

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

DR. RACHEL TUDOR,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 5:15-CV-00324-C
	)	
SOUTHEASTERN OKLAHOMA	)	
STATE UNIVERSITY,	)	
	)	
and	)	
	)	
THE REGIONAL UNIVERSITY	)	
SYSTEM OF OKLAHOMA,	)	
	)	
	)	
Defendants.	)	

**PLAINTIFF DR. RACHEL TUDOR'S  
BRIEF IN SUPPORT OF  
BILL OF COSTS**

Pursuant Fed. R. Civ. P. 54 and to Local Rule 54.1, Dr. Tudor files the foregoing brief in support of her Bill of Costs. In support, Tudor states the following:

**I. INTRODUCTION**

This is a case brought by Tudor pursuant to Title VII of the Civil Rights Acts of 1964 to redress employment discrimination and retaliation she endured at the hands of her former employers, Southeastern Oklahoma State University (“Southeastern”) and the Regional University System of Oklahoma

("RUSO"). Tudor prevailed at trial and, after the resolution of other post-trial motions, judgment was entered for Dr. Tudor's by the Court on June 6, 2018 (ECF No. 293).

## II. ARGUMENT AND AUTHORITIES

### A. As Prevailing Party, Tudor is Entitled to Recover Her Costs

Through June 20, 2018, Tudor incurred taxable costs in the amount of \$16,055.09 prosecuting her case against Defendants. (*See* Bill of Costs filed concurrently herewith.) Tudor is the prevailing party in this action and therefore is entitled to have her costs paid by Defendants. Federal Rule of Civil Procedure 54(d)(1) states:

Except when express provision therefor is made either in statute of the United States or in these rules, costs other than attorneys fees shall be allowed as of course to the prevailing party unless the court otherwise directs . . . . Such costs may be taxed by the clerk on one day's notice.

Rule 54 thus "creates a presumption that the district court will award costs to the prevailing party." *Zeran v. Diamond Broadcasting, Inc.*, 203 F.3d 714, 722 (10th Cir. 2000). Further, Local Rule 54.1 states:

A prevailing party who seeks to recover costs against an unsuccessful party pursuant to 28 U.S.C. § 1920 shall file a bill of costs on the form provided by the Clerk and support the same with a brief.

Because the Court entered judgment in Tudor's favor (ECF No. 293), she should be considered the prevailing party for the purposes of taxing costs.

Additionally, Tudor is deemed the prevailing party in this matter because she prevailed at a jury trial on three of her four claims, and the only claim on which she did not prevail was a hostile work environment claim with particulars substantially subsumed within successful claims and the overall “results obtained are excellent.” *Roberts v. Roadway Exp., Inc.*, 149 F.3d 1098, 1111 (10th Cir. 1998) (*citing Ramos v. Lamm*, 713 F.2d 546, 556 (10th Cir. 1983)).

**B. COSTS SOUGHT BY TUDOR ARE PROPERLY TAXABLE**

The types of costs that may be recovered as taxable costs by the prevailing party are set forth in 28 U.S.C. § 1920. Those costs include: (1) fees for a court reporter for all or any part of the stenographic transcript necessarily obtained for the use in the case; (2) fees and disbursements for printing; (3) fees for witnesses; (4) fees for exemplification and copies of papers necessarily obtained for use in the case; (5) docket fees under 28 U.S.C. § 1923. As such, Tudor requests costs for the following items:

*Deposition transcripts:* Tudor seeks to recover costs of \$615.15 for transcripts of depositions taken of Mr. Chris Roessler on August 23, 2017, Mr. Austin Harman on August 23, 2017, and of Mr. Charles Babb on August 24, 2017. The costs of the transcripts of those depositions and necessity of which are attested to in a declaration of counsel, attached hereto (Exhibit 2 ¶ 2).

In *Ramos v. Lamb*, 713 F.2d 546 (10th Cir. 1983), the Tenth Circuit held that the costs of taking and transcribing depositions are set within the scope

of 28 U.S.C. § 1920 where the depositions are reasonably necessary for the litigation. Depositions of Roessler, Harmon, and Babb were critical to the prosecution of this case. Roessler and Harmon were 30(b)(6) designees of Defendants, and testified to key facts and issues pertinent to the authentication of emails and other issues which were key to defending against Defendants' motion for summary judgment and documents that were key exhibits at trial (Exhibit 2 ¶ 3(a)). The re-deposition of Charles Babb, ordered by this Court,<sup>1</sup> was also necessary to gather critical information and authenticate key documents relied upon in later stages of these proceedings (Exhibit 2 ¶ 3(a)).

***Printing:*** Tudor also seeks to recover in this case the amount of \$3,673.62 for printing costs necessarily obtained. Exhibit 2 ¶ 2 lists printing costs for which Tudor seeks recovery and the amount sought.

Fees for printing of papers necessarily obtained for use in the case are taxable as costs under § 1920(4). These fees include costs for copies of trial exhibits, summary judgment exhibits, deposition exhibits, third party documents, discovery documents, and other types of documents. *Tilton v. Capital Cities/ABC, Inc.*, 115 F.3d 1471, 1475–76 (10th Cir. 1997).

