

Rule 39. Costs

(a) Allocating Costs Among the Parties. The following rules apply to allocating taxable costs among the parties unless the law provides, the parties agree, or the court orders otherwise:

- (1) if an appeal is dismissed, costs are allocated against the appellant;
- (2) if a judgment is affirmed, costs are allocated against the appellant;
- (3) if a judgment is reversed, costs are allocated against the appellee;
- (4) if a judgment is affirmed in part, reversed in part, modified, or vacated, each party bears its own costs.

(b) Reconsideration. Once the allocation of costs is established by the entry of judgment, a party may seek reconsideration of that allocation by filing a motion in the court of appeals within 14 days after the entry of judgment. But issuance of the mandate under Rule 41 must not be delayed awaiting a determination of the motion. The court of appeals retains jurisdiction to decide the motion after the mandate issues.

(c) Costs Governed by Allocation Determination. The allocation of costs applies both to costs taxable in the court of appeals under Rule 39(e) and to costs taxable in district court under Rule 39(f).

(d) Costs For and Against the United States. Costs for or against the United States, its agency, or officer will be allocated under Rule 39(a) only if authorized by law.

(e) Costs on Appeal Taxable in the Court of Appeals.

(1) **Costs Taxable.** The following costs on appeal are taxable in the court of appeals for the benefit of the party entitled to costs;

- (A) the production of necessary copies of a brief or appendix, or copies of records authorized by Rule 30(f);
- (B) the docketing fee; and
- (C) a filing fee paid in the court of appeals.

(2) **Costs of Copies.** Each court of appeals must, by local rule, set the maximum rate for taxing the cost of producing necessary copies of a brief or appendix, or copies of records authorized by Rule 30(f). The rate must not exceed that generally charged for such work in the area where the clerk's office is located and should encourage economical methods of copying.

(3) Bill of Costs: Objections; Insertion in Mandate.

- (A) A party who wants costs taxed in the court of appeals must — within 14 days after judgment is entered— file with the circuit clerk and serve an itemized and verified bill of those costs.
- (B) Objections must be filed within 14 days after the bill of costs is served, unless the court extends the time.
- (C) The clerk must prepare and certify an itemized statement of costs for insertion in the mandate, but issuance of the mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the district clerk must — upon the circuit clerk's request — add the statement of costs, or any amendment of it, to the mandate.

(f) Costs on Appeal Taxable in the District Court. The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs:

- (1) the preparation and transmission of the record;
- (2) the reporter's transcript, if needed to determine the appeal;
- (3) premiums paid for a bond or other security to preserve rights pending appeal; and
- (4) the fee for filing the notice of appeal.

Local Rule 39(a). Reproduction Costs.

The cost of producing and binding necessary copies of briefs and appendices in the form required by Fed. R. App. P. 32 shall be taxable as costs at a rate equal to actual cost, but not higher than 15 cents per page for each copy required for filing and service by Local Rules 30(b)(4) and 31(d) or by order of the Court.

Local Rule 39(b). Bill of Costs.

The verified bill of costs may be that of a party or counsel, and should be accompanied by the printer's itemized statement of charges. When costs are sought for or against the United States, counsel should cite the statutory authority relied upon. Taxation of costs will not be delayed by the filing of a petition for rehearing or other post-judgment motion. A late affidavit for costs must be accompanied by a motion for leave to file. The clerk rules on all bills of costs and objections in the first instance.

Local Rule 39(c). Recovery of Costs in the District Court.

Although some costs are "taxable" in the Court of Appeals, all costs are recoverable in the district court after issuance of the mandate. If the matter of costs has not been settled before issuance of the mandate, the clerk will send a supplemental "Bill of Costs" to the district court for inclusion in the mandate at a later date.

Various costs incidental to an appeal must be settled at the district court level. Among such items are: (1) the cost of the reporter's transcript; (2) the fee for filing the notice of appeal; (3) the

fee for preparing and transmitting the record; and (4) the premiums paid for any required appeal bond. Application for recovery of these expenses by the successful party on appeal must be made in the district court, and should be made only after issuance of the mandate by the Court of Appeals. 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.

Former Local Rule 39 redesignated Local Rule 39(a) December 1, 1995; amended December 1, 1998, and September 1, 2011.

Local Rule 39(b) adopted December 1, 1995.

Local Rule 39(c) adopted December 1, 1995; amended October 1, 2015, and December 1, 2025.

Former I.O.P.-39.1 rescinded December 1, 1995.