

# COST RECOVERY 50 STATE SURVEY

*Survey research conducted September 2008*

## Introduction

The majority of states have considered whether the expense of computerized legal research may be recovered, as part of, or in addition to attorney's fees. In some jurisdictions computerized legal research is regarded as a general overhead expense, but in most jurisdictions reasonable costs may be recovered, as part of, or in addition to, attorney's fees. For purposes of clarity, the reader is reminded that "costs" are charges or fees taxed by the court, such as filing fees, jury fees, courthouse fees and reporter fees; the expenses of litigation, prosecution, or other legal transaction. *Black's Law Dictionary*, Garner. 8<sup>th</sup> Ed. (West 2004).

A search a various sources of state law, indicates that states fall into the following categories with respect to recovery of the expenses of computerized legal research:

### **1. Computerized legal research expenses are recoverable as "Costs"**

Alaska, Colorado, Connecticut, Iowa, Nevada, New Jersey, South Dakota, North Carolina

### **2. Computerized legal research "Costs" are recoverable if they are disclosed in the contingency agreement.**

Pennsylvania, Texas, Louisiana, New York

### **3. Computerized legal research expenses constitute out-of-pocket expenses that are not recoverable as part of an award for reasonable "attorneys fees"**

Kansas

### **4. Legal research expenses are a component of the attorney's hourly rate, and included in "attorneys fees". As such, computerized legal research expenses may not be recovered as "Costs" or any other element of damages separate from "Attorney's fees."**

Arizona, California, Florida, Hawaii, Idaho, Illinois, Indiana, Massachusetts, Minnesota, New Mexico, New York, North Dakota, Oklahoma, Rhode Island, Wyoming, Washington

### **5. Recovery of the expense of computerized legal research is left to the discretion of the trial court**

Utah, Georgia

### **6. The expense of computerized legal research is not recoverable as a taxable "cost"**

Michigan, Delaware, Ohio

### **7. After an exhaustive search of statutes, cases, ethics opinions, trial court documents, appellate briefs and secondary sources, no authority was found on the issue of recovery of computerized legal research expenses.**

Arkansas, District of Columbia, Kentucky, Maine, Maryland, Mississippi, Missouri, Nebraska, New Hampshire, South Carolina, Tennessee, Vermont

**8. After an exhaustive search of statutes, cases, ethics opinions, trial court documents, appellate briefs and secondary sources, the authority found on the issue of recovery of computerized legal research expenses was found to be unresolved or undetermined.**

Alabama, Oregon, Virginia, West Virginia, Wisconsin

## Preliminary Notes

The following 50 State Survey collects and delineates which states have statutes, regulations, cases, ethics/ bar opinions, trial court orders, and attorney general decisions discussing the recovery of costs for computerized legal research. In addition, the survey identifies secondary sources, trial court documents, and appellate briefs that provide insight and guidance relevant to the recovery of the aforementioned costs. In particular, these documents disclose the various arguments made by counsel and the amounts sought to be recovered (everything from \$3.00 to in excess of \$100,000) for computer assisted legal research (CALR or CAR).

This survey specifically focuses on recovery of the expenses of computerized legal research. The practitioner is reminded to consult the statutes and/or court rules addressing "costs", attorney's fees, and or recovery of litigation expenses. While recovery of computerized legal research is based upon such statutes and/or rules, this survey is concerned with legal authority specifically addressing whether computerized legal research expenses may be recovered and whether in general, they are permitted as a component of "costs" or attorney's fees.

Throughout this survey we use "NA" to indicate that material was not available or not relevant.

In order to ascertain the relevant documents in each jurisdiction we conducted the following searches in Westlaw.

To find the relevant state cases we searched in the ALLSTATES database:

Search - bill! charg! pass-through cost fee expense recover! /25 (computer! electronic +4 research search!) (261 Docs)

Search - bill! charg! pass-through cost fee expense recover! /25 (computer! electronic +4 research search!) % ti(state) (191 Docs)

To find the relevant state statutes we searched in the ST-ANN-ALL database:

Search - BILL! CHARG! PASS-THROUGH COST FEE EXPENSE RECOVER! /25 (COMPUTER! ELECTRONIC +4 RESEARCH SEARCH!) (145 Docs)

To find the relevant regulations we searched in the ADC-ALL database:

Search - BILL! CHARG! PASS-THROUGH COST FEE EXPENSE RECOVER! /25 (COMPUTER! ELECTRONIC +4 RESEARCH SEARCH!) (33 Docs)

To find the relevant ethics/bar cases and opinions we searched in the METH-EO database:

Search - BILL! CHARG! PASS-THROUGH COST FEE EXPENSE RECOVER! /25 (COMPUTER! ELECTRONIC +4 RESEARCH SEARCH!) (8 Docs)

To find the relevant attorney general opinions we searched in the AG-ALL database:

Search - BILL! CHARG! PASS-THROUGH COST FEE EXPENSE RECOVER! /25 (COMPUTER! ELECTRONIC +4 RESEARCH SEARCH!) (12 Docs)

To find relevant trial court orders, we search in each state's trial court order database:

Search - bill! charg! pass-through cost fee expense recover! /25 (computer! electronic westlaw +4 research! search!)

To find relevant trial court pleadings, motions, and memoranda, we searched in each state's trial court filings database:

Search - bill! charg! pass-through cost fee expense recover! /25 (computer! electronic westlaw +4 research! search!)

To find relevant appellate court briefs, we searched in each state's combined briefs database:

Search - bill! charg! pass-through cost fee expense recover! /25 (computer! electronic westlaw +4 research! search!)

For a more detailed analysis of attorney fees, the following resources are recommended:

Westlaw Databases

Attorney Fee Awards 3d ed. (ATTFEEAW)

Attorneys' Fees (ATTYFEES)

Secondary Sources:

Recovery of Computer-Assisted Research Costs as Part of or in Addition to Attorney's Fees Under State Law, 33 A.L.R.6th 305, 2008 WL 859703 (Apr. 2, 2008)

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## ALABAMA

### **Statutes**

NA

### **Cases**

NA

### **Regulations**

NA

### **Ethics/Bar Cases and Opinions**

Robert W. Norris, Opinions of the General Counsel, 55 Ala. Law. 190 (1994).

### **Secondary Sources**

Kathryn E. Cassady, Attorney's Fees In *Invessys, Inc. v. McGraw-Hill Cos.*: Should Electronic Research Costs Be Recoverable Under Fee Shifting Statutes?, 29 Am. J. Trial Advoc. 487 (2005).

### **Attorney General Opinions**

NA

### **Trial Court Documents (motions and trial court orders)**

NA

### **Briefs**

NA

## ALASKA

### **Statutes**

Rules of Civil Procedure, Rule 79

Part F - Allowable Costs

(11) Charges paid by the prevailing party's attorney for computerized legal research

### **Cases**

Atlantic Richfield Co. v. State, 723 P.2d 1249, 1253 (Alaska 1986)

CTA Architects of Alaska, Inc. v. Active Erectors & Installers, Inc., 781 P.2d 1364, 1367, 1989 WL 138342 (Alaska 1989).

"Computer Research and paralegal expenses are correctly characterized as costs rather than attorney fees, and, if recoverable, should be requested under civil rule governing costs."

Sever v. Alaska Pulp Corp., 931 P.2d 354, 363, 132 Lab. Cas. P 58182, 1996 WL 614868 (Alaska 1996)

"Award of \$18,323.01 for computerized research was not an abuse of discretion absent a showing that research was not reasonably necessary for former employer to defend against former employee's suit."

### **Regulations**

NA

### **Ethics/Bar Cases and Opinions**

NA

### **Secondary Sources**

NA

### **Attorney General Opinions**

NA

### **Trial Court Documents (motions and trial court orders)**

NA

### **Briefs**

**Sever v. Alaska Pulp Corp.**

Brief of Appellant, 1995 WL 17814757 (Alaska) (August 8, 1995).

## ARIZONA

### **Statutes**

Ariz. Rev. Stat. Ann. § 12-341.01; Recovery of attorney fees

In any contested action arising out of a contract, express or implied, the court may award the successful party reasonable attorney fees.

### **Cases**

Ahwatukee Custom Estates Mgmt. Ass'n, Inc. v. Bach, 193 Ariz. 401, 973 P.2d 106, 108, 288 Ariz. Adv. Rep. 42, 1999 WL 33629 (1999)

"... attorneys' fees awards can include the cost of computerized legal research."

Matter of Liquidation of Azstar Cas. Co. Inc., 189 Ariz. 27, 938 P.2d 76, 78, 1996 WL 523535 (Ariz. Ct. App. 1996)

"... provided the computerized research is necessary and the charges reasonable, we conclude that computerized research charges may be recovered by the successful party as an element of an award of attorneys' fees under § 12-341.01(A).

