

CCAP Panel Compensation Claim Manual

A collection of claim policies, rules & practices for appointed counsel practicing in the Third & Fifth District Courts of Appeal

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Introduction:

This guide to compensation claim policies and procedures is alphabetical by topic. Topic links within the document and to source web pages are provided for convenience while viewing the online PDF-interactive version.

The policies described here are subject to change with or without notice. Please be alert for modifications.

Many of the statewide policies and procedures within this manual are the same for all projects, however some policies have been modified to fit specific practices and policies in the Third and the Fifth District Courts of Appeal and CCAP. Appointed counsel is expected to be familiar with the policies, rules & practices contained within this guide.

It is counsel's responsibility to provide explanations for any over-guideline or other extraordinary time/expense claimed. Familiarity with policies, procedures and statewide guidelines will assist counsel to identify normal versus extraordinary claims. A claimed item may be paid if it is over the guideline, but an explanation is always required.

**CCAP COMPENSATION CLAIM MANUAL
FOR PANEL ATTORNEYS
– POLICIES, RULES AND PRACTICES –**

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ABANDONMENTS – LINE 5

Abandonment motions should be claimed under “Other Motions,” Line 5. The informal guideline is presumptively 0.3 hours. For *Sade C./Phoenix H.* filings (*In re Sade C.* (1996) 13 Cal.4th 952 [no appellate issues can be identified in a dependency case; hereinafter referred to as *Sade C.*]; *In re Phoenix H.* (2009) 47 Cal.4th 835 [appellate procedures for *Sade C.* cases]), use Line 6 instead.

Time for drafted AOB work prior to an abandonment is now claimed on Line 6. In order for the project staff attorney to be able to evaluate the drafted statements and/or issues, please provide a copy of the draft to the assigned staff buddy along with the paper claim, or send/fax it to the staff buddy if submitting an eClaim.

ADMINISTRATIVE TASKS & EXPENSES – LINE 22

For appointments made on or after October 1, 2004, the final claim may include up to 1.0 hour of attorney time spent on case-related administrative or clerical tasks, such as copying, mailing, formatting the brief, or preparing the claim. Time should be claimed on Line 22; no other time should be claimed on this line. No explanation or detail of the time spent need be provided.

Other administrative expenses or overhead costs are not separately reimbursable. Examples include general office supplies; library upkeep; Lexis, Westlaw, or CD-ROM monthly fees; travel to and parking at libraries; copying of cases and statutes for research.

AIDOAC (Appellate Indigent Defense Oversight Advisory Committee)

The Appellate Indigent Defense Oversight Advisory Committee (AIDOAC) of the Judicial Council, is responsible for the oversight of the appointed counsel program. It makes policy recommendations to the Chief Justice and to the Administrative Presiding Justices regarding virtually every aspect of the program. Its members are appointed by the Chief Justice and include one justice from each of California’s six appellate courts, a member of the California Appellate Defense Council (CADC), two appellate project directors, and one at-large attorney member. It is staffed by the Judicial Council (JCC), or more specifically, the Appellate and Trial Court Services Division of that office (ACS). AIDOAC is committed to its efforts, working with the projects, to recruit and retain panel attorneys who do good work.

Notice re AOC name change to JCC: In July 2014 the Judicial Council of California formally dropped the name of “AOC” (Administrative Office of the Courts) for that staffing and folded them into the broader agency title of the Judicial Council or “JCC.” Nothing has changed other than the name and acronym. The unit or division of the Judicial Council where panel claims are processed continues to be the Office of Appellate Court Services, or “ACS.” We will be updating forms, articles and web pages on the CCAP website over time to reflect this change.

Claims audited by AIDOAC quarterly, are chosen at random. The audit process is not based on cost-benefit analysis; the process exists so that the state can be assured that the projects are

awarding compensation at a proper level. As a part of the audit process, AIDOAC receives from the project counsel's original claim and any attachments, the project's original recommendation, and selected case filings as requested by AIDOAC. A questionnaire to the attorney of record goes out when the claim is chosen. Counsel may take this opportunity to add additional explanations for anything unusual or over-guidelines in the claim. Unless there is some later adjustment in the claim, the attorney will usually hear nothing further from the committee.

