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. 8th 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.”**

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.**
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:
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:**

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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
"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."

"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.
ARIZONA

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

Cases
   “… attorneys’ fees awards can include the cost of computerized legal research.”

   “… 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

Attorney General Opinions
NA

Trial Court Documents (motions and trial court orders)

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

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**
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**
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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


Cases
"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"

"Fees for legal research, computer or otherwise, may not be recovered under section 1033.5"

"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
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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


Attorney General Opinions
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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)

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
COLORADO

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<td>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.</td>
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<td>“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.”</td>
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<td>“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.”</td>
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<td>“Numerous courts have allowed for the recovery of services of paralegals, law clerks, staff, and the costs of computerized legal research”</td>
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<td>Denson v. P. F. Chang’s China Bistro, Inc. 05CV5048,</td>
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Example of how Westlaw charges were broken down per min.

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

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

("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**

**Pueblo Bancorporation v. Lindoe, Inc.**
Appellant's Reply Brief, 2001 WL 35960166 (Colo.App.)

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

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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
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Trial Court Documents (motions and trial court orders)
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Briefs
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"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

"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


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**

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DISTRICT OF COLUMBIA

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Attorney General Opinions
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Trial Court Documents (motions and trial court orders)
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Briefs
NA
FLORIDA

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

Cases

"[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."


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."


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

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

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

GEORGIA

Statutes
NA

Cases
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
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Secondary Sources
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Attorney General Opinions
NA

Trial Court Documents (motions and trial court orders)
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Briefs
NA
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.

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.


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
...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.


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),


Attorney General Opinions
NA

Trial Court Documents (motions and trial court orders)
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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' 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),
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.

Held that the cost for computer research is not recoverable

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.

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.

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.

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
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

“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”.

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,”

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.

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

Regulations
NA

Ethics/Bar Cases and Opinions
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Attorney General Opinions
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Trial Court Documents (motions and trial court orders)
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Briefs
Van Winkle v. Nash,
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.
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;
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**

**Attorney General Opinions**
NA

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

**Briefs**
NA

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


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.

Berman v. Carroll


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)

("There is no authority for taxing electronic research as actual costs.")

Estate of Marvin H. Page

Briefs

Churchill v. Swarthout
“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.

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.”

Tribal orders

Scott v. forest Lake Chrysler-Plymouth-Dodge

Dymit v. Indep. School District #717
CALR not awarded as costs
Naterra Land Inc. v. Dingmann,
“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

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
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

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

  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).


*Trial court orders*


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

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
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
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.

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.

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.

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

Statutes
Okl. 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
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.

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
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.

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.
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.

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
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<td>Briefs</td>
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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).

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.

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.
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
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.
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.

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.

Court denied costs of computer assisted legal research.
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
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.

…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.
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.

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.
Mark Bassingthwaighte, 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.
Wisconsin

Statutes
NA

Cases
NA

Regulations
NA

Ethics/Bar Cases and Opinions
NA

Secondary Sources

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)

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

Briefs

Beudette v. Eau Claire County Sheriff's Department

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
  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)
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