

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE**

Procon Analytics, LLC,)	
)	
Plaintiff,)	No. 3:19-cv-201
)	
v.)	
)	
Spireon, Inc.,)	
)	
Defendant.)	

FINDINGS OF THE CLERK

Plaintiff Procon Analytics, LLC, filed a Bill of Costs against Defendant Spireon, Inc., on April 27, 2021, in the amount of \$27,743.15. [Doc. 73]. Defendant Spireon, Inc., filed a Notice of Appeal on May 4, 2021 [Doc 76] as well as an Objection to the Bill of Costs on May 18, 2021 [Doc. 81]. Pursuant to E.D. Tenn. L.R. 54.1, *Guidelines* II(F)(2)(ii), the Clerk deferred the taxation of costs until resolution of the appeal and required the parties to file a report on the status of the costs within fourteen (14) days of the appellate mandate becoming final. [Doc. 83]. The appellate mandate issued on March 1, 2022 [Doc. 86] and the parties filed a Joint Status Update on March 11, 2022, stating that no update to the previously filed Bill of Costs and Objections was necessary. [Doc. 88]. Accordingly, the matter is ripe for determination. *See* E.D. Tenn. L.R. 54.1.

Standard of Review

Pursuant to Federal Rule of Civil Procedure 54(d)(1), “[u]nless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney’s fees—should be allowed to the prevailing party.” Title 28 United States Code section 1920 defines the term “costs” and

“enumerates [the] expenses that a federal court may tax as costs under the discretionary authority found in Rule 54(d).” *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 441-42 (1987); *see also* 28 U.S.C. § 1920 (2018). That is, the Clerk may only tax costs as permitted by Title 28 United States Code sections 1821 and 1920, or as otherwise provided by law. *See* 28 U.S.C. §§ 1821 and 1920.

Although the Court has discretion to deny costs, there is a presumption in favor of awarding costs to the prevailing party. Fed. R. Civ. P. 54(d); *see Freeman v. Blue Ridge Paper Products, Inc.*, 624 Fed. Appx. 934, 938 (6th Cir. 2015) (stating Rule 54(d) “creates a presumption in favor of awarding costs, but allows denial of costs at the discretion of the trial court”). Bills of costs filed in this Court must be prepared in accordance with the Court’s *Guidelines on Preparing Bills of Costs*. *See* E.D. Tenn. L.R. 54.1. The Clerk will not tax costs that do not comply with the *Guidelines* or that are not supported with appropriate documentation. E.D. Tenn. L.R. 54.1, *Guidelines* I(A).

Fees of the Clerk

Plaintiff requests \$400.00 in filing fees. [Doc.73]. Defendant does not dispute this cost [Doc. 81, p.2] and this fee is specifically provided for by the *Guidelines*. *See* E.D. Tenn. L.R. 54.1, *Guidelines* III(B)(1). Accordingly, the \$400.00 requested as fees of the clerk shall be **ALLOWED**.

Deposition Transcript Fees

Plaintiff requests a total of \$27,343.15 in deposition transcript fees. [Doc. 73]. In support of these costs, Plaintiff submits a statement that the costs are necessary and supporting documentation. [Doc. 73-1, p. 2]. Defendant agrees with the taxation of some of the costs but maintains that other costs are inappropriate under the *Guidelines*. [Doc. 81].

“Costs of printed or electronically recorded transcripts are taxable if (1) the transcripts were necessarily obtained for use in the case and (2) the deposition was reasonably necessary at the time of its taking.” E.D. Tenn. L.R. 54.1, *Guidelines* III(D)(1). However, the Court limits the amount recoverable as costs for deposition transcripts and has adopted the Judicial Conference transcript rates as the maximum taxable transcript fees notwithstanding what fee may have been charged to the party by the court reporter. *Id.* at *Guidelines* III(D)(2). The current rates are \$3.65 per page for an original transcript and \$.90 per page for a copy.¹ Costs of deposition transcripts that do not set forth the number of pages or rate per page will not be taxed. *Id.* at *Guidelines* III(D)(2)(i). The *Guidelines* further provide that “[e]xtra fees charged by reporters for mileage, per diem, expeditious handling, condensed transcripts, ASCII disks, postage, deposition exhibits, etc., shall not be taxed, unless advanced authorization was sought and received from the Court.” E.D. Tenn. L.R. 54.1, *Guidelines* III(D)(4).