In a few of the audited cases, the committee may not be satisfied that the project's recommendation was justified and may ask it for further explanation. The committee then decides whether an adjustment in the payment should be made. If the attorney owes money, JCC will make arrangements for repayment – either in one lump sum or in installments, and by direct payment or by deduction from future claims. Attorneys who decline to cooperate will have the sums automatically deducted from future claims at the JCC level. If the adjustment is in the attorney's favor, CCAP will submit a supplemental claim on the attorney's behalf.

APPEAL SUBJECT TO DISMISSAL

An appeal is subject to dismissal – i.e., termination before a decision on the merits – if basic requirements are lacking, such as jurisdiction, standing, or appealability, or if it can no longer materially affect the client's interests, as when, for example, it has become moot because of developments in the lower court or changes in the underlying situation, or the client has died or escaped. To ensure the attorney responds appropriately and does not end up doing non-compensable work, it is vital to notify CCAP immediately upon learning of the situation and to cease doing anything but urgent work on the case (such as an extension request to avoid missing a court deadline).

CCAP will help assess what if any action would be appropriate. The steps to be taken will depend on the situation. This might include notifying the court and/or proceeding until the court orders otherwise, abandoning, moving for abatement or dismissal, or seeking permission to continue the litigation despite the situation.

The court might elect to proceed with a moot or quasi-moot case if the issues are important and an opinion would provide guidance in similar cases: public interest can be considered. (*In re William M.* (1970) 3 Cal.3d 16, 23-25.) To avoid doing non-compensable work and ensure appropriate action, the attorney must contact CCAP immediately if a case appears possibly to be moot.

APPELLANT'S OPENING BRIEF – LINE 6

The guidelines are the sum of the allowance for the statement of case and facts and the briefed issues.

Time claimed for *Sade C./Phoenix H.* filings are now included here. In a People's appeal, the time appointed counsel spends preparing the respondent's brief should be included on this line.

Line 11 is for habeas corpus related work. Specifically, time for any investigation, research, and/or drafting connected to habeas or possible habeas claims should be included there, whether

or not the ultimate decision is to file a habeas petition. In a habeas appointment (a “stand-alone” case separate from the appeal), counsel’s petition or traverse filing is put on line 11, not line 6, but all other habeas-related time is put on the corresponding line categories. See [Billing Habeas Time and Expenses memo](#).

Time claimed for drafted AOB work prior to an abandonment is now be claimed on line 6. In order for the project staff attorney to be able to evaluate the drafted statements and/or issues, please provide a copy of the draft to the assigned staff buddy for our file.

The “filing date” for an opening brief is the file-stamp date. This is the date the court clerk enters in their online docket, and not a constructive filing date pursuant to the “mailing rule” (Rules of Court, rule 8.25(b)). Use of priority mail on or before the due date makes the brief timely, but the brief is not deemed “filed” on the date of mailing. As we cross from the end of one fiscal year to the next, it is particularly critical that the correct date is used so the claim is paid out of the correct pot of funds (prior fiscal year or next fiscal year), which is determined by the AOB filing date for interim claims. At critical times of the year, CCAP will verify court filing dates and correct the date to match the court’s docket.

It is helpful to provide any relevant information in an explanation regarding the complexity of the arguments which may assist the project staff in classifying the issue. For example, counsel should explain if research was conducted that is not reflected in the filed argument.

For every claim (both interim and final), attach a Use of Previous Briefing form to the claim (this is Step 7 in the eClaims program), reflecting the use of significant portions of sample arguments and/or the re-use of complex authorities and analysis from either a briefbank source or in the briefs and petitions filed in the same case. (This form is available on CCAP’s website under “[Forms](#).”) If this was the first time the prior briefing was used, provide comments regarding that fact, as the initial use of the argument will often take more time than its subsequent use. A brief description of the portion of the borrowed material is useful, for example: “Approximately 25% of the authorities in the sufficiency issue were borrowed from previous briefing I have written. That portion required approximately 1.5 hours to adapt to this case.” “Use of Previous Briefing” also includes copying of briefing within the same case (i.e., copying AOB paragraphs into the Petition for Review is a use of previous briefing).

See also [STATEMENT OF CASE, FACTS
ISSUE CLASSIFICATIONS](#)

ASSOCIATE COUNSEL, LAW CLERKS, PARALEGALS (use of)

Statewide policy: The projects expect that appointed counsel will read the entire record, will be conversant in the case and issues, and will report the extent and use of associate counsel time. Associate counsel’s time is added to the panel attorney’s, and the combined time entered on the applicable line of the claim form. An attachment indicating the breakdown of the associate counsel’s time spent is required, along with associate counsel’s name, state bar number, and signature. A form is available at http://www.capcentral.org/claims/forms/docs/assoc_counsel.pdf

AIDOAC policy states that associate counsel cannot be used for cases appointed on an assisted basis except under extraordinary circumstances and by first obtaining approval from the project director.

Third District policy: Under current court policies, appointed counsel must first obtain the court's approval for services rendered by associate counsel if the associate will sign any pleading or appear at oral argument. Route the request first to CCAP. The request should include: the name, bar number, address and telephone number of associate counsel; a statement that the compensation claim will be filed in the name of appointed counsel and bear counsel's signature; a statement that a separate claim will *not* be filed by associate counsel; the signature of appointed counsel and associate counsel; and, a proof of service for opposing counsel.

Paralegal and law clerk times are listed as expenses and itemized to indicate the service performed (for example, 4.1 hours on AOB, 2.8 hours on reply brief). The projects convert these expenses into equivalent attorney hours for purposes of assessing the overall reasonableness of the claim.

AUGMENTATIONS & RULE 8.340(b) CORRECTIONS – LINES 4 & 5

A motion to augment the record should be listed on Line 4; the guideline is 1.5 hours. Requests to correct omissions in the normal record (Cal. Rules of Court, rule 8.340(b)) filed in the superior court should be claimed under “Other Motions” Line 5; the informal guideline is 0.5 hour. A combined augmentation and correction request is claimed on Line 4 (note: a combined motion is permitted in the Fifth District only, not the Third).

Extension requests are not necessary in the Third and the Fifth when filing a motion to augment or correction requests, either separately or in combination with the record motion. No time will be recommended for an extension if included as part of the motion or request.

Serve a copy of the request to correct omissions and supplemental record requests (rule 8.340(b) requests) in the Court of Appeal as well as the parties. Both the Third and the Fifth will toll a due date for an appellant’s opening brief. These courts differ on whether other brief due dates are automatically tolled; refer to our comparison chart for these differences:

<http://www.capcentral.org/procedures/thirdvsfifth.asp>

BINDING

The cost of binding briefs filed in the Court of Appeal or Supreme Court is compensable, however, **the least expensive method reasonably available should be chosen**. The cost can be claimed with the photocopying expense if counsel paid for these services in a lump sum.

Service copies of briefs should not be bound, but should simply be stapled in one corner; no taping is needed. These include copies for the Attorney General, County Counsel, trial counsel, superior court, district attorney, CCAP, co-appellant’s counsel, minor’s counsel, client, appellate counsel’s file copy, etc.

Binding expenses for the court's copies are expected to fall within the current local rate allowance that is posted on the CCAP web site. Provide an explanation if counsel is unable to meet the current allowance: http://www.capcentral.org/claims/guidelines/bind_expenses.asp

Motions should not be bound nor have cover sheets for Third and Fifth District cases.

Sending receipts to CCAP for binding is no longer necessary. However, a good business practice would be to keep receipts or copies on file.

CERTIFICATION OF WORD COUNT

Preparing a certification of word count, as required by California Rules of Court, rule 8.360(b)(1), is an administrative task and is not separately compensable. It may be included in the actual time on Line 22, Administrative Tasks.

See also [ADMINISTRATIVE TASKS & EXPENSES](#)

CERTIORARI PETITION – LINE 14

CCAP can recommend compensation for certiorari work if counsel first obtains an expansion of their appointment. (Other districts may have a different practice.) Requests should address whether there is a reasonable chance of certiorari being granted. (This showing does not apply if the courts have authorized a period of time for a cert petition on a particular current issue.) That means there must be a strong, well-preserved federal issue that has important societal implications. Only a handful of certiorari petitions are filed in our cases each year, so it is an exceptional step. In Third District cases, CCAP must preview the expansion request and make a recommendation. In Fifth District cases, file an expansion request directly in that court. Compensation does not depend on whether Cert is ultimately granted.

CLAIM FORM

The manual (paper format) claim form can be found at <http://www.courts.ca.gov/9669.htm>

Use of the approved claim format is mandatory. Handwritten entries on the form are not acceptable. For this reason, many attorneys now opt to use the [eClaims](#) Internet version of the claim form. (Note: for your first eClaim with a project, you must call that project to request a new temporary password; you will be prompted to re-set the temporary password to a confidential password known only to you.)