### **Regulations**

NA

### **Ethics/Bar Cases and Opinions**

NA

### **Secondary Sources**

Paul Bender, Susan Anderson, Ellen Starkeson, Anica M. Pacheco, Jennifer et. al., The Supreme Court of Arizona: Its 1998-99 Decisions, 32 Ariz. St. L.J. 1 (2000),.

### **Attorney General Opinions**

NA

### **Trial Court Documents (motions and trial court orders)**

#### Trial orders

Galeb, Miller Dev., LLC v. Markham Contracting Co., Inc., CV2002-019416, 2007 WL 5232454 (Ariz. Super. Ct. Oct. 16, 2007) (Ariz. Super.)

Trial court entered judgment and specifically awarded attorney fees and Westlaw research costs

Campbell v. Bank of America N.A., CV2003-010107, 2005 WL 5643318 (Ariz. Super. Ct. Feb. 2, 2005)

The Bank requested \$29,519.20 for attorneys' fees, \$607.44 for computer legal research, and \$842.20 taxable costs. Court granted \$20,000 in attorneys' fees, and \$842.20 in taxable costs, plus 10% interest from date of judgment. No explanation of reason for declining to award Westlaw fees.

### **Briefs**

#### **Altaffer v. Graves**

Answering Brief of Appellees Dean W. Graves and Virginia W. Graves., 2008 WL 2511995 (Ariz.App. Div. 2)

The trial court entered judgment in favor of the Graves and awarded them \$23,023 in attorneys' fees and computerized legal research charges.)

**XANTERRA PARKS & RESORTS, LLC v. COCONINO COUNTY**

Appellant Coconino County's Consolidated Opening Brief, 2006 WL 4916524 (Ariz.App. Div. 1 July 21, 2006),

Arguing that Online research is not recoverable. Research time was already incorporated into the attorneys' fees. Appellee cannot also recover these charges as a cost.

## ARKANSAS

### Statutes

NA

### Cases

NA

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

Stephen W. Jones & Melissa Beard Glover, The Attack on Traditional Billing Practices, 20 U. Ark. Little Rock L.J. 293 (1998)

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

NA

### Briefs

NA

## CALIFORNIA

### Statutes

CA ST FIXED FEE APPT Guideline 2; Incidental and Investigative Expenses  
CA ST FIXED FEE APPT Guideline 10; Fixed Legal Fees and Expenses for Evidentiary Hearings

Cal. Civ. Proc. Code § 1033.5 (West) Costs - Items allowable

### Cases

Hughes v. U.S. Foodservice, Inc., 168 Fed. App'x. 807, 810, 2006 WL 448687 (9th Cir. 2006)  
"Although California courts have held that California Code of Civil Procedure section 1033. bars parties from recovering computer research expenses as costs, they have not held that parties may not recover the expenses as attorneys' fees"

Ladas v. California State Auto. Assn., 19 Cal. App. 4th 761, 776, 23 Cal. Rptr. 2d 810, 8 IER Cases 1628, 1993 WL 425460 (Cal. Ct. App. 1993)  
"Fees for legal research, computer or otherwise, may not be recovered under section 1033.5"

Plumbers & Steamfitters, Local 290 v. Duncan, 157 Cal. App. 4th 1083, 1099, 69 Cal. Rptr. 3d 184, 07 Cal. Daily Op. Serv. 14193, 2007 Daily Journal D.A.R. 18275, 2007 WL 4303802 (Cal. Ct. App. 2007)  
"Finally, we reject the department's contention that charges incurred by Local 290 for computerized legal research are not recoverable as attorney fees under Code of Civil Procedure section 1021.5. (See California Common Cause v. Duffy, 200 Cal. App. 3d 730, 753-754, 246 Cal. Rptr. 285, 1987 WL 45723 (Cal. Ct. App. 1987) [upholding attorney fee award under Code of Civil Procedure section 1021.5 that included compensation for "109 minutes of computer research and 309.7 hours of work by three attorneys"

### Regulations

NA

### Ethics/Bar Cases and Opinions

ETHICAL CONSIDERATIONS IN OUTSOURCING OF LEGAL SERVICES published in 29-NOV L.A. Law. 75 (Los Angeles County Bar Association Professional Responsibility and Ethics & Committee Opinion No. 518.

### Secondary Sources

Douglas W. Schroeder, Fee Agreements: The Good, the Bad, and the Ugly, Orange County Law., May 2008, at 32.

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

Lovett v. City and County of San Francisco.  
Points and Authorities in Support of Plaintiff Lovett's Post-Trial Motion for Attorney's Fees and Costs, 2002 WL 32999474 (Cal.Superior)  
Seeking to recover LEXIS charges of \$20,000)

City of Los Angeles v. Animal Def. League, BS090518BS090519, 2006 WL 5157674 (Cal. Super. Ct. Sept. 6, 2006) (Cal.Superior) (trial order)

CALR expense treated as cost in motion for attorney fees and costs relating to litigation and appeals. Costs granted for CALR, but only in 1/3 as full amount sought represented research conducted for 3 companion cases--so billing reduced from triplet billing.

### **Briefs**

#### **Plumbers and Steamfitters, Local 290 v. Duncan**

Respondent's Brief, 2007 WL 2210927 (Appellate Brief) (Cal.App. 1 Dist. June 22, 2007)

Appellants' Opening Brief, 2007 WL 1622930 (Appellate Brief) (Cal.App. 1 Dist. April 30, 2007)

## COLORADO

### Statutes

NA

### Cases

Brody v. Hellman, 167 P.3d 192, 2007 WL 2002998 (Colo. Ct. App. 2007)

Kennedy v. King Soopers Inc., 148 P.3d 385, 2006 WL 2567754 (Colo. Ct. App. 2006)

Pueblo Bancorporation v. Lindoe, Inc., 37 P.3d 492, 2001 DJCAR 4185, 2001 WL 921190 (Colo. Ct. App. 2001)

Mackall v. Jalisco Intern., Inc., 28 P.3d 975, 2001 DJCAR 2821, 2001 WL 618558 (Colo. Ct. App. 2001)

Inasmuch as the computerized legal research was conducted and billed as a separate item to plaintiff, the Court finds that it is a proper item of costs. This billing was separate from attorney fees. Further, considering the issues presented, the Court finds that the research was necessary for trial preparation. Finally, the costs thereof were reasonable.

Roget v. Grand Pontiac, Inc., 5 P.3d 341, 1999 CJ C.A.R. 5936, 1999 WL 976632 (Colo. Ct. App. 1999)

"Accordingly, we conclude that § 13-16-122 does not prohibit an award of costs that includes the expenses associated with computerized legal research. Thus, courts may exercise their broad discretion and award such expenses."

"A party seeking to recover computerized legal search costs must show: (1) the client was billed for computerized legal research expenses separate from attorney fees; (2) the computerized legal research was necessary for trial preparation; and (3) the requested costs were reasonable."

Newport Pac. Capital Co., Inc. v. Waste, 878 P.2d 136, 140, 1994 WL 265132 (Colo. Ct. App. 1994)

"Numerous courts have allowed for the recovery of services of paralegals, law clerks, staff, and the costs of computerized legal research"

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

Nancy E. Rice & Ellen Ostheimer Creager, The Bill of Costs, Colo. Law., NOVEMBER 1996, at 71.

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

Denson v. P. F. Chang's China Bistro, Inc. 05CV5048,

2007 WL 5177969 (Colo. Dist. Ct. Feb. 21, 2007)

2007 WL 5177970 (Colo. Dist. Ct. Feb. 9, 2007)

Barker v. Allstate Ins. Co., 00CV2061, 2001 WL 36024456 (Colo. Dist. Ct. Nov. 27, 2001)  
(Colo. Dist. Ct.)

Example of how Westlaw charges were broken down per min.

Blake v. Huang, 05CV2111, 2008 WL 2517738 (Colo. Dist. Ct. Feb. 19, 2008)

Awarding Westlaw research expenses as costs and citing *Mackall v. Jalisco*.

Genova v. Longs-peak Emergency Physicians, P.C., 00CV1074, 2002 WL 33944384 (Colo. Dist. Ct. Mar. 21, 2002) (Colo. Dist. Ct.)

Court awards Defendants \$5,155.27 for their computerized legal research fees.

City of Westminster v. Bates Engineering, 97CV3415, 2002 WL 33944411 (Colo. Dist. Ct. Feb. 22, 2002) (Colo. Dist. Ct.)

("The Court finds the cost of \$3,769.05 for computer-assisted legal research to be reasonable and necessary. One of the statements made in *Cherry Creek School District #5 v. Voelker* [859 P.2d 805 (Colo. 1993)] is that given the complexities of contemporary litigation certain legal devices may be an important component of effective trial preparation. That statement in the context of this case appears to just as applicable to computer-assisted legal research. This case included a number to sophisticated legal issues and it is obvious a great amount of legal research is generated through Westlaw and comparable systems that carry a charge for that service.")

