IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE,
AT CHATTANOOGA

ROY L. DENTON, *Plaintiff*	*	**Case No. 1:07-cv-211**
	*	
	*	**Chief Judge Curtis L. Collier**
v.	*	
	*	
STEVE RIEVLEY, *in his individual capacity* *Defendant*	*	
	*	
	*	
	*	***JURY DEMAND***
	*	

PLAINTIFF ROY L. DENTON'S MOTION FOR DISALLOWANCE OF DEFENDANT STEVE RIEVLEY'S BILL OF COSTS AND OBJECTIONS OF COSTS

Comes now the Plaintiff Roy L. Denton, *pro se*, and moves to disallow, **OBJECT** to the defendant's Bill of Costs filed by the defendant. *See Court Doc. No. 148.* As support for this response and objection, plaintiff hereby incorporates and relies upon his previous filing in this matter, response and objection to Petition for Costs *See Court Doc. No. 150*

~~~Witnesses and Experts.~~~

According to the *Court's Guidelines on Preparing Bills of Cost*, "Where witnesses, expert and otherwise, appear voluntarily or are subpoenaed by the regular service of subpoena within the district, or outside the district as allowed by law, they shall be entitled to fees provided by statute to be taxed as costs in the case. ***In all civil cases, witness fees will be taxed only upon the certificate by counsel for the prevailing party requesting the same. Said certificate shall contain the following information***:

- (1) the name of the witness;
- (2) the place of residence, or the place where subpoenaed, or the place from which the witness voluntarily traveled without a subpoena to attend upon said case;
- (3) the number of days the witness actually testified in court;
- (4) the number of days the witness traveled to and from the place of trial or hearings and the exact number of miles traveled; and
- (5) the manner of travel, that is, whether by air, railroad, bus or private automobile."

OBJECTION

The defendant has failed to submit the appropriate and required "certificate of counsel". In all civil cases, ***witness fees will be taxed only upon the certificate*** by counsel for the prevailing party requesting the same. There are five mandates required to be in the certificate of counsel. The pro se layman plaintiff must follow every rule and fulfill every element of what these rules require. If the pro se plaintiff is expected to be held to the same strict guidelines as that of an attorney, then most certainly an attorney must adhere to the same. The title "Esquire" is tremendous, but with it come responsibility and that responsibility is derived from "the rules". So for the court to allow a "relaxation" of a information required to be listed within the certificate by counsel, would prejudice the plaintiff.

The Bill of Costs *fails to certify* ***the place of residence*** *of the witness* ***or the place subpoenaed***, or the place ***from which the witness voluntarily traveled without subpoena*** to attend the case. The Bill of Costs names witnesses Jason Woody, Brian Malone and Gerald Brewer, Chris Sneed and Kim Denton. The defendant additionally fails to determine the "***manner***" in which the witnesses traveled.

In this instant case, Jason Woody, Brian Malone and Gerald Brewer is believed to have each traveled in Dayton city owned police vehicles, using public taxpayer owned gasoline where such vehicles are **NOT** authorized by local city ordinance to travel in excess of ten miles of the Dayton City Hall.

Therefore, strict certification is demanded to show that each "police witness" is not being unjustly enriched by using a public taxpayer owned vehicle to conduct ***personal*** business such as driving to and from Chattanooga, TN to a federal court building, as well as to attempt to collect a "mileage fee" from the plaintiff for an undetermined travel cost. Steve Rievley was sued "Individually".

Furthermore, the defendant is claiming as cost a witness fee and mileage which names **Kim Denton as a witness** and is claiming costs for witness fee and mileage for her. As the court records clearly show, the defendant's attorneys subpoenaed Kim Denton the Friday before court and never called her to testify. In fact, there was absolutely no good faith reasoning to have her subpoenaed except to have her sequestered and removed from the trial as with the "other witnesses", except for speculation of an alleged legal tactic, designed to remove the wife of the plaintiff, Kim Denton, known by the court to had assisted the plaintiff, from courtroom, thereby depriving the plaintiff of her assistance, as she assisted him with court approval at the first trial.

In any event, costs as to the witness Kim Denton, they are not taxable to the plaintiff as a matter of law because Kim Denton did not testify but had to appear in court under Ronald D. Wells subpoena, sequestered, and was never called to testify as a witness for the defendant.

