



United States District Court
DISTRICT OF MINNESOTA

LR 54.3 COSTS AND ATTORNEY'S FEES

(a) **Under EAJA.** A party must file and serve an application for fees under the Equal Access to Justice Act within 30 days of final judgment as that term is defined in 28 U.S.C. § 2412(d)(2)(G).

(b) **Under Rule 54(d)(2).** When a party timely files and serves a motion for attorney's fees and related nontaxable expenses under Fed. R. Civ. P. 54(d)(2), a party may file a response within 14 days after being served with the motion. Unless the court orders otherwise, a party must not file a reply brief.

(c) **Under Rule 54(d)(1).** If a party seeks costs under Fed. R. Civ. P. 54(d)(1):

(1) *Bill of Costs.*

(A) Within 30 days after judgment is entered, a party seeking costs must file and serve a verified bill of costs using a form available from the clerk.

(B) Within 14 days after being served with the bill of costs, the opposing party may file and serve objections.

(C) Within 7 days after being served with any objections, the party seeking costs may file and serve a response.

(2) *Taxing of Costs by the Clerk.* Unless the court directs otherwise, the clerk will tax costs after the bill of costs, any objections, and any response have been filed and served in accordance with LR 54.3(c)(1).

(3) *Review of Clerk's Action.*

(A) Within 7 days after the clerk taxes costs, a party may file and serve a motion and supporting documents for review of the clerk's action.

(B) Within 7 days after being served with the motion for review, a party may file and serve a response.

(C) Unless the court orders otherwise, a party must not file a reply brief.

(d) Under Fed. R. App. P. 39.

(1) At the request of the circuit clerk under Fed. R. App. P. 39(d), the clerk must promptly add the statement of costs on appeal (or any amendment of that statement) to the mandate of the court of appeals.

(2) A party that seeks costs taxable under Fed. R. App. P. 39(e) must file a verified bill of costs (or amended bill of costs) within 14 days after the court of appeals issues the mandate. The procedures described in LR 54.3(c) — except the deadline for filing the initial bill of costs found in LR 54.3(c)(1)(A) — govern a bill of costs under this subsection.

[Adopted effective February 1, 1991; amended November 1, 1996; amended January 3, 2000; amended May 17, 2004; amended December 1, 2009; amended July 23, 2012; amended May 14, 2013; amended March 19, 2021]

2021 Advisory Committee's Note to LR 54.3

Subsection (b) has been revised to specify a 14-day response period on a motion for attorney's fees or related nontaxable expenses. This includes such motions under the EAJA. The court will no longer issue a briefing schedule in every case.

Subsection (c) has been revised to be consistent with Fed. R. Civ. P. 54(d)(1). The time to file a motion to review the clerk's action, and to file a response to that motion, has been changed from 14 days to 7 days.

2013 Advisory Committee's Note to LR 54.3

The language of LR 54.3 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

Subsection (b) has been revised to eliminate a filing deadline that was inconsistent with Fed. R. Civ. P. 54(d)(2)(B). Accordingly, the timeliness of a motion for attorney's fees and related nontaxable expenses depends on sources of law outside of LR 54.3(b), and LR 54.3(b) relates only to briefing schedules for such motions.

Former LR 54.3(c)(5), which specified that filing a bill of costs does not affect the appealability of a final judgment, has been deleted as unnecessary. When and whether a final judgment is appealable is the type of legal issue that is not subject to a court's local rules.

For organizational purposes, former subsection (c)(6) is now designated as subsection (d). New subsection (d)(2) (formerly part of subsection (c)(6)) relating to appellate costs taxable in the district court under Fed. R. App. P. 39(e) has been revised to clarify that — as with an ordinary bill of costs under LR 54.3(c) — a party must file a "verified" bill of costs, as required by 28 U.S.C. § 1924.

2012 Advisory Committee's Note to LR 54.3

Former subsection (d), which stated that motions filed under this rule must comply with LR 7.1, has been deleted as redundant of LR 7.1.

2009 Advisory Committee's Note to LR 54.3

This local rule has been amended to be consistent with the amendments to the federal rules on time-computation and changes the past practice of the Clerk of Court not to tax costs until all applicable appeal periods have expired. The amended rule now requires the request to be filed promptly after the entry of judgment.

The form referenced in LR 54.3(c)(1) is available in all Clerk's Office locations and electronically on the Court's website at www.mnd.uscourts.gov. When filing a bill of costs or amended bill of costs under subsection (c)(6), refer to Fed. R. App. P. 41 to determine when the Court of Appeals mandate was issued.

Parties are encouraged to refer to the District Court's Bill of Costs Guide, which is available in all Clerk's Office locations and electronically on the Court's website at www.mnd.uscourts.gov.

1991 Advisory Committee's Note to LR 54.3

In general, applications for attorney's fees should be submitted promptly after a determination of the case on the merits. Prompt submission aids the trial Judge, whose memory of the work of the lawyers is fresh, and facilitates appellate consideration of the whole controversy. As a general procedure, then, the rule requires attorney's fees motions to be submitted within 30 days of the entry of judgment.

The Equal Access to Justice Act, 28 U.S.C. § 2412, requires (and permits) applications for fees to be made "within thirty days of final judgment in the action". "Final judgment" is defined as "a judgment that is final and not appealable, and includes an order of settlement". It is clear that the EAJA contemplates that fee applications will be made either after appeal, or after the time for appeal has run. The rule adopts the statutory time and definitions for EAJA petitions. Some circumstances (in addition to those relating to the EAJA) may call for a different schedule for the submission of fee motions. For example, if post-judgment motions may significantly affect the results of the case (and thus the extent of the award), it may be more fair or more efficient to postpone submission and consideration of the fee motions until after those motions are decided. Additionally, in rare instances, delaying the fee consideration until after an appeal is determined may promote justice and efficiency. Subparagraph (b)(2) provides a procedure by which a party seeking fees can ask the Court to establish an alternate schedule. The Notice of Intention to Claim an Award of Attorney's Fees tolls the time for submitting a fee motion, pending the establishment of the schedule by the district court. The drafters contemplate that the Court will, in its schedule, provide adequate time for the preparation and submission of the detailed fee petition.

Finally, Section (b)(3) provides that the Court may excuse failure to abide by the provisions of the rule, for good cause shown. This section does not apply to EAJA petitions, which are governed by the statutory time limit.