UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
OFFICE OF THE CLERK

BILL OF COST REFERENCE NOTES
AUGUST 30, 2006

These notes are offered by the Clerk of Court merely as an aid in preparing bills of costs in civil actions in this court. These notes are not an authoritative statement of the law or practice in the United States District Court for the Northern District of Mississippi. This compilation has not been reviewed or approved by any judge of this court. It does not necessarily represent the views of any judge of this court. It is not legal authority and should not be cited in motions or other papers supporting or opposing costs-related issues. It is neither legal advice nor an explanation of the law governing bills of costs.

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Prevailing Party. Generally, the prevailing party in a civil action is entitled to recover its costs for a limited range of expenses *allowed by statute*. The decision whether to award costs is vested in the trial judge. *See Card v. State Farm Fire & Cas. Co.*, 126 F.R.D. 658, 660 (N.D. Miss. 1989) ("The trial court has discretion to award costs to a prevailing party."), *citing Nissho-Iwai Co., Ltd. v. Occidental Crude Sales*, 729 F.2d 1530, 1551 (5th Cir. 1984).

There is a presumption under Rule 54(d) that a judgment silent as to costs is deemed as awarding costs to the prevailing party. *See Reed v. International Union of UAAAI*, 945 F.2d 198, 204 (7th Cir. 1991).

Generally, —

The plaintiff is the prevailing party when it recovers on the entire complaint.

The defendant is the prevailing party when the case is terminated by judgment in favor of the defendant or on court-ordered dismissal. *See Sheets v. Yamaha Motors Corp.*, 891 F.2d 533, 539 (5th Cir. 1990) (dismissal of a plaintiff's suit with prejudice is tantamount to a judgment on the merits for the defendant, thereby making the defendant the prevailing party).

The court may determine the prevailing party when the case is voluntarily dismissed or when there is a partial recovery or recovery by more than one party.

Interpleader Action—

Generally, costs are awarded to the plaintiff initiating the interpleader as a disinterested stakeholder. But if the interpleading plaintiff assumes a position as an opponent of a defendant, such as by denying liability to a defendant, contesting apportionment among competing claimants, or otherwise litigating its own self-interests, the court may, in its discretion, deny costs to the interpleading plaintiff. *See Cogan v. United States*, 659 F. Supp. 353, 354 (S.D. Miss. 1987).

But note—

"[W]here the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be . . . entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff." 28 U.S.C. § 1332(b).

Standards of Review. The district court's standard of review of the clerk's taxation of costs is *de novo*. *See American Steel Works v. Hurley Const. Co.*, 46 F.R.D. 465 (D. Minn. 1969).

The appellate standard of review of a district court's costs determination is "abuse of discretion." *Hensley v. Eckerhart,* 461 U.S. 424, 437 (1983), *Mota v. University of Texas Houston Health Science Center,* 261 F.3d 512, 529 (5th Cir. 2001).

What to file. A party claiming costs must file a *verified* bill of costs containing an affidavit attesting that each claimed item is correct, that each claimed item was *necessarily incurred* in the case, and that the services for which fees were charged were actually and necessarily performed. 28 U.S.C. § 1924.

The standard federal form for the bill of costs is *Bill of Costs Form AO 133* and is available at the clerk's offices in Oxford, Aberdeen, and Greenville and on the Northern District's website:

www.msnd.uscourts.gov Go to the **Forms** option

The court's form contains a listing of items recoverable as costs, a worksheet for capturing expenses and fees for witnesses, and the necessary affidavit. If costs are presented on a properly completed AO 133 or the form available at the court's website, a separate affidavit or verification is not necessary.

In an *unopposed* bill of costs, the boilerplate conclusory statement that "each item of cost or disbursement claimed is correct and has been necessarily incurred in the

above action" is sufficient for the clerk's taxation of costs in favor of the prevailing party.