## **Briefs**

### **Brody v. Hellman**

Plaintiffs-Appellees' Answer Brief, 2006 WL 4554130 (Colo. App.) September 26, 2006.

Objectors-Intervenors-Appellants Opening Brief, 2006 WL 4554131 (Colo. App.) August 3, 2006.

### **Pueblo Bancorporation v. Lindoe, Inc.**

Appellant's Opening Brief, 2002 WL 34151354 (Colo. App.), Jan. 17, 2002

Appellant's Reply Brief, 2001 WL 35960166 (Colo. App.)

### **Mackall v. Jalisco Intern., Inc.**

Appellant Jalisco International, Inc.'s Opening Brief, 2000 WL 35522200 (Colo. App., Aug. 16, 2000)

Appellee Mackall's Answer Brief, 2000 WL 35522201 (Colo. App.) October 10, 2000.

Appellant Jalisco International, Inc.'s Reply Brief, 2000 WL 35522202 (Colo. App. October 30, 2000.

## CONNECTICUT

### **Statutes**

NA

### **Cases**

NA

### **Regulations**

NA

### **Ethics/Bar Cases and Opinions**

CHARGE TO CLIENT FOR COMPUTER-ASSISTED RESEARCH UNDER CONTINGENCY AGREEMENT; CT Eth. Op. 96-3 (1996)

REIMBURSEMENT OF COSTS PAID TO THIRD PARTY UNDER A CONTINGENCY FEE ARRANGEMENT; CT Eth. Op. 03-08 (2003)

“the lawyer may recoup expenses reasonably incurred in connection with the client's matter for services performed in-house, such as ... computer research..., so long as the charge reasonably reflects the lawyer's actual cost for the services rendered.”

### **Secondary Sources**

NA

### **Attorney General Opinions**

NA

### **Trial Court Documents (motions and trial court orders)**

NA

### **Briefs**

NA

## DELAWARE

### Statutes

N/A

### Cases

FGC Holdings Ltd. v. Teltronics, Inc., CIV.A. 883-N, 2007 WL 241384 (Del. Ch. Jan. 22, 2007)

“Under case law, “costs” are not identical to “expenses”; our courts have defined costs as those “expenses necessarily incurred in the assertion of [a] right in court,” such as court filing fees, fees associated with service of process or costs covered by statute. Thus, items such as computerized legal research, transcripts, or photocopying are not recoverable.”

Gaffin v. Teledyne, Inc.: 93 WL 271443 at 2

Gaffin also seeks reimbursement for \$18,683.76 for the costs of computerized legal research. These expenses are not considered costs and will not be allowed

Ripsom v. Beaver Blacktop, Inc., C.A. 83C-AU-128, 1989 WL 147336 (Del. Super. Ct. Dec. 4, 1989)

“There is no provision in a Delaware statute or Rule which authorizes an award of costs for this research. See Superior Court Civil Rule 54(d). This research service was used for the primary benefit of plaintiff’s counsel, and I am satisfied that the research expenses were not “necessarily incurred in the assertion of [plaintiff’s] rights in court,” and are therefore not recoverable as costs.”

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

Blank Rome, LLP v. Vendel, 29 Del. J. Corp. L. 208 (2003) (Del.Ch.)

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

LILLIS v. AT&T CORP. and AT&T Wireless Services, Inc.,

Plaintiffs' Reply in Further Support of Their Motion to Enforce This Court's Order Regarding the Advancement of Fees and Expenses, 2007 WL 2667186 (Del.Ch.)

Defendant AT&T Corp.'s Opposition to Plaintiffs' Motion to Enforce This Court's Order Regarding the Advancement of Fees and Expenses, 2007 WL 2667185

CALR expenses over \$100,000

Comrie v. ENTERASYS NETWORKS, INC.,

Answering Brief of Defendants Enterasys Networks, Inc. and GlobalNetwork Technology Services, Inc. to Plaintiffs' Application for an Award of Attorneys' Fees and Costs, 2003 WL 25579313 (Del.Ch.)

Petition and Memorandum in Support of Plaintiffs' Application for Award of Attorneys' Fees and Costs, 2003 WL 25579310

**Briefs**

NA

**DISTRICT OF COLUMBIA**

**Statutes**

NA

**Cases**

NA

**Regulations**

NA

**Ethics/Bar Cases and Opinions**

NA

**Secondary Sources**

NA

**Attorney General Opinions**

NA

**Trial Court Documents (motions and trial court orders)**

NA

**Briefs**

NA

## FLORIDA

### Statutes

Fla. Stat. Ann. § 57.041 (West); Costs; recovery from losing party

### Cases

Wood v. Panton & Co. Realty, Inc., 950 So. 2d 534, 536, 32 Fla. L. Weekly D765, 2007 WL 837187 (Fla. Dist. Ct. App. 2007)

"[W]e have previously held that computer research costs "are more akin to awards under attorney's fees provisions [and not] costs."... The added cost of computerized research is normally matched with a corresponding reduction in the amount of time an attorney must spend researching. Therefore, we see no difference between a situation where an attorney researches manually and bills only time spent and a situation where the attorney does the research on a computer and bills for both the time and the computer fee. In both cases the total costs are attorney's fees and may not be recovered as "costs."

Winn-Dixie Stores, Inc. v. Reddick, 954 So. 2d 723, 731, 32 Fla. L. Weekly D1089, 2007 WL 1213418 (Fla. Dist. Ct. App. 2007)

These nonstatutory costs [which are] subsumed within the reasonable attorney's fee could include compensation for postage, long distance calls, photocopying, travel, paralegals, expert witnesses, and computerized legal research."

Ocean Club Cmty. Ass'n, Inc. v. Curtis, 935 So. 2d 513, 517, 24 IER Cases 613, 31 Fla. L. Weekly D987, 2006 WL 861180 (Fla. Dist. Ct. App. 2006)

In the instant case, the plaintiff properly concedes that the trial court abused its discretion by awarding \$93.54 for costs relating to computerized legal research, as these costs are not compensable. See *Skidmore*, 720 So.2d at 1130 (holding that "award of computer research costs was error, as such charges are overhead and not properly taxable as costs")

### Regulations

2 Fla. Admin. Code Ann. r. 2-37.030; Standard Fee Schedule.

### Ethics/Bar Cases and Opinions

In re Amendments to the Rules Regulating The Florida Bar, 916 So. 2d 655, 696, 30 Fla. L. Weekly S844, 2005 WL 2456201 (Fla. 2005)

Amendment to the Rules Regulating The Florida Bar, 875 So. 2d 448, 494, 29 Fla. L. Weekly S265, 29 Fla. L. Weekly S379, 2004 WL 1119496 (Fla. 2004)

A lawyer may agree with the client to charge a reasonable amount for in-house costs or services. In-house costs include items such as copying, faxing, long distance telephone, and computerized research.

### Secondary Sources

Esther E. Galicia. RECENT LEGAL DEVELOPMENTS. 26 No. 3 Trial Advoc. Q. 36 (2007)

BL FL-CLE 16-1, Business Litigation in Florida: RECOVERY OF ATTORNEYS' FEES

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

Brandon v. . Beasley & Hauser, 502004CA006436XXXXMB, 2005 WL 5569299 (Fla. Cir. Ct. Aug. 30, 2005) (Fla.Cir.Ct.)

CALR awarded, but reduced from petitioned amount. Fee agreement in place.

Theofilos v. . Collado 502003CA005564XXCDAA, 2006 WL 4606378 (Fla. Cir. Ct. Dec. 1, 2006) (Fla.Cir.Ct.)

CALR costs awarded pursuant to fee agreement in place, but court says it would have awarded CALR as costs pursuant to Statewide Uniform Guidelines for Taxation of Costs had there not been an agreement.

### **Briefs**

**Echevarria, McCalla, Raymer, Barrett & Frappier v. Cole**, Brief on the Merits by Petitioners, Echevarria, McCalla, Raymer, Barrett & Frappier, et. al. 2006 WL 868070, (Fla. March 13, 2006).

## GEORGIA

### **Statutes**

NA

### **Cases**

Ellerin & Associates v. Brawley, 263 Ga. App. 860, 863, 589 S.E.2d 626, 03 FCDR 3329, 2003 WL 22480317 (Ga. Ct. App. 2003)

Although the trial court found at least one expert's fee "outrageous" and questioned the practice of billing clients for the expense of electronic research and the time and expenses of two attorneys for out-of-town depositions, the court felt constrained the fee agreement to allow them. Our ruling that the agreement no longer controls permits the trial court freedom on remand to decide what credit, if any, is due the Brawleys for expenses that were not both necessary and reasonable, based upon their value to the Brawleys....As with other expenses, the trial court therefore must decide on remand whether the additional expenses sought by Ellerin were necessary and reasonable based upon their value to the Brawleys.

