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Chapter 67

Costs and Disbursements

by Vincent J. Hess[*]

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B. COSTS AT COMMENCEMENT OF THE PROCEEDING

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[*]The author recognizes the original author of this chapter, the late John H. McElhaney, whose vision still guides this chapter.

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I. INTRODUCTION

§ 67:1 Scope note

This chapter offers an overview of the law relating to the taxation of costs in federal court and, from a practical perspective, can be used as a starting point to address basic questions such as whether a particular cost or type of cost is taxable and under what circumstances. The organization, as well as the content, is designed to provide the practitioner with accessible answers to questions confronted in day-to-day practice. The chapter discusses preliminary considerations and strategy relating to costs, in particular, decisions to be made before filing suit or in the early stages of the litigation. Although "costs" is a commonly used term whose definition seems apparent, it has a more precise and limited meaning in the context of this chapter. The chapter provides an analysis of the laws that allow taxation of costs and the basic principles that apply in interpreting those laws. It describes costs at the commencement of the proceeding,[1] describes the types of costs that may be taxable,[2] and also addresses the practical issues counsel will face when trying to obtain or contest court costs.[3] The chapter also deals with cost taxing under an offer of judgment,[4] which allows a defendant to try to shift the costs of suit to the plaintiff. Also included is a discussion of costs issues that can arise litigating in the United States courts of appeals[5] and the Supreme Court.[6] The chapter concludes with practice checklists[7] and a copy of the standard Bill of Costs form used in United States district courts.[8]

§ 67:2 Preliminary considerations and strategy

Taxation of costs of court is not likely to be the driving force

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[Section 67:1]

[1]See §§ 67:3 to 67:5.

[2]See §§ 67:7 to 67:10.

[3]See §§ 67:12 to 67:25.

[4]See §§ 67:26 to 67:33.

[5]See § 67:6.

[6]See §§ 67:34 to 67:41.

[7]See § 67:42.

[8]See § 67:43.

behind the practitioner's decision making during litigation. However, at some point the dust will settle and you will need to contemplate how to recoup some of the fees and expenses your client has incurred to obtain success. Instead, you might be in the position of deciding whether to contest costs your adversary is trying to tax against you.

While the court cost tail will not ordinarily wag the lawsuit dog, some early planning, followed by renewed attention as the case progresses, can improve the result achieved for your client. For instance, keeping specific track of the copying costs as they are incurred over a number of years during which a lawsuit may be pending can preserve and supply the information needed to make a cost recovery. Without this planning, accompanied by keeping contemporaneous records, it may not be possible, at the conclusion of a lengthy case, to reconstruct the data needed to prove how many copies were made for recoverable or for nonrecoverable purposes.

When a court is willing to address the matter, seeking preapproval from the court can sometimes provide guidance as to the court's probable willingness to allow taxation of an item. In some cases preapproval may even be considered by the court to be a prerequisite to successful taxation of some cost items.[1]

Finally, common-sense agreements, such as sharing the expenses to bring a distant witness to a central location where counsel are located, might save money and might even eliminate the need for subsequent litigation as to whether travel expenses of the lawyers or the witness are recoverable. Moreover, in light of recent court rulings that have denied taxation of significant portions of e-discovery costs, you should consider at the outset of the lawsuit potential agreement with your adversary concerning the scope of e-discovery and cost-sharing arrangements.[2]

II. LAW AND PROCEDURE

A. BASIC PRINCIPLES IN SEEKING RECOVERY OF COSTS AND DISBURSEMENTS

§ 67:3 Applicable statutory and rule provisions

Costs of litigation, including attorney's fees, have long been

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[Section 67:2]

[1]As to preapproval, see §§ 67:11, 67:12.

[2]See, e.g., Country Vintner of North Carolina, LLC v. E. & J. Gallo Winery, Inc., 718 F.3d 249, 261 n.20 (4th Cir. 2013). As to taxation of e-discovery costs, see § 67:22.

awardable in federal court.[1] Since 1853, however, recoverable fees and costs have been regulated by federal statute, and the "American rule," that each party to a lawsuit bears its own attorney's fees, has become firmly entrenched.[2] Currently, Fed. R. Civ. P. 54(d)(1) provides that "costs—other than attorney's fees—should be allowed to the prevailing party," and 28 U.S.C.A. § 1920, governing the taxation of costs, provides for the general limitations on allowable costs.[3] 28 U.S.C.A. § 1821 governs witness fees.[4] Fed. R. Civ. P. 54(d)(1) is the basic rule providing for taxation of costs.

District courts possess wide discretion to allow or disallow

[Section 67:3]

[1]See generally Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 95 S. Ct. 1612, 44 L. Ed. 2d 141, 7 Env't. Rep. Cas. (BNA) 1849, 10 Fair Empl. Prac. Cas. (BNA) 826, 11 Empl. Prac. Dec. (CCH) P 10842, 5 Envtl. L. Rep. 20286 (1975). See also Marx v. General Revenue Corp., 568 U.S. 371, 133 S. Ct. 1166, 1172, 185 L. Ed. 2d 242, 84 Fed. R. Serv. 3d 1486 (2013) (the Federal rule "codifies a venerable presumption that prevailing parties are entitled to costs"); Taniguchi v. Kan Pacific Saipan, Ltd., 566 U.S. 560, 132 S. Ct. 1997, 2001, 182 L. Ed. 2d 903 (2012).

[2]The Supreme Court has reiterated that the term "costs" in the general federal statutes for costs does not include attorney's fees. Peter v. Nantkwest, Inc., 140 S. Ct. 365, 373, 205 L. Ed. 2d 304 (2019). The Supreme Court has summarized the history of the federal statutory scheme and the Court's recent decisions interpreting the statutory scheme. Rimini Street, Inc. v. Oracle USA, Inc., 139 S. Ct. 873, 877–79, 203 L. Ed. 2d 180 (2019). See Crawford Fitting Co. v. J. T. Gibbons, Inc., 482 U.S. 437, 440, 107 S. Ct. 2494, 2496, 96 L. Ed. 2d 385, 43 Fair Empl. Prac. Cas. (BNA) 1775, 43 Empl. Prac. Dec. (CCH) P 37102, 1987-1 Trade Cas. (CCH) ¶ 67596, 7 Fed. R. Serv. 3d 1161 (1987) (discussing the 1853 Fee Act, in which Congress "comprehensively regulated fees and the taxation of fees as costs in the federal courts"). See generally Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 95 S. Ct. 1612, 44 L. Ed. 2d 141, 7 Env't. Rep. Cas. (BNA) 1849, 10 Fair Empl. Prac. Cas. (BNA) 826, 11 Empl. Prac. Dec. (CCH) P 10842, 5 Envtl. L. Rep. 20286 (1975). It is clear from the plain language of the rule that Fed. R. Civ. P. 54(d) does not provide for reimbursement of attorney's fees. Such fees, if recoverable, must be sought under other authority. See Runyon v. McCrary, 427 U.S. 160, 185–186, 96 S. Ct. 2586, 2601–2602, 49 L. Ed. 2d 415 (1976) (under the American rule, attorney's fees are not recoverable absent explicit congressional authorization); Chapter 66, "Court-Awarded Attorney's Fees" (§§ 66:1 et seq.).