~~~Cost for Private Process Server.~~~

On the original filed Petition for Costs, the defendant claimed a cost at **Line item 8** for the amount of $55.00 paid to Wayne Clemens - **Private Process Server**. [*See Court Doc. 145, attached as Exhibit A*]

However, the first instance mentioning of Wayne Clemens by the defendant was that he was a "**Private** Process Server". The plaintiff filed his objections to defendant's Petition for Costs and specifically made reference that under Local Rule 54.1 and the associated Guidelines

for Preparing Bills of Costs (a)(1) states in pertinent part — "The costs for service by a sheriff *or other authorized person shall be taxable, except that counsel have the duty to mitigate costs by having process served by a person located as close as possible to the person to be served in order to minimize legal fees.* ***Costs for service by a private process server will not be taxed.***"

The defendant in deleting or omitting the word "private" and now claims in the second Petition or Bill of Costs that Mr. Clemens is a "process server", is still objected to and strict proof is demanded as to this private process server costs. As the Rule clearly states, in it's last sentence, "**Costs for service by a private process server will not be taxed**". Wayne Clemons was and is considered itemized as a "**private process server**". Furthermore, counsel for the defendant had a duty to mitigate costs by having process served by a person located as close as possible to the person to be served, which was just one more of the things this law firm did not do. Counsel for the defendant is acting as though Court Doc. No. 145 does not exist. The document has not been withdrawn, or anything else was done, or if it was then the defendant's law firm did something without letting me (*the plaintiff*) know. That alone should give rise to disallow the defendant's attorneys any costs at all, just because…

Even IF Mr. Clemens is determined to be a "process server" as opposed to a "private process server", defendant's law firm still is not entitled cost. Reason being, on Friday, August 20, 2010, attorney Ronald D. Wells was actually in Dayton, TN at the Dayton Police department to conduct "witness preparation" at that time. Any person over the age of 18 and not a party could have easily drove the half-mile and "served" the civil process. In any event, defendant's lawyers had a duty to mitigate the costs, in which they did not do and accordingly, are not entitled to tax any cost to the plaintiff for their "process server", private or otherwise.

~~Court Reporter Cost~~

The defendant submits as costs an amount of $512.55 for transcript(s) prepared by Elizabeth B. Coffey, Court Reporter. The plaintiff specifically objects to any cost for a transcript. Under Local Rule 54.1 and the associated Guidelines for Preparing Bills of Costs (a)(2)(i) states in pertinent part —

- 2) *Transcripts and Depositions*. When a transcript is obtained ***for purposes of appeal, the cost of the original is taxable if the appeal is successful.***
  (i) Transcripts of trial proceedings obtained for the purposes of ***preparing proposed findings of fact and conclusions of law, when directed by the court in a bench trial,*** shall be taxable as a matter of course to the successful party. *(emphasis added)*

Under 28 U.S.C. § 1920(2), prevailing parties are entitled to the fees of the court reporter for all or ***any part of the transcript necessarily obtained for use in the case***. "Courts generally consider a transcript 'necessarily obtained' when it was necessary to counsel's effective performance and proper handling of the case ... or when requested by the court.... The words 'use in the case' signify that the transcript must have a direct relationship to the determination and result of the trial." *Dopp v. HTP Corp.*, 755 F. Supp. 491, 502 (*D. Puerto Rico* 1991), vacated on other grounds, 94 7 F.2d 5 06 (1st Cir. 1991). Clearly, the defendant cannot expect the court to tax a transcript to the plaintiff ***when the transcript must have a direct relationship to the determination and result of the trial***. Ronald Wells used the exact same legal theory at the second trial as he did for the first trial. Judge Collier even used the "same" jury instructions.

For the record, Mr. Wells upon walking into court was pulling what looked to be a miniature filing cabinet on wheels and from all those documents he had in there he never submitted into evidence nothing more than a less than 10 page police report. The transcript was purely obtained for the law firms use, not "necessarily obtained" for the effective performance and proper handling of the case, nor did the court order it.