But when a bill of costs is opposed by the non-prevailing party, the prevailing party must offer substantiation showing the reasonableness and necessity of all challenged claims, plus proof of payments when such is appropriate.

"Substantiation" requires thoughtful consideration: *Compare Copper Liquor, Inc. v. Adolph Coors Co.*, 684 F.2d 1087, 1098-99 (5th Cir. 1982) ("Courts are not accountants and defendants should not be tagged with either cost or expense bills that are horseback estimates. Those who are entitled to recover costs and expenses bear the burden of furnishing a reasonable accounting. . . ."), *with Perez v. Pasadena Independent School Dist.,* 165 F.3d 368,374 (5th Cir. 1999) ("'It is not necessary or desirable for federal courts to review receipts for every five dollar expenditure. Judges, being former practicing attorneys, are quite capable of determining the reasonableness of expenses incurred during litigation. . . .'" *quoting Duke v. Uniroyal, Inc.,* 743 F. Supp. 1218, 1227 (E.D.N.C. 1990)).

The clerk's practice is to require at least as much "substantiation" of costs and expenses as would be required by common law on a suit on an open account.

When to File. A prevailing party "shall serve the bill of costs not later than thirty days after entry of judgment. . . . [A]n appeal . . . shall not affect the taxation of costs." Rule 54.2(A), UNIFORM LOCAL RULES OF THE UNITED STATES DISTRICT COURTS FOR THE NORTHERN DISTRICT AND THE SOUTHERN DISTRICT OF MISSISSIPPI [hereinafter LOCAL RULES].

Objections to a bill of costs shall be served within 10 days of service of the bill.

LOCAL RULE 54.2(A) notwithstanding, the time for filing a bill of costs or objections is not jurisdictional; accordingly, an untimely bill or objections to a bill *may* be considered even if tardy. *See United States v. Kolesar*, 313 F.2d 835, 837 n.1 (5th Cir. 1963). The period for serving the bill may be enlarged under FED. R. CIV. P. 6(b). *Id*. Counsel seeking to file a bill of costs out of time should electronically file and serve a motion for leave to file out of time. Upon the court's grant of leave to file out of time, counsel should promptly file and serve the bill of costs and all supporting documentation electronically.

A judgment (and any other case filing) is deemed "entered" according to the date stamp automatically placed on the document by the court's Electronic Case Filing system [ECF]. All attorneys practicing in the United States District Court for the Northern District of Mississippi are required by Local Rule to enroll in the court's ECF system and to file and serve all pleadings electronically. *See Administrative Procedures for Electronic Case Filing* (N.D. Miss. 2005)(available on court's public website).

Neither a bill of costs nor an objection to a bill of costs involves reconsideration of the decision on the merits of a civil action. Consequently, such a motion or application is not one to alter or amend the judgment under FED. R. CIV. P. 60(b), and it does not render ineffective a notice of appeal filed prior to disposition of costs issues. *Buchanan v. Stanships, Inc.*, 485 U.S. 265, 268-69 (1988); *see also Samaad v. City of Dallas*, 922 F.2d 216, 217 (5th Cir. 1991).

Application for Attorneys' Fees Distinguished. Unlike bills of costs, motions or applications for attorneys' fees are not reviewed by the clerk. Accordingly, prevailing parties should not combine an application for attorneys' fees in a bill of costs—they should be submitted as two separate and distinct applications for relief. *See* FED. R. CIV. P. 54(d)(1) and (d)(2).

