

## BILL OF COSTS

### Applicable Law and Rules

1. Fed. R. Bankr. P. 7054(b) authorizes the court to allow costs to the prevailing party in an adversary proceeding. The text of this rule and of other relevant provisions of the law and rules is printed on the second page of the form.
2. Rule 7054(b) provides that the bill of costs be presented to the clerk on notice to the other parties to the adversary proceeding.
3. The length of time required for notice is often fixed by local rule. Some local rules also limit the time in which costs may be sought. A copy of the local rules may be obtained from the clerk of court.
4. The clerk will not tax costs unless the judgment signed by the court specifically awards costs to the prevailing party. Rule 7054(b). The Bankruptcy Rule is different from Fed. R. Civ. P. 54(d), where costs are allowed unless the court orders otherwise.
5. It is not necessary to have the bill of costs issued simultaneously with the entry of the judgment. Fed. R. Civ. P. 58, which is incorporated by reference by Fed. R. Bankr. P. 9021.

### Instructions

#### Caption

1. Identify the Judicial District in which the bankruptcy case was filed. Example: "Eastern District of California."
2. "In re": Insert the name of the debtor as it appears in the bankruptcy petition. Then insert the names of the plaintiff(s) and defendant(s) as they appear on the original complaint.
3. "Case No.": Insert the bankruptcy case number assigned by the court at the time of filing.
4. "Adv. Proc. No.": Insert the number assigned to the adversary case by the court at the time of the filing of the complaint.

**Notice:** The address of the clerk's office and the date and time the bill will be presented to the clerk should be stated in the boxes provided. This date and time should be cleared with the clerk in advance of service of the notice.

**Fees:** The fees necessarily incurred during the proceeding should be itemized in the space provided. The list is intended as a guide. It is not expected that every cost will be on the list. Therefore, several lines have been provided at the bottom of the list for additional costs to be itemized.

**Declaration:** The declaration serves as both an affirmation that the costs sought were actually incurred, were necessary, and have been calculated in good faith, and as an affidavit of service of the bill of costs on the judgment debtor.

**Service:** A copy of the proposed bill of costs must be served on the judgment debtor at least one day prior to the presentation of the bill to the clerk. Bankruptcy Rule 7054(b).

**Objections:** Either party may move for court review of the bill, on five days notice. Rule 7054(b).

### **General Information for the Clerk**

Prior to issuing the bill of costs, the clerk should ensure that:

1. A judgment was entered in the adversary proceeding.
2. The judgment specifically states that costs are awarded to the party seeking the bill of costs. NOTE: This is different from federal civil practice where Fed. R. Civ. P. 54 automatically permits costs. Fed. R. Bankr. P. 7054 specifically declines to follow this part of Rule 54.
3. The attorney's declaration has been executed, and that the name and address of the judgment debtor have been filled in. This declaration is both an affirmation that the costs sought in the bill are correctly calculated, and that the judgment debtor has been served with a copy of the proposed bill.

If both parties appear before the clerk and cannot reach agreement on the costs being sought, or if the fees sought are miscalculated, the clerk should exercise the clerk's best judgment as to the amount of costs to be awarded. Rule 7054(b) permits either party to move for review of the clerk's action in fixing the costs, or in refusing to fix costs. The clerk will almost certainly be called upon to testify at such a hearing. Thus, the clerk should keep specific notes of the basis for any decision to amend or deny the bill of costs.

Some courts have adopted a local rule fixing the length of time for notice of the presentation of the bill of costs.

Several courts have also adopted a local rule limiting the time in which costs may be sought after the judgment is entered. Clerks may wish to consider whether such rules should be adopted in their districts.