Therefore, this transcript, and any other transcript obtained by defense counsel was for their own use and is not taxable to the plaintiff.

~~~Disbursements for Printing~~~

The defendant submits an amount for exemplification and the costs of $219.30 for 1,462 copies of paper @ .15 per copy. The plaintiff specifically objects to this cost as it is not taxable to the plaintiff.

Restated, Costs will be taxed in accordance with this Court's *Guidelines on Preparing Bills of Cost.* E.D. TN. LR. 54.1 — and by reading those *Guidelines* it states, "Section 1920 (4) provides for the taxation of the cost of producing copies of papers necessarily obtained for use in the case. The general rule followed by this court is that duplicating expenses are properly taxable ***only to the extent that the copies were used as exhibits at trial or were furnished to and used by the court or opposing counsel.*** See e.g., *Sun Publishing Co. v. Mecklenburg News, Inc.*, 594 F. Supp. 1512, 1524 (E.D. Va. 1984). Although not required to submit a bill of costs so detailed as to make it impossible economically to recover copying costs, the prevailing party is required to provide the best breakdown obtainable from retained records. See *Northbrook Excess & Surplus Insurance Co. v. Proctor & Gamble Co.*, 924 F.2d 633, 643 (7th Cir. 1991). Furthermore, as stated by one court, the losing party "***should be taxed for the cost of reproducing relevant documents and exhibits for use in the case, but should not be held responsible for multiple copies of documents, attorney correspondence, or any of the other multitude of papers that may pass through a law firm's xerox machines.***" *Fogleman v. ARAMCO*, 920 F.2d 278, 286 (5th Cir. 1991). The costs of copies obtained for counsel's own use or for counsel's convenience are not taxable. The fee of an official for certification or proof of non-existence of a document is taxable." *(emphasis added)*

As the record clearly shows, and the clerk can attest as demonstrated in the Witness-Exhibit list (*See Court Doc. No. 137*), the defendant used no more than 10 pages of a police report as his only submitted evidence. No other paper documents were filed, or even used at trial for that matter. For the defendant to somehow attempt to pass on the cost of photocopying *countless* pieces of paper for counsel's own use, or for counsel's convenience are not taxable.

This Court should take *sua sponte* notice of the fact that this entire litigation may have a public impact, thereby creating public interest. The Fourth Amendment to the United States Constitution is of paramount importance to the public. A jury verdict that is tantamount to a "*jury nullification*" of the landmark Fourth Amendment protections and provisions found in *Payton v. New York*, 445 U.S. 573 (1980) and *Georgia v. Randolph*, 547 U.S. 103 (2006) would most certainly spur interest concerning constitutional property rights, especially the well grounded privacy inside one's home.

When determining costs, this court should consider the public appeal to the merits that in trained legal hands may can better show. No matter how clumsily this "*pro se non lawyer*" may have presented his case, some other person may pick up the torch for the betterment of the people, or the betterment of the government. From that public interest stand point, people should not fear to vindicate their constitutional rights because of "money", or lack thereof.

Accordingly, as the First Circuit has held, "Under section 1920(4), Plaintiffs are entitled to the fees for their copies which were necessarily obtained for use in the case. Copies are recoverable when they are reasonably necessary to the maintenance of the action." *Rodriguez-Garcia v. Davila*, 904 F.2d 90, 100 (1st Cir. 1990). The defendant isn't entitled to any award of the nearly 1,500 pages claimed and the cost should be disallowed.

~~~Mileage~~~

The defendant lists a mileage expense of $263.61. The plaintiff objects to such costs as this. The defendant is somehow "claiming" a mileage expense, but offers absolutely no information as to where, who or what justifies $263.61. And how does such a mileage figure amount even get calculated? In the plaintiff's first Motion for Disallowance and Objection [Doc. 150], the plaintiff went into great detail concerning this law firms unsubstantiated mileage claim as well as challenged the calculation . The office of Ronald D. Wells, located at 633 Chestnut Street, Chattanooga, TN and drive to the Federal Courthouse located at 900 Georgia Ave., Chattanooga, TN where Mapquest.com show a travel distance of not even half a mile. This court should order Mr. Wells to show exactly how this figure, even calculated down to the very penny, just "how" was this mileage calculated at all.

Furthermore, there is no costs even allowed on form ***AO 133 Bill of Costs*** for mileage. If the defendant's counsel can somehow merely "tax" some sort of "costs" associated with a few trips to the courthouse, then the defense could just as easily tax his meals to the plaintiff.

THEREFORE, for the foregoing reasons and objections contained herein, the plaintiff moves the Court to DENY the costs as claimed in the Bill of Costs and Order that each party bear their own costs due to the potential public interest of this type vindication of a constitutional right.

Respectfully submitted this 17th day of September, 2010.

BY: _____

Roy L. Denton
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423-285-5581

CERTIFICATE OF SERVICE

The undersigned hereby certifies that an exact copy of this document has been served upon all parties of interest in this cause by placing an exact copy of same in the U.S. Mail addressed to such parties, with sufficient postage thereon to carry same to it's destination, on this 16th day of September, 2010.

Roy L. Denton

Copy mailed to:

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