

UNITED STATES COURT OF FEDERAL CLAIMS GUIDE FOR PREPARING A BILL OF COSTS

The following step-by-step guide is provided by the Clerk's Office for the benefit of parties preparing bills of costs.

A. Review Rule 54(d)

Bills of costs are governed by Rule 54(d) of the Rules of the United States Court of Federal Claims ("RCFC"), which states that "[c]osts—other than attorney's fees—should be allowed to the prevailing party to the extent permitted by law." RCFC 54(d)(1).

B. Review RCFC Form 4

RCFC Rule 54 provides that a prevailing party shall file with the clerk of court a bill of costs within thirty (30) days after the date of final judgment, as defined by 28 U.S.C. § 2412(d)(2)(G) ("'[F]inal judgment' means a judgment that is final and not appealable, and includes an order of settlement.") The prevailing party should file Form 4, found in the Appendix of Forms to the RCFC, along with an affidavit and a memorandum setting forth the grounds and authorities supporting all costs. RCFC 54(d)(1)(B)(ii). With the exception of post-judgment costs, any costs omitted from the bill will not be allowed, therefore parties must take care to be accurate in preparing their bill for filing with the court.

C. Understand the Standard of Review

In preparing a bill of costs, it is helpful to keep in mind the standard of review that will be applied by the clerk or judge when evaluating the bill. The clerk or judge must "give 'careful scrutiny' to the items proposed by the prevailing party" for award of costs. *Alex v. KHG of San Antonio, LLC*, 2015 WL 5098327, at *8 (W.D. Tx. 2015) (citing *La. Power & Light Co. v. Kellstrom*, 50 F.3d 319, 335 (5th Cir. 1995)). The clerk or judge has discretion to tax requested costs that are reasonable, *see Soler v. Waite*, 989 F.2d 251, 255 (7th Cir. 1993), and supported by adequate documentation as proof, *see Johnson v. Big Lots Stores, Inc.*, 639 F. Supp. 2d 696, 709 (E.D. La. 2009).

If a decision on a bill of costs is made by the clerk, the decision will be final unless modified by the court upon review. A review by the court can be obtained by a motion for review filed by any party within fourteen (14) days after action by the clerk. RCFC 54(d)(1)(C)(iv). If granted, the review will be limited to the record made before the clerk and will encompass only those items specifically identified in the motion. *Id.*

D. Prepare the Bill of Costs

1. Categories of Taxable Costs

Statutes and case law allow the taxation of the following categories of costs.

- a. **28 U.S.C. § 1920** sets forth the categories of costs that are taxable in federal court actions.¹ A judge or clerk of any court of the United States may tax the following as costs.
 - Fees of the clerk and marshal
 - Fees for printed or electronically recorded transcripts necessarily obtained for use in the case
 - Fees and disbursements for printing and witnesses
 - Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case
 - Docket fees under 28 U.S.C. § 1923
 - Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under 28 U.S.C. § 1828
- b. **28 U.S.C. § 1821** addresses witness fees, including per diem, mileage, and subsistence.
- c. **28 U.S.C. § 1828** addresses interpretation services fees.
- d. **28 U.S.C. § 1914** addresses fees of the clerk.
- e. **28 U.S.C. § 1921** addresses fees of the United States marshal.
- f. **28 U.S.C. § 1923** addresses docket fees.

Another good source of guidance is case law on bills of costs that sets forth what is taxable and what is not.

¹ RCFC 54(d) provides that the clerk may tax costs in favor of the prevailing party to the extent that such costs are allowed under 28 U.S.C. § 2412(a), which incorporates by reference 28 U.S.C. § 1920, where a list of allowable costs are enumerated.

2. Supporting Documentation

It is important to gather supportive documentation to substantiate each of the costs claimed (*e.g.*, receipts, invoices, etc.). RCFC 54(d)(1)(B)(iii). Each cost included in the bill should be supported by documentation. In general, the reasonableness of costs claimed should be supported by itemized invoices and receipts; in the absence of such documentation, the judge or clerk will scrutinize the claimed costs together with the written justification included in the bill. As a result, full taxation of the cost may or may not be authorized.

3. Organize the Documentation into Categories

Form 4 provides a line item for each category of taxable costs. To facilitate review of a bill of costs, it is helpful for the supporting documentation to be grouped into the categories on the form.

4. Complete Form 4

Once the supporting documentation is organized and the costs are calculated, that information should be used to complete the bill of costs by inserting the totals for each category of taxable costs on Form 4. Remember to attach as exhibits copies of any vouchers, itemized bills, orders, receipts, or invoices proving the costs in accordance with RCFC 54(d)(1)(B)(iii). As an example, see the model below:

FEES OF THE CLERK

Filing	Fee/Check Amount
Filing Fee	\$250.00
Total	\$250.00

FEES OF THE REPORTER

Service	Fee/Check Amount
Transcript of pre-trial conference	\$100.00
Transcript of deposition (Mr. X)	\$250.00
Total	\$350.00

FEES FOR WITNESSES

Witness	Attendance	Subsistence	Mileage	Total Cost of Witness
Mr. X	2 days	-0-	-0-	\$80.00
Total				\$80.00

5. Review, Verify, and File the Bill of Costs

Remember that a bill of costs is a filing with the court, and therefore a certificate of service must accompany the document. The bill should also be reviewed for accuracy² and verified in accordance with RCFC 54(d)(1)(B)(ii), which requires that the prevailing party submit an affidavit and a memorandum setting forth the grounds and authorities supporting all costs. In the affidavit of support, the prevailing party shall certify that 1) the items claimed as costs are correct; 2) the costs have been necessarily incurred in the case; and, 3) the services for which fees have been charged were actually and necessarily performed. All costs shall be specified so that the nature of the claims can be readily understood.

E. Reply to Objections

A party may file a written objection to “some or all of the requested costs” within twenty-eight (28) days after service of the bill of costs. RCFC 54(d)(1)(C)(i). The prevailing party may reply to a filed objection no later than seven (7) days after service of the objection. RCFC 54(d)(1)(C)(ii).

² See *Summit Tech., Inc. v. Nidek Co.*, 435 F.3d 1371, 1380 (Fed. Cir. 2006) (“Although [28 U.S.C. §] 1920(4) does not demand page-by-page precision, a bill of costs must represent a calculation that is reasonably accurate under the circumstances.”).