by the Court, the above rules apply to expert witnesses who are deposed or attend or testify at trial.

G. Fees for Exemplification, 28 U.S.C. § 1920(4)

The Court of Appeals for the Third Circuit has not yet decided whether the term “exemplification” in Section 1920(4) should be interpreted narrowly, to refer only to “an official transcript of a public record, authenticated as a true copy for use as evidence,” or expansively, to refer to “the act of illustration by example,” which would include “a wide variety of exhibits and demonstrative aids.” Race Tires, 674 F.3d at 166. Until such time as

the question is decided by the appellate court, the Clerk will consider both items to be possibly taxable as exemplifications.

The Prevailing Party must provide information from which the Clerk can determine whether the cost is taxable. Although the Clerk will make such determinations on a case-by-case basis, examples of situations in which exemplification fees will be taxed include when the item is a) requested by the Court, b) pre-approved by the Court as a taxable expense, c) agreed to be a taxable expense by the parties, or d) used to assist the fact-finder's understanding of the issues in the case, rather than to emphasize counsel's argument or expert testimony, Supernus Pharms., Inc. v. TWI Pharms., Inc., Civ. No. 15-369, 2018 WL 2175765, at *16 (D.N.J. May 11, 2018) (citing cases); Depomed, Inc. v. Actavis Elizabeth LLC, Civ. No. 13-4507, 2018 WL 999673, at *16-18 (D.N.J. Feb. 21, 2018) (citing Summit Tech., Inc. v. Nidek Co., Ltd., 435 F.3d 1371, 1377 (Fed. Cir. 2006)). When taxable, only the costs resulting from the physical preparation of the exemplification, and not those costs associated with the intellectual efforts involved in creating or designing it, will be recoverable. Intellectual Ventures I LLC v. Symantec Corporation, Civ. No. 10-1067, 2019 WL 1332356, at *4 (D. Del. Mar. 25, 2019); Depomed, 2018 WL 999673, at *16-17; Warner, 2013 WL 1876441, at *15-16.

→ *Supporting Documentation*: In addition to the invoice, receipt, or bill, reflecting the exemplification charges, the Prevailing Party should attach any orders issued by the Court concerning the production or taxability of the exemplifications, any documents evidencing the parties' agreement concerning the taxability of exemplifications, or an explanation of the charges from which the Clerk can determine, in accordance with the caselaw cited above, 1) whether the exemplifications were used to assist the fact-finder and 2) which charges were incurred for physical preparation of the exemplification.

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)

To be taxable, copy costs must be “necessarily obtained for use in the case,” 28 U.S.C. §1920(4). *It is the Prevailing Party's duty to demonstrate that the cost was necessary so that the Clerk can deem it taxable.* A Prevailing Party who elects to ignore its obligation to demonstrate necessity with an appropriate explanation or by attaching the required supporting documentation as set forth below runs the risk of the requested copy costs being disallowed, in whole or in part, by the Clerk. The Clerk will not independently review the record in order to assess the necessity of requested copy costs.

Copy costs should be reasonable. The copy fee rates included in the Court's Fee Schedule, as established under 28 U.S.C. § 1914, are presumed reasonable. <https://www.pawd.uscourts.gov/fee-schedule>. Absent an objection from the opposing party on the ground of unreasonableness, the Clerk will tax the actual copy rate charged to the Prevailing Party.

Copies made for counsel's convenience or to be provided to clients are not taxable.

For any copy costs, the invoice should reflect, at least, the date on which the copies were made, the document(s) copied or the reason that the copies were made (discovery production, trial exhibits, etc.), the number of pages copied, the number of copies made, the reason why multiple copies were made, the per page copy rate, and the total cost. For copies made in-house, billing records may be submitted, but must include the same, or equivalent, information. Copies made in-house for the convenience or use of counsel, staff, or the parties are considered office overhead, which is not a taxable cost. If, however, an otherwise taxable copy cost is incurred using in-house resources, provided the appropriate documentation is attached, it will be taxed on the same basis as though the copies were made by a third-party vendor. If an invoice or billing record does not include all the information required, the Prevailing Party must attach an explanation providing the missing information. The Clerk is unable to tax copy costs if the record submitted by the Prevailing Party does not clearly show whether the requested copy fees are taxable under applicable statute, rule, and caselaw.

1. Copies Made at the Direction of the Court.

→ *Supporting Documentation:* The Court order

2. Documents Not Filed or Served through CM/ECF.

a. Documents physically filed with the Clerk.

→ *Supporting Documentation:* The docket number of the filing must be identified for the Clerk and the Prevailing Party should explain why the document could not be electronically filed.

b. Documents that cannot be served via CM/ECF.

→ *Supporting Documentation:* The Prevailing Party should explain why the document could not be electronically served via CM/ECF, e.g., the document could not be electronically filed or the opposing party does not have a CM/ECF account. The docket number of any filings should be identified for the Clerk

c. Courtesy copies provided to the Presiding Judge.

→ *Supporting Documentation:* In order to be “necessarily obtained” the courtesy copies must have been required either pursuant to Local Rule or Chambers Procedures or by an order of the Court. The Prevailing Party should cite the pertinent Rule or Procedure and explain how it applies (if not evident). If the Presiding Judge ordered that courtesy copies be provided in a particular case, the Prevailing Party should identify the docket number of the relevant order or attach pages from any transcript that reflects the Court’s directive.

Even where the cost of copies filed with the Clerk, served on an opposing party, or provided to the Court may be taxable, related expenses, such as shipment or delivery charges, increased labor costs, binding, or tabbing are not recoverable as a “cost of making copies.”

3. Copies Made in Responding to a Discovery Request.

→ *Supporting Documentation:* Identify the discovery request, the date of production, and the number of total pages in the production.