### **Regulations**

NA

### **Ethics/Bar Cases and Opinions**

NA

### **Secondary Sources**

NA

### **Attorney General Opinions**

NA

### **Trial Court Documents (motions and trial court orders)**

NA

### **Briefs**

NA

## HAWAII

### **Statutes**

NA

### **Cases**

DFS Group L.P. v. Paiea Properties, 131 P.3d 500, 110 Hawai'i 217, 225, 33 A.L.R.6th 681, 2006 WL 848344 (Haw. 2006)

Consequently, although the seventh circuit appears to agree with the ICA that computer-assisted research charges are not recoverable as taxable costs, there is some evidence to suggest that it might nevertheless award such computer-assisted research charges as a separately billed component of attorneys' fees.

Bjornen v. State Farm Fire & Cas. Co., 912 P.2d 602, 606, 81 Hawai'i 105, 1996 WL 92169 (Haw. Ct. App. 1996)

We agree with the majority and conclude that disbursements for computerized legal research such as WESTLAW are a component of attorney fees and are not taxable costs.

### **Regulations**

NA

### **Ethics/Bar Cases and Opinions**

NA

### **Secondary Sources**

Carole R. Richelieu, Ethics & Issues, Haw. B.J., October 2006, at 20  
Discussing holding in *DFS Group L.P. v. Paiea Properties*

-APR Haw. B.J. 30, ATTORNEY'S FEES & COSTS: Hawaii Appellate Courts Impose New Limitations on Recovery (April 1999)

David C. Farmer, Esq., Westlaw/lexis Charges Are They Taxable Costs in Hawaii?, Haw. B.J., 6/96, at 30.

### **Attorney General Opinions**

NA

### **Trial Court Documents (motions and trial court orders)**

NA

### **Briefs**

NA

## IDAHO

### Statutes

ID R A Rule 41; Attorney fees on appeal (d)

Attorney fees may include the reasonable cost of automated legal research if the court finds it was reasonably necessary in preparing the party's case.

### Cases

McKay v. Owens, 130 Idaho 148, 159, 937 P.2d 1222, 1997 WL 260022 (1997)

...the trial court's imposition of attorney fees and computer-aided research costs as a sanction under I.R.C.P. 11 was not an abuse of discretion.

Mihalka v. Shepherd, 145 Idaho 547, 181 P.3d 473, 479, 2008 WL 820562 (2008)

Med. Recovery Services, LLC, v. Jones, 145 Idaho 106, 175 P.3d 795, 2007 WL 4293024 (Idaho Ct. App. 2007)

P.O. Ventures, Inc. v. Loucks Family Irrevocable Trust, 144 Idaho 233, 159 P.3d 870, 2007 WL 1247064 (2007)

Elliott v. Darwin Neibaur Farms, 138 Idaho 774, 69 P.3d 1035, 2003 WL 1802352 (2003)

In the event the court grants attorney fees to a party or parties in a civil action it shall consider the following factors in determining the amount of such fees: ... The reasonable cost of automated legal research (computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

Hon. Jesse R. Walters, Jr., A Primer for Awarding Attorney Fees in Idaho, 38 Idaho L. Rev. 1 (2001),

Mark D. Perison, A Guide to Attorney Fee Awards in Idaho, 32 Idaho L. Rev. 29 (1995)

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

NA

### Briefs

#### McKay v. Owens

Brief of Respondents Owens, 1996 WL 33657932 (Idaho April 11, 1996),  
Appellants' Brief, 1996 WL 33657934 (Idaho March 14, 1996),

#### Elliott v. Darwin Neibaur Farms

Appellants' Reply Brief, 2003 WL 23747965 (Idaho February 14, 2003)  
Appellants' Brief, 2002 WL 32644577 (Idaho November 27, 2002),

**Medical Recovery Services, LLC, v. Jones**

Appellant's Brief, 2007 WL 2112487 (Idaho June 25, 2007)

**Porter v. Bassett**

Respondents' Brief (Corrected), 2007 WL 4882807, (Idaho December 26, 2007), (No. 33828.)

**In Re: UNIVERSITY PLACE/IDAHO WATER CENTER PROJECT v. CIVIC PARTNERS, INC.**

Respondent Capital City Development Corporation's Brief, 2008 WL 2199243 (Idaho April 09, 2008),

Appellant's Brief, 2008 WL 786383 (Idaho March 12, 2008),

## ILLINOIS

### Statutes

NA

### Cases

Guerrant v. Roth, 334 Ill. App. 3d 259, 269, 777 N.E.2d 499, 267 Ill. Dec. 696, 2002 WL 31051555 (Ill. App. Ct. 2002)

We hold, therefore, that the computer-assisted legal research expenses are a form of attorney fees and are not separately recoverable as a cost or expense pursuant to the parties' contingent fee agreement. We express no opinion, however, as to whether computer-assisted legal research expenses are ever separately recoverable in a contingent fee agreement.

Harris Trust & Sav. Bank v. Am. Nat. Bank & Trust Co. of Chicago, 230 Ill. App. 3d 591, 594 N.E.2d 1308, 171 Ill. Dec. 788, 1992 WL 117005 (Ill. App. Ct. 1992)

Held that the cost for computer research is not recoverable

Johnson v. Thomas, 342 Ill. App. 3d 382, 794 N.E.2d 919, 936, 276 Ill. Dec. 669, 51 UCC Rep. Serv. 2d 769, 2003 WL 21697397 (Ill. App. Ct. 2003)

Accordingly, where a statute permits the recovery of costs only, but not of attorney fees, computer research expenses would not be recoverable because they fall under the aegis of attorney fees

Although we have determined that expenses paid to a third party for the purposes of furthering specific litigation, including computerized legal research, messenger services, and court reporter fees, may be recovered by Thomas, before allowing such recovery, the court must determine that the costs were reasonable and necessary.

### Regulations

NA

### Ethics/Bar Cases and Opinions

IL Adv. Op. 85-9; TOPIC: COMPUTERIZED LEGAL RESEARCH (1986)

The Committee is of the opinion that an attorney may use a formula for estimating and charging a client for CLR as an expense if the formula reasonably reflects the firm's actual cost. Actual cost to the firm constitutes those expenses directly attributable to providing CLR to its clients as opposed to those expenses which are a necessary part or adjunct of a properly equipped lawyer's office.

### Secondary Sources

Patrick Moran, Who's Paying the Westlaw Bill? If It's Not in the Contract, You Are, CBA Rec., June/July 2003, at 45

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

#### *Motions*

United States Fidelity & Guaranty vs. Old Orchard Plaza.

Brunswick Corporation's Petition for All Costs and Expenses, Including Reasonable Attorneys' Fees, 2000 WL 35549800 (Ill.Cir.)

Robles v. Valor Ins. Co., 2000 WL 35461427 (Ill.Cir.), December 15, 2000

Plaintiff is also not entitled to recover costs for court reporters, photocopying and Westlaw research because these too are overhead expenses.

### **Briefs**

#### **Guerrant v. Roth**

Brief of Appellant D'Ancona & Pflaum LLC, 2002 WL 32191394 (Ill.App. 1 Dist. February 19, 2002),

## INDIANA

### **Statutes**

NA

### **Cases**

Missi v. CCC Custom Kitchens, Inc., 731 N.E.2d 1037, 1039, 2000 WL 968448 (Ind. Ct. App. 2000)

“costs” did not include expenses for “Westlaw charges”, “mounting/printing costs for exhibits”, “camera/film/developing costs for pictures”, “printing costs for exhibits”, and “copying expenses for trial”.

Shell Oil Co. v. Meyer, 684 N.E.2d 504, 1997 WL 473236 (Ind. Ct. App. 1997)

Paralegal fees and expenses for telephone, computer legal research time, postage, mileage, depositions, copies, process, and expert witnesses could be recovered as “attorney’s fees and court costs,”

Hammes v. Frank, 579 N.E.2d 1348, 1353, 1991 WL 213504 (Ind. Ct. App. 1991)

We agree with the trial court’s determination that given the complex and sophisticated nature of class action litigation in today’s legal arena, the costs of paralegals, associate attorneys, and computer time are reasonable and necessary expenses.

Johnson v. Naugle, 557 N.E.2d 1339, 1346, 1990 WL 114412 (Ind. Ct. App. 1990)

“costs” did not include expenses for Westlaw research, telephone calls, mileage, copies, and videotaping

### **Regulations**

NA

### **Ethics/Bar Cases and Opinions**

NA

### **Secondary Sources**

NA

### **Attorney General Opinions**

NA

### **Trial Court Documents (motions and trial court orders)**

NA

### **Briefs**

Van Winkle v. Nash,  
Appellant's Reply Brief, 2001 WL 35825226 (Ind.App. October 24, 2001).

