

IN THE SUPREME COURT OF THE STATE OF FLORIDA

IN RE AMENDMENTS TO UNIFORM)	CASE NO.: SC96726
GUIDELINES FOR TAXATION)	
OF COSTS)	

**AMENDED REPORT OF THE CIVIL PROCEDURE RULES
COMMITTEE ON REVISED UNIFORM GUIDELINES FOR TAXATION
OF COSTS IN CIVIL ACTIONS**

Pursuant to the Supreme Court of Florida’s Order of March 8, 2001, on the Amendments to Uniform Guidelines for Taxation of Costs, The Florida Bar Civil Procedure Rules Committee continued its analysis of the guidelines. The Supreme Court stressed that the Guidelines “should reflect a policy of reducing the impact of costs upon parties, with the ultimate aim of decreasing the overall costliness of litigation. . . . We must maintain the focus on having costs as low as the bounds of justice will permit.”¹

As directed by the Supreme Court, the Committee, through its subcommittee, solicited comments from a broad spectrum of entities.² The subcommittee also reviewed virtually all published Florida appellate decisions addressing the Uniform Guidelines for Taxation of Costs, as well as collecting and considering the approaches of the other forty-nine (49) states and federal guidelines. Finally, the subcommittee also analyzed the previous written filings by various individuals when the proposed Guidelines were initially published in November 1999.

In addition to the appellate case law and statutory information, additional legal themes were also considered. Chief among those was the importance of making the

¹Amendments to Uniform Guidelines for Taxation of Costs, 794 So. 2d 1247 (Fla. 2001).

²Submissions were received from, among others, The Florida Chapter of the American Board of Trial Advocates (FLABOTA) and the Trial Lawyers Section of The Florida Bar. The subcommittee believes the Trial Lawyers’ proposal was more confusing than the proposal the full committee approved, and believes our proposal more closely meets the goals of the Florida Supreme Court, to reduce the cost of litigation (the Trial Lawyers’ proposal would potentially increase it) and simplify the application of the guidelines so the parties may better estimate what their costs might be.

prevailing party whole.³ Also important was simplifying the application of the guidelines so that litigants may predict with greater accuracy the likely aggregate costs.⁴ Moreover, in attempting to satisfy the Supreme Court's request, the subcommittee confronted the strain between decreasing the overall costliness of litigation versus simultaneously attempting to make the prevailing party whole.⁵

From the outset, the subcommittee agreed that the trial court should maintain broad discretion to assess costs.⁶ In exercising its discretion, the trial court should consider and reward utilization of innovative technologies by a party which subsequently minimizes costs; and reduce the award when use of innovative technologies would have resulted in lowering costs.

Furthermore, the subcommittee agreed that the standard utilized by the trial court in reviewing requests for taxation of costs should be slightly revised from "reasonable" to "reasonably necessary." This revision adds the requirement that reasonable costs be "necessary," at the time the action was taken, to either defend or prosecute the case.⁷ Unless otherwise expressly indicated, the movant possesses the initial burden of showing that the requested cost was reasonably necessary.⁸

Based on the subcommittee's research and suggestions, the Civil Procedure Rules Committee, by a vote of 42-0, recommends that the existing Statewide Uniform

³See Mikes v. City of Hollywood, 687 So. 2d 1381, 1384 (Fla. 4th DCA 1997).

⁴See White v. Steak and Ale of Florida, Inc., 816 So. 2d 546 (Fla. 2002); City of Jacksonville v. Brooks, 823 So. 2d 184 (Fla. 1st DCA 2002).

⁵See Caceres v. Physicians Protective Trust Fund, 489 So. 2d 869 (Fla. 3d DCA 1986).

⁶See Borja v. Nationsbank of Fla., N.A., 730 So. 2d 799 (Fla. 3rd DCA 1999); Centex-Rooney Constr. Co., Inc. v. Martin County, 725 So. 2d 1255, 1262 (Fla. 4th DCA 1999); Madison v. Midland Nat'l Life Ins. Co., 648 So. 2d 1226 (Fla. 4th DCA 1995); State Farm Fire & Cas. Co. v. Oskierko, 334 So. 2d 61 (Fla. 3d DCA 1976); Foley v. Peckham, 256 So. 2d 65 (Fla. 3d DCA 1971); Winn Dixie Stores, Inc. v. Vote, 463 So. 2d 459 (Fla. 2d DCA 1985); Crane v. Stulz, 136 So. 2d 238 (Fla. 2d DCA 1961).

