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FILED
CLERK, U.S. DISTRICT COURT
MAY 30 2003
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

ENTERED
CLERK, U.S. DISTRICT COURT
ENTERED
MAY 30 2003
05-30-03
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY [Signature]

JANET I. FISCHER,)
)
Plaintiff,)
)
v.)
)
UNITED STATES OF AMERICA,)
JOHN ASHCROFT, in his official)
and individual capacity, et al.,)
)
Defendants.)

EDCV 02-691-OMP (SGL)

SHOW CAUSE ORDER

This court has dismissed with prejudice the civil rights and racketeering action brought by pro se plaintiff Janet I. Fischer. Several defendants move for sanctions against plaintiff. Plaintiff is ordered to show cause in writing why she should not be treated as a vexatious litigant or sanctioned for filing frivolous papers.

DISCUSSION

Defendants argue that this court should treat plaintiff as a vexatious litigant. See Local Rule 83-8. Such an order may

1 require that plaintiff post security for costs, or direct that
2 plaintiff obtain prior written authorization from a judge or
3 magistrate-judge before the Clerk of the Court will accept any
4 additional filings. Defendants also seek sanctions under Federal
5 Rule of Civil Procedure 11, contending that plaintiff's action
6 was frivolous and intended to harass defendants.

7 **I. Local Rule 83-8**

8 This court's Local Rule 83-8.1 provides:

9 It is the policy of the Court to discourage vexatious
10 litigation and to provide persons who are subjected to
11 vexatious litigation with security against the costs of
12 defending against such litigation and appropriate
13 orders to control such litigation. It is the intent of
14 this rule to augment the inherent power of the Court to
15 control vexatious litigation and nothing in this rule
16 shall be construed to limit the Court's inherent power
17 in that regard.

18 Local Rule 83-8.2 provides:

19 On its own motion or on motion of a party, after
20 opportunity to be heard, the Court may, at any time,
21 order a party to give security in such amount as the
22 Court determines to be appropriate to secure the
23 payment of any costs, sanctions or other amounts which
24 may be awarded against a vexatious litigant, and may
25 make such other orders as are appropriate to control
26 the conduct of a vexatious litigant. Such orders may
include, without limitation, a directive to the Clerk
not to accept further filings from the litigant without
payment of normal filing fees and/or without written
authorization from a judge of the Court or a Magistrate
Judge, issued upon such showing of the evidence
supporting the claim as the judge may require.

27 In an order under this Local Rule, the court must find that "the
28 litigant to whom the order is issued has abused the Court's
29 process and is likely to continue such abuse, unless protective
30 measures are taken." L.R. 83-8.3.

1 **II. Sanctions Under Court's Inherent Power**

2 Courts may issue sanctions under their inherent power.

3 "[T]he inherent power of a court can be invoked even if
4 procedural rules exist which sanction the same conduct."

5 Chambers v. NASCO, Inc., 501 U.S. 32, 49 (1991).

6 A court must, of course, exercise caution in invoking
7 its inherent power, and it must comply with the
8 mandates of due process, both in determining that the
9 requisite bad faith exists and in assessing fees.
10 Furthermore, when there is bad-faith conduct in the
11 course of litigation that could be adequately
12 sanctioned under the Rules, the court ordinarily should
13 rely on the Rules rather than the inherent power. But
14 if in the informed discretion of the court, neither the
15 statute nor the Rules are up to the task, the court may
16 safely rely on its inherent power.

17 Id. at 50 (citations omitted). The district court has inherent
18 power to issue restrictive pre-filing orders against vexatious
19 litigants with long histories of abusive litigation. De Long v.
20 Hennessey, 912 F.2d 1144, 1147 (9th Cir. 1990).

21 **III. Sanctions under Rule 11**

22 Federal Rule of Civil Procedure 11 provides in part:

23 By presenting to the court (whether by signing, filing,
24 submitting, or later advocating) a pleading, written
25 motion, or other paper, an attorney or unrepresented
26 party is certifying that to the best of the person's
knowledge, information, and belief, formed after an
inquiry reasonable under the circumstances, (1) it is
not being presented for any improper purpose, such as
to harass or to cause unnecessary delay or needless
increase in the cost of litigation; (2) the claims,
defenses, and other legal contentions therein are
warranted by existing law or by a nonfrivolous argument
for the extension, modification, or reversal or
existing law or the establishment of new law; (3) the
allegations and other factual contentions have
evidentiary support or, if specifically so identified,
are reasonably based on a lack of information or
belief. . . .