Accordingly, the undersigned shall review each request and the objections thereto and apply the provisions of the *Guidelines* to the deposition costs as follows:

1. Video Depositions. Plaintiff requests \$1,305.00 for the video deposition of Dr. Michael Nranian [Doc. 73-3, p. 2], \$1,015.00 for the video deposition of Jason Penkethman [Docs. 73-3, p. 5], \$870.00 for the video deposition of Paul Peterson [Doc. 73-3, p. 8], \$580.00 for the video deposition of Michael Maledon [Doc. 73-3, p. 11], \$450.00 for the video deposition of Rita Parvaneh [Doc. 73-3, p. 13], \$600.00 for the video deposition of Wallace Tennelle [Doc. 73-3, p. 15], and \$1,200.00 for the video deposition of Sunil Marolia [Doc. 73-3, p. 17].

Defendant objects to taxation of these costs and argues that the *Guidelines* permit costs for video depositions only if the deposition was used at trial. [Doc. 81, p. 5]. Additionally, Defendant

¹ <https://www.tned.uscourts.gov/court-reporter-rates> (May 10, 2019).

argues that Procon did not meet its burden of explaining why the video depositions were “necessarily obtained for use in the case” at the time taken when the Court resolved the case on a Motion for Judgment on the Pleadings, “which by its very nature does not rely upon any evidence, much less videotaped depositions.” [Doc. 81, p. 5].

While the *Guidelines* note that the taxation of costs for electronic media depositions used at trial are “commonly taxed,” the *Guidelines* do not limit the taxation of costs of video recordings only to those video recordings used at trial. See E.D. Tenn. L.R. 54.1, *Guidelines* III(D)(1)(vii) (including video recordings “used at trial” in a non-exclusive list of commonly taxable fees). With that stated, the prevailing party has the burden to demonstrate that “(1) the transcripts were necessarily obtained for use in the case and (2) the deposition was reasonably necessary at the time of its taking.” See E.D. Tenn. L.R. 54.1, *Guidelines* III(D)(1). Here, the video recordings were not used in the case, and Plaintiff provides no justification as to why any video recordings were necessary in addition to printed transcripts. [Doc. 73-3, pp. 3, 6, 12, 14, 16, and 18]. In the case of Mr. Nranian’s deposition, Plaintiff asserts that the deposition was obtained for “claim construction briefing purposes,” which, presumably, does not require more than a printed transcript. [Doc. 73-1, p. 2]. As such, Plaintiff has failed to meet its burden under the *Guidelines*. Accordingly, the video deposition costs in the amount of \$6,020.00 are **DISALLOWED**.

2. Invoice No. 635980 [Doc. 73-3, p. 3]. The following charges will be **ALLOWED**: \$1,178.95 (323 pages x \$3.65) for the original deposition transcript of Michael Nranian taken August 18, 2020. The remaining \$290.70 requested as costs will be **DISALLOWED** because the rate charged is higher than the maximum allowable for originals and Plaintiff has not shown that it is entitled to costs for both the original and copy. The

\$280.00 requested as costs for the full day attendance fee is **ALLOWED** as within the maximum amount permitted by the *Guidelines*. *Id.* III(D)(3)(i). Unless advanced authorization is received from the Court, extra fees are not taxable. *Id.* at III(D)(4). Accordingly, the \$800.00 requested as a web conferencing fee will be **DISALLOWED**.

The total amount **ALLOWED** for this invoice is \$1,458.95.

3. Invoice No. SF4508567 [Doc. 73-3, p. 4]. The following charges will be **ALLOWED**: \$143.10 (159 pages x \$0.90) for a copy of the deposition transcript of Dr. Ralph Wilhelm. Unless advanced authorization is received from the Court, extra fees—including expedited handling—are not taxable. *Id.* at III(D)(4). Accordingly, the \$310.05 requested for realtime services will be **DISALLOWED**.

The total amount **ALLOWED** for this invoice is \$143.10.

4. Invoice No. 655567 [Doc. 73-3, pp. 6-7]. The following charges will be **ALLOWED**: \$602.25 (165 pages x \$3.65) for the original deposition transcript of Jason Penkethman and \$237.25 (65 pages x \$3.65) for the original 30(b)(6) deposition transcript of Jason Penkethman. The remaining \$148.50 and \$58.50 requested for the depositions will be **DISALLOWED** because the rate charged is higher than the maximum allowable for originals and Plaintiff has not shown that it is entitled to costs for both the original and copy. The \$157.50 charged as an attendance fee for the Jason Penkethman deposition and the \$52.50 charged as an attendance fee for the 30(b)(6) Jason Penkethman deposition will be **ALLOWED** as within the maximum amount permitted by the *Guidelines*. *Id.* III(D)(3)(i). Unless advanced authorization is received from the Court, extra fees—including expedited handling—are not taxable. *Id.* at III(D)(4). Accordingly, the realtime services and web conference fees requested will be **DISALLOWED**.

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