Costs, Fees, and Expenses Distinguished. The financial toll of litigation involves three different but related concepts: "costs," "fees," and "expenses." These terms of art are discussed in 10 Charles Alan Wright, Arthur R. Miller, and Mary Kay Kane, FEDERAL PRACTICE AND PROCEDURE, *Civil* 3d § 2666 (2002) (hereinafter Wright & Miller):

> "Costs" refers to those charges that one party has incurred and is permitted to have reimbursed by the opposing party as part of the judgment. Although "costs" has an everyday meaning synonymous with 'expenses,' the concept of taxable costs under Rule 54(d) is more limited and represents those expenses . . . that a court will assess against a litigant. . . . [C]osts almost always amount to less than the successful litigant's total expenses in connection with a lawsuit.
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> "Fees" are those amounts paid to the court or one of its officers for particular charges that typically are delineated by statute. . . . [T]hese include such items as docket fees, clerk's and marshal's charges, and witness' fees. . . .
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> "Expenses," of course, include all the expenditures actually made by a litigant in connection with the action. Both fees and costs are expenses, but by no means constitute all of them. For example, absent a special statute, or an exceptional exercise of judicial discretion, items such as attorney's fees, travel expenditures, and investigatory expenses will not qualify either as statutory fees or reimbursable costs. These expenses must be borne by the litigants.

The federal judiciary's *Judicial Conference Miscellaneous Fee Schedule* follows 28 U.S.C. § 1914 and appears on the court's fee public website.

Items Recoverable as Costs. Items allowable as recoverable costs are listed in 28 U.S.C. §§ 1821, 1914, 1920, 1921, and 1923. If a litigation-related expense is not specifically listed in these statutes, it probably is not recoverable in a bill of costs.

The following expenses are recoverable as costs under 28 U.S.C. § 1821:

- A witness's attendance fee ($40 per day as of January 1, 2004) when subpoenaed or summoned for appearance at discovery or at trial. *But note:* The expenses of witnesses who are themselves parties in interest normally are not taxable.

- A witness's mileage allowance (44.5¢ per mile as of January 1, 2006), plus charges for parking, tolls, taxicabs, and "all normal travel expenses." The federal Office of Management & Budget [OMB] changes the mileage allowance periodically according to economic trends and developments, and the clerk seeks to keep these notes current with the changes; however, the prudent attorney will consider calling the clerk's office to confirm the mileage allowance in effect for any particular period of travel.

- A witness's "actual expenses of travel . . . at the most economical rate reasonably available" when traveling by common carrier. This standard is a moving target: when the costs-related statutes were written, the "coach fare" standard was a dependable basis for determining "the most economical rate reasonably available." But modern methods of booking air travel via the Internet and the ready availability of "super saver" fares, "frequent flyer" fares, deep-discount fares, travel service discounted fares, advance-notice bookings, and the like, make it impossible to label any fare as "the most economical rate."

  The clerk will review copies of airline tickets and receipts to determine whether a claim is for first-class or business-class travel, which probably will always be disallowed, or coach, which will generally be allowed provided the travel is reasonably necessary, and whether the ticket was purchased at least seven days in advance.

  The Fifth Circuit considers a "seven-day advance fare" a standard for considering travel expenses recoverable in a bill of costs. In *Cypress-Fairbanks Independent School Dist. v. Michael F.,* 118 F.3d 245, 257 (5th Cir. 1997), the non-prevailing party objected to the prevailing party's claim for a witness's travel, averring that opposing counsel had sufficient time to purchase the witness's ticket in advance of trial at a considerably lower rate. The court sustained the objection, noting that . . .

  > The . . . [prevailing party] provided no reasonable explanation why . . . [the witness's] plane ticket could not have been purchased at least one week in advance, particularly as there is no record evidence that the one-day hearing in the district court was either scheduled or changed at the last minute. Thus, the witness fees and expenses recoverable by . . . [the prevailing party] should have been re-

> duced by . . . the difference between . . . [the witness's] actual plane fare and the maximum amount she would have had to pay for a seven-day advance fare.
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> Prudent counsel will substantiate claims for witness travel with a copy of the witness's airline ticket and, if available, a copy of a travel agent's billing invoice—anything that reasonably informs opposing counsel and the clerk that the witness's ticket was purchased at least seven days in advance and that the witness traveled at "*a* most economical rate reasonably available" if not "*the* most economical rate," and *almost* never first class. A first-class ticket *may* be justified in an appropriate case by a clear showing of reasonable necessity, including for instance a showing that a witness's physical handicap necessitated first-class accommodations.