⁷See King v. Nat'l Sec. Fire and Cas. Co., 656 So. 2d 1338, 1339 (Fla. 4th DCA 1995); Buyer Fin. Corp. v. Oliveros, 196 So. 2d 451 (Fla. 3d DCA 1967); Emigh v. Tinter, 108 So. 2d 913 (Fla. 3d DCA 1959).

⁸Thus, unless otherwise indicated, there would be a logical presumption that the cost shall be taxed. See Gray v. Bradbury, 668 So. 2d 296, 298 (Fla. 1st DCA 1996); Kendall Racquetball Invs., Ltd. v. Green Co., Inc. of Fla., 657 So. 2d 1187 (Fla. 3d DCA 1995); Powell v. Barnes, 629 So. 2d 185, 186 (Fla. 5th DCA 1993).

Guidelines for Taxation of Costs in Civil Actions be replaced with the following, which also appears in the Appendix in legislative format with the footnotes deleted:

STATEWIDE UNIFORM GUIDELINES FOR TAXATION OF COSTS IN CIVIL ACTIONS

I. **Litigation Costs Which Shall Be Taxed.**

A. Depositions

1. The original and one copy of the deposition and court reporter's per diem for all depositions, unless the objecting party shows it was not reasonably necessary.⁹
2. The original and/or one copy of the video deposition and the cost of the services of a technician for video depositions **used at trial**, unless the objecting party shows it was not reasonably necessary.
3. Telephone toll and video conferencing charges for the conduct of telephone and video depositions unless the objecting party demonstrates that the depositions were not reasonably necessary.

B. Documents and Exhibits

1. The costs of copies of documents admitted (in lieu of "actually cited") with the court, which assist the court in reaching a conclusion.
2. The costs of copies obtained in discovery, even if the copies were not used at trial, unless an objecting party demonstrates that the copies were not reasonably necessary.¹⁰

C. Expert Witnesses

⁹See Nowel v. Broward Gen. Med. Ctr., 725 So. 2d 438, 439 (Fla. 4th DCA 1999); Southeast Fla. Cable, Inc. v. Islandia I Condo. Ass'n Inc., 661 So. 2d 91, 92 (Fla. 4th DCA 1995); Balseca v. Callies Elec., Inc., 566 So. 2d 322 (Fla. 3d DCA 1990); Mainlands of Tamarac by Gulf Unit No. Four Ass'n Inc. v. Morris, 388 So. 2d 226 (Fla. 2d DCA 1980); Fatolitis v. Fatolitis, 271 So. 2d 227 (Fla. 2d DCA 1973); Vote, 463 So. 2d at 460. But see Schnier v. Barnett Bank of S. Fla., N.A., 595 So. 2d 143 (Fla. 3d DCA 1992).

¹⁰See Martin v. Marlin, 528 So. 2d 943 (Fla. 3d DCA 1988) Keener v. Dunning, 238 So. 2d 113, 114 (Fla. 4th DCA 1970), But see In re Estate of Williams, 771 So. 2d 7 (Fla. 2d DCA 2000); State Farm Mut. Auto. Ins. Co. v. Sampaio, 374 So. 2d 617, 618 (Fla. 4th DCA 1979).

1. A reasonable fee for deposition and/or trial testimony, and the costs of preparation of any court ordered report.¹¹

D. Witnesses

1. Costs of subpoena, witness fee, and service of witnesses for deposition and/or trial.¹²

E. Court Reporting Costs Other than for Depositions

1. Reasonable court reporter's per diem for the reporting of evidentiary hearings, trial and post-trial hearings.¹³

F. Reasonable Charges Incurred for Requiring Special Masters, Guardians Ad Litem, and Attorneys Ad Litem

II. Litigation Costs That May Be Taxed as Costs.

A. Mediation Fees and Expenses.

1. Costs and fees of Mediator.

B. Reasonable Travel Expenses¹⁴

1. Reasonable travel expenses of attorney.¹⁵
2. Reasonable travel expenses of expert.¹⁶
3. Reasonable travel expenses of witnesses.

¹¹Eppler v. Tarmac Am., Inc., 695 So. 2d 775, 777 (Fla. 1st DCA 1997); Hyster Co. v. Stephens, 560 So. 2d 1334, 1337 (Fla. 1st DCA 1990); Conboy v. City of Naples, 230 So. 2d 476 (Fla. 2d DCA 1970); Fla. R. Civ. P. 1.390(c). But see § 92.231, Fla. Stat. (2002); Seabrooks v. Winn Dixie Stores, Inc., 745 So. 2d 1039 (Fla. 1st DCA 1999); Wuesthoff Mem'l Hosp. v. Tapia, 687 So. 2d 1370, 1371 (Fla. 1st DCA 1997).

