

COSTS AND ATTORNEY'S FEES

To Whom Allowed

Unless otherwise provided by law, agreed by the parties, or ordered by the court, if an appeal is dismissed or the judgment affirmed, costs are taxed against the appellant; and if the judgment is reversed costs are taxed against the appellee. If a judgment is affirmed or reversed in part, or is vacated, costs are allowed only as ordered by the court. Fed. R. App. P. 39(a).

Costs for or against the United States, its agency, or officer will be assessed only if authorized by law. Fed. R. App. P. 39(b). Those instances in which costs are authorized for or against the United States are controlled by statute, especially 28 U.S.C. § 2412 and 5 U.S.C. § 504.

Costs Taxable in the Court of Appeals

The only costs generally taxable in the court of appeals are: (i) the \$500 docketing fee if the appellant is the prevailing party; and (ii) the cost of printing or reproducing the briefs and appendices, including exhibits. Fed. R. App. P. 39(c); Local Rule 39(c). The cost of producing necessary copies of briefs and appendices is taxable on appeal at a rate equal to actual cost, but not higher than \$.15 per page.

Costs Taxable in the District Court

Various costs incidental to an appeal must be settled at the district court level. These include: (i) the cost of the reporter's transcript; (ii) the \$5 fee for filing the notice of appeal; (iii) the fee for preparing and transmitting the record; and (iv) the premiums paid for any required appeal bond. Fed. R. App. P. 39(e); Local Rule 39(c).

Application for recovery of these expenses by the successful party must be made in the district court, and should be made only after issuance of the mandate. These costs, if erroneously applied for in the court of appeals, will be disallowed without prejudice to the right to reapply for them in the district court. Local Rule 39(c).

Bill of Costs

The prevailing party seeks costs allowable on appeal by filing in the court of appeals, within 14 days after entry of judgment, the bill of costs form provided with the notice of judgment. Fed. R. App. P. 39(d). The bill of costs shall be itemized and verified and, if based on a printer's bill, should be accompanied by the printer's itemized statement of charges. Local Rule 39(b). When costs are sought for or against the United States, counsel should cite the statutory authority relied upon. Local Rule 39(b). A late affidavit for costs must be accompanied by a motion for leave to file.

Objections to Bill of Costs

Objections to the bill of costs must be filed within 10 days of service on the party against whom costs are to be taxed unless the time is extended by the court. Fed. R. App. P. 39(d).

Award of Costs

The clerk rules on all bills of costs and objections in the first instance. Local Rule 39(b). A party desiring reconsideration of the clerk's determination must file a motion for reconsideration within 14 days of entry of the clerk's order. Local Rule 27(b). Taxation of costs will not be delayed by the filing of a petition for rehearing or other post-judgment motion. Local Rule 39(b).

The clerk prepares and certifies an itemized statement of costs taxed in the court of appeals for insertion in the mandate, but the issuance of the mandate shall not be delayed for taxation of costs. Fed. R. App. P. 39(d). If the mandate has been issued before final determination of costs, the clerk will send a supplemental bill of costs to the district court for inclusion in the mandate at a later date. Local Rule 39(c).

Recovery of Costs

All costs, those taxed by the court of appeals as well as those taxed by the district court, are recoverable in the district court, through an action to enforce an award of costs.

Attorney's Fees

Under the "American Rule," attorney's fees for appellate work are generally not recoverable absent express contractual or statutory authorization. E.g., 28 U.S.C. § 1912; 28 U.S.C. § 1927; 42 U.S.C. § 1988; Fed. R. App. P. 38.

Under Local Rule 46(e), any application for an award of attorney's fees and expenses must include a reference to the statutory basis for the request and a detailed itemization of the amounts requested. In certain agency cases, this requirement may be met by submitting the standard government form for fees and expenses provided by the agency for approval by the court. Local Rule 46(e).

Related Links

- [Rule 39, Costs \(with Local Rules\)](#)
- [Rule 46, Attorneys \(with Local Rules\)](#)
- [Court Forms & Fees - Costs](#)