[3]A separate provision in Rule 54 governs nontaxable expenses that are sought along with an award of attorney's fees. Fed. R. Civ. P. 54(d)(2). See Ray Haluch Gravel Co. v. Central Pension Fund of Intern. Union of Operating Engineers and Participating Employers, 571 U.S. 177, 134 S. Ct. 773, 187 L. Ed. 2d 669, 198 L.R.R.M. (BNA) 2129, 87 Fed. R. Serv. 3d 1079 (2014).

[4]Crawford Fitting Co. v. J. T. Gibbons, Inc., 482 U.S. 437, 107 S. Ct. 2494, 96 L. Ed. 2d 385, 43 Fair Empl. Prac. Cas. (BNA) 1775, 43 Empl. Prac. Dec. (CCH) P 37102, 1987-1 Trade Cas. (CCH) ¶ 67596, 7 Fed. R. Serv. 3d 1161 (1987).

those costs that are eligible to be taxed.[5] However, an important 1987 decision of the Supreme Court, *Crawford Fitting Co. v. J.T. Gibbons, Inc.*,[6] decided that the discretion of the district courts to tax costs does not extend to deciding what categories of costs are eligible to be taxed. Instead, the discretionary authority of the district court and of the federal appellate courts is limited to consideration of only those categories of costs expressly enumerated in 28 U.S.C.A. § 1920, and they may not exercise discretion to allow other costs. The discretion that exists under Fed. R. Civ. P. 54(d) "is solely a power to decline to tax, as costs, the items enumerated in § 1920."[7] Accordingly, district judges do not have unrestrained discretion to tax costs for every expense the prevail-

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[5]Marx v. General Revenue Corp., 568 U.S. 371, 133 S. Ct. 1166, 1172, 185 L. Ed. 2d 242, 84 Fed. R. Serv. 3d 1486 (2013) ("the decision whether to award costs ultimately lies within the sound discretion of the district court"). See, e.g., Estate of Hevia v. Portrio Corp., 602 F.3d 34, 46, 94 U.S.P.Q.2d 1501 (1st Cir. 2010); Jack Russell Terrier Network of Northern Ca. v. American Kennel Club, Inc., 407 F.3d 1027, 1038, 74 U.S.P.Q.2d 1922, 2005-1 Trade Cas. (CCH) ¶ 74790 (9th Cir. 2005); Camacho v. Vertical Reality Inc., 210 Fed. Appx. 985, 986 (11th Cir. 2006); Pacheco v. Mineta, 448 F.3d 783, 793–94, 98 Fair Empl. Prac. Cas. (BNA) 10, 87 Empl. Prac. Dec. (CCH) P 42362 (5th Cir. 2006); LoSacco v. City of Middletown, 71 F.3d 88, 33 Fed. R. Serv. 3d 1168 (2d Cir. 1995); Finchum v. Ford Motor Co., 57 F.3d 526, 42 Fed. R. Evid. Serv. 331, 32 Fed. R. Serv. 3d 340 (7th Cir. 1995); McGill v. Faulkner, 18 F.3d 456, 28 Fed. R. Serv. 3d 980 (7th Cir. 1994) (power to award costs to prevailing party is within the sound discretion of the district court); First Commonwealth Corp. v. Hibernia Nat. Bank of New Orleans, 891 F. Supp. 290 (E.D. La. 1995), judgment amended on other grounds, 896 F. Supp. 634 (E.D. La. 1995) and aff'd, 85 F.3d 622 (5th Cir. 1996) (award of costs is within discretion of the trial court).

[6]Crawford Fitting Co. v. J. T. Gibbons, Inc., 482 U.S. 437, 107 S. Ct. 2494, 96 L. Ed. 2d 385, 43 Fair Empl. Prac. Cas. (BNA) 1775, 43 Empl. Prac. Dec. (CCH) P 37102, 1987-1 Trade Cas. (CCH) ¶ 67596, 7 Fed. R. Serv. 3d 1161 (1987).

[7]Crawford Fitting Co. v. J. T. Gibbons, Inc., 482 U.S. 437, 442, 107 S. Ct. 2494, 2497, 96 L. Ed. 2d 385, 43 Fair Empl. Prac. Cas. (BNA) 1775, 43 Empl. Prac. Dec. (CCH) P 37102, 1987-1 Trade Cas. (CCH) ¶ 67596, 7 Fed. R. Serv. 3d 1161 (1987); In re Two Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litigation, 994 F.2d 956, 962, 25 Fed. R. Serv. 3d 1185 (1st Cir. 1993). See also Jane L. v. Bangerter, 61 F.3d 1505, 1517 (10th Cir. 1995) ("only those items listed under section 1920 may be awarded as costs"); Herold v. Hajoca Corp., 864 F.2d 317, 323, 48 Fair Empl. Prac. Cas. (BNA) 972, 48 Empl. Prac. Dec. (CCH) P 38527 (4th Cir. 1988) ("Rule 54(d) does not provide authority to tax as costs those expenses not enumerated in 1920"); Goodwall Const. Co. v. Beers Const. Co., 824 F. Supp. 1044, 1063, 26 U.S.P.Q.2d 1401 (N.D. Ga. 1992), aff'd and remanded, 991 F.2d 751, 26 U.S.P.Q.2d 1420 (Fed. Cir. 1993) ("[a]bsent explicit statutory authorization federal courts are limited to the express provisions of § 1920 permitting the taxing of costs"); Corsair Asset Management, Inc. v. Moskovitz, 142 F.R.D. 347, 351 (N.D. Ga. 1992) ("in order for a claimed expense to be reimbursed, the expense must be encompassed by § 1920 or some other specific statute").

ing litigant has incurred in the litigation.[8] The *Crawford Fitting* decision must be considered in evaluating the precedential value of all prior decisions as well as the vitality of pre-*Crawford Fitting* literature.[9] The Supreme Court has emphasized the limited recovery available under Fed. R. Civ. P. 54(d)(1), referring to taxable costs as "relatively minor, incidental expenses" that "are modest in scope" and that constitute "a fraction of the nontaxable expenses borne by litigants for attorneys, experts, consultants, and investigators."[10]