- Airport terminal parking fees. *Ezelle v. Bauer Corporation*, 154 F.R.D. 149, 154 (S.D. Miss. 1994).

- A witness's daily subsistence allowance (per diem) ($99 per day, Oxford, Aberdeen, and Greenville; call Clerk's Office financial section (662-281-3023) for rates for other localities or for allowance changes) when overnight stay away from home "is required at the place of attendance because such place is so far removed from the residence of such witness as to prohibit return thereto from day to day."

Note: The key factor in weighing witness fees as costs is whether each witness's testimony was "relevant and material to an issue in the case and reasonably necessary to its disposition." Wright & Miller, § 2678 (2002). Absent a reasonable explanation, there is a presumption that a witness subpoenaed to trial but not called to the stand is not a necessary witness; in deciding a contested bill of costs, the clerk will disallow a prevailing party's claim for a non-testifying witness's attendance fees and related expenses. *See Morris v. Carnathan*, 63 F.R.D. 374, 377 (N.D. Miss. 1974). This is a topic that invites resolution in advance in the pretrial order. Further, counsel may seek to show that a non-testifying witness's presence appeared to be reasonably necessary at the time the witness was subpoenaed, continuing up to the time that developments during trial negated that necessity.

- **Expert witnesses**. Unless specifically ordered by the court, an expert's fees for his or her expertise *are not* recoverable as an item of costs. *See Copper Liquor, Inc. v. Adolph Coors* Co., 684 F.2d 1087, 1100 (5th Cir. 1982) ("Expert witnesses generally may be allowed only the fees allowed 'fact' witnesses, . . . If counsel plan to seek allowance of the entire expert's fee, the better practice is to seek court approval before calling the expert witness."); *Card v. State Farm Fire & Cas. Co.*, 126 F.R.D. 658, 661 (N.D. Miss. 1989) ("Costs for expert witnesses are limited to the costs which would be allowed other witnesses under [U.S.C.] Sections 1920 and 1821.").

- **Corporate representative**. As to whether a corporation, as the prevailing party, may recover the witness fee, witness mileage allowance, and per diem of its corporate representative, who is not personally involved in the civil action and who testifies for the corporation, *compare Morrison v. Alleluia Cushion Co., Inc.*, 73 F.R.D. 70, 71 (N.D. Miss. 1976) (not allowed), *with Ezelle v. Bauer*, 154 F.R.D. 149, 154-55 (S.D. Miss. 1994) (allowed).

The following categories of expenses are recoverable under 28 U.S.C. §§ 1914 and 1920:

- **Fees of the clerk, including filing fees and statutorily-defined docketing fees**. *Card*, 126 F.R.D. at 660 (N.D. Miss. 1989) ("Court fees are allowed as costs whether they are fees which are paid when the action was initially filed or when the action was removed."). *See Judicial Conference Miscellaneous Fee Schedule* following 28 U.S.C. § 1914. The court's fee schedule is posted on its public website. The $100 fee charged by the court for *pro hac vice* attorney admissions is not recoverable in a bill of costs.

- **U.S. Marshal's fees**. *See* 28 U.S.C. § 1921 for an itemization of marshal's fees recoverable as costs. In the Northern District of Mississippi, the U.S. Marshal does not serve civil process except (i) on behalf of the United States as a party, (ii) in proceedings classified as *in forma pauperis*, and (iii) on writs of seizure and execution. *See* Rule 4.1(B), LOCAL RULES. For bill of cost determinations, the clerk reads the statute as plainly as it is written: state and local law officers and private process servers are not the unstated equivalent of U.S. Marshals and, consequently, their service of process fees are not recoverable in a bill of costs.

