



Federal Pro Se Clinic

CENTRAL DISTRICT OF CALIFORNIA: WESTERN DIVISION

Post-Judgment Guide:

■ The Potential Costs of Losing Your Case in Federal Court ■

Litigating a case in federal court can be time-consuming and expensive. *Pro se* litigants (either plaintiffs or defendants) can expect to spend money during the litigation process for things like making copies of court documents and taking depositions of witnesses. However, you should not overlook two significant costs the Court may impose on you if you lose your case:

1. **Taxable costs to the prevailing party**
2. **Attorney's fees to the prevailing party**

This guide explains these costs and when the Court may impose them on the losing party.

A. Taxable Costs to the Prevailing Party

According to Federal Rule of Civil Procedure 54 and Central District Local Rule 54-1, the "prevailing party" is entitled to certain "taxable costs" of litigation after the Court issues a "final judgment." 28 U.S.C. §§ 1821, 1827, 1828, and 1920-23 also describe the costs that may be imposed on the losing party. The prevailing party can be either the plaintiff or the defendant.

You should consider these costs as you prepare your case because Federal Rule of Civil Procedure 54(d)(1) creates a presumption in favor of awarding costs to a prevailing party. This means that if you lose your case, you will have the burden of showing that the costs are not justified. If you cannot meet this burden, you may have to pay the prevailing party's costs. (Note: costs cannot be imposed on the federal government under Rule 54(d)(1).)

WARNING!

A waiver of the filing fee (i.e., obtaining In Forma Pauperis status) **does not protect you** from paying the opposing side's costs or attorney's fees. You must follow the procedures outlined in this guide to challenge the assessment of any costs or fees.

Glossary of Terms

"Prevailing Party"

Generally, a party is the "prevailing party" if the Court enters a final judgment in that party's favor. Even if a plaintiff voluntarily dismisses the case, the Court, upon the defendant's request, may determine that the defendant is the prevailing party and allow it to obtain its costs from the plaintiff.

"Final Judgment"

A "final judgment" is a final determination by the judge of all the outstanding claims in a case.

"Taxable Cost"

A "taxable cost" is a cost that a prevailing party may obtain from the losing party for expenses it incurred during the litigation. This cost must be specifically permitted under a rule or statute, such as Federal Rule of Civil Procedure 54 or 28 U.S.C. § 1920.

This chart summarizes some of the costs (called “taxable costs”) a prevailing party may ask the Court to impose on the losing party after a final judgment has been entered in a case:

TAXABLE COST	DESCRIPTION OF COST
Initial Filing Fee	The fee for initiating a case in federal court. This fee is currently \$400.
Service of Process Fee	Fees for service of process (whether served by the U.S. Marshal or other persons allowed by Federal Rule of Civil Procedure 4) and for service of subpoenas pursuant to Federal Rule of Civil Procedure 45.
United States Marshal’s Fee	Fees or commissions paid by the prevailing party for services provided by the U.S. Marshal. For example, the prevailing party may recover costs paid to the U.S. Marshal for serving a deposition subpoena on a witness.
Deposition Reporter Fee	The cost of a stenographic reporter. This fee is taxable only if the deposition was reasonably necessary for trial. The prevailing party is not entitled to the costs of video or audio technicians, unless ordered by the Court.
Deposition Exhibit Fee	The cost of copying or reproducing exhibits used at a deposition. This cost is taxable only if the exhibits were made a part of the deposition transcript.
Deposition Transcript Fee	Fees paid for the cost of the original and one copy of a deposition transcript (additional copies are not taxable). However, the prevailing party is not entitled to the fees incurred in <u>defending</u> a deposition, videotaping or recording a deposition (unless ordered by the Court), or delivering a deposition transcript.
Interpreter or Translator Fee	Fees paid to interpreters and translators, including the salaries, fees, expenses, and costs incurred for oral language translations. See 28 U.S.C. § 1828 for more information about interpreter and translator fees.
Fees for Certification, Exemplification, and Reproduction of Documents	The cost of making copies for preparing, filing, and serving exhibits attached to court documents. For example, a prevailing party is entitled to recover the cost of making copies of exhibits to a complaint, motion to dismiss, or motion for summary judgment.
Witness Fees	Witness fees, including attendance, mileage or other travel expenses, per diem subsistence allowance, and any other fees or expenses provided in 28 U.S.C. § 1821, are taxable when paid to a witness: (a) who actually attends any court proceeding scheduled in connection with the case or before any person authorized to take the witness’s deposition; or (b) with a subpoena directing the witness’s appearance.

How Does a Prevailing Party Obtain its Costs?