¹²See §§ 92.142 & 92.151, Fla. Stat. (2002).

¹³See Waller v. Baxley, 565 So. 2d 808 (Fla. 2d DCA 1990); Abraham v. S.N.W. Corp., 549 So. 2d 776 (Fla. 4th DCA 1989); Schumacher v. Wellman, 415 So. 2d 120, 122 (Fla. 4th DCA 1982); Weiss v. Turteltaub, 386 So. 2d 1245 (Fla. 3d DCA 1980).

¹⁴Travel expenses are defined as reasonable costs when traveling in excess of 100 miles from the expert's and/or attorney's principal place of business. Travel expenses do not include the expert's and/or attorney's time.

¹⁵See Barnes v. City of Dunedin, 666 So. 2d 574 (Fla. 2d DCA 1996); C.B.T. Realty Corp. v. St. Andrews Cove I Condo. Ass'n, Inc., 508 So. 2d 409 (Fla. 2d DCA 1987). But see Bevel Bros., Inc. v. Lemenze, 720 So. 2d 556 (Fla. 4th DCA 1998).

¹⁶See C.B.T. Realty, 508 So. 2d at 411.

III. Litigation Costs That Should Not Be Taxed as Costs.

- A. The Cost of Long Distance Telephone Calls with Witnesses, both Expert and Non-Expert (including conferences concerning scheduling of depositions or requesting witnesses to attend trial).
- B. Any Expenses Relating to Consulting But Non-Testifying Experts.
- C. Cost Incurred in Connection with Any Matter Which Was Not Reasonably Calculated to Lead to the Discovery of Admissible Evidence.
- D. Travel Time.
 - 1. Travel time of attorney(s).
 - 2. Travel time of expert(s).

The proposed amendments have been published in the *Bar News* and on the Bar's website, and the period for comment is over. Comments received are appended to this report. The committee's response is as follows:

- 1. As to Henry Trawick's comments:
 - a. "Evidentiary" should not be added. The committee considered and rejected limiting the reimbursement for the use of court reporters; the consensus was that these costs should be extended to post-trial hearings. Post-trial hearings are extremely important because they set the stage for appellate review. If a party makes a legal argument without a court reporter being present, a question may arise as to what was argued and what was waived. Some committee members believed reimbursement should be available for costs of all hearings, but the majority believed reimbursement for evidentiary hearings should be limited pretrial, but not post-trial.
 - b. It is noted in footnote 14 that the travel expenses in II(b)(1) do not include the attorney's time. That is, while the attorney's time is part of his or her fee, shelter and gas are not. Furthermore, travel expenses are only reimbursed under that guideline if the attorney traveled more than 100 miles, so there is some limitation on the amount that could be taxed.
- 2. As to T. Rankin Terry's comments: The committee mentions in the preamble to the proposed guidelines that there were two divergent themes

or goals: to make a party whole, while also attempting to decrease the overall cost of litigation. Neither goal can be completely satisfied. To make a party whole is to necessarily drive up the cost of litigation. So the proposal is a balancing of the two goals.

3. Bill Wagner's suggestions would best be considered by the full committee, if the court so directs.

The Florida Bar Board of Governors voted on April 2, 2004, by a vote of 37-0, to approve the proposed amendments. The Committee respectfully requests that this Court adopt these proposed amendments to the Statewide Uniform Guidelines for the Taxation of Costs in Civil Actions.

Respectfully submitted _____, 2004.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by United States mail to: Phillip J. Jones, Wilkins, Frohlich et al., 18501 Murdock Circle, 6th Floor, Port Charlotte, FL 33948-1039, Hon. J. Kevin Carey, 801 E. Twiggs St., Ste. 344, Tampa, FL 33602-3515, Madelon Horwich, The Florida Bar, 651 E. Jefferson St., Tallahassee, FL 32399-2300, James W. Middleton, Rogers Towers, et al., 1301 Riverplace Blvd., Ste. 1500, Jacksonville, FL 32207-1811, Walter G. Latimer, Marlow Connell et al., 2950 Southwest 27th Ave, Ste. 200, Miami, FL 33133-3776, Gail Leverett Parenti, Parenti, Falk, et al., 113 Almeria Ave, Coral Gables, FL 33134, Keith H. Park, Law Offices of Keith Park, Ste 200, 2240 Palm Beach Lakes Blvd, West Palm Beach, FL 33409, Daniel K. Bean, Holland & Knight, LLP, P.O. Box 52687, Jacksonville, FL 32201-2687, Bill Wagner, 601 Bayshore Blvd, Ste 910, Tampa, FL 33606, William E. Hahn, Hahn, Morgan & Lamb, 2701 North Rocky Point Dr., Ste. 410, Tampa, FL 33607, Henry Trawick, P.O. Box 4009, Sarasota, FL 34230-4009, T. Rankin Terry, 2121 McGregor Blvd., Ft. Myers, FL 33901-3494, and Kelly Hamer, 307 NW 3d St., Ocala, FL 34475-6638, this ____ day of _____, 2004.