See also [eCLAIMS](#)

COMMUNICATIONS – LINE 1 – (Client & Trial Attorney(s) Only)

The guideline for Line #1 (client and trial attorney) is 3.5 hours. The time claimed may be recommended if it is over the guideline, but an explanation is always required. *Be explicit about the number of hours, letters, calls, etc.* (If that is too onerous because of the extreme number, approximations will do -- e.g., "at least 50 letters from the client," "about 25 calls with the client.") While all recognize the importance of being responsive to an anxious or demanding

client, counsel will be expected to exercise reasonable control over the client and limit the number and mode of communications appropriately, such as responding monthly to a client's frequent letters, or at a critical stage of the appeal process. Frequent status reports to clients when nothing has happened in a case can be compensated only in a de minimis amount or somewhat more if the client is very difficult. Review of trial counsel's file should be placed under "Other Services" in Line #24.

Habeas Communication: Communications that are part of a habeas corpus investigation, research, and/or drafting connected to habeas or possible habeas claims should be included on Line 11. See [Billing Habeas Time and Expenses memo](#). (Caution, see [HABEAS CORPUS](#) topic: expansion of appointment is necessary beyond minimal investigation efforts.)

Family Communication That Facilitates Client Communication: Time spent facilitating client communication is compensable if reasonably necessary to handling the appeal. For example, contacting family members and others may be necessary to communicate with the young, disabled, the sex offense client who does not accept prison mail, or to translate. The attorney may include the time spent on client-facilitated family communication on Line 1 and provide an explanation that describes the client's need for assistance.

Other Family Communication: Communications that promote the attorney-client relationship but are unnecessary to the handling of the direct appeal (e.g., contacts with family members for the purpose of reassuring them, with prison officials on a client's medical condition, or with the client's attorney in a civil case) should be claimed on Line #23 (Other Communications) but is only minimally compensable and only when a detailed explanation is provided.

Communication in Dependency Cases: Appellate counsel for the minor is expected to contact the client, unless strong reasons for not doing so have been received from the minor's trial counsel, social worker, therapist, or others. To facilitate communication and to ensure against potentially harmful approaches to interviewing the minor (e.g., reviewing the underlying abuse or molestation allegations), appellate counsel should arrange the contact through the guardian ad litem, trial counsel or the social worker.

Client Visits: If normal methods of communication by letters or attorney-client confidential phone calls are unsatisfactory because of a client's illiteracy or a disability, such as deafness, blindness, mental difficulties, or other problems, a visit may be appropriate. If necessary, the attorney may be able to bring someone to facilitate the interview, such as an interpreter, sign language expert, psychologist, or a family member or friend. These services and expenses must be preapproved.

See also: [OTHER COMMUNICATIONS – LINE 23](#)
[OTHER SERVICES – LINE 24](#)
[PREAUTHORIZATION](#)

COMPUTER ONLINE RESEARCH

The cost of computer research is compensable only if the research required access to unique materials outside counsel's basic fee plan (California and U.S. Supreme Court cases). Receipts or invoices for the computer research are required according the JCC's issued policy:

For work performed after November 1, 1999, include only the cost of research that "requires access to unique materials that are outside a basic fee plan (California and U.S. Supreme Court cases) and is supported by documentation."

To the extent it is compensable, computer research is listed as an expense (Expense Line #6) and itemized by the service to which it is related (e.g., AOB, reply brief, etc.). The projects convert these expenses into equivalent attorney hours for purposes of assessing the overall reasonableness of the claim for that service. Attorneys must include an explanation of the need for these materials. Monthly fees for an online access library should not be included.

Legislative history done by a specialized service requires preauthorization; consult with CCAP before incurring the expense. See: [PREAUTHORIZATION](#)

CONSULTATION WITH PROJECT

The statewide guideline for consultation with the project is 4.0 hours if the case is assisted and 2.0 hours if independent. Specific justification for additional time should accompany the claim. If the staff attorney's records and memory do not adequately correspond with the claim for this time, more specific information as to time claimed may be requested.

COPIES FOR CLIENT

The original file and the transcripts belong to the client. Normally the transcripts should be sent to the client when the case is over using a carrier who will track the packaged transcripts to a non-P.O. box address; that postage is a compensable expense. (See more below.) The attorney's file is usually only sent upon request, and postage for that is also compensable. However, since the original file must be sent to the client, any *copying* of the file is for the attorney's own records and protection and is not a compensable expense. The attorney's *time* in copying and/or sending the file or record is overhead and not compensable.

