

TAXATION OF COSTS

12/20/2006

I. Entitlement to Costs

Fed. R. Bankr. P. 7054 does not incorporate Fed. R. Civ. P. 54(d). Therefore, in bankruptcy court, costs are not allowed as a matter of course to the prevailing party. Fed. R. Bankr. P. 7054(b) provides that the court may allow costs to the prevailing party. Therefore, for the bankruptcy clerk to tax costs, the bankruptcy court judgment must include a provision awarding the prevailing party "taxable costs." If the judgment does not award costs, the bankruptcy clerk cannot tax any costs.

Also, if the judgment includes the dollar amount of costs awarded, there is no need for the clerk to tax the costs and therefore, no need to submit a bill of costs. The costs have already been awarded in the judgment. This often occurs in a default judgment. See Fed. R. Bankr. P. 7055(b) wherein a default judgment for a sum certain may include an amount for costs.

II. Procedure for Taxation of Costs

- A. While Fed. R. Bankr. P. 7054(b) provides that the bankruptcy clerk may tax costs on one day's notice by the parties appearing before the clerk, the procedure in this district is set forth in Local Rule of Bankruptcy Procedure 7054-1, which provides as follows.

Rule 7054-1 Costs-Taxation

"A party allowed costs shall, within ten days after entry of the judgment unless the time is extended by motion filed prior to the expiration of the ten days, file with the clerk and serve upon all adverse parties, a cost statement together with a notice of application to have the costs taxed and a proposed form of taxation of costs. The cost statement shall include a memorandum of the costs and shall be verified."

"Unless the clerk otherwise directs, the notice of application to have costs taxed shall give adverse parties notice that they have ten days to file and serve on the party who seeks costs, any objections to the cost statement. Any evidence supporting the objection shall be attached thereto. Thereafter, the clerk shall tax the costs."

"The clerk will not tax costs unless the judgment allows costs."

If an objection is filed, the clerk will tax costs after considering the objection. If no objection is filed, the clerk will then tax the costs that are allowable. This procedure allows for taxation of costs without the need for any of the parties to appear before the clerk.

- B. If any party desires to appeal the clerk's decision taxing costs, Fed. R. Bankr. P. 7054(b) requires that a motion seeking the court's review of the clerk's decision be filed within five days of the decision.
- C. The following form for the Bill of Costs and Notice of Taxation provides for the procedure as stated above. The use of this form will comply with the above requirements.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re)	Chapter _____
)	
)	Case No. _____
)	
Debtor(s).)	
_____)	
)	
Plaintiff(s),)	Adversary No. _____
)	
vs.)	
)	BILL OF COSTS AND
)	NOTICE OF TAXATION
)	
Defendant(s).)	
_____)	

Judgment was entered in this action on _____ against _____.

NOTICE IS GIVEN that the following Bill of Costs will be filed with the Clerk of the Bankruptcy Court.

NOTICE IS FURTHER GIVEN that the Clerk will tax the costs ten (10) days from the date of mailing of this notice. If you have an objection to any of the costs claimed, you must file a written objection with the Clerk, U.S. Bankruptcy Court, P.O. Box 34151, Phoenix, Arizona, 85067-4151, within ten (10) days and serve a copy on:

The Clerk of the Court is requested to tax the following costs:

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

(ATTACH AN ITEMIZATION AND DOCUMENTATION FOR ALL REQUESTED COSTS.)

DECLARATION

I, attorney for _____, declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action, that the services for which fees have been charged were actually and necessarily performed, and that a copy of this Bill of Costs was mailed this day with postage prepaid to:

DATED: _____

Attorney

COSTS ARE TAXED IN THE FOLLOWING AMOUNT:

\$_____.

DATED: _____
TERRENCE S. MILLER
Clerk of Court

III. Costs on Appeal

A. Fed. R. Bankr. P. 8014 provides for taxation of costs on appeal as follows:

Except as otherwise provided by law, agreed to by the parties, or ordered by the district court or the bankruptcy appellate panel, costs shall be taxed against the losing party on an appeal. If a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the court.

B. Costs on appeal are taxed by the bankruptcy clerk. However, the bankruptcy clerk is unable to tax costs on appeal until a copy of the appellate court's judgment is received from the clerk of the district court or bankruptcy appellate panel.

C. After a copy of the judgment of the appellate court is docketed on the bankruptcy court's docket, the prevailing party on appeal, if entitled to costs under Fed. R. Bankr. P. 8014, may file and serve a Bill of Costs on Appeal.

D. The procedure for taxation of costs on appeal is different than for costs awarded by judgment of the bankruptcy court.

1. Fed. R. Bankr. P. 8014 does not require that the losing party be given an opportunity to object to the costs.

2. If a party is entitled to costs under Rule 8014, the clerk is to tax those costs allowed by the rule.

3. The only costs that are taxable on appeal are those specified in Bankruptcy Rule 8014 and are:

a. costs incurred in the production of copies of briefs, the appendices and the record;

b. costs incurred in the preparation and transmission of the record;

c. the costs of the reporter's transcript, if necessary for the determination of the appeal;

d. any premiums paid for supersedeas bonds or other bonds to preserve rights pending appeal; and

e. the fee for filing the notice of appeal if previously paid by the prevailing party.

E. The following form for the Bill of Costs on Appeal may be used.

DECLARATION

I, attorney for _____, declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action, that the services for which fees have been charged were actually and necessarily performed, and that a copy of this Bill of Costs was mailed this day with postage prepaid to:

DATED: _____

Attorney

COSTS ON APPEAL ARE TAXED IN THE FOLLOWING AMOUNT: \$_____.

DATED: _____

TERRENCE S. MILLER
Clerk of Court