- **Reporters' fees for transcripts that *are necessarily obtained for use in the case***. When itemizing deposition claims, the prudent prevailing party will offer brief statements showing the necessity of each deposition at the time it was obtained and its connection to *use in the case*, such as for preparation for examination and cross-examination of witnesses, for rebuttal testimony, in support of motions, and determination of damages.

  Additionally, the controlling statute, 21 U.S.C. § 1920(2) allows recovery of "Fees of the court reporter for . . . the stenographic transcript . . . ." Nothing more.

  Reporters' bills and invoices frequently contain itemized expenses that become problematic when deposition expenses are challenged by a non-prevailing party: a "good" bill or invoice from a reporter will include only the name of the deponent, the deposition date, and the total charge for the deposition—it will *not* contain itemized charges for extra copies of depositions, ASCII versions of the transcript, indices, postage or shipping

charges, binding charges, or any other charge. Such itemizations invariably lead to unnecessary wrangling by the parties, and a disallowance by the clerk, when a bill of cost is challenged.

For a discussion of deposition-related expenses that are recoverable in a bill of costs, *see* Wright & Miller, § 2676 (2002).

The phrase *necessarily obtained for use in the case* is a term of art. A prudent prevailing party seeking an award for stenographers' fees and expenses might want to ensure that his or her claims meet the standards enunciated in the following authorities, among others:

> *Fogelman v. ARAMCO*, 920 F.2d 278, 286 (5th Cir. 1991)("Prevailing parties are entitled to recover the costs of original depositions and copies under 28 U.S.C § 1920(2) and § 1920(4) . . . provided they were 'necessarily obtained for use in the case.'").
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> "Use in the case" means that a transcript must have a direct relationship to the determination and result of the trial. *Loewen v. Turnipseed*, 505 F.Supp. 512, 517 (N.D. Miss. 1980).
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> The cost of a deposition may be taxed even if it is used just to structure questioning at trial, but only if the court in its discretion believes the taxation of costs to be justified. *Ezelle v. Bauer Corporation*, 154 F.R.D. 149, 155 (S.D. Miss. 1994).
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> *Stearns Airport Equipment Co., Inc. v. FMC Corporation*, 170 F.3d 518, 536 (5th Cir. 1999) ("it is not required that a deposition actually be introduced in evidence for it to be necessary for a case—as long as there is a reasonable expectation that the deposition may be used for trial preparation, it may be included in costs."). *But see Felts v. National Accounts Ass'n Corp., Inc.*, 83 F.R.D. 112, 114 (N.D. Miss. 1979) (When copies of depositions taken by plaintiffs were not necessarily obtained by defendants for use in presenting their successful motion for summary judgment, costs for such deposition copies were disallowed.).
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> *Copper Liquor, Inc. v. Adolph Coors Co.*, 684 F.2d 1087, 1099 (5th Cir. 1982) ("While some cases hold that the costs of depositions are taxable only if they were either introduced in evidence or used at trial in examining or impeaching witnesses, the more equitable as well as more practical view is to allow the recovery of such expense if the taking of the deposition is shown to have been reasonably necessary in the light of facts known to counsel at the time it was taken."). *See also Nissho-Iwai*, 729 F.2d 1530, 1553 (5th Cir. 1984) (use of a deposition to structure questioning met the "reasonably necessary" standard).

Cypress-Fairbanks Independent School Dist. v. Michael F., 118 F.3d 245, 257–58 (5th Cir. 1997) (Depositions of party's own witnesses not introduced at trial will be deemed surplusage and hence not properly recoverable in a prevailing party's cost bill. While the deposition may be helpful to counsel in preparation of the witness's anticipated trial testimony, such is more for the convenience of counsel rather than a reasonably necessary cost).

Absent court approval or an agreement of the parties, daily transcript services *are not* recoverable in a bill of costs. *See Brumley Estate v. Iowa Beef Processors, Inc.*, 704 F.2d 1362, 1363 (5th Cir. 1983) (Additional expense of daily transcripts was held to be for convenience of ordering party but was not necessary for use in the case). The parties' pretrial order is an ideal opportunity for counsel and the court to resolve in advance ultimate liability for daily transcripts. *See Cypress-Fairbanks, supra*.

"The cost of depositions that simply are investigative or preparatory in character, rather than for the presentation of the case, typically are not taxable." 10 Wright & Miller, § 2676 (2002).

- Fees for printing, photocopying, and for witnesses.

  Fees for witnesses are governed by 28 U.S.C. § 1821.

  Since January 1, 2005, the date the Northern District of Mississippi implemented the federal judiciary's Electronic Case Filing system [ECF] and made all case filings available through the judiciary's PACER system [**P**ublic **A**ccess to **C**ourt **E**lectronic **R**ecords], prevailing parties' claims for photocopying expenses should be greatly diminished.

  The ECF and PACER systems automatically provide to all counsel and the court, via the Internet, near-instantaneous digital copies of all pleadings and other documents filed in all civil actions. Counsel seeking to recover photocopying expenses will be held to a high standard for showing that the copies were *necessarily obtained for use in the case*. Absent a showing to the contrary, the clerk will assume that all copywork for pleadings and other documents filed and served in a case was produced for the convenience of counsel.

  Printing and photocopying expenses are recoverable if the materials were *necessarily obtained for use in the case* and the prevailing party demonstrates that necessity. *See Stearns Airport Equipment Co., Inc. v. FMC Corporation*, 170 F.3d 518, 536 (5th Cir. 1999), *and Fogelman v. ARAMCO*, 920 F.2d 278, 286 (5th Cir. 1991). If a document that is otherwise allowable as an item of costs requires notarization, the notary's fee may also be recovered.

In addition to the showing of *necessarily obtained for use in the case,* a claim for photocopy expenses should show at least the following information:

- General description or label identifying the document.
- Number of pages in document.
- Number of sets of documents copied.
- Total number of pages copied.
- Price per copy (25¢ per page approved in *Herdahl v. Pontotoc County School Dist.*, 64 F. Supp. 1113, 1120 (N.D. Miss. 1997)
- Total photocopy charges.

Items Generally NOT Recoverable as Costs. *See generally,* Wright & Miller, § 2677 (2002). When contested, the clerk commonly will disallow the following claims:

- Incompletely or inadequately documented expenses. Documentation supporting the bill of costs should include, when appropriate, copies of canceled checks, receipts for payments, invoices or bills for expenses, or other documentation reasonably showing that an allowable expense was in fact paid by the prevailing party.

- Attorneys' fees and travel expenses incurred in connection with deposition taking. *See J.T. Gibbons v. Crawford Fitting Co.*, 760 F.2d 613, 616 (5th Cir. 1985).

- Fees charged by state or local law officers, or by private process servers, for service of subpoenas and summons.

- Witness attendance fees, mileage allowances, and subsistence for parties and counsel.

- Salaries, wages, and other compensation for paralegals, legal assistants, legal secretaries, and other law office support staff.

- Court reporters' charges for videotape copies and ASCII discs and deposition indices, postage or courier delivery charges and other costs that frequently appear in reporters' invoices. *See Mota v. University of Texas Houston Health Svc. Ctr.,* 261. F.3d 512, 529–30 (5th Cir. 2001). The prudent reporter will bill the noticing attorney a comprehensive flat price on deposition invoices; counsel should inform reporters of this standard.

- Messengers.

- Investigators.

- Fees charged by the clerk's office for *pro hac vice* attorney admissions. *See Eagle Ins. Co. v. Johnson*, 982 F. Supp. 1456, 1460 n.2 (M.D. Ala. 1997) ("Pro-hac-vice fees are a creature of the courts. They do not appear to be authorized by any statute.").