28 U.S.C.A. § 1920 lists six costs that the courts have discretion to tax. In the words of the statute, Section 1920 provides discretion to allow:

(1) Fees of the clerk and marshal;

(2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;

(3) Fees and disbursements for printing and witnesses;

(4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;

(5) Docket fees under Section 1923 of this title;

(6) Compensation of court appointed experts, compensation

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[8]Rimini Street, Inc. v. Oracle USA, Inc., 139 S. Ct. 873, 877, 203 L. Ed. 2d 180 (2019). See, e.g., Reger v. The Nemours Foundation, Inc., 599 F.3d 285, 288 (3d Cir. 2010) (reimbursable costs are limited to those enumerated in § 1920); Brisco-Wade v. Carnahan, 297 F.3d 781, 782 (8th Cir. 2002); Arcadian Fertilizer, L.P. v. MPW Indus. Services, Inc., 249 F.3d 1293, 1296, 49 Fed. R. Serv. 3d 774 (11th Cir. 2001); Johnson v. Pacific Lighting Land Co., 878 F.2d 297, 298, 13 Fed. R. Serv. 3d 1469 (9th Cir. 1989) (citing Crawford Fitting); Berryman v. Hofbauer, 161 F.R.D. 341, 344 (E.D. Mich. 1995) (district court must exercise discretion and allow the taxation of those costs for materials which were necessarily obtained for use in the case and which were reasonable). See generally Farmer v. Arabian Am. Oil Co., 379 U.S. 227, 85 S. Ct. 411, 13 L. Ed. 2d 248, 9 Fed. R. Serv. 2d 45E.14, Case 1 (1964) (disapproved of by, Crawford Fitting Co. v. J. T. Gibbons, Inc., 482 U.S. 437, 107 S. Ct. 2494, 96 L. Ed. 2d 385, 43 Fair Empl. Prac. Cas. (BNA) 1775, 43 Empl. Prac. Dec. (CCH) P 37102, 1987-1 Trade Cas. (CCH) ¶ 67596, 7 Fed. R. Serv. 3d 1161 (1987)).

[9]See, e.g., the excellent and comprehensive article, Bartel, Taxation of Costs and Awards of Expenses in Federal Courts, 101 F.R.D. 553 (1984). Noting the uncertainty existing as of the date of that article, the author prophetically observed that "[a] more logical conclusion would be to give effect to § 1920 by looking to the statute as the exclusive means of recovering the basic categories of costs listed in it." Bartel, Taxation of Costs and Awards of Expenses in Federal Courts, 101 F.R.D. 553, 596 (1984). A court opinion that addresses numerous issues pertaining to costs is Burton v. R.J. Reynolds Tobacco Co., 395 F. Supp. 2d 1065 (D. Kan. 2005).

[10]Taniguchi v. Kan Pacific Saipan, Ltd., 566 U.S. 560, 132 S. Ct. 1997, 2006, 182 L. Ed. 2d 903 (2012). Accord Country Vintner of North Carolina, LLC v. E. & J. Gallo Winery, Inc., 718 F.3d 249, 261 (4th Cir. 2013) ("That Gallo will recover only a fraction of its litigation costs under our approach does not establish that our reading of the statute is too grudging . . ..").

of interpreters, and salaries, fees, expenses, and costs of special interpretation services under Section 1828 of this title.[11]

A considerable number of substantive federal statutes, in a variety of fields, contain specific fee-shifting provisions, usually allowing for attorney's fees and costs to a prevailing plaintiff.[12] Among the better known subjects of business litigation that statutorily grant attorney's fees and costs are the antitrust laws[13] and civil RICO.[14] Other more-or-less familiar statutes allow for imposition of attorney's fees at the discretion of the court, such as ERISA,[15] certain provisions of the securities laws,[16] and the copyright laws,[17] or upon a finding of, for example, bad faith or similar ill-motive, such as in the case of trademark infringement.[18] Numerous other federal statutes, however, also contain fee-

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[11]In interpreting the categories of costs set forth in § 1920, the U.S. Supreme Court has emphasized that an undefined term in the statute should be given its "ordinary meaning," which can be determined from dictionaries in use when Congress enacted the statute, with attention paid to the statutory context. Taniguchi v. Kan Pacific Saipan, Ltd., 566 U.S. 560, 132 S. Ct. 1997, 2002–04, 182 L. Ed. 2d 903 (2012).

[12]The Supreme Court has rejected an argument that any statute which specifically provides for costs displaces Fed. R. Civ. P. 54(d)(1); instead, the Court decided that a statute must limit the discretion to award costs under the rule in order to displace the rule. Marx v. General Revenue Corp., 568 U.S. 371, 133 S. Ct. 1166, 1173–74, 185 L. Ed. 2d 242, 84 Fed. R. Serv. 3d 1486 (2013). See, e.g., Lochridge v. Lindsey Management Co., Inc., 824 F.3d 780, 782–83, 26 Wage & Hour Cas. 2d (BNA) 793, 166 Lab. Cas. (CCH) P 36447 (8th Cir. 2016) (Fair Labor Standards Act, by expressly allowing award of costs to prevailing plaintiff, does not preclude award of costs to prevailing defendant under Rule 54). See Chapter 66, "Court-Awarded Attorney's Fees" (§§ 66:1 et seq.). "If, for particular kinds of cases, Congress wants to authorize awards of expenses beyond the six categories specified in the general costs statute, Congress may do so." Rimini Street, Inc. v. Oracle USA, Inc., 139 S. Ct. 873, 877, 203 L. Ed. 2d 180 (2019).

[13]15 U.S.C.A. § 15. See Chapter 87, "Antitrust" (§§ 87:1 et seq.).

[14]18 U.S.C.A. § 1964. See Chapter 126, "RICO" (§§ 126:1 et seq.).

[15]29 U.S.C.A. § 1132. See Chapter 124, "ERISA" (§§ 124:1 et seq.).

[16]17 U.S.C.A. § 505. See Chapter 88, "Securities" (§§ 88:1 et seq.).

[17]E.g., 15 U.S.C.A. §§ 78i and 78r. See Twentieth Century Fox Film Corp. v. Entertainment Distributing, 429 F.3d 869, 885, 76 U.S.P.Q.2d 1797 (9th Cir. 2005) (full costs allowable under copyright statute include costs that are not taxable under section 1920; noting circuit split). The phrase "full costs" in the copyright statute does not expand the types of costs that are taxable under Section 1920. Rimini Street, Inc. v. Oracle USA, Inc., 139 S. Ct. 873, 203 L. Ed. 2d 180 (2019). See Chapter 118, "Copyright" (§§ 118:1 et seq.).