1 Fed. R. Civ. P. 11(b). "[A] district court may impose Rule 11
2 sanctions if a paper filed with the court is for an improper
3 purpose, or if it is frivolous." G.C. and K.B. Investments, Inc.
4 v. Wilson, 326 F.3d 1096, 1109 (9th Cir. 2003). The court
5 applies an objective standard to determine whether sanctions are
6 warranted under Rule 11. Id. (citing Townsend v. Holman
7 Consulting, 929 F.2d 1358, 1362 (9th Cir. 1990) (en banc)).

8 **CONCLUSION**

9 Plaintiff is ordered to show cause in writing by July 1,
10 2003, why she should not be subject to a vexatious litigant
11 order, or sanctioned for bringing and maintaining an action in
12 violation of Rule 11. Defendants may file response briefs by
13 July 14, 2003, and plaintiff may file a reply brief by July 21,
14 200~~2~~³. The court will then take the issue under advisement
15 without hearing. Defendants are to file their bills of costs
16 separately.

17 DATED this 29 day of May, 2003.

18 

19 _____
20 OWEN M. PANNER
21 U.S. DISTRICT COURT JUDGE
22
23
24
25
26

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Central District of California U.S.D.C.

Filing Procedure

Subject:
Bill of Costs Handbook

Section:
General Civil Filing
Information

Contact:
Clerk of Court

Last Update:
05/30/2003



BILL OF COSTS HANDBOOK October 1, 2001

This handbook has been prepared to assist parties in properly completing and filing Bill of Costs.

The prevailing party is entitled to reasonable costs as incurred by the proceedings. No costs are allowed unless a party qualifies as, or is determined by the Court to be, the prevailing party pursuant to Local Rule 54-2, as follows:

- A. The plaintiff is the prevailing party when it recovers on the entire complaint.
- B. The defendant is the prevailing party when the proceeding is terminated by court-ordered dismissal or judgment in favor of the defendant.
- C. The Court shall determine the prevailing party when there is a partial recovery or a recovery by more than one party.
- D. The Court shall determine the prevailing party when the case is voluntarily dismissed or otherwise voluntarily terminated.

The prevailing party has 15 days after the entry of judgment to file and serve a Bill of Costs on Form AO 133 and in accordance with instructions on said form. (Form AO 133 can be found at the end of this handbook and also on the Court's website at www.cacd.uscourts.gov).

The Bill of Costs shall be attached to a Notice of Application to the Clerk to Tax Costs and shall state the hour and date this application will be made. This date and time cannot be less than 14 days nor more than 21 days from the date that notice is given to other parties.

For Los Angeles, effective January 2, 2002, Bill of Costs hearings will be heard in room 917 (ninth floor). Bill of Costs hearings are scheduled for Thursdays at 10:00 a.m., 11:00 a.m., 2:00 p.m., 3:00 p.m. and 4:00 p.m. Please call (213) 894-8248 to reschedule a Bill of Costs hearing, to take a scheduled Bill of Costs hearing off calendar, or to ascertain the name of or speak to the Court Support Supervisor that will be hearing a particular Bill of Costs. To schedule a telephonic appearance for a Bill of Costs hearing, please complete the blue form attached to this handbook and fax it to the appropriate Court Support Supervisor. Upon receipt of the form, the Court Support Supervisor will be in contact with further instructions.

In the case of a contested Bill of Costs, please telephonically notify the appropriate Court Support Supervisor at least 24 hours in advance of the hearing date in the following instances: (1) where the matter has been settled, or (2) where one of the parties intends to submit the matter on the documentation filed and not make an appearance at the hearing.

For Santa Ana, Bill of Costs hearings are scheduled on the first and third Friday of each month at 10:00 a.m. or 11:00 a.m. in Room 1-053.

For Riverside, Bill of Costs hearings are scheduled on the second and fourth Friday of each month at 10:00 a.m.

