

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

STANDING ORDER REGARDING BILLS OF COSTS

IT IS ORDERED that before any party files a Motion for Bill of Costs, they should submit their proposed bill of costs to opposing counsel for their review in light of the applicable law. Further, 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 Court is confident that, through meeting, conferring, and compromising on these specific matters, the parties should be able to resolve these matters without having to impose upon the Court’s limited resources. However, if the parties have legitimate disputes on which they cannot agree, they shall file a motion—in accordance with Local Rule CV-54—indicating their areas of disagreement with specificity. In such case, the Court may elect to conduct a hearing on same at which time **LEAD TRIAL COUNSEL** will be **ORDERED** to appear and explain why these disputes and differences remain unresolved.

APPLICABLE LAW

Pursuant to Federal Rule of Civil Procedure 54(d), costs are to be awarded to the prevailing party as a matter of course, unless the Court directs otherwise. However, the provision 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 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 section 1923 of this title;
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

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 marshal under § 1920. *Cypress-Fairbanks Indep. Sch. 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 for printed or electronically recorded transcripts

Section 1920 was amended in 2008 to authorize recovery for “[f]ees for printed or electronically recorded transcripts 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 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 en banc*, 701 F.2d 542 (5th Cir. 1983), *overruled on other grounds by 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).

The 2008 amendment to this provision recognizes that costs may be taxed for “electronically recorded transcripts.” Accordingly, the Fifth Circuit has now implicitly recognized that costs may be allowed for video tapes of depositions. *See S&D Trading Academy, LLC v. AAFIS, Inc.*, 336 Fed. Appx. 443, 450-52 (5th Cir. 2009) (unpublished); *see also SynQor, Inc. v. Artesyn Techs., Inc.*, 2011 U.S. Dist. LEXIS 112493, at *9-10 (E.D. Tex. September 29, 2011) (taxing videotape deposition costs in light of the 2008 amendment and *S&D Trading Academy*). Recoverable costs related to depositions typically include, but are not limited to: reporter’s appearance fees, transcript costs, and videographer fees.

However, 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 the costs of making copies

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.* The Court first determines whether the charges sought are reasonable in light of the litigation. Reasonable charges shall be allowed; however, non-specific copying and exemplification charges may be further reduced.¹ Charges for multiple copies of documents, attorney correspondence, and other such items are not recoverable. *Id.*

Electronic discovery costs are generally not allowed, including costs for document collection, document processing, and document hosting. Document scanning costs are allowed to the extent that they are reasonable and necessary for litigation. Electronic document conversion costs are allowed to the extent that they are necessary for use in the case. The Court’s model ESI Order designates TIFF as the default format for document production. Parties that agree to such an arrangement shall have agreed that the costs of converting native documents to TIFF are taxable under Rule 54. However, in the event that the parties agree that native document production is acceptable (i.e., no conversion is necessary), the costs associated with converting native documents to TIFF (or any other format) shall not be recoverable. *See Eolas Techs. Inc. v. Adobe Sys. Inc.*, No. 6:09-cv-446 (E.D. Tex. July 20, 2012).

Miscellaneous fees

¹ For instance, a charge labeled “copying” is non-specific, while a charge labeled “copying Project X source code” is considered specific.

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 v. Univ. of Tex. Houston Health Science Ctr.*, 261 F.3d 512, 530 (5th Cir. 2001).

This standing order shall be effective as of the date of signature by the Court and until such time, if any, as it is amended or rescinded by subsequent order.

So ORDERED and SIGNED this 2nd day of September, 2014.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE