

## LOCAL CIVIL RULE 54

### COSTS – NOTICE OF APPEAL – JURY COSTS

(A) **Payment in Advance:** All fees and costs due the Clerk shall be paid in advance except as otherwise provided by law.

(B) **Stipulation for Costs for Certain Admiralty and Maritime Claims:** No stipulation for costs for complaints, petitions, counterclaims, and cross-claims, and the filing of an answer, appearance, or claim shall be required, unless specifically ordered by the Court, except where now or hereafter required by statute, the Federal Rules of Civil Procedure, or the Supplementary Rules for Certain Admiralty and Maritime Claims heretofore or hereafter adopted by Congress or through the rule making process.

(C) **Bond Premiums:** If costs are awarded by the Court, the reasonable premiums or expense paid on any bond or other security given by the prevailing party shall be taxed as part of the costs.

(D) **Taxable Costs And Procedure For Taxing Costs:**

(1) Bill of Costs. The party entitled to costs shall file a bill of costs as provided in 28 U.S.C. §§ 1920 and 1924 within ~~eleven (11)~~ fourteen (14) days from the entry of judgment, unless such time is extended by order of the Court.

Such bill of costs shall distinctly set forth each item thereof so that the nature of the charge can be readily understood. An itemization and documentation for requested costs in all categories shall be attached to the cost bill. Costs will be disallowed if proper documentation is not provided.

(2) Objection to the Bill of Costs. A party from whom costs are sought may ~~serve~~ file an opposition to the bill of costs within ~~eleven (11) days~~ fourteen (14) calendar days after service of the bill of costs. The opposition shall identify each item objected to and the grounds for the objection. Within ~~five (5) days~~ six (6) calendar days thereafter, the prevailing party may ~~serve~~ file responses to the objections. The fourteen (14) and six (6) calendar day periods for objections and reply briefs shall apply without regard to, and are not expanded by, the mode of service used for those briefs, notwithstanding the provisions of Fed. R. Civ. P. 6(d).

If no objections are filed, the Clerk shall promptly proceed to tax the costs and shall allow such items specified in the bill of costs as are properly chargeable as costs. The Clerk shall give notice of such action to the parties or their counsel. The Court shall promptly review the action of the Clerk upon timely motion under Fed. R. Civ. P. 54(d). In the absence of a timely motion the action of the Clerk is final.

If objections are filed and the Clerk is unable to determine all or some of the properly chargeable costs, the application for such costs shall be referred to the judge who presided over the trial or, at the discretion of that judge, to a magistrate judge for report and recommendation under 28 U.S.C. § 636(b)(1)(B).

(E) **Excessive and Unnecessary Costs:** Any party applying for costs which are not recoverable or which are excessive shall be subject to sanction under Fed. R. Civ. P. 11.

**(F) Notice of Appeal – Fees:**

(1) Where there are multiple parties seeking to appeal jointly (e.g., where cases are consolidated or tried together or decided by a single judgment or order) and a joint notice of appeal is filed, the Clerk shall collect only one fee and only one cost bond, if required. Where separate notices of appeal are filed, the Clerk shall collect separate fees and require separate bonds.

(2) Separate notices of appeal, separate fees, and separate bonds are required of a party who exercises a right of appeal under Fed. R. App. P. 4(a)(3), within fourteen (14) days of the date on which the first notice of appeal was filed.

**(G) Jury Costs:** Whenever any civil action scheduled for jury trial is settled, or otherwise disposed of in advance of the actual trial, then, except for good cause shown, juror costs, including service fees, mileage, and per diem, shall be assessed equally against the parties and their counsel or otherwise assessed as directed by the Court, unless the Clerk is notified at least one (1) full business day prior to the day on which the action is scheduled for trial in time to advise the jurors that it will not be necessary for them to attend.

Likewise, when any civil action, proceeding as a jury trial, is settled at trial in advance of the verdict, then, except for good cause shown, all jury costs, service fees, mileage, and per diem shall be assessed equally against the parties and their counsel, or otherwise assessed as directed by the Court.

## **JUSTIFICATION FOR CHANGES TO LOCAL CIVIL RULE 54**

### **(1) Local Rule 54(D)(1) - Deadline for Bill of Costs**

Currently, Local Rule 54(D)(1) establishes a deadline for a prevailing party to file a bill of costs eleven (11) days after the entry of judgment. The proposed change to such Rule would modify the deadline to fourteen (14) days after entry of judgment.

Federal Rule of Civil Procedure 54(d)(1) establishes the procedure and deadline for filing a motion seeking the review of the clerk's action taxing costs; however, the Federal Rule makes no mention of the deadline for the initial submission of a bill of costs. As outlined below, although the current eleven (11) day deadline established in Local Rule 54(D)(1) does not "conflict" with Federal Rule 54, a modification of such deadline improves consistency and predictability.

Because Federal Rule 54(D)(1) provides no guidance regarding the deadline for filing a bill of costs, a review of the surrounding provisions of such Rule is instructive. Subsection (d)(2) of Federal Rule 54, which addresses the timing for filing a post-judgment motion seeking attorney's fees, establishes a fourteen (14) day period for filing a motion seeking attorney's fees. In light of such deadline, and in the absence of any apparent benefit to requiring that a bill of costs be filed three days prior to the filing of a motion seeking attorney's fees, the proposed change to Local

Rule 54(D)(1) establishes a consistent fourteen (14) day deadline for both post-judgment submissions.

In addition to improving internal consistency and predictability specific to the requirements in Rule 54, such change is also consistent with prior modifications to the Federal Rules of Civil Procedure that amended various time periods/deadlines to periods that are a multiple of seven. Utilizing multiples of seven, where appropriate, improves predictability for practitioners and the Court as it minimizes the need for adding extra days to time calculations in order to account for weekends.

## **(2) Local Rule 54(D)(2) - Deadlines for Objections to Bill of Costs**

Currently, Local Rule 54(D)(2) establishes an eleven (11) day period for an opposing party to file objections to a bill of costs, and a five (5) day period for the prevailing party to file a response to the objections. The proposed changes to such Rule would modify such deadlines to fourteen (14) calendar days and six (6) calendar days, respectively. Similar to the justification for the proposed changes to Local Rule 54(D)(1), the proposed change to Local Rule 54(D)(2) would improve internal consistency and predictability within Rule 54, and across the Local Rules.

Focusing first on Rule 54, the current version of Local Rule 54(D)(2) creates the potential for a conflict with Federal Rule 54(d)(1). Specifically, the Federal Rule states that costs may be taxed by the Clerk “on 14 days’ notice.” Fed. R. Civ. P. 54(d)(1). Local Rule 54(D)(2) not only establishes a deadline for objecting to a bill of costs, but expressly instructs the Clerk to “promptly proceed to tax the costs” if no objections are filed to a bill of costs. E.D. Va. Loc. Civ. R. 54(D)(2). It appears that the filing of a bill of costs likely constitutes the “notice” referenced in the Federal Rule, and if an opposing party does not file an objection, the Clerk may act to “promptly” tax the costs on day 12 or day 13 after “notice” was given (assuming that the mailbox rule is not applicable). Such action of taxing costs on less than fourteen days’ notice would appear to violate Federal Rule 54(d)(1). Accordingly, extending the period to file objections to a bill of costs from eleven (11) days to fourteen (14) calendar days would eliminate such potential inconsistency.

Considering next the consistency and predictability across the Local Rules, Local Rule 7(F) establishes a fourteen (14) calendar day briefing period for opposition briefs, and a six (6) calendar day briefing period for reply briefs for motions filed in civil cases. The proposed changes to the deadlines established in Rule 54(D)(2) draw directly from the language used in Local Rule 7(F). Notably, the proposed changes incorporate the use of a “calendar day” deadline in order to establish predictable deadlines that are not varied by the manner of service. Similar to the justification for the proposed modification to Local Rule 54(D)(1), there appears to be no apparent benefit in carving out a special briefing deadline for an objection and/or reply to a bill of costs that differs slightly from the default deadlines applicable to other civil motions.

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