

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

Jevarreo Kelley-Lomax,

*Plaintiff,*

v.

City of Chicago, *et al.*,

*Defendants.*

Case No. 20 CV 04595

Judge Manish S. Shah

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**DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR BILL OF COSTS**

Defendants the City of Chicago, Chicago Police Officer Robert Garduno, Chicago Police Officer Anthony Spicuzza, and Chicago Police Sergeant George Davros have prevailed in this lawsuit brought by Plaintiff Jevarreo Kelley-Lomax. (Dkt. 141, Mem. Op. & Order; Dkt. 142, Judgment.) As the undisputed prevailing party in this lawsuit as to all issues, Defendants move this Court for a judgment of costs. Fed. R. Civ. P. 54(d)(1); LR 54.1. There is a strong presumption in favor of awarding costs to the prevailing party, and “unless and until the losing party affirmatively shows that the prevailing party is not entitled to costs, the district court must award them ‘as of course.’” *Congregation of the Passion, Holy Cross Province v. Touche, Ross & Co.*, 854 F.2d 219, 222 (7th Cir. 1988). Here, the Court awarded costs to Defendants upon entry of judgment. (Dkt. 142, Judgment (“Defendants shall recover costs from plaintiff.”).)

Under 28 U.S.C. § 1920, the Court may tax the following as costs:

- (1) Fees of the clerk and marshal;
- (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;
- (3) Fees and disbursement for printing and witnesses;

- (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;
- (5) Docket fees under Section 1923 of this title; and
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under Section 1828 of this title.

28 U.S.C. § 1920.

Defendants submit herewith their itemized Bill of Costs, including invoices where appropriate, supported by declarations and using the form provided by the U.S. District Court of the Northern District of Illinois. All of Defendants' costs set forth therein are reasonable, were necessarily incurred in defending the claims brought by Kelley-Lomax, and are calculated at the amounts prescribed by law—even where Defendants' actual costs exceed the prescribed amounts. *See* Bill of Costs, Exhibit 1, Declaration of Adam W. Decker; Bill of Costs, Exhibit 2, Declaration of Cathleen A. Bloedorn.

**A. 28 U.S.C. § 1920(1) – Defendants seek \$1,482.02 in costs for clerk and marshal fees.**

“Fees for service of process are recoverable under 28 U.S.C. § 1920(1), but may not exceed the U.S. Marshal’s rate at the time process was served.” *Goldberg v. 401 N. Wabash Venture LLC*, 09 CV 6455, 2013 WL 4506071, at \*1 (N.D. Ill. Aug. 23, 2013) (cleaned up). In the event a private process server is used, rather than the U.S. Marshal, the prevailing party is only entitled to the U.S. Marshal rate. *Id.*; *see also Lewis v. City of Chicago*, 04-cv-6050, 2012 WL 6720411 (N.D. Ill. Dec. 21, 2012). A party may only recover for time spent serving each subpoena if such time is accounted for by the process server. *Goldberg*, 2013 WL 4506071, at \*2. At all times relevant to the litigation, the U.S. Marshal’s rate for service of process was \$65.00/hour, plus travel costs and other out-of-pocket expenses. 28 C.F.R. § 0.114(a)(3) (eff. Oct. 30, 2013). Moreover, prevailing parties may

recover costs for attempted service. *Vesey v. Envoy Air, Inc.*, 4:18-cv-04124, 2020 WL 13682563, at \*2 (C.D. Ill. Apr. 30, 2020); *Ayala v. Rosales*, No. 13 CV 04425, 2016 WL 2659553, at \*4 (N.D. Ill. May 9, 2016); 28 C.F.R. § 0.114(f) (“The United States Marshal’s Service shall collect the fees enumerated in paragraph (a) of this section, where applicable, ... as long as service is endeavored.”).

The Hanrahan Investigations Group’s invoices attached as an exhibit to the Bloedorn Declaration provides an itemization of and supporting invoices for service fees Defendants incurred in serving testimonial subpoenas. *See* Bill of Costs, Ex. 2, Bloedorn Decl. App’x 1. Defendants’ private process servers indicated the time spent serving or attempting service on various witnesses. Defendants do not seek to recover additional charges for rush service. The total of \$1,482.02 should be fully reimbursed to Defendants.

**B. 28 U.S.C. § 1920(2) – Defendants seek \$1,722.60 for recovery of deposition transcript costs.**

Pursuant to 28 U.S.C. § 1920(2), Defendants should be awarded “[f]ees for printed or electronically recorded transcripts necessarily obtained for use in the case.” To award costs for transcripts, the “transcripts need not be indispensable, but only reasonably necessary.” *Marinich v. People Gas Light & Coke Co.*, 98 CV 2394, 2002 WL 1759796, at \*2 (N.D. Ill. July 30, 2002) (internal quotation and citation omitted). Deposition costs are recoverable if the deposition was reasonably necessary “to the case at the time it was taken,” regardless of its subsequent use in a motion or in court. *See Cengr v. Fusibond Piping Sys., Inc.*, 135 F.3d 445, 455 (7th Cir. 1998).

The costs of deposition transcripts are recoverable to the extent they were necessarily obtained for use in the case. 28 U.S.C. § 1920(2). “[C]osts may be awarded for deposing a witness who is not called at trial as long as the deposition was necessary when taken.” *Lewis*, 2012 WL 6720411, at \*5 (awarding costs to prevailing defendant for 9 depositions taken by plaintiff as well

as costs for depositions of witnesses listed on plaintiff's will call/may call witness list). Court reporter attendance fees are also recoverable so long as they do not exceed the maximum rate authorized in this District. *Harney v. City of Chicago*, 702 F.3d 916, 927 (7th Cir. 2012) (allowing court reporter attendance fees in addition to transcript fees). And courts have also approved court reporter fees for deponents who did not appear at their scheduled depositions. *See, e.g., Chapman v. Wagener Equities, Inc.*, 09 CV 7299, 2017 WL 2973420, at \*3 (N.D. Ill. Jul. 12, 2017); *Merryman v. Sarah Fisher/Hartman Racing LLC*, 1:13-cv-00849, 2015 WL 1823525, at \*2 (S.D. Ind. Apr. 20, 2015).

