

**APPENDIX A  
DRAFT REVISIONS**

**Local Civil Rule 54.1. Taxable Costs**

(a) **Notice of Taxation of Costs.** Within thirty (30) days after the entry of final judgment, or, in the case of an appeal by any party, within thirty (30) days after the final disposition of the appeal, unless this period is extended by the Court for good cause shown, any party seeking to recover costs shall file with the Clerk a notice of taxation of costs **by Electronic Case Filing, except a pro se party may do so in writing**, indicating the date and time of taxation **which shall comply with the notice period prescribed by Fed. R. Civ. P. 54**, and annexing a bill of costs. Costs will not be taxed during the pendency of any appeal, motion for reconsideration, or motion for a new trial. Within thirty (30) days after the determination of any appeal, motion for reconsideration, or motion for a new trial, the party seeking to tax costs shall file a new notice of taxation of costs. Any party failing to file a notice of taxation of costs within the applicable thirty (30) day period will be deemed to have waived costs. ~~The notice of taxation of costs shall be served upon each other party, and shall specify the date and time fixed for taxation, which shall comply with the notice period prescribed by Fed. R. Civ. P. 54.~~ The bill of costs shall include an affidavit that the costs claimed are allowable by law, are correctly stated and were necessarily incurred. Bills for the costs claimed shall be attached as exhibits.

(b) **Objections to Bill of Costs.** A party objecting to any cost item shall serve objections ~~in the Eastern District of New York~~ by Electronic Case Filing, ~~or if in the Southern District of New York or except a pro se party may do so in writing, prior to or at~~ the date and time scheduled for taxation. ~~In the Eastern District, the~~ The parties need not appear at the date and time scheduled for taxation **unless requested by the Clerk.** The Clerk will proceed to tax costs at the time scheduled and allow such items as are properly taxable. In the absence of written objection, any item listed may be taxed within the discretion of the Clerk.

**COMMITTEE NOTE**

Local Civil Rule 54.1 serves a very useful purpose by outlining what costs are and are not taxable unless otherwise ordered by the Court. This is a subject that is not addressed with specificity by 28 U.S.C. § 1920 and Fed. R. Civ. P. 54(d)(1). Local Civil Rule 54.1 has been updated with the valuable assistance of the Clerks of the two Courts to reflect more precisely which costs are and are not taxable without an order of the Court.

**[August 2014 Note]: Local Rule 54.1 is modified to indicate that the Bill of Costs, and any objection thereto, shall be filed via ECF (except for Pro Se parties) in both Districts.**

[July 2013 Note]: The seven-day notice period previously set forth in Local Civil Rule 54.1(a) was in conflict with the 14-day notice period provided by Rule 54(d)(1) of the Federal Rules of Civil Procedure, and the Committee recommends that the Local Rule be changed to conform with Rule 54(d)(1). Instead of prescribing a particular time period (which might be changed by a future amendment to Fed. R. Civ. P. 54), the Committee recommends that the Local Rule refer the reader to Fed. R. Civ. P. 54. The term “request to tax costs” has misled some parties into not realizing that they need to file a notice of taxation of costs specifying the date and time of taxation. For this reason, the Committee recommends that Local Civil Rule 54.1(a) be amended to substitute the term “notice of taxation of costs” for the term “request to tax costs”, and to add an explicit requirement that the notice specify the date and time fixed for taxation.

Local Civil Rule 54.1(a) presently provides that costs will not be taxed during the pendency of an appeal. At the suggestion of the Clerk’s Offices, the Committee recommends that the Rule be amended to

provide that costs will likewise not be taxed during the pendency of a motion for reconsideration or a motion for a new trial. Also at the suggestion of the Clerk's Offices, the Committee recommends that the Rule be amended to provide that the party seeking to tax costs shall file a new notice of taxation of costs within 30 days after the determination of any appeal, motion for reconsideration, or motion for a new trial.

At the suggestion of the Eastern District Clerk's Office, The Committee recommends that Local Civil Rule 54.1(b) be amended to place parties on notice that, in the Eastern District, the parties need not appear at the date and time scheduled for taxation unless requested by the Clerk.