[18]15 U.S.C.A. § 1117; e.g., Bittner v. Sadoff & Rudoy Industries, 728 F.2d 820, 5 Employee Benefits Cas. (BNA) 2670, 38 Fed. R. Serv. 2d 962 (7th Cir. 1984) (overruled on other grounds by, McCarter v. Retirement Plan For Dist. Managers of American Family Ins. Group, 540 F.3d 649, 44 Employee Benefits Cas. (BNA) 2313, 102 A.F.T.R.2d 2008-6177 (7th Cir. 2008)). See Chapter 117, "Trademark" (§§ 117:1 et seq.).

shifting provisions and/or provide for the award of costs, including the prohibition against banks tying lending services to other services,[19] bad-faith debt collection practices,[20] patent infringement cases,[21] violations of the Truth in Lending Act,[22] and even suits for damages caused by international terrorism.[23]

Because of the general American rule against fee and cost shifting, a prevailing party should consider attempting to recover under a statute that itself provides for an award of fees as well as for costs that are not within the scope of Section 1920.[24] Fed. R. Civ. P. 54(d) is the procedural cost rule that applies generally to all civil lawsuits in federal court, except those against the United States, for which there must be a separate legal basis.[25] The Federal Rules of Bankruptcy Procedure do not incorporate

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[19]12 U.S.C.A. § 1975.

[20]15 U.S.C.A. § 1692(a). See, e.g., Marx v. General Revenue Corp., 568 U.S. 371, 133 S. Ct. 1166, 185 L. Ed. 2d 242, 84 Fed. R. Serv. 3d 1486 (2013) (costs provision in the Fair Debt Collection Practices Act does not displace a district court's discretion to award costs under Fed. R. Civ. P. 54(d)(1), so a district court may award costs to a prevailing defendant in an FDCPA case without having to find the requirements of a cost award under the FDCPA such as bad faith on the part of plaintiff). See also Peck v. IMC Credit Services, 960 F.3d 972, 975, 106 Fed. R. Serv. 3d 1773 (7th Cir. 2020) (the term "costs" in the FDCPA are "simply those awardable" under Rule 54(d), without a special definition in the FDCPA). See Chapter 112, "Collections" (§§ 112:1 et seq.).

[21]35 U.S.C.A. § 285. See Chapter 116, "Patents" (§§ 116:1 et seq.).

[22]15 U.S.C.A. § 1640. See Chapter 113, "Consumer Protection" (§§ 113:1 et seq.).

[23]18 U.S.C.A. § 2333.

[24]Costs not recoverable under § 1920 might be recoverable under a substantive federal statute. Rimini Street, Inc. v. Oracle USA, Inc., 139 S. Ct. 873, 877, 203 L. Ed. 2d 180 (2019). See, e.g., Fruitt v. Astrue, 604 F.3d 1217, 1219, 153 Soc. Sec. Rep. Serv. 364, Unempl. Ins. Rep. (CCH) P 14635C, 76 Fed. R. Serv. 3d 1073 (10th Cir. 2010) (allowing costs against the United States, pursuant to 28 U.S.C.A. § 2412(a)(1)); Gordon v. Virtumundo, Inc., 2007 WL 2253296, at *13 (W.D. Wash. 2007) (CAN-SPAM Act allows award of mediator fees, deposition travel expenses, electronic legal research fees and other costs not taxable under § 1920). Likewise, simply because another substantive statute addresses costs does not preclude recovery under Rule 54. See Quan v. Computer Sciences Corp., 623 F.3d 870, 888, 49 Employee Benefits Cas. (BNA) 2642, 77 Fed. R. Serv. 3d 885 (9th Cir. 2010) (abrogated on other grounds by, Fifth Third Bancorp v. Dudenhoeffer, 573 U.S. 409, 134 S. Ct. 2459, 189 L. Ed. 2d 457, 58 Employee Benefits Cas. (BNA) 1405 (2014)). Note, too, the possible application of state law in this regard; state unfair trade practice legislation, for example, often provides for recovery of attorney's fees and costs. See, e.g., La. Rev. Stat. Ann. § 51:1409.

[25]"[C]osts against the United States, its officers, and its agencies may be imposed only to the extent allowed by law." Fed. R. Civ. P. 54(d)(1); see, e.g., U.S. v. D.K.G. Appaloosas, Inc., 829 F.2d 532, 539, 9 Fed. R. Serv. 3d 83 (5th Cir. 1987) (costs of court against United States governed by 28 U.S.C.A. § 2465 in civil forfeiture proceedings, not Rule 54); Goulding v. I.R.S., 1997 WL 47450, at *3 (N.D. Ill. 1997).

Rule 54(d); instead, a separate provision in the bankruptcy rules makes cost-shifting discretionary, and other statutes allow for the costs defined in Section 1920 to be shifted in bankruptcy proceedings.[26] Other procedural statutes[27] and rules[28] provide for an award of costs under such circumstances as civil fines and forfeitures,[29] dismissal for want of jurisdiction,[30] remand,[31] and default judgments.[32] Some precedent provides that statutory provisions do not limit recovery of costs if a contract explicitly authorizes additional costs.[33]

Where a state statute provides for the award of costs beyond the taxable costs controlled by federal rules or statutes, and where no such federal rule or statute conflicts with a state policy of providing costs to plaintiffs to further the remedial purposes of the state law, the cost provisions of the state statute should be applied. Accordingly, precedent exists for federal courts allowing taxation of broader categories of costs than those allowed under Section 1920, Federal Rule 54 and other provisions of federal law.[34]

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[26]In re Parikh, 508 B.R. 572, 598–99 (Bankr. E.D. N.Y. 2014) (denying a request for costs under Fed. R. Bankr. P. 7054(b), because the costs were "largely attributable to [the party's] own litigiousness").

[27]A plaintiff in a case based upon diversity jurisdiction may have costs taxed against it if it does not recover the jurisdictional minimum amount in controversy. 28 U.S.C.A. § 1332(b).

[28]Discussed in detail elsewhere are rules that allow a party to recover costs as a sanction against another party. See Chapter 68, "Sanctions" (§§ 68:1 et seq.).

[29]28 U.S.C.A. § 1918(a).

