

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 08-cv-00916-DME-MJW

DENISE M. SEYBOLD,

Plaintiff,

v.

JOHN COOKE, Sheriff of Weld County, Colorado,
in his individual and official capacity,

Defendant.

ORDER AWARDING COSTS TO DEFENDANT

This matter comes before the Court on Defendant's Motion for Award of Costs (Doc. 280). Having considered the motion, Plaintiff's Response (Doc. 282), and Defendant's Reply (Doc. 283), the Court hereby GRANTS the motion.

The Court may award costs of litigation to the prevailing party under Federal Rule of Civil Procedure 54(d)(1). Whether or not to award costs "is within the court's sound discretion," but "Rule 54 creates a presumption that the district court will award the prevailing party costs." Rodriguez v. Whiting Farms, Inc., 360 F.3d 1180, 1190 (10th Cir. 2004). To deny costs to the prevailing party "is in the nature of a severe penalty and there must be some apparent reason to penalize the prevailing party if costs are to be denied." Id. (quoting Klein v. Grynberg, 44 F.3d 1497, 1507 (10th Cir. 1995)).

The Plaintiff has argued that costs should not be awarded here, due to her indigent status and the fact that the EEOC issued a finding of probable discrimination in her case. These are compelling reasons, but the Tenth Circuit has held that, as the

denial of costs is in the nature of a penalty against the prevailing party, the losing party bears the burden of showing why such a penalty is appropriate. Rodriguez, 360 F.3d at 1190-91. Plaintiff has not made such a showing.

Therefore, it is hereby **ORDERED**:

- that Defendant's Motion for Award of Costs under Fed. R. Civ. P. 54(d)(1) is GRANTED;
- Defendant shall submit a Bill of Costs to the Clerk within 14 days of this Order, according to the terms of Local Rule 54.1 of this Court.

Dated this 16th day of April, 2010.

BY THE COURT:

s/ David M. Ebel

U. S. CIRCUIT COURT JUDGE