

BILL OF COSTS

Applicable Law and Rules

1. Fed. R. Bankr. P. 7054(b) authorizes the court to allow costs to the prevailing party in an adversary proceeding. The text of this rule and of other relevant provisions of the law and rules is printed on the second page of the form.
2. The prevailing party must submit the bill of costs to the clerk on notice to the other parties to the adversary proceeding.
3. The length of time required for notice is often fixed by local rule. Some local rules also limit the time in which costs may be sought. In addition, the local rules may include specific filing procedures. A copy of the local rules may be obtained from the clerk of court.
4. The clerk will not tax costs unless the judgment signed by the court specifically awards costs to the prevailing party. Rule 7054(b). The Bankruptcy Rule is different from Fed. R. Civ. P. 54(d), where costs are allowed unless the court orders otherwise.
5. It is not necessary to have the bill of costs issued simultaneously with the entry of the judgment. Fed. R. Civ. P. 58, which is incorporated by reference by Fed. R. Bankr. P. 7058.

Instructions

Caption

1. Identify the Judicial District in which the bankruptcy case was filed. Example: "Eastern District of California."
2. "In re": Insert the name of the debtor as it appears in the bankruptcy petition. Then insert the names of the plaintiff(s) and defendant(s) as they appear on the original complaint.
3. "Case No.": Insert the bankruptcy case number assigned by the court at the time of filing.
4. "Adv. Proc. No.": Insert the number assigned to the adversary case by the court at the time of the filing of the complaint.

Fees:

The fees necessarily incurred during the proceeding should be itemized in the space provided. The list is intended as a guide. It is not expected that every cost will be on the list. Therefore, several lines have been provided at the bottom of the list for additional costs to be itemized.

Declaration: The declaration serves as both an affirmation that the costs sought were actually incurred, were necessary, and have been calculated in good faith, and as an affidavit of service of the bill of costs on the judgment debtor.

General Information for the Clerk

Prior to issuing the bill of costs, the clerk should ensure that:

1. A judgment was entered in the adversary proceeding.
2. The judgment specifically states that costs are awarded to the party seeking the bill of costs. NOTE: This is different from federal civil practice where Fed. R. Civ. P. 54 automatically permits costs. Fed. R. Bankr. P. 7054 specifically declines to follow this part of Rule 54.
3. The attorney's declaration has been executed, and that the name and address of the judgment debtor have been filled in. This declaration is both an affirmation that the costs sought in the bill are correctly calculated, and that the judgment debtor has been served with a copy of the proposed bill.

Rule 7054(b) permits either party to move for review of the clerk's action in fixing the costs, or in refusing to fix costs. The clerk will almost certainly be called upon to testify at such a hearing. Thus, the clerk should keep specific notes of the basis for any decision to amend or deny the bill of costs.

Some courts have adopted a local rule fixing the length of time for notice of the submission of the bill of costs. Several courts have also adopted a local rule limiting the time in which costs may be sought after the judgment is entered. In addition, some courts have adopted a local rule establishing specific procedures for the filing of the bill of costs and of objections to such bill prior to the clerk taxing costs. Clerks may wish to consider whether such rules should be adopted in their districts.