[30]28 U.S.C.A. § 1919; see Miles v. State of California, 320 F.3d 986, 988, 14 A.D. Cas. (BNA) 103, 54 Fed. R. Serv. 3d 1228 (9th Cir. 2003); Hygienics Direct Co. v. Medline Industries, Inc., 33 Fed. Appx. 621, 626 (3d Cir. 2002); Edward W. Gillen Co. v. Hartford Underwriters Ins. Co., 166 F.R.D. 25, 28 (E.D. Wis. 1996) (costs awardable in case dismissed for lack of subject-matter jurisdiction governed by § 1919, not Rule 54(d)).

[31]28 U.S.C.A. § 1447(c). See Chapter 17, "Removal to Federal Court" (§§ 17:1 et seq.).

[32]Fed. R. Civ. P. 55(b)(1) (courts shall award costs when rendering default judgments). See Chapter 64, "Judgments" (§§ 64:1 et seq.).

[33]Hobson v. Orthodontic Centers of America Inc., 220 Fed. Appx. 490 (9th Cir. 2007). See In re Ricoh Co., Ltd. Patent Litigation, 661 F.3d 1361, 1366–67, 100 U.S.P.Q.2d 1793 (Fed. Cir. 2011). See also discussion in § 67:13.

[34]Jablonski v. St. Paul Fire and Marine Ins. Co., 2010 WL 1417063, at *10 (M.D. Fla. 2010); Scottsdale Ins. Co. v. Tolliver, 262 F.R.D. 606, 611 (N.D. Okla. 2009), aff'd on other grounds, 636 F.3d 1273 (10th Cir. 2011); Bristol Technology, Inc. v. Microsoft Corp., 127 F. Supp. 2d 64 (D. Conn. 2000) (citing Garcia v. Wal-Mart Stores, Inc., 209 F.3d 1170, 46 Fed. R. Serv. 3d 441 (10th Cir. 2000)). Cf. Zunde v. International Paper Co., 2000 WL 1763843 (M.D. Fla. 2000).

§ 67:4 Prevailing party

To prevail within the meaning of Fed. R. Civ. P. 54(d), a party must succeed on any significant issue in the litigation that achieves some of the benefits the party sought in bringing the suit.[1] Some courts, mainly in the Seventh Circuit, have defined prevailing party slightly differently, as that which prevails "as to the substantial part of the litigation."[2] Either way, a party is deemed to have prevailed when it obtains some relief in an action, even if it does not sustain all of its claims.[3] In patent-infringement cases, Federal Circuit authority determines which party was the prevailing party, and regional circuit law guides the district court's discretion to award costs.[4]

A party may be considered a prevailing party even though the case is disposed of prior to trial. A party whose motion for summary judgment is granted is considered a prevailing party,[5] as is

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[Section 67:4]

[1]Buckhannon Bd. and Care Home, Inc. v. West Virginia Dept. of Health and Human Resources, 532 U.S. 598, 600, 121 S. Ct. 1835, 149 L. Ed. 2d 855, 11 A.D. Cas. (BNA) 1300 (2001) (a party that fails "to secure a judgment on the merits or a court-ordered consent decree" is not a prevailing party); Perez v. Miami-Dade County, 186 Fed. Appx. 936, 937 (11th Cir. 2006); Loggerhead Turtle v. County Council of Volusia County, Fla., 307 F.3d 1318, 1323 n.4, 55 Env't. Rep. Cas. (BNA) 1161, 33 Envtl. L. Rep. 20057 (11th Cir. 2002); Schultz v. U.S., 918 F.2d 164, 165, Unempl. Ins. Rep. (CCH) P 15846A, 90-2 U.S. Tax Cas. (CCH) P 50563, 66 A.F.T.R.2d 90-5730 (Fed. Cir. 1990); Marlen C. Robb & Son Boatyard & Marina, Inc. v. Vessel Bristol, 893 F. Supp. 526, 545 (E.D. N.C. 1994).

[2]See, e.g., Slane v. Mariah Boats, Inc., 164 F.3d 1065, 1068, 14 I.E.R. Cas. (BNA) 1291 (7th Cir. 1999); First Commodity Traders, Inc. v. Heinold Commodities, Inc., 766 F.2d 1007, 1015 (7th Cir. 1985); Mary M. v. North Lawrence Community School Corp., 951 F. Supp. 820, 828, 116 Ed. Law Rep. 150 (S.D. Ind. 1997), rev'd on other grounds, 131 F.3d 1220, 122 Ed. Law Rep. 980 (7th Cir. 1997); see also Jones v. Diamond, 594 F.2d 997, 1028 (5th Cir. 1979), on reh'g, 636 F.2d 1364 (5th Cir. 1981) (overruled by, International Woodworkers of America, AFL-CIO and its Local No. 5-376 v. Champion Intern. Corp., 790 F.2d 1174, 43 Fair Empl. Prac. Cas. (BNA) 385, 40 Empl. Prac. Dec. (CCH) P 36148, 4 Fed. R. Serv. 3d 721 (5th Cir. 1986)).

[3]Slane v. Mariah Boats, Inc., 164 F.3d 1065, 1068, 14 I.E.R. Cas. (BNA) 1291 (7th Cir. 1999); First Commodity Traders, Inc. v. Heinold Commodities, Inc., 766 F.2d 1007, 1015 (7th Cir. 1985); Burk v. Unified School Dist. No. 329, Wabaunsee County, Kan., 116 F.R.D. 16, 17, 40 Ed. Law Rep. 796 (D. Kan. 1987). See Howell v. Town of Ball, 2018 WL 580055, at 10 (W.D. La. 2018) (prevailing party's costs will not be denied or reduced based upon claims, parties or appeals that were dismissed). See also Chapter 66, "Court-Awarded Attorney's Fees" (§§ 66:1 et seq.) concerning the success factors.

[4]Oracle America, Inc. v. Google Inc., 2012 WL 3822129, at *1 (N.D. Cal. 2012). See Chapter 116, "Patents" (§§ 116:1 et seq.).