In this case, Defendants seek costs for the depositions of all party and non-party witnesses whose depositions were actually taken by either party, because at the time those depositions were taken, the depositions were necessary. The itemization of costs of these deposition transcripts, based on the per page rate set forth in General Order 18-0011, and the related deposition invoices, are included in the itemized breakdowns attached to the bill of costs. *See* Bill of Costs, Ex. 1, Decker Decl. App'x 1; Bill of Costs, Ex. 2, Bloedorn Decl. App'x 1. Defendants do not seek the actual invoiced amounts for these transcripts, but rather only seeks: (i) the ordinary per page amount prescribed in General Order 18-0011 (\$3.65 per page for originals, and \$0.90 per page for copies)<sup>1</sup>, which total \$1,062.60; and (ii) allowed court reporter attendance fees for each deposition noticed by Defendants at the rates provided in the General Order that total \$660. *See* Local Rule 54.1(b) ("attendance fees for the court reporters are limited to \$110 for a half day and \$220 for a full day;" one half day is 4 hours or less).

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<sup>1</sup> Defendants request original transcript rates for depositions they noticed and copy transcript rates for depositions Kelley-Lomax noticed.

**C. 28 U.S.C. § 1920(3) – Defendants seek \$14.88 in printing fees.**

Defendants seek \$14.88 in costs for physical copies of materials sent to various subpoena respondents, including Azam Khan (the owner of the gas station where Kelley-Lomax was arrested), and Enterprise Car Rental (the owner of the rental car company for the vehicle in which Kelley-Lomax was found with a gun). These costs were reasonable and necessarily incurred by Defendants in order to investigate Kelley-Lomax's claims in the litigation and are thus recoverable.

**D. 28 U.S.C. § 1920(4) – Defendants seek \$376.68 in copying costs.**

Defendants seek \$376.68 in costs relating to copying and converting documents received from subpoena respondent the Cook County State's Attorney's Office. "[T]he cost of converting files into electronic format for discovery is taxable." *Merix Pharm. Corp. v. Clinical Supplies Mgmt., Inc.*, No. 11 C 3318 MFK, 2015 WL 3407459, at \*11 (N.D. Ill. May 27, 2015) (collecting cases); *see also Intercontinental Great Brands LLC v. Kellogg N. Am. Co.*, No. 13 C 321, 2016 WL 316865, at \*6 (N.D. Ill. Jan. 26, 2016) (awarding fees for TIFF conversion); *Ariel Investments, LLC v. Ariel Capital Advisors LLC*, No. 15 C 3717 MFK, 2017 WL 3023746, at \*3 (N.D. Ill. July 17, 2017) (awarding costs for "file format conversion").

Defendants have documented these costs and are thus entitled to them. *See, e.g., Motorola Sols., Inc. v. Hytera Communications Corp. Ltd.*, 1:17-CV-01973, 2021 WL 3489813, at \*14-16 (N.D. Ill. Aug. 6, 2021) (awarding the prevailing party Rule 54(d) costs incurred for TIFFing, OCRing, and branding). Defendants thus seek the amount of \$376.68 in recoverable copying costs.

**CONCLUSION**

For these reasons, Defendants ask this Court to award them the aggregate amount of **\$3,596.18** in costs pursuant to Fed. R. Civ. P. 54(d) and 28 U.S.C. § 1920, itemized as follows:

<b>Cost Type</b>	<b>Amount Sought</b>
Clerk and Marshal Fees	\$1,482.02
Transcript Costs	\$1,722.60
Printing costs	\$14.88
Copying Costs	\$376.68
<b>Total:</b>	<b>\$3,596.18</b>

Defendants further request that the Court enter judgment in that amount or such other amount as the Court deems just against Kelley-Lomax, and grant any further relief as this Court deems equitable and just.

Dated: October 31, 2024

/s/ Adam W. Decker

Special Assistant Corporation Counsel

Allan T. Slagel (ARDC No. 6198470)

[aslagel@taftlaw.com](mailto:aslagel@taftlaw.com)

Derrick M. Thompson, Jr. (ARDC No. 6287536)

[dthompson@taftlaw.com](mailto:dthompson@taftlaw.com)

Adam W. Decker (ARDC No. 6332612)

[adecker@taftlaw.com](mailto:adecker@taftlaw.com)

TAFT STETTINIUS & HOLLISTER, LLP

111 E. Wacker Dr., Suite 2600

Chicago, Illinois 60601

(312) 527-4000

*Attorneys for the City of Chicago*

/s/ Cathleen A. Bloedorn

Special Assistant Corporation Counsel

Manuel Sanchez (ARDC No. 2451484)

[msanchez@sanchezdh.com](mailto:msanchez@sanchezdh.com)

Cathleen A. Bloedorn (ARDC No. 6224499)

[cbloedorn@sanchezdh.com](mailto:cbloedorn@sanchezdh.com)

Sanchez Daniels & Hoffman LLP

333 West Wacker Drive – Suite 500

Chicago, Illinois 60606

(312) 641-1555

*Attorneys for Officers Robert Garduno,  
Anthony Spicuzza, and Sergeant George  
Davros*