STATEWIDE UNIFORM GUIDELINES FOR TAXATION OF COSTS IN CIVIL ACTIONS

ADMINISTRATIVE ORDER

~~The Florida Conference of Circuit Judges requests permission to publish and distribute to all judges in the State of Florida for their guidance the appended uniform guidelines for taxation of costs in civil actions.~~

~~Permission is hereby granted to publish and distribute the guidelines, but without prejudice to the rights of any litigant objecting to the application of the guidelines to a specific case on the basis that the assessment of costs pursuant to the guidelines is contrary to applicable substantive law. It is recognized that no approval of these guidelines shall relieve the trial judge of his responsibility under the law to assess the proper costs. This order~~

~~is not to be construed as any intrusion on that responsibility of the trial judges.~~

~~These guidelines were adopted by the Florida Conference of Circuit Judges at its business session in Panama City on September 23, 1981; have been endorsed by the Board of Governors of The Florida Bar; and have been endorsed by both the Trial Lawyers Section of The Florida Bar and The Florida Bar's Special Commission to Reduce Court Costs and Delay. The Court is confident that the appended guidelines which were authored by experienced circuit judges and lawyers are reasonable and will enable the judges of this state to construe and apply uniformly the law.~~

~~_____
/s/ Alan C. Sundberg
_____~~

~~Chief Justice~~

COST ITEM

1. *Depositions*

~~A. Deposition of parties or witnesses read into evidence at trial in their entirety.~~

~~Cost of *original* deposition, plus Court Reporter's per diem, plus cost of one copy, be taxed.~~

~~B. Deposition of parties or witnesses, when only a portion of the deposition is read at trial for impeachment purposes or in evidence.~~

~~Cost of *original* pages actually used, plus Court Reporter's per diem, plus cost of one copy of pages actually used, be taxed if only a portion of the deposition is read into evidence. The cost of additional pages, including if appropriate, the entire deposition, may be taxed if the *prevailing* party can logically demonstrate to the Court that the additional pages for which taxation is sought were reasonably necessary under the facts and circumstances of the case, in the event of which the court should tax the cost of such additional pages or the deposition as a whole, together with *one* copy thereof. If only a portion of a deposition is used at trial solely for impeachment purposes, the same rule should apply unless the presiding judge determines that the portions used did not, in fact, really impeach the witness, in which case *nothing* should be awarded for the deposition. The burden should be upon the *prevailing* party to point out the pages actually used and, if used for impeachment, to show how and in what manner the portions read actually impeached the witness.~~

~~C. Deposition of parties or witnesses used to successfully support a Motion for Summary Judgment.~~

~~The cost of the *original* entire deposition, plus Court Reporter's per diem, plus cost of *one* copy, should be taxed.~~

~~D. Depositions of parties or witnesses used to *defeat* a Motion for Summary Judgment, but not used for any purpose at trial.~~

~~The cost of the *original* entire deposition, plus Court Reporter's per diem, plus cost of *one* copy, should be taxed.~~

~~E. Depositions of witnesses not used at trial for any purpose and not used to support or defeat a Motion for Summary Judgment.~~

~~The cost of such depositions should not be taxed unless the *prevailing* party can logically demonstrate that the taxing of such deposition (under the facts and circumstances of the case) was reasonably necessary. If the Court concludes that the taking of the deposition was reasonably necessary, then the cost of the deposition, plus Court Reporter's per diem, plus the cost of *one* copy, should be taxed.~~

~~F. Cost of *copies* of depositions of parties or witnesses, when the deposition is used in whole or in part at trial, or is used in whole or in part in *defeating* a Motion for Summary Judgment.~~

~~If used in whole or in part at trial, same rule as set out in 1B above should be followed. If used to *defeat* a Motion for Summary Judgment, cost of one entire copy should be taxed.~~