## IOWA

### **Statutes**

NA

### **Cases**

In re Makhlouf, 695 N.W.2d 503, 2005 WL 159159 (Iowa Ct. App. 2005) at 6 (2005)

An additional expense of \$1,283.58 was incurred in the direct cost of computer research, transcript of evidence costs for hearings and other exhibits and transcript costs. ... We find the above listing of fees and expenses to be reasonable and necessary.

### **Regulations**

NA

### **Ethics/Bar Cases and Opinions**

NA

### **Secondary Sources**

NA

### **Attorney General Opinions**

NA

### **Trial Court Documents (motions and trial court orders)**

NA

### **Briefs**

NA

## KANSAS

### **Statutes**

NA

### **Cases**

DeSpiegelaere v. Killion, 24 Kan. App. 2d 542, 550, 947 P.2d 1039, 1997 WL 721914 (Kan. Ct. App. 1997)

The district court denied the DeSpiegelaeres' request for an award of out-of-pocket expenses based upon the following: "[The DeSpiegelaeres] also [seek] to charge the defendants' [ sic ] \$1,386.76 in expenses consisting primarily of copy charges, postage and computerized legal research charges. There is absolutely no statutory authority for such an award."

### **Regulations**

Kan. Admin. Regs. § 105-6-2; AGENCY 105. STATE BOARD OF INDIGENTS' DEFENSE SERVICES, ARTICLE 6. REIMBURSEMENT OF EXPENSES, Expenses allowed.

(d) expenses incurred by appointed attorneys in obtaining computerized legal research if the case presents a unique question of law to be researched. Such expenses shall not exceed \$200;

### **Ethics/Bar Cases and Opinions**

NA

### **Secondary Sources**

NA

### **Attorney General Opinions**

NA

### **Trial Court Documents (motions and trial court orders)**

NA

### **Briefs**

NA

## KENTUCKY

### Statutes

NA

### Cases

NA

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

NA

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

NA

### Briefs

NA

## LOUISIANA

### Statutes

NA

### Cases

NA

### Regulations

NA

### Ethics/Bar Cases and Opinions

La eth. Op. 95-061 (reported in 44 La. B.J. 249)

"Question: In a contingency fee arrangement, may an attorney charge, in addition to the contingency fee, the cost of LEXIS or Westlaw research? Response: Unless the contingency fee contract expressly provides that such charges will be borne by the client in addition to the contingency fee, such charges should not be assessed to the client.

This would be true for any incidental expenses incurred, such as telephone expenses, copying charges, expert fees, etc."

### Secondary Sources

Ethics Opinions, 46 La. B.J. 235 (1998).

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

NA

### Briefs

NA

## MAINE

### Statutes

NA

### Cases

NA

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

NA

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

NA

### Briefs

NA

## MARYLAND

### Statutes

NA

### Cases

NA

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

NA

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

NA

### Briefs

NA

## MASSACHUSETTS

### Statutes

NA

### Cases

United Co-op. Farmers, Inc. v. Citizens Bank of Massachusetts, 012292B, 2005 WL 3722629 (Mass. Super. Dec. 16, 2005)

The cost of electronic legal research are encompassed within legal fees to which the defendant is not entitled

Fed. Deposit Ins. Corp. v. Kefalas, 11 Mass. L. Rptr. 139, 1999 WL 1411361 (Mass. Super. Dec. 14, 1999)

Those costs are appropriate with the exception of the amount charged for online electronic research and for "courier fees." The former is an element of overhead, not expense, and the latter often substitutes for regular mail even when time is not of the essence.

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

NA

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

NA

### Briefs

#### Berman v. Carroll

Brief for Plaintiffs-Appellants-Cross-Appellees, 2000 WL 34607869 (Mass. February 18, 2000).

Recovery of costs of Lexis in the amount of \$3,060.77 and Westlaw in the amount of \$3,159.65

## MICHIGAN

### Statutes

Mich. Comp. Laws Ann. § 600.2405 (West)

### Cases

NA

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

NA

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

Frickel Co., P.C. v. Banasiak, 2002-5615-CK,  
2006 WL 5309890 (Mich. Cir. Ct. Dec. 4, 2006)  
("There is no authority for taxing electronic research as actual costs.")

Estate of Marvin H. Page  
2005 WL 4721442 (Mich. Cir. Ct. Aug. 23, 2005).

### Briefs

#### **Churchill v. Swarhout**

Appellants' Brief Oral Argument Requested, 2005 WL 6072785, (Mich.App. April 05, 2005)  
Appellants' Brief, 2005 WL 5712429 (Mich.App. April 05, 2005)  
Appellants' Reply Brief, 2005 WL 6072760 (Mich.App. May 20, 2005)  
Appellants' Reply Brief, 2005 WL 5712945 (Mich.App. May 20, 2005)

## MINNESOTA

### Statutes

NA

### Cases

Bellboy Corp. v. Richmond Ltd., A05-877, 2006 WL 290306 (Minn. Ct. App. Feb. 7, 2006)

"It is well settled that computer-aided research, 'like any other form of legal research, is a component of attorneys' fees and cannot be independently taxed as an item of cost.

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

NA

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

#### Motions

#### **Naterra Land Inc. v. Dingmann,**

Defendant Dingman's Memorandum of Law in Opposition to Motion for Attorneys' Fees & Costs and Disbursements, 2007 WL 2020367 (Minn. Dist. Ct. Mar. 21, 2007)

#### **Milner v. Farmers Insurance Exchange**

Defendants' Memorandum of Law Regarding Plaintiffs' Claimed Attorneys' Fees, 2005 WL 3147107 (Minn. Dist. Ct. May 23, 2005)

Opposing Plaintiff's claim for \$26,105.39 in fees for computer aided legal research-- \$5,217.55 for Lexis Nexis and \$16,204.06 Westlaw.

Plaintiffs' Opposition to Defendant's Memorandum of Law Regarding Plaintiffs' Claimed Attorneys' Fees, 2005 WL 3147098 (Minn. Dist. Ct.) June 3, 2005

Citing ABA For. Op. 93-379 in support of plaintiff's claim to CALR costs and arguing that "[m]any courts have recognized that the use of computer-aided research reduces the actual time spent researching, thus resulting in a reduction of the lodestar, and that such an expense is properly reimbursed."

#### Trial orders

#### Scott v. forest Lake Chrysler-Plymouth-Dodge

2002 WL 34159402 , (Minn. Dist. Ct. Nov. 14, 2002)

#### Dymit v. Indep. School District #717

2004 WL 5047576 (Minn. Dist. Ct. Mar. 12, 2004))

CALR not awarded as costs

Naterra Land Inc. v. Dingmann.

2007 WL 2025005 (Minn. Dist. Ct. Apr. 27, 2007) (Minn.Dist.Ct.)

“The Court has reviewed the detailed time and cost descriptions submitted by the Plaintiff in its 31 pages of detailed submissions. After a careful review, the Court concludes that the costs sought by Plaintiff are reasonable and necessary, with one exception. The Court agrees with Dingman that the claim for legal research is a component of attorneys’ fees, and should not be independently taxed as an item of costs. Ryther v. Kare 11, 864 F.Supp. 1525, 1534 (D.Minn.1994). Consequently, the Court will deduct the \$2,854.92 sought for computerized legal research from the \$10,209.08 in costs and disbursements, and award a total of \$7,354.16 in costs and disbursements.”

Milner v. Farmers Insurance Exchange

2005 WL 5621615 (Minn.Dist.Ct. Sep 14, 2005)

Granting CALR costs (*order vacated* by 2005 WL 5621616 (Minn.Dist.Ct. Nov 23, 2005))

**Briefs**

NA

## MISSISSIPPI

### Statutes

NA

### Cases

NA

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

NA

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

NA

### Briefs

NA

## MISSOURI

### Statutes

NA

### Cases

NA

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

NA

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

NA

### Briefs

NA

## MONTANA

### Statutes

NA

### Cases

Chamberlin v. Puckett Const., 277 Mont. 198, 921 P.2d 1237, 1244, 1996 WL 361206 (1996)

Pohl opined that the amount of computer research time was reasonable in this case in which Brown wrote numerous briefs and that “the time [Brown] spent using Westlaw was money well spent, probably would have taken a lot more hours of research ... if he had come down here to the law library.” – fee was upheld

Ray v. Nansel, 2002 MT 191, 311 Mont. 135, 147, 53 P.3d 870, 2002 WL 1980464 (2002)

We disagree, however, that costs associated with Westlaw research were necessary. These costs may be common costs in modern law practice, but they primarily involve improving a law practice’s efficiency. Therefore, the District Court could reasonably conclude that they were not necessary costs

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

NA

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

NA

### Briefs

NA

## NEBRASKA

### Statutes

NA

### Cases

NA

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

NA

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

NA

### Briefs

NA

## NEVADA

### Statutes

Nev. Rev. Stat. Ann. § 622.400 (West) Recovery of attorney's fees and costs incurred by regulatory body in certain regulatory proceedings

(g) Expenses for research, including, without limitation, reasonable and necessary expenses for computerized services for legal research

Nev. Rev. Stat. Ann. § 18.005 (West); "Costs" defined

17. Any other reasonable and necessary expense incurred in connection with the action, including reasonable and necessary expenses for computerized services for legal research.

