

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**STANDING ORDER REGARDING
BILLS OF COSTS**

IT IS ORDERED that before any party files a Motion for Bill of Costs, they should first review the following applicable law. Second, they should submit their proposed bill of costs to opposing counsel for their review in light of the applicable law. Third, if there are any areas of disagreement the parties shall meet, confer, and be prepared to compromise making every effort to submit an “agreed” bill of costs to the Court. The parties should be able to meet and confer and resolve these matters without having to take up the Court’s limited resources to sort through invoices and arguments that the parties’ able counsel should be able to resolve through meeting, conferring and compromising on these tedious matters. However, if the parties have a legitimate dispute on which they cannot agree, they shall file a joint “disagreed” bill of costs indicating their areas of disagreement, and the Court will set a hearing on same at which time **LEAD TRIAL COUNSEL** will be **ORDERED** to appear and explain why they have not been able to resolve their differences.

APPLICABLE LAW

Pursuant to Federal Rule of Civil Procedure 54(d), costs are to be awarded to the prevailing party as matter of course, unless the Court directs otherwise. However, the provisions of 28 U.S.C. § 1920 limit the Court’s discretion in taxing costs against the unsuccessful litigant. *See Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 441–42 (1987). Although the prevailing party is entitled to its costs, the prevailing party must still demonstrate that its costs are recoverable under

Fifth Circuit precedent, and the prevailing party should not burden the Court with costs that are clearly not recoverable under the law.

The statute permits the following recoverable costs:

- (1) Fees of the clerk and marshal;
- (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and copies of papers necessarily obtained for use in the case;
- (5) Docket fees under Section 1923 . . .; and
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under Section 1828. . . .

28 U.S.C. § 1920. A district court is permitted to decline to award costs listed in the statute, but may not award costs omitted from the statute. *Crawford*, 482 U.S. at 441–42.

Fees of the Clerk and Marshal

Private process server fees are not recoverable fees of the clerk and marshall under § 1920. *Cypress-Fairbanks Indep. School Dist. v. Michael F.*, 118 F.3d 245, 257 (5th Cir. 1997) (“As there was nothing exceptional about the parties or the nature of this case, the district court should have denied these unnecessary private service costs.”).

Fees of the Court Reporter

28 U.S.C. § 1920(2) authorizes recovery for “[f]ees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case.” The trial court has great discretion to tax the costs of taking, transcribing, and reproducing depositions that are “necessarily

obtained for use in the case.” *Fogleman v. ARAMCO*, 920 F.2d 278, 285 (5th Cir. 1991); *Nissho-Iwai Co. v. Occidental Crude Sales*, 729 F.2d 1530, 1553 (5th Cir. 1984). Whether a deposition or copy was necessarily obtained for use in the case is a factual determination to be made by the district court. *Fogleman*, 920 F.2d at 285–86 (citations omitted). The district court is accorded great latitude in this determination. *Id.* at 286.

Costs should not be disallowed merely because the deposition was not ultimately used at trial or in connection with a dispositive motion. The costs of a deposition are allowed “if the taking of the deposition is shown to have been reasonably necessary in the light of the facts known to counsel at the time it was taken.” *Copper Liquor, Inc. v. Adolph Coors Co.*, 684 F.2d 1087, 1099 (5th Cir. 1982), *modified on other grounds en banc*, 701 F.2d 542 (5th Cir. 1983), *overruled on other grounds in Int’l Woodworkers of Am. v. Champion Int’l Corp.*, 790 F.2d 1174 (5th Cir. 1986); *see also Stearns Airport Equip. Co., v. FMC Corp.*, 170 F.3d 518, 536 (5th Cir. 1999).

Under Fifth Circuit precedent since § 1920 makes no provision for videotapes of depositions, recovery of such without prior authorization from the court is not allowed. *See Gaddis v. United States.*, 381 F.3d 444, 476 (5th Cir. 2004) (citing *Mota v. Univ. of Tex. Houston Health Science Ctr.*, 261 F.3d 512, 529–30 (5th Cir. 2001)).

In addition, incidental costs associated with depositions, such as the cost of expedited delivery charges, ASCII disks, and parking, are generally not recoverable. *See Harris Corp. v. Sanyo No. Am. Corp.*, 2002 WL 356755, at *3 (N.D. Tex. March 4, 2002); *Canion v. United States*, No. EP-03-CA-0347-FM, 2005 WL 2216881 at *3 (W.D. Tex. 2005).

Fees for exemplification and copies of papers necessarily obtained for use in the case

Costs of photocopies necessarily obtained for use in the litigation are recoverable upon proof

of necessity. 28 U.S.C. § 1920(4); *Holmes v. Cessna Aircraft Co.*, 11 F.3d 63, 64 (5th Cir. 1994). The party seeking costs need not “identify every xerox copy made for use in the course of legal proceedings.” *Fogleman*, 920 F.2d at 286. However, it must demonstrate some connection between the costs incurred and the litigation. *Id.* Charges for multiple copies of documents, attorney correspondence, and other such items are not recoverable. *Id.*

Miscellaneous fees

Miscellaneous expenses such as postage, facsimiles, electronic legal research, and travel expenses are not recoverable under § 1920. *See Home Depot U.S.A. v. Fed. Ins. Co.*, No. 4:02-CV-95, 2003 U.S. Dist. LEXIS 5492, at *5 (E.D. Tex. 2003) (Davis, J.); *see also Compton v. Taylor*, No. H-05-4116, 2006 U.S. Dist. LEXIS 43402 at *8 (S.D. Tex. 2006). Likewise, reimbursement for attorney travel and meals is not allowed. *Coats v. Penrod Drilling Corp.*, 5 F.3d 877, 892 (5th Cir. 1993). In addition, the Fifth Circuit has expressly held that mediation fees are not recoverable. *Mota*, 261 F.3d at 530.