

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

ROY L. DENTON)	
)	
Plaintiff)	Case No. 1:07-cv-211
)	
v.)	JURY DEMAND
)	
STEVE RIEVLEY)	Collier/Carter
)	
Defendant)	

**DEFENDANT STEVE RIEVLEY’S RESPONSE TO MOTION FOR DISALLOWANCE
OF DEFENDANT STEVE RIEVLEY’S BILL OF COSTS AND OBJECTIONS OF
COSTS**

Comes the Defendant, Steve Rievley, in his individual capacity, (herein “Officer Rievley”), through counsel, and hereby files his Response to the Plaintiff’s Motion for Disallowance of Defendant Steve Rievley’s Bill of Costs and Objections of Costs. Officer Rievley respectfully states that he filed his original Petition for Costs on September 3, 2010 (*See Court Doc. 145*) which was later amended using the Court’s standard form for Bill of Costs. (*See Court Doc. 148*). Both the Petition for Costs and the Bill of Costs were filed pursuant to Rule 54(d)(1) and (2) of the *Federal Rules of Civil Procedure*, 42 U.S.C. § 1988, and the August 27, 2010 Order entered by this Court entitling Steve Rievley to recover costs from the Plaintiff (*see Court doc.140*). Officer Rievley submits, based on the above rules and Order of this Court, he is entitled to recover his costs. He asks that this Court grant the costs he has incurred in defending this suit pursuant to this Court’s August 27, 2010 Order and to deny the Plaintiff’s Motion. For cause, Officer Rievley would show this Court

the following:

In his Motion for Disallowance of Defendant Steve Rievley's Bill of Costs and Objections of Costs, the Plaintiff states that the Certificate of Counsel does not contain the necessary items and that such a "relaxation" of the rules "prejudice[s] the Plaintiff." The Certificate of Counsel contains all the necessary items required by the Rules which would allow both the Court and the Plaintiff to determine if the costs incurred by the Defendant and properly taxed to the Plaintiff by this Court's August 27, 2010 Order were necessary and reasonable.

1. Witness Fees

The name of the witness of each witness is included in the Bill of Costs as required by this Court's standard form. The place subpoenaed for each witness is listed as Dayton, Tennessee although it appears as "place of residence" on the Court's standard form. The number of days each witness actually testified in both trials is listed. The number of days each witness traveled and the exact number of miles traveled is listed. (It should be noted that each of the witnesses subpoenaed on page 2 traveled to the courthouse each day of the trial in anticipation of giving testimony. This is due to the fact that there is always a certain amount of unpredictability in the timing and planning of voir dire, opening statements, a plaintiff's presentation of evidence, etc.). Although each witness traveled to Chattanooga to wait outside the courtroom during both trials, unsure when he would be called to give testimony, only the days of actual testimony are listed. These costs are properly taxable to the Plaintiff pursuant to Local Rule 54 (e)(4). This Rule states that "[t]axation may be made for the cost of each day the witness is necessarily in attendance and is not limited only to those costs incurred for the actual day upon which the witness testified." *Id.* Officer Rievley, however, is not asking that these costs be taxed to the Plaintiff as he did not have to pay the witnesses for these

days.

The only item inadvertently omitted by the certificate is the manner by which the witness traveled. Given that Officer Rievley is only claiming the \$40.00 witness fee and the mileage rate of \$0.50 per mile paid to each witness subpoenaed to appear at Court to give anticipated testimony, it is not a stretch to assume that these witnesses did not travel by railway, bus or air, especially given the fact that the certificate states that the witnesses were subpoenaed in Dayton, Tennessee. There is no prejudice to the Plaintiff that the mere mention that they traveled by automobile is not included.

As for the Plaintiff's additional arguments for the taxation of costs for witness fees, the Plaintiff's speculations are totally irrelevant and without merit. It does not matter what vehicles the witnesses drove to the courthouse to testify and there is no "strict certification" requirement that the Plaintiff demands. In fact, the Plaintiff merely speculates on how the witnesses arrived at the courthouse. They could have easily been driven to the courthouse by a friend, used a relative's car, or their own. Regardless of how each witness chose to arrive at the courthouse, the fact remains the same: counsel for Officer Rievley subpoenaed each witness for both trials and paid each witness the same amount according to the witness fee and the mileage. Counsel for Officer Rievley is entitled to recover the costs *they have paid* in defending this suit pursuant to this Court's August 27, 2010.

Moreover, as stated above, Local Rule 54(e)(4) allows for "[t]axation may be made for the cost of each day the witness is necessarily in attendance and is not limited only to those costs incurred for the actual day upon which the witness testified." *Id.* Therefore, it is entirely proper for this Court to allow counsel for Officer Rievley to recover the cost of subpoenaing Ms. Kim Denton as a witness and the costs associated with such a subpoena. Ms. Denton, as a wife of the Plaintiff and having been mentioned as being present on the night of the alleged events, supplied an Affidavit

during the litigation of this matter (*See Court Doc. 60*), and her testimony might have proved beneficial during the second trial. Ultimately, it was decided that her testimony was not needed. Counsel for the defense does not need, nor is he required to explain, his strategy to the Plaintiff, except to say that as a potential witness Ms. Denton was properly subpoenaed. The fact that she was ultimately not called as a witness is not relevant. It does not negate the fact that as a prevailing party, Officer Rievley is entitled to recover the cost of procuring as a witness.