### Cases

Bergmann v. Boyce, 109 Nev. 670, 683, 856 P.2d 560, 1993 WL 271622 (1993)

However, we reverse the award of computer research, juror analysis and witness preparation expenses because these expenses are not allowable costs under § 18.005.

Gibellini v. Klindt, 110 Nev. 1201, 885 P.2d 540, 542, 1994 WL 670876 (1994)

In so holding, this court reasoned that attorneys incur computer research expenses as a function of their research of the law, so that the expense is more closely related to the attorney's fee than to the kinds of recoverable costs defined in § 18.005.

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

NA

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

#### Motions

#### **Baldonado v. Wynn Las Vegas, LLC**

2007 WL 5177574 (Nev. Dist. Ct.)

Opponent argues that defendant "presumptively has a flat fee Westlaw subscription-- therefore no add'l cost incurred for research

#### **Drury Industries Inc. v. Drury Properties**

2005 WL 5394519

Example memo for CALR costs of \$28,000);

#### **Herman v.. California Capital Ins. Co.**

What do Westlaw charges represent--time using Westlaw or actual time searching, etc).

2004 WL 5293796 (Nev. Dist. Ct. Sep. 29, 2004) Defendant's Verified Memorandum of Fees and Costs

2004 WL 5293797 (Trial Motion, Memorandum and Affidavit) (Nev. Dist. Ct. Sep. 29, 2004) Defendant California Capital Insurance Company's Motion to Collect Costs and Enforce Provisions of NRCP 68 & RS 12.115

2004 WL 5293795 (Trial Motion, Memorandum and Affidavit) (Nev. Dist. Ct. Oct. 5, 2004) Motion to Tax Costs and Opposition to Motion for Attorney Fees and Costs

2004 WL 5293793 (Trial Motion, Memorandum and Affidavit) (Nev. Dist. Ct. Oct. 12, 2004) Second Supplemental Declaration of Gordon M. Park in Support of Amended Verified Memorandum of Fees

2004 WL 5293794 (Trial Motion, Memorandum and Affidavit) (Nev. Dist. Ct. Oct. 12, 2004) Defendant California Capital Insurance Company's Reply to Opposition to Motion to Collect Costs and Enforce Provisions of NRCP 68 & RS 12.115

2004 WL 5293792 (Trial Motion, Memorandum and Affidavit) (Nev. Dist. Ct. Nov. 19, 2004) Supplemental Brief on Defendant's Motion for Attorney Fees

2004 WL 5293791 (Trial Motion, Memorandum and Affidavit) (Nev. Dist. Ct. Dec. 3, 2004) Defendant California Capital Insurance Company's Supplemental Reply to Opposition to Motion to Collect Costs and Enforce Provisions of NRCP 68 & RS 12.115

2004 WL 5293790 (Trial Motion, Memorandum and Affidavit) (Nev. Dist. Ct. Dec. 7, 2004) Additional Supplemental Brief on Defendant's Motion for Attorney's Fees and Costs

2004 WL 5293789 (Trial Motion, Memorandum and Affidavit) (Nev. Dist. Ct. Dec. 14, 2004) Additional Supplemental Brief on Defendant's Motion for Attorney's Fees and

*Trial court orders*

Herman v. California Capital Ins. Co, 2005 WL 5353171 (Nev. Dist. Ct.) (May 13, 2005) .  
Applied Bergman holding to deny CALR expenses despite 18.005 & 18.020.)

Godman v. Ruffin Gaming, LLC, 2005 WL 4721774 (Nev. Dist. Ct.) February 9, 2005  
CALR costs of \$3.23 granted.

**Briefs**

NA

## NEW HAMPSHIRE

### Statutes

NA

### Cases

NA

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

NA

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

NA

### Briefs

NA

## NEW JERSEY

### **Statutes**

NA

### **Cases**

Sitar Co. v. 222 Realty, Inc., A-5010-03T1, 2005 WL 3211307 (N.J. Super. Ct. App. Div. Dec. 1, 2005)

None of those disbursements for delivery services, transcripts, photocopying, electronic legal research, and other costs of the litigation appear unreasonable.

Matter of Estate of Reisen, 313 N.J. Super. 623, 636, 713 A.2d 576, 1998 WL 344888 (N.J. Super. Ct. Ch. Div. 1998)

On the other hand, the court is aware that computer and search fees are charged to law firms and thus, to the extent used, are justifiable, reimbursable items.

### **Regulations**

NA

### **Ethics/Bar Cases and Opinions**

NA

### **Secondary Sources**

NA

### **Attorney General Opinions**

NA

### **Trial Court Documents (motions and trial court orders)**

NA

### **Briefs**

NA

## NEW MEXICO

### **Statutes**

NMRA, Rule 1-054(d)(3)(h)

Note: Amended by Supreme Court Order 08-8300-011, effective May 23, 2008 (NO. 08-8300-011, IN THE MATTER OF THE AMENDMENTS OF RULE 1-054 NMRA OF THE RULES OF CIVIL PROCEDURE FOR DISTRICT COURTS)

### **Cases**

Key v. Chrysler Motors Co., 2000-NMSC-010, 128 N.M. 739, 745, 998 P.2d 575, 2000 WL 342762 (2000)

We agree with the Court of Appeals on this issue and conclude that computer-assisted research is more analogous to attorney fees. “[U]nder the American Rule the prevailing party normally does not receive attorney fees;” thus, Chrysler is not entitled to recover legal research expenses.

### **Regulations**

NA

### **Ethics/Bar Cases and Opinions**

NA

### **Secondary Sources**

NA

### **Attorney General Opinions**

NA

### **Trial Court Documents (motions and trial court orders)**

NA

### **Briefs**

NA

## NEW YORK

### Statutes

NA

### Cases

Bell v. Helmsley, 2003 N.Y. Slip Op. 50866(U), 2003 WL 21057630 (N.Y. Sup. Ct. Mar. 27, 2003)

An attorney's time spent performing computerized research is properly compensable. However, the cost of the computer service used in the research is no more reimbursable than the cost of the West's Keynote Digests and the volumes of the Federal Reporter and the Federal Supplement that lawyers used to use (and many still use) to find authority and research issues of law. Westlaw fees are simply an item of overhead, and as such should be built into the fees charged, rather than unbundled and reimbursed separately.

Noghrey v. Town of Brookhaven, 17 Misc. 3d 1102(A), 851 N.Y.S.2d 59, 2007 N.Y. Slip Op. 51798(U), 2007 WL 2780345 (N.Y. Sup. Ct. 2007) at 6 (2007)

The Court finds that under the facts and circumstances of this matter and in view of the award herein, computerized research fees are duplicative and inappropriate.

Matter of Estate of Sykes, 161 Misc. 2d 978, 615 N.Y.S.2d 825, 826, 1994 WL 450309 (N.Y. Sur. 1994)

Furthermore, since counsel cannot recover a fee in excess of the agreed upon contingent fee for legal research done by counsel or another (see Matter of Clinton, 157 Misc.2d 506), there is no basis to allow counsel to be compensated for computer assisted research in contingent fee cases.

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

NA

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

#### Trial motion

Bell v. Helmsley,

Plaintiff's Post Trial Motion Attorney's Fees, 2003 WL 24175848 (N.Y. Sup. Ct. Mar. 27, 2003)

#### Trial order

In re Lemmie, 2008 N.Y. Slip Op. 31294(U), 2008 WL 2018235 (N.Y. Sur. Mar. 24, 2008).

Vertis Inc. v. Active Media Services, Inc. 600289/2005

2006 WL 4758727 (N.Y. Sup. Ct. Aug. 23, 2006)

Stating there is a split of authority as to recovery of costs for CALR.

**Briefs**

NA

## NORTH CAROLINA

### **Statutes**

N.C.G.S.A. § 95-25.22 Recovery of unpaid wages

(d) The court, in any action brought under this Article may, in addition to any judgment awarded plaintiff, order costs and fees of the action and reasonable attorneys' fees to be paid by the defendant. In an action brought by the Commissioner in which a default judgment is entered, the clerk shall order attorneys' fees of three hundred dollars (\$300.00) to be paid by the defendant.