The client will already have been sent copies of briefs and will have the original of letters sent by the attorney; thus the parts of the original file that need to be sent may often just consist of letters from the client, research notes, etc. In sending any document such as a brief or letter during or after the case, the attorney should advise the client clearly that the client is receiving the original and/or the client's only copy, and the client will be responsible for its safekeeping. If the attorney has done so, the attorney may appropriately ask the client to reimburse the cost of copying and sending duplicates if those are lost.

In *Wende, Ben C.*, and *Sade C./Phoenix H.* cases, the client is usually sent the record as soon as the brief is filed. Counsel may make copies of short records (e.g., 100 pages or less) or record excerpts for their own later possible use. However, any substantial copying requires specific justification and should be cleared with CCAP first.

Transcripts should be returned to the client/inmate via a service such as UPS or other similar service provider which provides both a tracking number and insurance as part of their service. "Tracking number" means you are given a package number and can track when it was delivered to the prison. UPS will not deliver to a Postal Box address; use the street address for delivery, which is listed in our [Facilities Phone Directory](#) under "Shipping Address." The package or box of transcripts must be properly marked with the attorney's name, return address and "Confidential Legal Mail." The return address must match the address listed with the State Bar.

Chapter 5, Article 41 of the [CDCR Dept. Operations](#) regs "Inmate Mail" does not say that a box or package cannot be accepted for delivery from an attorney (there are restrictions on boxes from other sources). If a prison refuses a UPS delivery because of their interpretation of the regs, then call the [prison litigation coordinator](#) for that institution (listed in our Facilities Phone Directory) and ask for assistance. See also, Art. 41, sec. 54010.12.1 "Persons with Whom Inmates May Correspond Confidentially."

DATES (starting and ending of services) / AOB DATE

Dates of services performed, as shown on the claim, should be checked for accuracy. The JCC uses these dates in making cash flow projections. The starting date is usually the appointment date. The ending date is when the last service is performed; the remittitur, final claim, etc., may be used.

The AOB date is the date the opening brief, *Wende* or *Sade C./Phoenix H.* brief is FILED by the court – DO NOT USE the mailing date per Rules of Court, rule 8.25(b). This date is particularly critical when crossing the State's fiscal year end (June 30) into a new budget year that begins on July 1; historically claims are paid according to which fiscal year the AOB (interim claim) or opinion (final claim) falls within, so the actual date of filing becomes critical to resolve which budget year a claim is paid from. At critical times of the year, CCAP will verify court filing dates and correct the date to match the court's docket.

A claim (either paper or eClaim) with a projected future date for filing the opening brief will be rejected by CCAP.

DEATH OF CLIENT

Counsel will need to obtain a certified copy of the appellant's death certificate (claim expense under "Other" Expense Line 9) to attach as an exhibit to the motion to abate. (For more information on abatement, read the article "Abatement of Criminal Appellate Proceedings Upon the Death of a Client" at: http://www.capcentral.org/procedures/client_matters/abatement.asp)

See also [APPEAL SUBJECT TO DISMISSAL](#)

DE MINIMIS OVERAGES

Small amounts over guidelines are subject to being cut, just like more substantial overages. For example, if guidelines are 2.5 hours and the claim is for 2.6 hours, the 0.1 hour difference will be subject to the same scrutiny and analysis that CCAP must exercise as a fiduciary as if the

claimed amount was a much greater difference over guidelines. Counsel, in turn, should explain any amount claimed over guidelines, whether 0.1 hr. or 10.0 hrs. (for example).

DIRECT DEPOSIT

Payments from the Administrative Office of the Courts may be directly deposited into an attorney's bank account. The form and FAQs are available from the JCC web site at:

<http://www.courts.ca.gov/4201.htm>

eCLAIMS

Claims can be transmitted to CCAP electronically via the Internet-interactive form found under Claims > eClaims Login on the CCAP web site. Once an eClaim is submitted, CCAP cannot correct errors on it. If CCAP contacts the attorney about a mistake, the CCAP claims administrator must unlock and unsubmit the claim first, and the panel attorney must then make the correction and re-submit the eClaim.

The eClaims program will automatically send an email to the panel attorney when the eClaim has been submitted for payment to the JCC.

