

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

February 24, 2017

Opinion No. 17-14

Witness Fees in Civil Cases

Question 1

If a state or local government employee is subpoenaed to testify in a civil trial regarding a matter that the government employee has knowledge of based on the scope and course of his or her employment, what witness fee(s) is/are to be paid by the party issuing the subpoena?

Opinion 1

Witnesses are entitled to a per diem and reimbursement for certain expenses as provided by Tenn. Code Ann. §§ 24-4-101 through 107. Since the costs of witness attendance are ordinarily taxable to the non-prevailing party, the party who summoned the witness may or may not be the party who must pay the witness fees.

Question 2

Is the government employee or the government employer entitled to charge the party issuing the subpoena any attendance or other fee, i.e., an hourly rate based upon the employee's salary, for attending a civil trial pursuant to a witness subpoena?

Opinion 2

No. Tennessee law does not provide for the payment of any witness fees or compensation other than the fees and compensation allowed under Tenn. Code Ann. §§ 24-4-101 through 107.

ANALYSIS

Tennessee Code Annotated § 24-4-101 provides for compensation for witnesses testifying under summons in a court of record in a civil matter:

Witnesses in courts of record attending under subpoena in a civil matter shall receive upon request to the clerk thirty dollars (\$30.00) per day for such attendance. In addition, when such witness resides at a distance of greater than ten (10) miles from the court, the witness shall, upon request to the clerk, also receive reimbursement for travel expenses for each mile traveled when going to and returning from such court at the rate allowable under the state comprehensive travel regulations in effect at that time.

Tenn. Code Ann. § 24-4-101(b).

Witnesses under summons who are required to travel out-of-county or from out-of-state to testify at a trial are entitled—in addition to the per diem allowance for attending the trial—to expense reimbursement for lodging, meals, and mileage at statutorily specified rates, and to the per diem allowance for each day of travel required to go to and return from the trial. Tenn. Code Ann. § 24-4-102.

Every witness summoned to testify before a judge of the court of general sessions is entitled to compensation of 50¢ for each day of attendance and to 5¢ per mile for travel to and from court when summoned to attend in a county other than the witness's own county. Tenn. Code Ann. § 24-4-103.

These fees and reimbursements are the only compensation to which any witness testifying under summons in a civil trial is entitled. The controlling statutory provisions do not differentiate between witnesses who are government employees, whether testifying regarding matters within the scope of their employment or not, and witnesses who are not government employees.

Because these witness fees are statutorily directed, the fees are nondiscretionary costs which the successful party in a civil action is ordinarily entitled to recover:

The successful party in all civil actions is entitled to full costs, unless otherwise directed by law or by a court of record, for which judgment shall be rendered.

Tenn. Code Ann. § 20-12-101; *see also* Tenn. Code Ann. § 20-12-105; Tenn. R. Civ. P. 54.04.

Thus, it is usually the non-prevailing party who is required to pay allowable witness compensation as part of the judgment.¹ But the non-prevailing party—i.e., the party responsible for paying the fees—may or may not be the party who caused the witness subpoena or summons to issue. In other words, payment of the witness fees is not necessarily the obligation of the party who compelled the testimony of a witness.

¹ *But see* Tenn. Code Ann. § 24-4-104 (witness may seek recovery of fees from the party that summoned the witness if the costs cannot be made out of the person against whom the fees have been adjudged).

In sum, Tennessee law does not provide for the payment of any witness fees or compensation other than what is specified in Tenn. Code Ann. §§ 24-4-101 through 107. And that statute provides a per diem for witness attendance, but does not permit a state or local government employee or government employer to charge the party compelling the witness testimony of a government employee any fee—such as a fee representing wages or salary for the time spent attending the trial—over and above the statutory per diem.

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