### **Cases**

NA

### **Regulations**

NA

### **Ethics/Bar Cases and Opinions**

NA

### **Secondary Sources**

NA

### **Attorney General Opinions**

NA

### **Trial Court Documents (motions and trial court orders)**

BROWN v. WESCO SIGNS, INC. 2006 WL 4660093 (N.C. Super.), April 24, 2006

BROWN v. WESCO SIGNS, INC. 2005 WL 5601110 (N.C. Super.), December 15, 2005

In action to recover unpaid wages, and pursuant to N.C.G.S.A. § 95-25.22, court award included expenses of computerized legal research.

### **Briefs**

NA

## NORTH DAKOTA

### Statutes

NA

### Cases

Heng v. Rotech Med. Corp., 2006 ND 176, 720 N.W.2d 54, 66, 25 IER Cases 120, 2006 WL 2136097 (N.D. 2006)

... we conclude that electronic legal research fees are a component of attorney fees and cannot be separately taxed as costs.

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

NA

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

NA

### Briefs

#### **Heng v. Rotech Medical Corp.**

Appellants' Reply Brief, 2006 WL 2688082 (N.D. March 17, 2006)

Brief of Appellee, Debora Heng, 2006 WL 857629 (N.D. March 06, 2006)

Appellants', Rotech Medical Corporation and Psi Healthcare, Inc., d/b/a Arrowhealth Medical Supply Brief, 2005 WL 4733473, (N.D. 2005)

## OHIO

### Statutes

NA

### Cases

Bryant v. Walt Sweeney Auto., Inc., 2002-Ohio-2577, 2002 WL 1071943 (Ohio Ct. App. May 31, 2002)

The litigation expenses included not only the expert-witness fees, but also charges for photocopying, facsimiles, mileage, parking, computerized legal research, postage, trial exhibits, a trial transcript, and deposition transcripts. The Ohio Supreme Court has held that litigation expenses cannot be taxed as costs, unless specifically provided for by statute. The Bryants have not provided, nor have we found, any statutory authority requiring that the foregoing itemized expenses be treated as costs.

Lee v. Pelfrey, 81 Ohio Misc. 2d 52, 57, 675 N.E.2d 80, 1996 WL 670393 (Ohio Com. Pl. 1996)

The costs for the plaintiff to obtain her own medical records, the costs of the plaintiff's computer legal research, and the witness fees paid by the plaintiff for discovery depositions of the defendants' experts are not costs which will be awarded to the plaintiff

Fulwiler v. Schneider, 104 Ohio App. 3d 398, 662 N.E.2d 82, 91, 1995 WL 570582 (Ohio Ct. App. 1995)

Further, the trial court also taxed as costs the expense of obtaining certain financial documents and medical records, the fee for a copy of appellee's own deposition, and expenses for photocopying and computer research. All of these items are part of the expense of litigation and are not properly taxable as costs under any statute.

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

NA

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

Fisher v. Barker, 2004 WL 5025759 (Ohio Com.Pl.), February 18, 2004.

Johnson v. Roberts, 2003 WL 25412112 (Ohio Com.Pl.), October 31, 2003  
CALR expenses not recoverable cost;

### Briefs

NA

## OKLAHOMA

### **Statutes**

Okla. Stat. Ann. tit. 12, § 936 (West); Attorney fees taxed as costs in actions for labor or services rendered or on certain accounts, bills and contracts;

In any civil action to recover for labor or services rendered, or on an open account, a statement of account, account stated, note, bill, negotiable instrument, or contract relating to the purchase or sale of goods, wares, or merchandise, unless otherwise provided by law or the contract which is the subject of the action, the prevailing party shall be allowed a reasonable attorney fee to be set by the court, to be taxed and collected as costs.

### **Cases**

Oklahoma Natural Gas Co. v. Apache Corp., 355 F. Supp. 2d 1246, 2004 WL 3104818 (N.D. Okla. 2004) applying OK law:

Charges for access to computer legal research database were recoverable in attorney fee award under Oklahoma fee-shifting statute, as a substitute for attorney time. 12 Okl.St. Ann. § 936.

Atwood v. Atwood, 2001 OK CIV APP 48, 25 P.3d 936, 952, 2001 WL 491955 (Okla. Civ. App. 2001)

Trustee who prevailed on summary judgment against beneficiaries claims for breach of trust duty was not entitled to recover costs incurred by his attorneys for computer-assisted legal research and miscellaneous office supplies; such costs were part of the attorneys' overhead, and not expenses

### **Regulations**

NA

### **Ethics/Bar Cases and Opinions**

NA

### **Secondary Sources**

NA

### **Attorney General Opinions**

NA

### **Trial Court Documents (motions and trial court orders)**

NA

### **Briefs**

NA

## OREGON

### Statutes

NA

### Cases

Bruce v. Cascade Collections, Inc., 199 Or. App. 59, 69, 110 P.3d 587, 2005 WL 845377 (Or. Ct. App. 2005)

Substantial discussion, but the holding is ambiguous.  
The question of whether computerized legal research is recoverable under Oregon law either as an item of cost or as a component of attorney fees appears to be unresolved by any published decision. Nor will it be resolved here.

Robinowitz v. Pozzi, 127 Or. App. 464, 872 P.2d 993, 997, 1994 WL 141190 (Or. Ct. App. 1994)

Attorney fees are for the reasonable value of legal services related to the prosecution or defense of an action. ORCP 68A(1). When the attorney's accounting and billing system attributes special overhead expenses, such as photocopying charges, long distance telephone charges and postage, to individual clients, and recovery of those expenses is made by direct billing to the client for whom the charges are incurred and not by an addition to the attorney's hourly rate, it is appropriate to include those charges in setting a reasonable attorney fee

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

NA

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

Harkson v. PGF Care Center, Inc., 0409-09742,  
Defendant's Statement of Costs and Disbursements, 2006 WL 4532943, (Jan. 12, 2006)  
Seeking costs of Westlaw research in amount of \$81.96

Harkson v. PGF Care Center, Inc., 2006 WL 4532944 (Or. Cir. Jan. 26, 2006)  
Trial court's order indicating that *Bruce v. Cascade* was closest Oregon's courts came to the issue regarding and they did not decide the issue.

### Briefs

NA

## PENNSYLVANIA

### Statutes

NA

### Cases

NA

### Regulations

NA

### Ethics/Bar Cases and Opinions

Phila. Eth. Op. 87-23; BILLING OF COST OF COMPUTER-AIDED LEGAL RESEARCH

In summary, the practice of billing for computer-aided legal research is permissible in the contingent fee context as long as the fee agreement explicitly spells out that such costs will be billed to the client, and provides an explanation of the nature of computer-aided legal research.

PA Eth. Op. 2006-30; COMPUTER ASSISTED LEGAL RESEARCH: RECOUPING CHARGES; FEE AGREEMENT; DISCLOSURE; OFFICE OVERHEAD

Gives formula for per minute or suggests charge based on monthly usage. Client is to be informed of the variability if the latter.

### Secondary Sources

Thomas G. Wilkinson, Ethics Digest, Pa. Law., September-October 2006, at 47 (2006).

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

NA

### Briefs

NA

## RHODE ISLAND

### Statutes

NA

### Cases

Shoucair v. Brown Univ., CIV.A. PC96-2896, 2004 WL 2075159 (R.I. Super. Sept. 9, 2004)

Courts have “customarily disallowed or reduced certain expenses including computerized legal research, copying, telephone calls, postage and travel...” Weinberger v. Great N. Nekoosa Corp., 801 F. Supp. 804, 827, Fed. Sec. L. Rep. P 96958, 1992 WL 187754 (D. Me. 1992) (declining to permit reimbursement for computer research, finding it attributed to firm overhead). Accordingly, this Court will not permit Siegel to be reimbursed for the Lexis/Nexis research.

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

NA

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

NA

### Briefs

NA

## SOUTH CAROLINA

### Statutes

NA

### Cases

NA

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

NA

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

NA

### Briefs

NA

## SOUTH DAKOTA

### **Statutes**

S.D. Codified Laws § 15-17-37; Prevailing party to recover disbursements--Taxation of disbursements

The prevailing party in a civil action or special proceeding may recover expenditures necessarily incurred in gathering and procuring evidence or bringing the matter to trial. Such expenditures include costs of telephonic hearings, costs of telephoto or fax charges, fees of witnesses, interpreters, translators, officers, printers, service of process, filing, expenses from telephone calls, copying, costs of original and copies of transcripts and reporter's attendance fees, court appointed experts, and other similar expenses and charges. These expenditures are termed "disbursements" and are taxed pursuant to § 15-6-54(d).

