

PRACTICE DIRECTION No. 1/2001

(GCR O.1, r.12)

GUIDELINES RELATING TO THE TAXATION OF COSTS

(GCR O.62, r. 17)

1. Introduction

- 1.1 These Guidelines are made pursuant to GCR Order 62, rule 17 and are intended to be a comprehensive code relating to the procedure in respect of taxation; the form and content of bills of costs; and the nature and amount of fees, charges, disbursements, expenses, or remuneration which may be allowed on taxation.
- 1.2 These Guidelines have no application to bills of costs relating to work done before 1st January 2002, ("the Commencement Date") which will be taxed in accordance with the schedule to the Grand Court (Taxation of Costs) Rules 1995.
- 1.3 Where an order for costs relates to work done both before and after the Commencement Date, it will normally be appropriate to prepare two separate bills of costs.
- 1.4 Words and expressions used in these Guidelines shall have the meaning ascribed to them by GCR O.1, r.7 and GCR O.62, r.3 as the case may be.
- 1.5 These Guidelines apply both to taxations on the standard basis and taxations on the indemnity basis. The only distinction between a taxation on this basis is (a) the difference in the burden of proof and (b) the application of maximum hourly rates for attorneys fees in the case of taxations on the standard basis.

2. Structure of a bill of costs

- 2.1 A bill of costs should distinguish between legal fees and disbursements.
- 2.2 A bill of costs may be drawn up in CI\$ or US\$ (referred to as "the currency of the bill"). Costs incurred in any other currency must be translated into the currency of the bill at the exchange rate ruling on the date of the bill. The CI\$/US\$ exchange ratio is fixed at 0.82.
- 2.3 The bill should contain an introduction which describes the nature of the litigation sufficient to enable the taxing officer to gain a proper understanding of it without necessarily having to read the pleadings, evidence or judgments.

- 2.4 The work done and disbursements incurred should be itemised and set out chronologically.
- 2.5 The lawyers engaged should be identified sufficiently to enable the taxing officer to determine the appropriate hourly rate(s) for work done by each of them.
- 2.6 Each item of work done should be described. The number of hours worked on each item by each lawyer or paralegal should be stated, together with the applicable hourly rates.
- 2.7 The bill should be divided into five columns as follows:
- (a) Column 1 should contain the item number.
 - (b) Column 2 should contain a description of each item of work arranged chronologically; the date(s) on which or period(s) during which it was done; the identity of the person(s) doing the work; the time spent; and the applicable hourly rates.
 - (c) Column 3 should contain the total amount claimed in respect of the item.
 - (d) Column 4 is for use by the paying party and should be left blank.
 - (e) Column 5 is for use by the taxing officer and should be left blank.
- 2.8 When the item comprises a disbursement it should be described in Column 2 and the amount claimed should be stated in Column 3.
- 2.9 Whenever possible, the paying party's response should be summarised in Column 4. The word "Agreed" should be inserted to indicate that the item and the amount claimed in respect of it are agreed in all respects. "Not agreed" shall be taken to mean that the item should be disallowed in toto. The paying party may insert a lower dollar amount to indicate that the amount claimed should be reduced because the time spent is excessive and/or the hourly rate(s) is excessive.
- 2.10 A brief explanation of the paying party's objection should be included in Column 4.
- 2.11 Where appropriate, the paying party should explain or elaborate upon his objection by a separate statement in writing.
- 2.12 The taxing officer will insert in Column 5 the amount allowed in respect of each item.

- 2.13 The successful party's bill of costs must contain a declaration signed by his attorney to the effect that
- (a) the bill is accurate and complete; and
 - (b) the amount sought in the bill does not exceed the successful party's incurred costs.
- 2.14 Having completed Column 4, the paying party's attorney must also sign the bill of costs.
- 2.15 Wherever possible, copies of bills of costs should be served in the form of a computer disk or by e-mail.

3. Procedure for serving and lodging bills of costs

- 3.1 The successful party must serve his bill of costs on the paying party personally or upon his attorney.
- 3.2 Where more than one party is liable jointly or severally to pay the whole or part of the costs, a copy of the bill of costs shall be served on every paying party.
- 3.3 Unless the bill of costs is exceptionally long or complex, the paying party should complete Column 4 and return it to the successful party within 21 days.
- 3.4 Unless the total amount payable is agreed, the successful party must lodge the bill of costs for taxation within 14 days of receiving it back from the paying party.
- 3.5 If the paying party fails to respond within 21 days or such longer period as may be agreed between the parties or allowed by the taxing officer, the successful party may apply for a default costs certificate.
- 3.6 The paying party may not participate in a taxation unless and until he has completed Column 4 of the bill of costs.