[5]See San Diego Police Officers' Ass'n v. San Diego City Employees' Retire-

a defendant in a suit dismissed for failure to state a claim.[6] A defendant is the prevailing party against unnamed plaintiffs whose claims are dismissed without prejudice when a class is decertified.[7] A defendant is also the prevailing party when the plaintiff's case is dismissed for lack of prosecution.[8] Furthermore, a plaintiff may recover costs as the prevailing party where the case becomes moot prior to a judgment on the merits because the defendant ceases the activity that inspired the plaintiff's lawsuit.[9] A party may be deemed the prevailing party when it successfully rebuffs its opponent's claims in an administrative proceeding, resulting in dismissal of suit for mootness.[10]

A defendant that is voluntarily dismissed from a lawsuit by the plaintiff will generally be considered a prevailing party entitled to recover costs under Fed. R. Civ. P. 54(d).[11] This is so whether

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ment System, 568 F.3d 725, 742, 46 Employee Benefits Cas. (BNA) 2813 (9th Cir. 2009); In re Derailment Cases, 417 F.3d 840, 844, 62 Fed. R. Serv. 3d 578 (8th Cir. 2005); U.S. Search, LLC v. U.S. Search.com Inc., 300 F.3d 517, 522, 63 U.S.P.Q.2d 2013 (4th Cir. 2002); Head v. Medford, 62 F.3d 351, 354–355 (11th Cir. 1995) (costs awarded where summary judgment rendered as to part of plaintiff's claims and court declined to exercise supplemental jurisdiction over remaining claims); Sanders v. Baucum, 929 F. Supp. 1028, 1045 (N.D. Tex. 1996) (costs recoverable from plaintiff against whom defendant prevailed on summary judgment); Peterson v. Crown Financial Corp., 498 F. Supp. 1177, 1180–1181 (E.D. Pa. 1980) (same).

[6]Leach v. U.S., 2002 WL 32122098, at *6 (Ct. Fed. Cl. 2002), aff'd, 70 Fed. Appx. 566 (Fed. Cir. 2003); Burda v. M. Ecker Co., 954 F.2d 434, 440 n.9, 92-1 U.S. Tax Cas. (CCH) P 50071, 21 Fed. R. Serv. 3d 879 (7th Cir. 1992).

[7]Camesi v. University of Pittsburgh Medical Center, 753 Fed. Appx. 135, 140–41, 2019 Wage & Hour Cas. 2d (BNA) 13272 (3d Cir. 2018).

[8]In re Olympia Brewing Co. Securities Litigation, 613 F. Supp. 1286, 1302 (N.D. Ill. 1985).

[9]Grumman Corp. v. LTV Corp., 533 F. Supp. 1385, 1390–1391, 1982-1 Trade Cas. (CCH) ¶ 64620 (E.D. N.Y. 1982) (plaintiff corporation was deemed to be the prevailing party where it obtained on antitrust grounds an injunction against defendant corporation, which was attempting to acquire control of plaintiff in a tender offer, and defendant subsequently abandoned the tender offer).

[10]B.E. Technology, L.L.C. v. Facebook, Inc., 940 F.3d 675 (Fed. Cir. 2019), cert. denied, 141 S. Ct. 618, 208 L. Ed. 2d 227 (2020).

[11]See, e.g., RFR Industries, Inc. v. Century Steps, Inc., 477 F.3d 1348, 1353, 81 U.S.P.Q.2d 1915, 67 Fed. R. Serv. 3d 616 (Fed. Cir. 2007); Power Mosfet Technologies, L.L.C. v. Siemens AG, 378 F.3d 1396, 1416, 72 U.S.P.Q.2d 1129 (Fed. Cir. 2004); AeroTech, Inc. v. Estes, 110 F.3d 1523, 1526–1527, 1997-1 Trade Cas. (CCH) ¶ 71771, 37 Fed. R. Serv. 3d 867 (10th Cir. 1997); Zenith Ins. Co. v. Breslaw, 108 F.3d 205, 207, 62 Cal. Comp. Cas. (MB) 327, R.I.C.O. Bus. Disp. Guide (CCH) P 9217, 37 Fed. R. Serv. 3d 173 (9th Cir. 1997) (abrogated on other grounds by, Association of Mexican-American Educators v. State of California, 231 F.3d 572, 148 Ed. Law Rep. 639, 84 Fair Empl. Prac. Cas. (BNA) 474, 79 Empl. Prac. Dec. (CCH) P 40298 (9th Cir. 2000)); In re Papst Licensing

that defendant is dismissed with[12] or without[13] prejudice.

A good practice when seeking voluntary dismissal under Fed. R. Civ. P. 41 is to pay careful attention to the use of a stipulation or motion governing the manner in which costs should be taxed between or among the parties. One case has held that although the defendant would not otherwise have been entitled to recover costs, the district court order awarding costs should not be overturned, because the parties' stipulation of dismissal included a provision allowing the defendant to move the court to recover costs.[14]

At trial, a plaintiff who receives damages in any amount,[15] even nominal,[16] is still treated as the prevailing party and is

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GMBH & Co. KG Litigation, 631 F. Supp. 2d 42, 47 (D.D.C. 2009). However, where litigation in another forum is ongoing between the plaintiff and the voluntarily dismissed defendant, the district court may award in the dismissed suit only those costs that were "wasted" effort spent in defending that suit and the results of which cannot be used in the ongoing litigation. The other costs may be sought in the ongoing litigation. Ortega v. Banco Central del Ecuador, 205 F.R.D. 648 (S.D. Fla. 2002), aff'd, 48 Fed. Appx. 739 (11th Cir. 2002).

[12]Power Mosfet Technologies, L.L.C. v. Siemens AG, 378 F.3d 1396, 1416, 72 U.S.P.Q.2d 1129 (Fed. Cir. 2004); AeroTech, Inc. v. Estes, 110 F.3d 1523, 1526–1527, 1997-1 Trade Cas. (CCH) ¶ 71771, 37 Fed. R. Serv. 3d 867 (10th Cir. 1997); Zenith Ins. Co. v. Breslaw, 108 F.3d 205, 207, 62 Cal. Comp. Cas. (MB) 327, R.I.C.O. Bus. Disp. Guide (CCH) P 9217, 37 Fed. R. Serv. 3d 173 (9th Cir. 1997) (abrogated on other grounds by, Association of Mexican-American Educators v. State of California, 231 F.3d 572, 148 Ed. Law Rep. 639, 84 Fair Empl. Prac. Cas. (BNA) 474, 79 Empl. Prac. Dec. (CCH) P 40298 (9th Cir. 2000)). But see Wendy's Intern., Inc. v. Nu-Cape Const., Inc., 164 F.R.D. 694, 698 (M.D. Fla. 1996) (voluntarily dismissed defendant not prevailing party).