### **Cases**

Casillas v. Schubauer, 2006 SD 42, 714 N.W.2d 84, 91, 2006 WL 1132066 (S.D. 2006)

More importantly, the expense for non-computerized legal research is not taxable and is not within "other similar expenses and charges." We hold that computerized legal research fees cannot be taxed as disbursements under § 15-17-37.

Duffy v. Circuit Court, Seventh Judicial Circuit, 2004 SD 19, 676 N.W.2d 126, 133, 2003 WL 23220997 (S.D. 2004)

Charges for electronic research services such as Lexis or Westlaw will not be allowed unless by prior written court order upon a showing of special need.

### **Regulations**

NA

### **Ethics/Bar Cases and Opinions**

NA

### **Secondary Sources**

NA

### **Attorney General Opinions**

NA

### **Trial Court Documents (motions and trial court orders)**

NA

### **Briefs**

#### **Casillas v. Schubauer**

Appellants' Reply Brief, 2006 WL 1830608 (S.D. January 30, 2006).

## TENNESSEE

### Statutes

NA

### Cases

NA

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

NA

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

NA

### Briefs

NA

## TEXAS

### **Statutes**

NA

### **Cases**

Shenandoah Associates v. J & K Properties, Inc., 741 S.W.2d 470, 486, 1987 WL 20576 (Tex. App. 1987)

It is the general rule in Texas that expenses incurred in prosecuting or defending a suit are not recoverable as costs or damages unless recovery of those items is expressly provided for by statute, is available under equitable principles, Phillips v. Wertz, 579 S.W.2d 279, 280 (Tex.Civ.App.-Dallas 1979, writ ref'd n.r.e.), or is expressly provided for by contract.

### **Regulations**

NA

### **Ethics/Bar Cases and Opinions**

NA

### **Secondary Sources**

Michael Northrup, Restrictions on Class-Action Attorney-Fee Awards, 46 S. Tex. L. Rev. 953 (2005) (*Shenandoah* discussed).

### **Attorney General Opinions**

NA

### **Trial Court Documents (motions and trial court orders)**

NA

### **Briefs**

NA

## UTAH

### **Statutes**

NA

### **Cases**

Stevenett v. Wal-Mart Stores, Inc., 977 P.2d 508, 365 Utah Adv. Rep. 10, 1999 UT App 80 (1999).

When no statute governs a particular item of expense, the allowance or disallowance of a particular item as a cost falls within the sound discretion of the trial court

### **Regulations**

NA

### **Ethics/Bar Cases and Opinions**

UT Eth. Op. 02-01, Utah State Bar Ethics Advisory Opinion Committee.

The various state bar ethics opinions summarized in the Appendix to this opinion have invariably concluded that litigation-financing arrangements similar to those described above are permissible, provided the attorney remains obligated on the loan and there is full disclosure to the client

### **Secondary Sources**

NA

### **Attorney General Opinions**

NA

### **Trial Court Documents (motions and trial court orders)**

Johnson v. Batchler, 2004 WL 5548161 (Utah Dist.Ct.) September 28, 2004.

Court denied costs of computer assisted legal research.

### **Briefs**

NA

## VERMONT

### Statutes

NA

### Cases

NA

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

NA

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

NA

### Briefs

NA

## VIRGINIA

### Statutes

Va. Sup. Ct. R. § 4. COMPUTERIZED LEGAL RESEARCH SERVICES RULE

### Cases

Advanced Marine Enterprises, Inc. v. PRC Inc., 256 Va. 106, 501 S.E.2d 148, 160, 14 IER Cases 4, 1998 WL 312881 (1998)

AME takes exception to the chancellor's award of expert witness fees, and expenses for express mail service, messengers, meals, law clerk "temporaries," computer-based legal research, "library research," photocopies, parking, taxicabs, telephone calls, and transcripts. We conclude that the chancellor abused his discretion in awarding PRC recovery for the above-challenged expenses. Generally, unless otherwise specified by statute, a trial court's discretion to award costs under Code § 18.2-500, or under the relevant provisions of Code §§ 14.1-177 through -201, is limited only to those costs essential for prosecution of the suit, such as filing fees or charges for service of process.

Sikh Found. of Va. v. Singh, 1998 WL 972276 (Va. Cir. Ct. July 17, 1998).

...the Virginia Supreme Court found that it was an abuse of discretion for the trial court in that case to award "expert witness fees, and expenses for express mail service, messengers, meals, law clerk "temporaries", computer-based legal research, "library research," photocopies, parking, taxicabs, telephone calls, and transcripts." Id. The Court concluded that the Chancellor had abused his discretion, and that under the Code the taxable costs would be limited to those costs essential for prosecution of the suit

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

NA

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

NA

### Briefs

NA

## WASHINGTON

### Statutes

### Cases

Absher Const. Co. v. Kent Sch. Dist. No. 415, 79 Wash. App. 841, 848, 917 P.2d 1086, 1995 WL 866175 (Wash. Ct. App. 1995)

Finally, we award computer research expenses in the amount of \$1,633.74. We consider such expenses to be an aspect of attorney fees, so long as the expenses are reasonably incurred. The use of computer -aided legal research is a norm in contemporary legal practice. Properly utilized, it saves the client attorney fees which would otherwise be incurred for more time consuming methods of legal research.

Louisiana-Pac. Corp. v. Asarco Inc., 131 Wash. 2d 587, 934 P.2d 685, 694, 1997 WL 166275 (1997)

I can find no logic in the practice which shifts the cost of a reasonable attorney's fee when calculated on an hourly rate or contingency to the losing party, but which does not similarly shift the burden of paying those out-of-pocket expenses necessarily incurred. Were such the rule, prevailing parties who were encouraged to litigate by legislative promises of compensation for "reasonable attorneys' fees" would not be made whole and, in many instances, would not be able to undertake the litigation, much less prosecute it to a successful conclusion.

### Regulations

NA

### Ethics/Bar Cases and Opinions

NA

### Secondary Sources

NA

### Attorney General Opinions

NA

### Trial Court Documents (motions and trial court orders)

NA

### Briefs

Louisiana-Pacific Corp. v. Asarco Inc

Plaintiffs' Brief in Support of Award of Litigation Expenses Under RCW 70.105D.080, 1996 WL 33683388, (Wash. Apr 12, 1996).

Asarco's Brief in Opposition to Award of Expanded Litigation Expenses Under RCW 70.105D.080 1996 WL 33683389, (Wash. May 01, 1996).

## WEST VIRGINIA

### **Statutes**

NA

### **Cases**

NA

### **Regulations**

NA

### **Ethics/Bar Cases and Opinions**

NA

### **Secondary Sources**

Mark Bassingthwaite, Esq., What Some Clients Hope You Don't Know About Billing, W. Va. Law., July/August 2005, at 42,

Author suggests that the best practice is to include computer assisted legal research costs in a fee agreement.

### **Attorney General Opinions**

NA

### **Trial Court Documents (motions and trial court orders)**

NA

### **Briefs**

NA

## WISCONSIN

### **Statutes**

NA

### **Cases**

NA

### **Regulations**

NA

### **Ethics/Bar Cases and Opinions**

NA

### **Secondary Sources**

Dianne Molvig, Sizing Up Your Business Practices, Wis. Law., February 2006, at 8.

Presents results of survey of Wisconsin firms and attorneys and indicates overwhelming number of firms do not bill their clients for computer assisted legal research costs.

### **Attorney General Opinions**

NA

### **Trial Court Documents (motions and trial court orders)**

Reid v. Benz, 1999 WL 34828528 (Wis.Cir.), Dec 01, 1999. (rev'd on appeal).

Award of costs included \$250.00 for computerized legal research expense.

### **Briefs**

Beudette v. Eau Claire County Sheriff's Department

Combined Brief of Respondents and Cross-Appellants, 2003 WL 23314395 (Wis.App. III Dist, February 12, 2003)

Arguing that award of costs for \$1,675.00 in Westlaw research was appropriate given that extensive nationwide research was needed because Wisconsin courts have not previously ruled on the legal issue, and the trial court recognized this fact indicating that substantial research was involved in the case. Therefore, it was necessary to research the law of other jurisdictions for guidance on this issue.

## WYOMING

### **Statutes**

NA

### **Cases**

Snyder v. Lovercheck, 992 P.2d 1079, 1092, 1999 WL 1132073 (Wyo. 1999)

Court concluded that computer research expenditures are included within attorney's fees and are not taxable as costs

### **Regulations**

NA

### **Ethics/Bar Cases and Opinions**

NA

### **Secondary Sources**

NA

### **Attorney General Opinions**

NA

### **Trial Court Documents (motions and trial court orders)**

NA

### **Briefs**

NA