4. Procedure on taxation

- 4.1 A taxation shall be inquisitorial in nature.
- 4.2 The taxing officer shall control the procedure applicable to each taxation which will not necessarily involve any oral hearing.
- 4.3 The taxing officer will investigate each item in the bill of costs unless it is agreed and determine what amount, if any, shall be allowed in respect of it.

- 4.4 If the paying party has failed to complete Column 4 of the bill of costs or failed to respond to any particular item within the prescribed time limit, the taxing officer will proceed to taxation on the assumption that the bill or particular item, as the case may be, is "Agreed".
- 4.5 The taxing officer will require the successful party to justify each item in whatever way appears to him to be appropriate. The successful party may be required to give an oral explanation and/or make written submissions and/or produce supporting documents of the kind referred to in rule 30(3).
- 4.6 For the purposes of justifying a bill of costs no distinction is to be drawn between work done by foreign lawyers and that done by local attorneys. Original files belonging to foreign lawyers must be produced if required by the taxing officer, failing which the amount claimed will be disallowed.
- 4.7 The taxing officer may require the production of files or individual documents which are privileged, but he should not disclose them to the paying party.
- 4.8 The taxing officer will require the paying party to justify his objections to the bill of costs in whatever way appears to him to be appropriate. The paying party may be required to explain his objections in writing and/or make oral submissions to the taxing officer.
- 4.9 The successful party will be required to produce to the taxing officer and disclose to the paying party all necessary invoices and receipts in respect of the disbursements claimed in the bill of costs. The successful party may also be required to produce the actual invoices rendered by his attorney and foreign lawyers and to reconcile the amount claimed in bill of costs with the amount specified in the invoices.

5. Procedure for Taxation of Costs Payable out of a Fund

- 5.1 When the costs of a trustee, personal representative or official liquidator are ordered to be paid out of a fund and taxed on the indemnity basis, the Bill of Costs should be prepared in accordance with Section 2 of these Guidelines.
- 5.2 The Bill of Costs should be served on the person (if any) designated for this purpose, such as a representative beneficiary in the case of costs payable out of a trust fund or the creditors' committee in the case of costs payable out of the assets of an insolvent company.
- 5.3 In cases where the trustee, personal representative or official liquidator is required to serve his Bill of Costs, he may apply for a default costs certificate or a certificate for costs in an agreed amount as may be appropriate.

5.4 In any other case, the trustee personal representative or official liquidator must make an application for taxation, in which case the procedure contained in Section 4 of these Guidelines will apply.

6. Disbursements

6.1 An expense may be claimed as a disbursement on taxation if:

- (a) it was reasonably and properly incurred by the successful party's attorney in the course of conducting the proceedings; and
- (b) it is not an expense of a kind which is customarily included in the overheads reflected in attorney's hourly rates and is therefore deemed to be reflected in the hourly rates charged by the successful party's attorney.

6.2 The amount claimed in respect of any disbursement shall not exceed the actual amount paid by the successful party who may be required to produce a receipt or other documents evidencing the amount paid.

6.3 Notwithstanding paragraphs 6.1 and 6.2 above, the following sums may be claimed as disbursements:

- (a) photocopying charges - up to 50¢ per page;
- (b) printing charges - up to 50¢ per page;
- (c) telephone and fax charges - the amount of the call charge plus a mark up not exceeding 20%;
- (d) transcripts produced by court reporters - up to CI\$3.50 per page.

6.4 Legal fees paid to foreign lawyers cannot be claimed as disbursements unless the foreign lawyer is engaged to give an opinion on a point of foreign law which is in issue in the proceedings.

6.5 Admission fees and work permit fees paid in respect of foreign lawyers are not recoverable on taxation on the basis that such expenses are part of the overheads reflected in the foreign lawyer's hourly rates.