ITEMS TAXABLE AS COSTS:

Pursuant to Local Rule 54-4, the following fees are taxable as costs:

- A. The Clerk's filing fees;
- B. Fees for service of process (whether served by the U.S. Marshal or other persons authorized by F.R.CIV.P. 4) and for service of subpoenas pursuant to F.R.Civ.P. 45;
- C. United States Marshal's fees include:
 1. Fees paid according to 28 U.S.C. Section 1921;
 2. Charges connected with caring for property attached, replevied libeled, or held pending stay of execution;
 3. The United States Marshal's commission on collections paid to creditors. That commission shall be 1 percent of the amount up to \$1,000.00, and ½ of 1 percent of the amount in excess of \$1,000, but not less than \$2.50 for any collection.
- D. Clerk's fees for certification of documents necessary for preparation for a hearing or a trial;
- E. Fees for reporter's transcripts, including the cost of the original transcript and one copy, of all or any part of a trial transcript, daily transcript or a transcript of matters occurring before or after trial, **if requested by the Court or prepared pursuant to stipulation;**
- F. Costs incurred with taking oral depositions, including:
 1. The cost of the original deposition and one copy used for any purpose in the connection with the case, but not including the cost of videotaped or recorded depositions unless ordered by the Court;
 2. The reasonable fees of a reporter, notary or any other person who reported or transcribed the deposition, but not including the costs of video or audio technicians unless otherwise ordered by the Court; Expedited rates are not allowable unless ordered by the Court;
 3. Reasonable witness fees paid to a deponent, including fees actually paid to an expert witness deponent pursuant to F.R.Civ.P. 26(b)(4)(c). However, such fees do not include expert witness fees paid to a trial witness in excess of the statutory witness fees unless otherwise ordered by the Court;
 4. Reasonable fees paid to an interpreter whose presence is necessary when taking a deposition;
 5. The cost of copying or reproducing exhibits used at the deposition and made a part of the deposition transcript.
- G. Witness fees if required to attend by the opposing party or if the witnesses are employees of a corporation and are not parties in their individual capacities:
 1. Attendance fees of \$40.00 per day;
 2. Mileage of .365 cents per mile for transportation to and from the Court;
 3. \$145.00 per diem, per day.
- H. Fees paid to interpreters and translators including:
 1. The salaries, fees, expenses and costs of an interpreter as provided by 28 U.S.C. Sections 1827 and 1828;

2. Fees for translation of documents received in evidence, used as part of the proceeding or when otherwise reasonably necessary to the preparation of the case.
- I. Docket fees according to 28 U.S.C. Section 1923;
 - J. The reasonable fees and expenses of masters, commissioners and receivers;
 - K. Document preparation costs including:
 1. The costs of copies of an exhibit attached to a document necessarily filed and served;
 2. The cost of copies of documents admitted into evidence when the original is not available or the copy is substituted for the original at the request of an opposing party;
 3. Fees concerned with officially certifying that a document or record does not exist;
 4. Patent Office charges for the patent file wrappers and prior art patents necessary to the prosecution or defense of a proceeding involving a patent;
 5. Notary fees incurred in notarizing a documents when the cost of the document is taxable;
 6. Fees for necessary certification or exemplification of any document.
 - L. Premiums paid on undertakings, bonds, security stipulations or substitutes where required by law, court order, or where necessary to enable a party to secure a right granted in the proceeding.

PLEASE NOTE: UPON ORDER OF THE COURT, these items may also be taxed as costs:

- A. Summaries, computations, polls, surveys, statistical comparisons, maps, charts, diagrams, and other visual aids reasonably necessary to assist the jury or the Court in understanding the issues at trial;
- B. Photographs, if admitted in evidence or attached to documents, necessarily filed and served upon the opposing party;
- C. The cost of models.

SPECIAL CASES:

- A. Removed Cases - Costs incurred in state Court prior to removal, which are recoverable under state statutes, shall be recovered by the prevailing party in Federal Court;
- B. Costs on Appeal - Costs on appeal taxable in the District Court shall be governed by F.R.App.P. 39(c). Such costs bill is to be filed within 15 days of the filing and spreading of the mandate of the Court of Appeals in the District Court;
- C. Costs on a Bankruptcy Appeal to the District Court - A cost bill on a bankruptcy appeal decided in the District Court is to be filed within fifteen (15) days of the entered date of the order deciding a bankruptcy appeal. The following are taxable as costs for bankruptcy appeals decided by the District Court:
 1. The costs of printing or otherwise reproducing briefs or excerpts of the record. A statement by counsel that the cost is no higher than generally charged for such reproduction in the local area and that no more copies than what was actually necessary were reproduced shall be required;
 2. The cost of the preparation and transmission of the record;
 3. If supersedeas or other bonds were purchased in order to preserve rights pending appeal, the premium paid for such bonds;
 4. Any clerk's fees which have actually been paid.