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<sup>1</sup> ECF No. 96 at 4 (sanctioning Defendants and ordering Defendants to “pay the costs associated with the continuation of Mr. Bab’s deposition, including the reasonable travel costs of counsel for the United States and Dr. Tudor”).

Whether copying fees are taxable as costs is not determined by the type of document copied, but by the necessity of obtaining the document for use in the case. *Id.* at 1476. Actual use of material in the case by an attorney or the court demonstrates necessity, but actual use is not required to demonstrate necessity. *See Reazin v. Blue Cross & Blue Shield of Kansas, Inc.*, 663 F.Supp. 1360, 1459 (D.Kan. 1986), *aff'd and remanded*, 899 F.2d 951 (10th Cir. 1990) (taxing costs of copies of trial exhibits provided to court and to opposing counsel).

Tudor seeks costs in the amount of \$3,673.62 for printing, as set forth in her Bill of Costs and Exhibit 2 ¶ 2. Tudor's counsel has made a good faith effort to identify with a sufficient degree of specificity the expenses incurred and the use to which the copies were put. Among other things, Tudor seeks reimbursement for printing courtesy copies delivered to the Court and trial exhibits. Obtaining copies of documents for these uses was necessary for the successful prosecution of this case, and the corresponding fees are therefore taxable.

***Court transcripts:*** Tudor also seeks to recover the amount of \$8,141.85 for transcripts of court hearings, voir dire, and the trial. Exhibit 2 ¶ 2 lists the transcript costs for which Tudor seeks recovery and the amount sought.

Transcripts are "necessarily obtained" where they are used in the case by counsel or by the court. *Case v. Unified Sch. Dist. No. 233, Johnson Cnty.*,

*Kan.*, 157 F.3d 1243, 1259 (10th Cir. 1998). *See also Fogleman v. ARAMCO*, 920 F.2d 278, 285 (5th Cir. 1991) (transcripts obtained for use during trial or trial preparation may be included in taxable costs); *Farmer v. Arabian Am. Oil Co.*, 324 F.2d 359, 364–65 (2d Cir. 1963) (transcripts of pretrial hearings and depositions properly taxable), *judgment rev'd on other grounds*, 370 U.S. 227 (1964).

Transcripts—of depositions, pre-trial hearings, and at trial—were necessary and utilized by counsel for the prosecution of this case and are thus taxable. As set forth in Exhibit 2 ¶ 3(c), transcripts for court hearings, voir dire, and the trial were absolutely critical to the prosecution of this case. Critical motions were decided at the November 1, 2017 docket call and the transcript of that hearing substantively informed and instructed counsel of later proceedings. The voir dire transcript substantially aided counsel in preparing for trial. Additionally, the trial transcripts were necessary both to aid counsel during the course of trial as well as were relied upon by all parties and the Court in post-trial briefing on injunctive relief.

***Service of subpoenas, witness fees, and millage:*** Tudor also seeks to recover in this case the amount of \$3,624.47 for expenses incurred in the service of subpoenas to witnesses called to testify at trial. Exhibit 2 ¶ 2 lists in detail the costs of service of subpoenas, witness fees, and millage for which Tudor seeks recovery and the amount sought. Additionally, Exhibit 2 ¶ 3(d)

sets for in detail the reasons why such costs were necessarily incurred.

Service of trial subpoenas on multiple witnesses whom either requested service via subpoena or who had to be compelled to testify via subpoena is recoverable. *See, e.g., Czarniak v. 20/20 Institute, LLC*, 2013 WL 3728805 at \*1 (D.Colo.) (process server fees to locate and serve subpoenas for trial attendance recoverable). Moreover, even though not all of the witnesses Tudor subpoenaed actually testified at trial, costs associated with securing their attendance is taxable because Defendants' strategy both required Tudor to secure their attendance and later obviated the need for their testimony (Exhibit 2 ¶ 3(d)). *Wehr v. Burroughs Corp.*, 477 F.Supp. 1012 (E.D.Pa. 1979), *aff'd on other grounds*, 619 F.2d 276 (3d Cir. 1980) (non-testifying witness fees taxable where testimony rendered unnecessary by occurrence of extrinsic circumstances); *Vorburger v. Central Ga. Ry. Co.*, 47 F.R.D. 571, 572 (M.D.Ala. 1969) (taxing as costs non-testifying witness attendance fees where opposing side's testimony at trial obviated need for non-testifying witnesses).

### III. CONCLUSION

For the foregoing reasons, Tudor requests that the Court grant her Motion for Costs and direct Defendants to pay such costs as set forth in the Bill of Costs filed concurrently herewith.

Dated: June 20, 2018

/s/ Ezra Young  
Ezra Young (NY Bar No. 5283114)  
Law Office of Ezra Young  
30 Devoe, 1a  
Brooklyn, NY 11211  
P: 949-291-3185  
F: 917-398-1849  
ezraiyoung@gmail.com

**CERTIFICATE OF SERVICE**

I hereby certify that on June 20, 2018, I electronically filed a copy of the foregoing with the Clerk of Court by using the CM/ECF system, which will automatically serve all counsel of record.

/s/ Ezra Young  
Ezra Young (NY Bar No. 5283114)