The Committee recommends that Local Civil Rule 54.1(c)(1) remain unchanged. It is authorized by 28 U.S.C. § 1920(2), which allows taxation of "fees for printed or electronically recorded transcripts necessarily obtained for use in this case."

The Committee recommends that Local Civil Rule 54.1(c)(2) remain unchanged. 28 U.S.C. § 1920 does not by its terms specifically address costs related to depositions. However the practice of taxing the expenses of a deposition when it is received in evidence or employed on a successful motion for summary judgment is widespread, and can be regarded as authorized by 28 U.S.C. § 1920(2) as "expenses for transcripts necessarily obtained for use in this case." See 10 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2676 (3d ed. 1998) ("There is general agreement that expenses of a deposition may be taxed as costs when it was received in evidence."); 7 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 54.103(3)(c)(i) (3d ed. 2011) ("§1920 also contains several provisions for the recovery of costs that, alone or in conjunction, have been interpreted to permit the awarding of the routine expenses incurred in taking depositions."). See also *Anderson v. City of New York*, 132 F. Supp. 2d 239, 246 (S.D.N.Y. 2001) (allowing deposition transcripts to be taxed as costs under § 1920).

The Committee recommends that Local Civil Rule 54.1(c)(3) remain unchanged. This subsection is authorized by 28 U.S.C. § 1920(3), which allows taxation of "fees and disbursements for printing and witnesses."

The Committee recommends that the second sentence of Local Civil Rule 54.1(c)(4) be deleted in light of the Supreme Court's ruling in *Taniguchi v. Kan Pacific Saipan, Ltd.*, 132 S. Ct. 1997 (2012). The rest of Local Civil Rule 54.1(c)(4) is authorized by § 1920(6), which allows taxation of "compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services" under 28 U.S.C. § 1828.

The Committee recommends that Local Civil Rule 54.1(c)(5) remain unchanged. This subsection is authorized by § 1920(4), which allows taxation of "fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in this case."

Courts in other circuits have begun to address the question whether and to what extent the costs of electronic discovery can be taxed as costs of copying or exemplification. See, e.g., *Race Tires America, Inc. v. Hoosier Racing Tire Corp.*, 674 F.3d 158 (3d Cir. 2012). Particularly in the absence of authoritative guidance from the Second Circuit on this issue, the Committee has concluded that it is premature to address this question in Local Civil Rule 54.1(c).

The Committee recommends that Local Civil Rule 54.1(c)(6) remain unchanged. This subsection is authorized by 28 U.S.C. § 1920(4), which allows taxation of "fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in this case."

The Committee recommends that Local Civil Rule 54.1(c)(7) be retained, because it does not authorize taxation of any costs, but instead serves a useful purpose by pointing out that attorney's fees are addressed in Fed. R. Civ. P. 54, and are not taxable except by order of the Court. For the reasons explained in the Committee Note to Local Civil Rule 54.1(a), the Committee recommends that the Local Rule refer the reader to Fed. R. Civ. P. 54 for the time period within which attorney's fees must be sought.

The Committee recommends that Local Civil Rule 54.1(c)(8) remain unchanged. Although 28 U.S.C. § 1920 does not by its terms address fees for masters, receivers, or commissioners, Fed. R. Civ. P. 53(g)

authorizes the Court to allocate payment for a master's compensation, and commentators have observed that appropriate expenditures incurred in connection with a special master may be taxed as costs by the prevailing party. 10 Fed. Prac. & Proc. Civ. §2677 (3d ed.).

The Committee recommends that Local Civil Rule 54.1(c)(9) remain unchanged. This subsection is authorized by 28 U.S.C. § 1920(4), which allows a taxation of "fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in this case."

The Committee recommends that Local Civil Rule 54.1(c)(10) remain unchanged. This subsection is authorized by 28 U.S.C. § 1920(5), which allows taxation of docket fees under 28 U.S.C. § 1923.