

**IN THE SUPREME COURT OF FLORIDA**

IN RE AMENDMENTS TO UNIFORM  
GUIDELINES FOR TAXATION OF COSTS

CASE NO. SC96726

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**STEVEN SELLERS' RESPONSE TO REQUEST FOR COMMENTS**

Pursuant to the request for comments on the proposed amendments to the statewide guidelines for taxation of costs in civil actions published in The Florida Bar News on November 1, 2004, the undersigned provides the following comments.

1. The format of the proposed guidelines is greatly improved by specifying costs that “shall be taxed,” “may be taxed,” and “should not be taxed.”
2. The proposed guideline calling for mandatory taxation of all deposition costs could lead to serious abuses, and the exception based on proof the deposition was not “reasonably necessary” will lead to a lack of uniformity in application of the guideline. I propose that only the cost of depositions of the parties and agents of the parties, all disclosed expert witnesses, and all persons required to authenticate documents admitted into evidence should be subject to mandatory taxation. Then, costs of depositions of persons disclosed in mandatory pre-trial disclosures of witnesses should be taxed at the court’s discretion based on necessity with a rebuttable presumption that depositions of witnesses that testify at trial are necessary and those that do not testify are not necessary. Deposition costs of any other person should not be taxed.

These suggestions reflect the reality that all parties and their agents generally should be deposed in a civil case and the costs thereof recovered by the prevailing party. These suggestions also may help

encourage attorneys to limit the number of witnesses on their proposed witness lists.

3. The proposed guideline relating to mandatory taxation of video depositions should be subject to the same suggestions set out above for depositions for the same reasons.

4. The proposed guideline relating to telephone toll charges and video conferencing charges for depositions should be subject to the same suggestions set out above for depositions for the same reasons.

5. I strongly disagree with the proposed guideline requiring taxation of costs of photocopies of all documents “admitted” with the court and “obtained in discovery.” The current guideline is sufficient except that the court should consider limiting the cost of each copy to a specified amount, perhaps \$0.10 per copy. In document intensive cases, such as disputes concerning large construction projects, the typical request to produce documents asks for all documents associated with the project which may involve tens of thousands of pages and the cost to copy these often disorganized and duplicative documents can reach the thousands of dollars at a per copy price in excess of \$0.25 per copy. It has been my experience that these costs are rarely necessary for successful prosecution or defense of the action and should not be taxed against the non-prevailing party who has no control over the strategy or lack thereof of opposing counsel. The current guideline authorizes taxation of these costs at the discretion of the judge which should be sufficient.

Technology that allows documents to be scanned and saved to a disk should be encouraged due to the ease of duplication and cost savings occasioned thereby. A guideline that allows for recovery of all copy costs will not encourage the use of such technology.

6. I agree that the guidelines should provide for mandatory taxation of the costs for expert witnesses. I suggest the mandatory guidelines apply only to expert witnesses that are deposed and/or testify at trial, whether in person or by deposition. This excludes the costs of all experts that may be listed by a party but are not deposed or called to testify. The cost of the expert should include not only the expert's fee for deposition and trial testimony and any court-ordered report, but also any expert fee relating to examinations or inspections or research for the purpose of enabling the expert to express an opinion. If the expert is called for deposition or testimony, it is reasonably necessary that the expert spend time preparing the expert's testimony and such fees should be taxed as they are with the current guidelines.

7. I agree that taxation of the costs for service of a subpoena and witness fees should be mandatory but only for those witnesses that actually testify at trial and, in the case of a deposition, only for those witnesses that are listed in either party's court-ordered witness list.

8. I suggest mandatory taxation of court-ordered mediation fees and permissive taxation otherwise. A significant cost incurred by a party only as a result of a court order should generally be recovered from the non-prevailing party.

9. I commend the Florida Bar Civil Procedure Rules Committee on a job well done.

### **CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing was served by United States mail on committee chair Robert N. Clarke, Jr., Ausley & McMullen, P.A., Post Office Box 391, Tallahassee, Florida 32302-0391 on November 4, 2004.

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