IMPORTANT:

Each item that is claimed in the Bill of Costs (form AO133) must be set forth separately. The prevailing party or attorney having knowledge of the facts shall complete the Declaration portion on with the Bill of Costs verifying that:

- A. The items claimed as costs are correct;
- B. The costs have been necessarily incurred in the case;
- C. The services for which fees have been charged were actually and necessarily performed;

Proper itemization and documentation of the actual expenses such as copies of receipts, returned checks, bills, etc. may be attached as exhibits to the Bill of Costs which may obviate opposition.

Pursuant to Local Rule 54-7, any party may file and serve written objections to any item specified in a Bill of Costs. The grounds for the objection must be specifically stated and they must be filed and served no later than seven (7) days before the date noticed for the application. **No verbal objection will be considered.** A written response may be filed and served no later than three (3) days before the date noticed for the application.

APPEARANCE BY COUNSEL TO THE COST BILL IS ONLY REQUIRED WHEN OBJECTIONS TO THE BILL OF COSTS ARE FILED:

After considering any objections to the Bill of Costs and any responses thereto, the Clerk shall tax and this amount will be included in the judgment. The Clerk's decision will be final, unless modified by the Court upon review. The clerk may specify the form of the hearing and determine whether and when telephone appearances will be permitted.

This review can be obtained by filing and serving a motion to retax costs within five (5) days of the Clerk's decision. The review will be limited to the record made before the Clerk, and will encompass only those items specifically identified in the motion.

Approximately thirty (30) days after the taxation of costs becomes final, the Clerk will indicate the amount on the original judgment and will enter a similar notation on the docket sheet.

Upon request, the Clerk will issue a Writ of Execution to recover costs or attorney's fees included in the judgment:

- A. When a certified copy of the final judgment is presented in the District Court;
- B. When a mandate of the Court of Appeals is presented to recover costs taxed by the Appellate Court.

Any motion or application for attorney's fees shall be served and filed within fourteen (14) days after the entry of judgment or other final order, unless otherwise ordered by the Court. The motions are heard only by the judge and must be filed separately from the Bill of Costs. Such motions and their disposition shall be governed by Local Rule 7.

File for Download:

File Type: Adobe Acrobat



FaxTransmission.pdf
File Size: 543 KBytes

UNITED STATES DISTRICT COURT
Central District of California

UNITED STATES OF AMERICA

BILL OF COSTS

V.

Case Number:

Judgment having been entered in the above entitled action on _____ against _____,
the Clerk is requested to tax the following as costs:

Table with 2 columns: Description of costs (e.g., Fees of the Clerk, Fees for service of summons and subpoena) and Amount (\$ _____). Includes a TOTAL row at the bottom.

SPECIAL NOTE: Attach to your bill an itemization and documentation for requested costs in all categories.

DECLARATION

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill was mailed today with postage prepaid to: _____

Signature of Attorney: _____

Name of Attorney: _____

For: _____ Date: _____
Name of Claiming Party

Costs are taxed in the amount of _____ and included in the judgment.

By: _____ Date: _____
Clerk of Court Deputy Clerk

WITNESS FEES (computation, cf. 28 U.S.C. 1821 for statutory fees)

NAME AND RESIDENCE	ATTENDANCE		SUBSISTENCE		MILEAGE		Total Cost Each Witness
	Days	Total Cost	Days	Total Cost	Miles	Total Cost	
					TOTAL		

NOTICE

Section 1924, Title 28, U.S. Code (effective September 1, 1948) provides:

"Sec. 1924. Verification of bill of costs."

"Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed."

See also Section 1920 of Title 28, which reads in part as follows:

"A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree."

The Federal Rules of Civil Procedure contain the following provisions:

Rule 54 (d)

"Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs, but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court."

Rule 6(e)

"Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period."

Rule 58 (In Part)

"Entry of the judgment shall not be delayed for the taxing of costs."