- WESTLAW, LEXIS/NEXIS, and other computer-aided legal research charges and tolls.

- Telephone expenses or tolls, including long-distance charges, conference call charges, and video-conferencing charges, unless agreed to by the parties and/or specifically allowed by the court. *See Ezelle v. Bauer Corporation*, 154 F.R.D. 149, 155 (S.D. Miss. 1994). Issues related to telephone and other communications expenses are usually best resolved in the pretrial order. *See* Rule 16.2, LOCAL RULES.

- Charter airfares for witnesses, including expert witnesses, unless agreed to by the parties and/or specifically allowed by the court. Issues related to charter airfares are usually best resolved in the pretrial order. *See* Rule 16.2, LOCAL RULES.

- Experts' professional fees for their testimony, unless agreed to by the parties and/or specifically allowed by the court. Issues related to experts' fees are best resolved in the pretrial order. *See* Rule 16.2, LOCAL RULES. *See, e.g., Coats v. Penrod Drilling Corp.*, 5 F.3d 877, 891(5th Cir. 1993) (experts' fees not recoverable under 28 U.S.C. § 1920), *and J.T. Gibbons v. Crawford Fitting Co.*, 760 F.2d 613, 616-17 (5th Cir. 1985) ("The Supreme Court long ago established as a general rule that expert witness fees are not taxable as costs beyond the statutory per diem fee, mileage, and subsistence allowance provided in 28 U.S.C. § 1821."). For exceptions in a narrow range of cases, most notably civil rights cases, *see Jones v. Diamond*, 636 F.2d 1364, 1381 (5th Cir.), *cert. dismissed sub nom Ledbetter v. Jones,* 453 U.S. 950 (1981).

- Expenses for photographs, digital video disks, graphic enlargements, charts, models, mock-ups, demonstrative evidence, and other exhibits, unless agreed to by the parties and/or specifically allowed by the court.

  Issues related to expenses of exhibits are usually best resolved in the pretrial order. Rule 16.2, LOCAL RULES.

  See Louisiana Power & Light Co. v. Kellstrom, 50 F.3d 319, 335 (5th Cir.) (district court may authorize production of trial exhibits if such would "facilitate the just, speedy, and inexpensive disposition of the action," but absent pretrial approval a prevailing party may not seek taxation of costs for exhibits), *cert. denied*, 516 U.S. 862 (1995).

Accord, Perez v. Pasadena Independent School District, 165 F.3d 368, 374 (5th Cir. 1999) (not an abuse of discretion for district court to allow prevailing party to recover costs of trial exhibits listed in pretrial order and provided to court in trial notebooks).

Card v. State Farm Fire & Cas. Co., 126 F.R.D. 658, 662 (N.D. Miss. 1989) ("The cost of videotape and duplicates of slides will not be allowed because these costs were not approved and were not necessarily obtained for trial. Costs for demonstrative aids are not usually allowed."), *aff'd without opinion*, 902 F.2d 957 (5th Cir. 1990).

Mota v. University of Texas Houston Health Science Center, 261 F.3d 512, 529–30 (5th Cir. 2001) (Award of costs for videotaped depositions reversed on appeal: "We have observed that 28 U.S.C. § 1920(2) only allows for the recovery of '[f]ees of the court reporter for . . . the stenographic transcript necessarily obtained for use in the case.' There is no provision for videotapes of depositions. This reading is consistent with the text of 28 U.S.C. § 1920(2) and the Supreme Court's admonition that we strictly construe this provision. Nor is it possible to characterize videotaped depositions as 'out-of-pocket expenses' similar to postage and long-distance telephone calls.").

- Copies of depositions by the party who noticed the deposition. Customarily, court reporters provide the original deposition plus one copy to the noticing party. There is no necessity for the noticing party to claim a copying expense unless another copy is produced and received into evidence during trial or is used to support a prevailing party's motion for summary judgment.