6.6 Work permit fees paid in respect of expert witnesses are recoverable.

7. Attorney's fees

- 7.1 The amount of attorney's fees allowable on taxation on the standard basis shall be determined on the basis of time spent. The unit of time used in a bill of costs may be $\frac{1}{10}$ hour or $\frac{1}{4}$ hour.
- 7.2 Amounts claimed on the basis of brief fees, refreshers, lump sums, percentages, conditional fee agreements, contingency agreements or any basis other than hourly rates will be disallowed.
- 7.3 In the case of taxations on the standard basis, the hourly rates to be applied will be determined on the basis of the post qualification experience of the persons engaged as follows:

More than 15 years	Up to CI\$300 or US\$365
Between 10 and 15 years	Up to CI\$275 or US\$335
and 10 years	Between 5
Less than 5 years	Up to CI\$250 or US\$305
Articled Clerks and Paralegals	Up to CI\$150 or US\$185
	UP to CI\$ 90 or US\$110

These are maximum rates. The taxing officer may, in the exercise of his discretion, determine that lower rates are appropriate in any particular case. The number of years post-qualification experience shall be reckoned from the date upon which the attorney was first admitted to practice as a professional lawyer either in the Cayman Islands or elsewhere. Queen's Counsel shall be treated as attorneys having more than 15 years post qualification experience.

- 7.4 In the case of taxations on the indemnity basis, the hourly rate or scale of rates will be that agreed between the attorney and his client provided that such rate or scale is not unreasonable. The mere fact that the agreed rate is higher than the maximum rate(s) allowable on a taxation on the standard basis shall not be regarded as evidence that it is unreasonable.
- 7.5 In determining the amount allowable in respect of each item in a bill of costs the taxing officer shall have regard to both the experience of the person undertaking the work and the nature of the work undertaken. For example, work done by an attorney of more than 15 years experience which could equally well have been done by a paralegal or junior attorney will be allowed at the appropriate lower hourly rate. However, the taxing officer will take into account that routine tasks done by paralegals and junior attorneys need to be directed and supervised by experienced attorneys.
- 7.6 Work done by articled clerks or trainees is not recoverable on taxation unless it is work of a kind which would normally be done by paralegals.

7.7 The cost of routine typing and file maintenance done by secretaries comprises part of the overheads reflected in the hourly rates for attorneys and is therefore not recoverable on taxation.

7.8 The cost of organising, cataloguing and filing documents for the purposes of discovery, inspection and/or trial is recoverable on taxation.

8. Work done by persons other than attorneys

8.1 Legal work done by "in-house counsel" who are in the employment of the successful party is not normally recoverable on taxation. It will only be recoverable if the successful party can satisfy the taxing officer that it is work of a kind which would otherwise be done by outside lawyers. For example, the work involved in instructing outside lawyers is not recoverable; time spent receiving and considering advice from outside lawyers is not recoverable; but time spent preparing a draft list of documents under the supervision of outside lawyers may be recoverable.

8.2 Investigative and other work done by non-lawyers will be recoverable on taxation only to the extent that the Court has given a direction pursuant to rule 18 that it should be allowed.

9. Travelling and hotel expenses

9.1 Reasonable travelling expenses incurred in bringing witnesses to the Islands or between the Islands shall be recoverable on taxation.

9.2 Reasonable expenses incurred by witnesses travelling within Grand Cayman or within Cayman Brac shall not be recoverable on taxation.

9.3 Reasonable hotel expenses incurred in accommodating witnesses during a hearing shall be recoverable on taxation, not exceeding US\$250 per day. Only the accommodation element of the hotel charges may be recovered.

9.4 Travelling and hotel expenses paid to foreign lawyers shall not be recoverable on taxation.

10. Service of process

10.1 The cost of serving process out of the jurisdiction is recoverable as a disbursement.

- 10.2 The cost of effecting personal service on an individual within the jurisdiction is recoverable at the rate specified in Schedule 3 of the Court Fees Rules 2000 whether the successful party employs the bailiff or a private process server.
- 10.3 The cost of serving process on the registered office of a company or upon a party's attorney and the cost of filing documents at court is not recoverable on the basis that the cost of employing messengers is part of the overheads reflected in the attorney's hourly rates.

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The Hon. Anthony Smellie, .Q.C., Chief Justice
The Hon. David Ballantyne, Attorney General
Andrew J. Jones, Esq., Legal Practitioner
Alden M. McLaughlin, Esq., Legal Practitioner