

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2005 MTWCC 10

WCC No. 2003-0740

---

**MINDY VAN VLEET, Individually and as  
natural guardian of Vanesa Van Vleet**

**Petitioner**

**vs.**

**MONTANA ASSOCIATION OF COUNTIES  
WORKERS' COMPENSATION TRUST**

**Respondent/Insurer.**

---

ORDER AWARDING COSTS

**Summary:** Following a favorable decision on appeal, *Van Vleet v. Montana Ass'n of Counties Workers' Compensation Trust*, 2004 MT 367, the petitioner filed a Memorandum of Costs. The respondent objected to most of the submitted costs on the grounds that they are either not recoverable or not documented.

**Held:** The signature of an attorney on a memorandum of costs constitutes his or her certification that the costs were incurred and are reasonable, and it is ordinarily unnecessary to provide the actual documentation for such costs even though Rule 24.5.342 requires that documentation regarding some costs be maintained. However, where the opposing party questions the costs based on a failure to provide documentation for the requested costs, the Court will direct the production of the documentation.

**Topics:**

**Costs: WCC Costs.** The signature of an attorney on a memorandum of costs constitutes his or her certification that the costs were incurred and are reasonable, and it is ordinarily unnecessary to provide the actual documentation for such costs even though Rule 24.5.342 requires that documentation regarding some costs be maintained. However, where the opposing party questions the costs based on a failure to provide

documentation for the requested costs, the Court will direct the production of the documentation.

**Constitutions, Statutes, Rules, and Regulations: Workers' Compensation Court Rules: 24.5.342.** The signature of an attorney on a memorandum of costs constitutes his or her certification that the costs were incurred and are reasonable, and it is ordinarily unnecessary to provide the actual documentation for such costs even though Rule 24.5.342 requires that documentation regarding some costs be maintained. However, where the opposing party questions the costs based on a failure to provide documentation for the requested costs, the Court will direct the production of the documentation.

¶1 Following a favorable decision on appeal, *Van Vleet v. Montana Ass'n of Counties Workers' Compensation Trust*, 2004 MT 367, the petitioner's attorneys filed a Memorandum of Costs. The initial request, filed January 19, 2005, is for \$2,348.24. In a second Memorandum of Costs filed February 1, 2005, that amount is reduced to \$2,237.67. The respondent objects to all but \$257.25 of the submitted costs. Thus, \$1,980.42 is at issue.

#### Rule Governing Costs

¶2 The recovery of costs is governed by Rule 24.5.342, which provides:

24.5.342 TAXATION OF COSTS (1) Unless otherwise ordered by the court, within 10 days after the entry of a judgment allowing costs, a prevailing claimant shall serve on the parties against whom costs are to be allowed an application for taxation of costs. The application must be filed with the court.

(2) The application for taxation of costs must be signed by the attorney for the claimant, or the claimant personally, if appearing pro sé. The signature on the application is a certification by the person signing the application of the accuracy of the costs claimed and that the costs incurred were reasonable and necessary to the case.

(3) The court will allow reasonable costs. The reasonableness of a given item of cost claimed is judged in light of the facts and circumstances of the case, and the issues upon which the claimant prevailed.

(4) The following are examples of costs that are generally found to be reasonable:

(a) deposition costs (reporter's fee and transcription cost), if the deposition is filed with the court;

(b) witness fees and mileage, as allowed by statute, for non-party fact witnesses;

- (c) expert witness fees, including reasonable preparation time, for testimony either at deposition or at trial, but not at both;
  - (d) travel and lodging expenses of counsel for attending depositions;
  - (e) fees and expenses necessary for perpetuation or presentation of evidence offered at trial, such as recording, videotaping or photographing exhibits;
  - (f) documented photocopy expenses;
  - (g) documented long-distance telephone expenses; and
  - (h) documented postage expenses.
- (5) The following are examples of costs that are generally found not to be reasonable:
- (a) trial transcripts ordered by the parties prior to any appeal;
  - (b) secretarial time; and
  - (c) items of ordinary office overhead not typically billed to clients.
- (6) Items of cost not specifically listed in this rule may be awarded by the court, in accordance with the principles in (3).
- (7) An insurer may make specific objection to any item of costs claimed within 10 days of the service of the application.

Discussion

¶3 The costs still at issue are as follows:

Photocopies	\$469.64
Postage	\$133.44
Long Distance	\$49.91
Depositions (Tom Miller)	\$177.00
Meals and Lodging	\$254.47
Mileage	\$473.40
Research Fees	\$422.56
<b>TOTAL</b>	<b>\$1,980.42</b>

¶4 The respondent objects to the costs of research on the ground that there is no provision for the recovery of those costs. It objects to the cost of the deposition urging that

deposition testimony was not used at trial. It objects to the remaining costs on the ground that no documentation supporting the costs has been provided.

¶5 Deposition Costs: Under this Court's rules, depositions are routinely filed and considered whether or not they are specifically used at trial in examining witnesses. Rule 24.5.322(9). In this case, the deposition of Sheriff Tom Miller was filed and considered by the Court in its decision. The cost of the deposition is therefore recoverable pursuant to Rule 24.5.342(4)(a).

¶6 Legal Research Costs: Costs associated with legal research are not one of the costs enumerated in Rule 24.5.342(4), nor are they akin to any of the listed items. Legal research is the stock and trade of an attorney. It makes no difference that the legal research for which costs are sought in this case was research regarding out-of-state decisions and was done at the behest of the Court. Such research is often done where there is no close case on point in Montana. Lawyers generally have the tools available to conduct that research either through law libraries or subscriptions to Westlaw or Lexis. This cost is not recoverable.

¶7 Other expenses: Rule 24.5.342(2), provides that the signature of the petitioner's attorney to his memorandum of costs constitutes his certification "of the accuracy of the costs claimed and that the costs incurred were reasonable and necessary to the case." That should ordinarily be sufficient unless the costs appear out of line. However, subparagraphs (4)(f) through (h) refer to "documented" costs for postage, long distance telephone calls, and photocopies, indicating that some contemporary documentation must have been kept to claim the costs. There is no reference to "documented" or documentation in connection with the mileage and meals and lodging.

¶8 While subsection (4)(f) requires that a memorandum of costs be based on documentation of the costs, the rule does not require the documentation to be attached to the memorandum of costs. However, since the respondent is dissatisfied with the mere certification of the petitioners' counsel, even though it was under oath, I will require the petitioner's attorneys to provide the documentation for all of their costs. I note that in *Derlatka v. Pacific Employers Ins. Co.*, 1998 MTWCC 66 and *Wall v. Nat'l Union Fire Ins. Co.*, 1998 MTWCC 65, cited by the petitioner, documentation of costs was provided in the first instance. If after review of the documentation the respondent still objects to the enumerated costs, it shall file a further objection, otherwise the costs will be allowed without further ado.

ORDER

¶9 By March 14, 2005, the petitioner's attorneys shall provide the respondent's attorney with copies of documentation of their costs for postage, long distance phone calls, photocopies, mileage, and lodging. The copies may be redacted to remove privileged information.

¶10 By March 23, 2005, the respondent shall file any objections it has to the costs for postage, long distance phone calls, photocopies, mileage, and lodging. The matter shall be deemed finally submitted on that date; no briefing or further response shall be allowed except by further order of the Court.

DATED in Helena, Montana, this 1<sup>st</sup> day of March, 2005.

(SEAL)

/s/ Mike McCarter  
JUDGE

c: Mr. Daniel B. Bidegaray  
Ms. Anna M. Bidegaray  
Mr. Norman H. Grosfield  
Submitted: February 1, 2005