

### Judgments—Court Costs—Costs.

Costs may be taxed in two ways: by the court as part of the judgment or by the prevailing party filing his bill of costs, in which event the costs do not become taxed until the five days allowed the dissatisfied party have elapsed and no motion to have the same taxed by the court has been filed. In case the motion is filed the costs are not taxed or ascertained until taxed by the court.

Harry W. Hill, Esq.,  
Clerk of District Court,  
Billings, Montana.

December 10, 1929.

My dear Mr. Hill:

You have requested my opinion on the following question:

“Must the clerk comply with the provisions of Section 9806 with reference to the time in respect to inserting the costs in a judgment, regardless of the time allowed the dissatisfied party to file notice of motion to have the costs taxed by the court as provided in Section 9803?”

Sections 9803 and 9806 provide as follows:

“The party in whose favor judgment is rendered, and who claims his costs, must deliver to the clerk, and serve upon the adverse party, within five days after the verdict or notice of the decision of the court or referee or, if the entry of the judgment on the verdict or decision be stayed, then before such entry is made, a memorandum of the items of his costs and necessary disbursements in the action or proceeding, which memorandum must be verified by the oath of the party, or his attorney or agent, or by the clerk of his attorney, stating, that to the best of his knowledge and belief the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding. A party dissatisfied with the costs claimed may, within five days after notice of filing of

the bill of costs, file and serve a notice of a motion to have the same taxed by the court in which the judgment was rendered, or by the judge thereof at chambers.”

“The clerk must include in the judgment entered up by him, any interest on the verdict or decision of the court, from the time it was rendered or made, and the costs, if the same have been taxed or ascertained; and he must, within two days after the same are taxed or ascertained, if not included in the judgment, insert the same in a blank left in the judgment for that purpose, and must make a similar insertion of the costs in the copies and docket of the judgment.”

I can see no ambiguity in these two statutes as Section 9806 simply requires the clerk to enter the costs as part of the judgment within two days after they are taxed or ascertained. Costs may be taxed in two ways, that is, by the court as part of the judgment or when not taxed by the court as part of the judgment, by the prevailing party filing his bill of costs as provided by Section 9803, in which event the costs do not become taxed until the five days allowed the dissatisfied party have elapsed, and no motion to have the same taxed by the court has been filed. In case the motion is filed the costs are not taxed or ascertained until taxed by the court as provided by the statute.

Very truly yours,  
L. A. FOOT,  
Attorney General.