

Mediation Expenses – Are they Taxable?

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As Spring approaches, the minds of most Americans turn to one of life's two inevitabilities. April 15th is a deadline that lives in infamy. And while the IRS is kinder and gentler, income taxation is not.

Thankfully, cost taxation is improved. Recent developments have expanded the list of taxable costs beyond those delineated in the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions. As caselaw has confirmed, these Guidelines are nothing more than (you guessed it) guidelines, from which trial courts can stray as sound discretion and justice requires. See Madison v. Midland Nat'l Life Ins. Co., 648 So. 2d. 1226, 1228 (Fla. 4th DCA 1995); Great Horizons Dev. Inc. v. Minkin, 572 So. 2d. 926 (Fla. 3d DCA 1990); and Department of Transportation v. Skidmore, 720 So. 2d. 1125 (Fla. 4th DCA 1998).

The Guidelines do not list Mediation costs, which has posed some inequity those in circuits that require Mediation before trial. Now, our local judiciary has precedent to restore the equity. Citing a 1990 case for the same proposition, the court in Elder v. Islam, 2004 Fla. App. LEXIS 2359 (Fla. 5th DCA 2/27/04) upheld a trial judge's decision to tax the prevailing party's pro-rata share of the invoice for court-ordered Mediation. The court further urged the drafters of the guidelines to address this issue and eliminate these disputes in the future.

The purpose of cost taxation is to reimburse the expenses that were necessary to prevail at trial. In the Fourth Judicial Circuit, one cannot get to trial without first going to court-ordered Mediation. Few costs are more "necessary" than those that are court-ordered. Recent precedent has confirmed the logic of taxing costs which the court requires be incurred. For those of us in Duval, Clay and Nassau Counties, taxable costs include Mediation expenses.

This article is one in a series of periodic articles concerning mediation topics such as use, legal developments, and negotiation tactics. Blane G. McCarthy is a Jacksonville civil trial lawyer and certified circuit civil mediator. For questions, comments, or suggestions on future articles, please call (904) 391-0091 or email at bgmccarthy@sprintmail.com.