[13]See RFR Industries, Inc. v. Century Steps, Inc., 477 F.3d 1348, 1353, 81 U.S.P.Q.2d 1915, 67 Fed. R. Serv. 3d 616 (Fed. Cir. 2007) (the plaintiff's involuntary dismissal without prejudice did not bestow prevailing party status upon the defendant); RFAR Group, LLC v. Epiar, Inc., 2013 WL 1743880, at *4 (N.D. Tex. 2013), report and recommendation adopted, 2013 WL 1748619 (N.D. Tex. 2013) (dismissal without prejudice on the basis of lack of personal jurisdiction does not give defendants the status of prevailing party); In re Papst Licensing GMBH & Co. KG Litigation, 631 F. Supp. 2d 42, 47 (D.D.C. 2009); Norris v. Turner, 637 F. Supp. 1116, 1124 (N.D. Ala. 1986). But see U.S. Nineteen, Inc. v. Orange County, Florida, 1999 WL 1336066, at *2 (M.D. Fla. 1999) (voluntarily dismissed defendant is not a "prevailing party" for purposes of Rule 54(d)).

[14]See Nemeroff v. Abelson, 620 F.2d 339, 350, 6 Media L. Rep. (BNA) 1075, Fed. Sec. L. Rep. (CCH) P 97317, 29 Fed. R. Serv. 2d 243 (2d Cir. 1980).

[15]American Ins. Co. v. El Paso Pipe and Supply Co., 978 F.2d 1185, 1192 (10th Cir. 1992); Ganey v. Edwards, 759 F.2d 337, 339 (4th Cir. 1985); Rice v. Sunrise Express, Inc., 237 F. Supp. 2d 962, 978–980, 197 A.L.R. Fed. 631 (N.D. Ind. 2002); see also Liedberg v. Goodyear Tire and Rubber Co., 102 F.R.D. 249, 250 (N.D. Ga. 1984) (plaintiff deemed prevailing party where parties settled after defendant was found liable but prior to determination of damages).

[16]Lipscher v. LRP Publications, Inc., 266 F.3d 1305, 1321, 60 U.S.P.Q.2d 1468, 2001-2 Trade Cas. (CCH) ¶ 73477, 51 Fed. R. Serv. 3d 172 (11th Cir.

entitled to recover costs.[17] Moreover, a plaintiff that is awarded none of the damages it sought, but obtains a declaration in its favor,[18] can still be considered a prevailing party.[19] When a directed verdict or judgment notwithstanding verdict is rendered against a plaintiff,[20] the defendant is deemed the prevailing party and is entitled to recover costs.[21] Further, when a motion for judgment as a matter of law to vacate a jury verdict in favor of plaintiff is granted, the defendant is deemed the prevailing party and may recover costs, notwithstanding a jury verdict in favor of plaintiff on defendant's counterclaim.[22] A defendant can be deemed the prevailing party and so be awarded costs where it did not win on its counterclaim but successfully defended against a larger claim.[23]

If both parties prevail on some claims or defenses, it is within the sound discretion of the district court whether to award the plaintiff costs.[24] That discretion may be exercised in a variety of ways, given the many possibilities whereby a party may obtain

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2001); Three-Seventy Leasing Corp. v. Ampex Corp., 528 F.2d 993, 998, 19 U.C.C. Rep. Serv. 132 (5th Cir. 1976); Burk v. Unified School Dist. No. 329, Wabaunsee County, Kan., 116 F.R.D. 16, 17, 40 Ed. Law Rep. 796 (D. Kan. 1987).

[17]Cf. cases cited in § 67:27.

[18]See generally Chapter 39, "Declaratory Judgments" (§§ 39:1 et seq.).

[19]Nature's Footprint, Inc. v. Provident Co Trust, 96 U.S.P.Q.2d 1926, 2010 WL 1903183, at *1 (W.D. Wash. 2010); Manildra Mill. Corp. v. Ogilvie Mills, Inc., 878 F. Supp. 1417, 1424–1425 (D. Kan. 1995), decision aff'd, 76 F.3d 1178, 37 U.S.P.Q.2d 1707, 34 Fed. R. Serv. 3d 321 (Fed. Cir. 1996).

[20]See generally Chapter 63, "Trial and Post-Trial Motions" (§§ 63:1 et seq.).

[21]Eugene v. 3Don & Partner Estate Group, LLC, 2009 WL 996016, at *17 (S.D. Fla. 2009); Tyler v. O'Neill, 2003 WL 22890086, at *2 (E.D. Pa. 2003), aff'd, 112 Fed. Appx. 158 (3d Cir. 2004); Lapierre v. Executive Industries, Inc., 117 F.R.D. 328, 329 (D. Conn. 1987) (directed verdict); Rose Hall, Ltd. v. Chase Manhattan Overseas Banking Corp., 576 F. Supp. 107, 176 (D. Del. 1983), judgment aff'd, 740 F.2d 956 (3d Cir. 1984) and judgment aff'd, 740 F.2d 957 (3d Cir. 1984) and judgment aff'd, 740 F.2d 958 (3d Cir. 1984) and judgment aff'd, 740 F.2d 958 (3d Cir. 1984) (judgment notwithstanding verdict).

[22]Tyler v. O'Neill, 2003 WL 22890086 (E.D. Pa. 2003), aff'd, 112 Fed. Appx. 158 (3d Cir. 2004).

[23]Haynes Trane Service Agency, Inc. v. American Standard, Inc., 573 F.3d 947, 967 (10th Cir. 2009).

[24]Wheatley v. Moe's Southwest Grill, LLC, 580 F. Supp. 2d 1319, 1321 (N.D. Ga. 2008), subsequent determination, 580 F. Supp. 2d 1324 (N.D. Ga. 2008); Gulf South Mach., Inc. v. American Standard, Inc., 1999 WL 199085, at *3 (E.D. La. 1999) (noting that at least two circuits already have held that a district court may order each party to bear its own costs when each has prevailed on one or more of its claims). See Republic Tobacco Co. v. North Atlantic Trading Co., Inc., 481 F.3d 442, 446–47, 67 Fed. R. Serv. 3d 776 (7th Cir. 2007) (defendant is not a prevailing party entitled to costs where its success in the district court is only a reduction in plaintiff's damages award); Thomas v. Clayton County,

less than all the relief sought in its complaint. Several examples of how courts have fashioned cost awards where the plaintiff was less than completely successful are: a plaintiff who recovered less than defendants offered in an offer of judgment under Fed. R. Civ. P. 68 was nevertheless awarded those costs that were incurred between the time he brought his suit until the time the offer was made;[25] a plaintiff was entitled to costs where it prevailed on two of its four claims and won a jury verdict for more than $13 million;[26] a plaintiff found to be 45% at fault under a comparative negligence statute was still deemed a prevailing party entitled to costs, in part because the plaintiff prevailed on her claim, notwithstanding that her damages were reduced in proportion to the percentage of fault she was assessed by the jury;[27] a plaintiff was awarded costs as to all of its claims, even those on which it did not prevail, whereas attorney's fees were apportioned only as to successful claims;[28] a plaintiff was considered a prevailing party and awarded costs incurred in prosecuting both of his claims, even though he prevailed on just one and was awarded actual and punitive damages, whereas the other party received no damages.[29]