~~2. Expert Witnesses~~

~~A. Charges made by the expert for examinations or inspections or research prior to trial for purpose of enabling witness to express expert opinions.~~

~~Such charges should be considered by the Court in setting a reasonable fee, especially in such cases as Eminent Domain where the expert *must* thoroughly inspect the property, check comparable sales, etc. The Court should consider the *nature* of the expert testimony, whether or not~~

~~the expert witness was really needed; the entire facts and circumstances of the case; and then award such monetary sum for preparation as the facts of the case warrant.~~

~~B. Charges made by expert witnesses for reports submitted to or conferences with attorney prior to trial.~~

~~Such charges or costs should *not* be taxed.~~

~~C. Charges of expert witnesses for travel time for attendance at trial; i.e. charges on an hourly basis or otherwise for *time* consumed in traveling from office to Courthouse.~~

~~Such charges should *not* be taxed for experts with offices in same city as Courthouse. For witnesses from *out* of city, such charges should *generally* not be taxed, but trial judge should be free to exercise his or her best judgment depending upon all the facts of the particular case involved.~~

~~D. Charges of expert witnesses for travel expenses from office to Courthouse.~~

~~(Same as 2C above)~~

~~E. Expert witness fee for testimony at trial.~~

~~A reasonable sum for such fee should be taxed, taking all factors of the case into consideration, including the time spent by the expert in actual testimony; the expertise required and the novelty of the situation; the prevailing community rates for such services to the extent they can be ascertained; the degree of “expertness” of the witness; and the witness’ qualifications, training and experience.~~

~~F. Charges made by expert witnesses for time spent at the Courthouse waiting to testify.~~

~~If the expert is at the Courthouse for the convenience of the attorney calling him so as to afford the opportunity for conferences during recesses or during progress of the trial, such "waiting time" charges should *not* be taxable. If the expert is caused to wait due solely to the failure of the attorney to properly schedule his appearance, such "waiting time" should *not* be taxed since most attorneys and judges will allow an expert to be called out of turn in order to conserve the expert's time. If, however, the expert is forced to wait due to trial delays not occasioned by the witness or by the attorney calling him, the trial judge should consider such charges and, if justified, award a reasonable amount therefor.~~

~~G. Expert witness fee charged for the giving of a deposition when the deposition is not used in whole or in part at the trial.~~

~~Such charges should *not* be taxed as a cost item.~~

~~H. Expert witness fee charged for the giving of a deposition which *is* used at trial.~~

~~A *reasonable* sum for such fee should be taxed, taking all factors of the case into consideration, including the time spent by the expert in actual testimony; the expertise required and the novelty of the situation; the prevailing community rates for such services to the extent they can be ascertained; the degree of "expertness" of the witness; and the~~

~~witness' qualifications, training and experience.~~

~~3. Travel expenses of prevailing attorney incurred in connection with the taking of depositions out of the City or State.~~

~~Such expenses should *not* be taxed as costs.~~

~~4. Travel expenses of non-expert witness who resides outside of state for attendance at trial.~~

~~If the testimony of such out of state witness is presented at trial, the statutory mileage allowed for subpoenaed witnesses from the Florida State line to the City where the trial is held, and return, should be taxed as costs.~~

~~5. Witness fees for non-expert witnesses who reside outside of state, but who attend trial and testify pursuant to arrangements made with them by the prevailing party.~~

~~That the same statutory witness fee provided for subpoenaed witnesses be awarded for such out of state and non-subpoenaed witnesses.~~

~~6. Cost of long distance telephone calls to witnesses, both expert and non-expert, arranging for witness conferences, or for scheduling of a deposition, or for the witness to attend trial.~~

~~That such costs *not* be taxed.~~

~~7. Cost of Xerox or other machine reproduced copies.~~

~~The cost of copies of documents (contracts, promissory notes, etc.) actually filed in the Court file should be taxed. The cost of copies of documents (contracts, business records, hospital records, etc.) actually filed and received in evidence~~

~~during course of trial should be taxed. Generally, the cost of copies obtained during course of discovery and not used at trial should not be taxed, but the presiding Judge should exercise his discretion on the taxability of the cost of such copies if the facts of the entire case warrant an award of the cost of such copies.~~

~~8. Cost of “daily copy” of trial transcript.~~

~~Only the cost of such portion as may be used for impeachment should be taxed. Portions used for consultation with the client or other expert witnesses should not be taxed.~~

~~The text of this administrative order (issued October 28, 1981) also appears at 432 So.2d 1346, 1349 n.2.~~

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