In the context of producing electronically stored information, only those expenses involving “scanning and conversion of native files to the agreed-upon format for production of ESI” are taxable. Race Tires, 674 F.3d at 167. The cost of transferring VHS tapes to DVDs is also a recoverable copy cost. Id.

For all document productions, whether electronic or of hard copies, only the costs of “making copies” are taxable. The myriad of expenses associated with preparing, organizing and serving a document production are not taxable.

I. Docket Fees under Section 1923, 28 U.S.C. § 1920(5)

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

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

→ *Supporting Documentation:* The docket number of the filing must be identified to the Clerk.

Docket fee costs in admiralty are additionally set forth in 28 U.S.C. § 1923.

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 Section 1828.”

1. **Court Appointed Experts.** This provision applies only to those expert witnesses who are appointed by the Court. The parties should request that the Court order appointing the expert address taxation of the costs associated with that expert, if appropriate under the circumstances. Costs associated with appearance of an expert witness retained by counsel are taxable only to the extent provided in Section III.F, *infra*.

→ *Supporting Documentation:* The Court order

2. Interpreters and Special Interpretation Services.

a. Court Appointed

1. **Private Interpreter.** Where the Court appoints a private interpreter, the parties should request that the Court order address taxation of the costs associated with that interpreter, if appropriate under the circumstances.

→ *Supporting Documentation:* The Court order

2. **Special Interpretation Services, 28 U.S.C. § 1828.** Where the Court approves a party’s request for use of the judiciary’s special interpretation services program, as set forth in 28 U.S.C. § 1828, the service is provided on a reimbursable basis, and the Court may direct that all or part of the expenses shall be apportioned between or among the parties or be taxed as costs in the action. The parties should request that the Court order address taxation of the costs associated with the special interpretation services, if appropriate under the circumstances. See also, 28 U.S.C. § 1827.

→ *Supporting Documentation:* The Court order

b. **Not Court Appointed.** When the Prevailing Party procures interpretation services without prior approval by the Court, costs will be taxed only to the extent such expenses are deemed necessarily incurred.

→ *Supporting Documentation:* The Prevailing Party must attach invoices, bills, or receipts reflecting the interpreter costs. If these documents do not provide a basis for the Clerk to assess if the expenses were necessarily incurred, the Prevailing Party must attach a supplemental explanation establishing that the costs are taxable.

Document translations are not taxable as interpreter costs. Taniguchi,
566 U.S. at 566-75.

K. Costs on Appeal, Fed. R. App. P. 39

The following appellate costs are taxable:

1. Costs included in the mandate under Fed. R. App. P. 39(d).
2. Costs taxable in this Court under Fed. R. App. P. 39(e).
 - a. Costs for the preparation and transmission of the record
 - b. Costs for the court reporter's transcript, if needed for the appeal
 - c. Premiums paid for a supersedeas bond or other bond to preserve rights pending appeal
 - d. Filing fee for the notice of appeal.

→ *Supporting Documentation:* The Prevailing Party must attach invoices, bills, or receipts reflecting the above costs and provide the docket number associated with the notice of appeal.

Taxable costs incurred in connection with proceedings in the United States Supreme Court 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 included in the body of the mandate sent to the court below.

Supporting documentation is not needed for fees appearing in the Court of Appeals' mandate or fees paid by a party to the Clerk of this Court.

L. Non-Taxable Costs

In addition to the items listed within the body of these Guidelines, Prevailing Parties should be aware that the Clerk generally does not tax the following costs:

1. Expenses incurred by counsel, including travel and subsistence costs.

2. Fees for computerized research.
3. Fees for administrative services such as word processing and typing charges incidental to an attorney's work.
4. Costs associated with office overhead such as copies made for the convenience of counsel, telephone or internet service charges, or utilities.
5. Paralegal services.
6. Special services, such as investigators, damage surveys, or accountant expenses.
7. Prejudgment and post-judgment interest.
8. Costs associated with ADR services.
9. Notary, postage, and delivery fees.
10. Late fees.

IV. CM/ECF Events Related to Bills of Costs

The following CM/ECF events related to filing a bill of costs are listed in their order of use.

- A. Bill of Costs:** Use this event to file Form AO 133 - Bill of Costs. The required itemization and supporting documentation, as well as any explanatory memoranda or affidavits should be provided as attachments to the form.
- B. Objections to Bill of Costs:** Use this event to file any objections to a Bill of Costs. Attach any factual or legal argument and documentation to the objection.
- C. Bill of Costs Reply to Objections:** Use this event to file a response to an objection. A reply should not restate information or arguments included with the Bill of Costs, but should respond to specific objections with new factual or legal argument or documentation.
- D. Bill of Costs Request to Clerk:** Any party wishing to make a submission in support of or objection to a Bill of Costs in addition to an objection or a reply must use this event, explaining therein why additional filings are required. This CM/ECF event may also be used to seek relief from or extension of any Bill of Costs related deadlines or to request clarification of any Bill of Costs related procedure. This request, as titled, is directed to and decided by the Clerk of

Court. Should relief be sought from the presiding judge, the party should file an appropriate motion with the Court.

- E. Bill of Costs Further Submission:** If a Request to the Clerk for Leave to File Further Bill of Costs Submission is granted, use this event to file the permitted additional submission(s).
- F. Costs Taxed:** The Clerk uses this event to enter a taxation of costs.
- G. Motion - Court Review of Clerk's Taxation of Costs:** Use this event to file a motion seeking review by the Presiding Judge of the Clerk's taxation of costs. The motion should be identified as *Motion for Court Review of Clerk's Taxation of Costs*. The motion must be filed within seven (7) days of the Clerk's taxation of costs.