Parties other than the traditional plaintiff and defendant may

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Ga., 94 F. Supp. 2d 1330, 144 Ed. Law Rep. 173, 47 Fed. R. Serv. 3d 149 (N.D. Ga. 2000) (each party was ordered to bear its own costs where the plaintiffs proved defendants' conduct was improper, but the defendants had viable defenses; the plaintiffs' success in proving defendants' conduct was unconstitutional should deter such conduct in the future); Great Lakes Dredge & Dock Co. v. Commercial Union Assur. Co., 2000 WL 1898533 (N.D. Ill. 2000) (recovery of costs is not necessarily precluded by the fact that a party won less than 10% of its initial demand). See also Landau & Cleary, Ltd. v. Hribar Trucking, Inc., 807 F.2d 91, 94 (7th Cir. 1986); Johnson v. Nordstrom-Larpenteur Agency, Inc., 623 F.2d 1279, 1282, 23 Fair Empl. Prac. Cas. (BNA) 284, 24 Wage & Hour Cas. (BNA) 845, 23 Empl. Prac. Dec. (CCH) P 31000, 89 Lab. Cas. (CCH) P 33920 (8th Cir. 1980). Where defendant won on appeal a reduction of 90% in its punitive damage liability, but still was liable for punitive damages of more than $500 million, "neither side is the clear winner," and each party bore its own costs for the appeal. Exxon Valdez v. Exxon Mobil, 568 F.3d 1077, 1081, 68 Env't. Rep. Cas. (BNA) 2155, 2009 A.M.C. 1592 (9th Cir. 2009). See also § 67:28 for discussion of apportionment of costs among the parties.

[25]Zackaroff v. Koch Transfer Co., 862 F.2d 1263, 1266, 12 Fed. R. Serv. 3d 872 (6th Cir. 1988). See § 67:6 for discussion of offers of judgment pursuant to Fed. R. Civ. P. 68.

[26]Clark v. Milam, 891 F. Supp. 268, 272 (S.D. W. Va. 1995), judgment aff'd, 139 F.3d 888 (4th Cir. 1998).

[27]Weseloh-Hurtig v. Hepker, 152 F.R.D. 198, 200–201, 28 Fed. R. Serv. 3d 672 (D. Kan. 1993) ("Costs are generally awarded to the prevailing party even if he is not awarded his entire claim.").

[28]Thurner Heat Treating Corp. v. Mayfair Ford, Inc., 656 F. Supp. 1178, 1182 (E.D. Wis. 1987), judgment aff'd, 843 F.2d 500 (7th Cir. 1988).

[29]Seber v. Daniels Transfer Co., 618 F. Supp. 1311, 1316, 120 L.R.R.M.

also recover or be liable for costs under Fed. R. Civ. P. 54(d). An intervenor can be a prevailing party entitled to costs, or liable for costs when it loses.[30] A petitioner for writ of mandamus who obtains the relief it sought is also a prevailing party, although costs are awardable only against the real party in interest who occupied the position of the respondent, instead of a nominal respondent such as a judge who was named as the subject of the mandamus.[31]

§ 67:5 Necessary for use in the case

Although the types of costs recoverable under Fed. R. Civ. P. 54 are restricted by 28 U.S.C.A. § 1920, it does not follow that all costs incurred by a prevailing party will be taxable so long as they are within those described in Section 1920. Judges do not have "unrestrained discretion to tax costs to reimburse a winning litigant for every expense he has seen fit to incur in the conduct of his case."[1] Costs submitted by the prevailing party "should always be given careful scrutiny."[2] The language of the statute itself provides that costs may be taxed only for items "necessarily obtained for use in the case."[3] Examples of these items include filing fees,[4] deposition and trial transcripts,[5] photocopies,[6] and

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(BNA) 3093 (W.D. Pa. 1985).

[30]Carter v. General Motors Corp., 983 F.2d 40, 43, 24 Fed. R. Serv. 3d 1378 (5th Cir. 1993); Stewart v. City of St. Louis, 2007 WL 2994444, at *2 (E.D. Mo. 2007); Smith v. Board of School Com'rs of Mobile County, 119 F.R.D. 440, 442 (S.D. Ala. 1988); see also MDT Corp. v. New York Stock Exchange, Inc., 858 F. Supp. 1028, 1035, 30 U.S.P.Q.2d 1849 (C.D. Cal. 1994) (intervenor was considered prevailing party so long as it substantially contributed to the resolution of the issues in the case). See § 67:30.

[31]Cotler v. Inter-County Orthopaedic Ass'n, P.A., 530 F.2d 536, 537–538 (3d Cir. 1976).

[Section 67:5]

[1]Farmer v. Arabian Am. Oil Co., 379 U.S. 227, 235, 85 S. Ct. 411, 416, 13 L. Ed. 2d 248, 9 Fed. R. Serv. 2d 45E.14, Case 1 (1964) (disapproved of by, Crawford Fitting Co. v. J. T. Gibbons, Inc., 482 U.S. 437, 107 S. Ct. 2494, 96 L. Ed. 2d 385, 43 Fair Empl. Prac. Cas. (BNA) 1775, 43 Empl. Prac. Dec. (CCH) P 37102, 1987-1 Trade Cas. (CCH) ¶ 67596, 7 Fed. R. Serv. 3d 1161 (1987)).

[2]Farmer v. Arabian Am. Oil Co., 379 U.S. 227, 235, 85 S. Ct. 411, 416, 13 L. Ed. 2d 248, 9 Fed. R. Serv. 2d 45E.14, Case 1 (1964) (disapproved of by, Crawford Fitting Co. v. J. T. Gibbons, Inc., 482 U.S. 437, 107 S. Ct. 2494, 96 L. Ed. 2d 385, 43 Fair Empl. Prac. Cas. (BNA) 1775, 43 Empl. Prac. Dec. (CCH) P 37102, 1987-1 Trade Cas. (CCH) ¶ 67596, 7 Fed. R. Serv. 3d 1161 (1987)).

[3]See 28 U.S.C.A. § 1920(2), (4).

[4]28 U.S.C.A. § 1920(1); see § 67:7.

[5]28 U.S.C.A. § 1920(2); see §§ 67:15 to 67:16.

[6]28 U.S.C.A. § 1920(4); see § 67:18. Costs for copies were taxable where