Although the Affidavit of B. Elizabeth Roderick includes Wayne Clemons as a process server under Paragraph (3)(B) in the amount \$55.00, the Court Clerk can take notice that the amount of the Bill of Costs does not include a fee for the service of summons and subpoena in its final total. The final total on the Bill of Costs is \$36,954.45. The final total on Attorney Roderick's Affidavit is also \$36,954.45. Thus, the fact that Paragraph (3)(B) was inadvertently left in the Affidavit is simply an oversight, but it has no prejudicial effect on the Plaintiff because the final total on the Bill of Costs does **NOT** include any fee for the services of Wayne Clemons. Accordingly, the Plaintiff's argument regarding the inclusion of the fee for a private process server is irrelevant.

Simply put, Officer Rievley is only seeking to recover the costs of the \$40.00 witness fee he was required to pay for each witness he subpoenaed to attend both trials and who actually attended the trials, regardless of how many days that witness attended each trial in anticipation of testifying. Furthermore, he is seeking to recover the costs he paid to each witness for mileage to attend each trial at a rate of \$0.50 per mile regardless of how many days each witness drove to the courthouse in anticipation of testifying. Counsel for Officer Rievley only paid each witness \$40.00 as a witness fee and \$0.50 per mile round-trip for one-day's anticipated testimony. That is all he is asking to recover. These costs were correct and were necessarily incurred in this action. Furthermore, these

costs were reasonable under the circumstances and are not prejudicial to the Plaintiff as they total only \$624.54 and are part of this Court's Order of August 27, 2010.

2. Transcripts and Printing

Officer Rievley is claiming \$512.55 for the transcripts obtained during the use in this case. The transcripts of the first trial were ordered by defense counsel in order to prepare for the second trial. The same principle applies here as it would to deposition testimony: an attorney orders deposition transcripts in order to prepare for use in a trial. The Plaintiff's argument that the defense used the same legal theory in the first trial and that the Court used the same jury instructions matters not. What is relevant is whether the transcripts ordered and used were necessary for the effective performance and proper handling of the case as the Plaintiff quoted in his Motion. In order for the defense counsel to prepare for the second trial, it was necessary to have a record of the first trial testimony. Such transcripts of testimony from the first trial could be used for many purposes including, cross-examining the plaintiff, evidence of prior statement by a witness pursuant to FED. R. EVID. 801, etc. Accordingly, the costs of obtaining these transcripts are reasonable, necessary, and properly includable as part of this Court's Order of August 27, 2010.

3. Costs for Making Copies

Officer Rievley is seeking reimbursement of only \$219.30 in copying charges. This amount breaks down to roughly 1,462 pages at \$0.15 per copy. This copying charge was reasonable and necessary during the course of approximately (3) years of litigations which included two (2) trials and one (1) appeal to the Sixth Circuit. Over 155 pleadings in the District Court alone have been filed in this case. Each time the defense is required to file a pleading, especially those with attached exhibits, it is required to make a copy for the Plaintiff, a file copy for itself, and send a copy

electronically to the Court. In some cases, the defense counsel must also send copies of pleadings to its client as well to keep him abreast of the status of the case. In light of such circumstances, \$219.30 for copying costs is not an exorbitant amount for this type of case.

4. Mileage

Officer Rievley is also claiming mileage in the amount of \$263.61. This amount is reflective of the mileage expense his counsel has incurred meeting with his client and witnesses in preparing for this case during the three (3) years this case has been pending. Counsel for Officer Rievley has made this trip approximately three (3) to four (4) times during the pendency of this lawsuit. This amount is reasonable and necessary and again, in light of such circumstances and this Court's August 27, 2010 Order, properly includable as costs to be taxed to the Plaintiff.

In conclusion, Officer Rievley respectfully requests that this Court award his costs as outlined in the Bill of Costs (*Doc. 148*) pursuant to this Court's August 27, 2010 Order and deny the Plaintiff's instant Motion.

ROBINSON, SMITH & WELLS

Suite 700, Republic Centre
633 Chestnut Street
Chattanooga, TN 37450
Telephone: (423) 756-5051
Facsimile: (423) 266-0474

By: s /ElizabethRoderick
Ronald D. Wells, BPR# 011185
Elizabeth Roderick, BPR #022762
Attorney for Defendant, Steve Rievley

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of September, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

This the 29th day of September, 2010.

Robinson, Smith & Wells

By: s/ Elizabeth Roderick

c: Roy L. Denton
120 6th Avenue
Dayton, TN 37321

/09292010/BED/daytontenton/respmot.costs.wpd