The rules for obtaining and opposing costs are very specific and the process must be completed in a relatively short period of time. Whether you are the prevailing party or the losing party, carefully read Federal Rule of Civil Procedure 54, Central District Local Rule 54, and the Central District of California’s “Bill of Costs Handbook” to find out what costs are taxable and when you must file certain documents with the Court. The following is an overview of the process for obtaining and opposing costs:

Step 1

Notice of Application to the Clerk to Tax Costs and Proposed Bill of Costs

To obtain its costs from the losing party, the prevailing party must file and serve a “**Notice of Application to the Clerk to Tax Costs and Proposed Bill of Costs**” **within 14 days after** the Court issues a final judgment in the case. The Application is available on the Court’s website, www.cacd.uscourts.gov, as form CV-59 under the tab “Court Forms.” The Application should include:

- A. An itemization of all costs so the clerk can readily understand the requested costs.
- B. Any documentation of the costs, including copies of receipts, returned checks, bills, and court orders, which should be attached as exhibits.
- C. A declaration by the prevailing party verifying that the items claimed as costs are correct, the costs have been necessarily incurred in the case, and the services for which fees have been charged were actually and necessarily performed.

Step 2

Objection to Bill of Costs

The losing party may oppose the Application to Tax Costs by filing and serving an “**Objection to Bill of Costs**” **within 14 days after** service of the Application to the Clerk to Tax Costs. This Objection must be in writing and should state the grounds for the Objection with specificity. It must include a statement that the parties met and conferred to resolve the disagreement over the claimed costs.

An effective Objection will address each disputed cost in a separate paragraph. Start with a paragraph heading that describes the disputed cost. The body of each paragraph should then argue at least one of the following:

- A. **The disputed cost is not recoverable.** Closely scrutinize the prevailing party’s Application to make sure that it has only applied for costs that are permitted under a federal statute, Federal Rule of Civil Procedure, or Central District Local Rule.
- B. **The amount assessed for the disputed cost is unreasonable.** When arguing that a cost is unreasonable, the losing party may refer to the average cost for an item or service. For example, if a national retail chain charges 7 cents to photocopy a single page, you may argue that the prevailing party should not ask for more than this amount per page.

Warning!

If the losing party does not file a timely Objection to the Bill of Costs, it may be barred from challenging the amounts requested by the prevailing party in the Proposed Bill of Costs.

**Step
3**

Reply in Support of Application

The prevailing party may file and serve a written “**Reply**” to the Objection **within 3 days after** service of an Objection to Bill of Costs.

**Step
4**

Bill of Costs

If the Court grants the prevailing party’s Application, the Court will issue a final “**Bill of Costs**” that will explain each cost that the losing party must pay to the prevailing party. The Bill of Costs will list each category of cost and the amount the losing party must pay.

**Step
5**

Motion to Retax Costs

Within 7 days after the Court issues a Bill of Costs, the losing party may file and serve a “**Motion to Retax Costs.**” There are several reasons why a losing party may choose to file a Motion to Retax Costs. For example:

- The losing party cannot afford to pay the costs.
- The losing party disagrees with the amount of a specific item listed in the Bill of Costs.
- The losing party believes that his or her case raised an important issue of law.

The Motion to Retax Costs is limited to the facts presented in the Application. It can only contest those items specifically identified in the Bill of Costs. However, the losing party may also argue that his or her case raised important issues of law and that the imposition of costs may deter other individuals from filing similar cases in the future.

Please refer to Public Counsel’s “Guide to Filing a Motion” for more information about the general requirements for filing a motion with this Court.

B. Attorney’s Fee Awards

In some circumstances, the prevailing party is entitled to a reimbursement of its attorney’s fees from the losing party. These fees include payment for the attorney’s time spent working on the prevailing party’s case and any other costs incurred in either pursuing or defending the litigation. The availability and amount of attorney’s fees to a prevailing party depends entirely on whether a statute entitles it to receive a reimbursement of its attorney’s fees. For example, 42 U.S.C. § 1988(b) entitles a prevailing party to obtain its attorneys’ fees in civil rights cases brought under 42 U.S.C. § 1983. It is therefore important to research the law in your case.

How Does a Prevailing Party Obtain its Attorney's Fees?

A prevailing party must obtain its attorney's fees by filing a **"Motion for Attorney's Fees and Costs" within 14 days after** the entry of a final judgment. The party seeking the attorney's fees is called the "moving party."

The moving party must address the following in its Motion for Attorney's Fees and Costs:

1. Describe the final judgment in the case.
2. Specify the statute, rule, or other reason that the moving party is entitled to attorney's fees.
3. Specify the amount requested (or, in the alternative, a fair estimate of the amount requested).
4. If ordered by the Court, disclose the terms of any agreement between the client and attorney about attorney's fees.

Please see Public Counsel's "Guide to Filing a Motion" for more information about the general requirements for filing a motion with this Court.