How to access eClaims for the first time: You must receive a case appointment first. Then call CCAP to request a temporary eClaims password to get started. Next, access the eClaims program by going to CCAP's web site (www.capcentral.org). When you pass the mouse-cursor over the **Claims** menu item at the top, a pull-down submenu appears. Click on **eClaims** in the menu. At the login screen, type your login name (which is your State Bar number) and your temporary password. Then choose CCAP for **Project**, and click on **Login**. You will then be asked to create a permanent password – this is a confidential password created by you and known only to you. If you are presently using a password to access eClaims with a different project, you may use that same confidential permanent password. Here are the rules for permanent passwords: 1) Use 8 characters or more, without spaces; 2) Among those 8 or more characters, use upper-case letters *and* lower-case letters *and* at least one number. (For example: DAFFYdog123).

For your first few eClaims, please read *all* of the instructions contained on the various pages carefully. The program should be relatively self-explanatory. However, if you have any questions about your eClaim, please call the CCAP claims processor for assistance.

One of the best features of eClaims is that it gives the attorney the ability to begin a claim and then log in and out many times, saving and adding time to categories as the case progresses, and taking as much time as needed to complete it. Counsel can also inspect old claims and see the project's recommendations in each claim, along with the date the recommendation for payments were sent to the JCC. To edit or examine a claim that has already been started, click on the **Examine** button to the right of the claim listing on the **Locate Claims - Results** page.

All claims are *cumulative*. That means that if 1.0 hour was claimed for “**Line 1 Communications**” in the Interim Claim, and the Final Claim has an additional 1.5 hours, the Final Claim for “**Line 1 Communications**” must be the full 2.5 hours.

Do eClaims receive priority over paper claims? No. eClaims are gathered and processed in the order in which they were received along with the paper claims received by mail for that day. As is the current policy at CCAP, all claims – whether paper or electronic – will thereafter be processed as soon as possible. Counsel is free to choose whichever process feels more comfortable – paper or electronic – without fear that a paper claim will "sit" while an electronic claim will "zip" through.

The perceived increase in speed of processing for eClaims is most likely related to the fact that the projects receive eClaims either on the day submitted to them, or on the following business day, while a snail-mailed claim may take several days to reach the project. In addition, eClaims catches most errors so fewer claims have to be corrected, and if any correction does need to be made, it can be made online and the claim resubmitted electronically very quickly.

Why does CCAP sometimes unsubmit an eClaim? See: [UNSUBMIT REQUESTS IN ECLAIMS](#)

ESCAPE BY CLIENT

See also: [APPEAL SUBJECT TO DISMISSAL](#)

EXPERTS

Expert services must be preapproved and require receipts/invoices submitted with the claim. These services include investigators, physicians, psychiatrists, accident reconstruction experts, etc.

For translator services see [TRANSLATORS](#)

EXTENSION REQUESTS – LINE 3

The guideline is 0.5 hour per request, if reasonable. As a matter of statewide practice, second and subsequent routine extension requests will be reviewed for case-related reasons, not merely attorney workload statements.

Extension requests are not necessary in the Third and the Fifth when filing a motion to augment or rule 8.340(b) correction requests, either separately or in combination with or in addition to the record motion/request. No time will be recommended for an extension requested as subpart of or in addition to the augment motion or 8.340(b) record request. (Please note that a request for sealed documents may require an independent extension request, as these motions to do not normally automatically toll the AOB due date.)

FEDERAL HABEAS CORPUS

Federal habeas corpus work is not paid by the state. The attorney may be able to get an appointment from the federal court after filing a petition, and then the work on the petition should be included in the federal court fee.

FILINGS DUE TO ATTORNEY ERROR

Filings required by the attorney's own error are not compensable. Examples include an erratum letter, correction of defective proof of service, motion to withdraw an improvidently filed *Wende* or *Sade C./Phoenix H.* brief or other document, a motion for relief from default or for leave to file a late brief caused by counsel's negligence, and resubmission of a document when the first was rejected as defective. Payment for a motion to file a supplemental brief is not compensable if the issue should have been raised in the AOB (i.e., it is a fairly obvious issue). Similarly, printing and postage expenses and time for communicating with the court clerk, opposing counsel, or CCAP about the error are not compensable.

See also: [OTHER SERVICES – LINE 24](#)

FINAL CLAIMS

When to file: By state policy, final claims should be filed *within 180 days of the opinion date*. Later claim filings are not expected by the JCC. Counsel with late claims may be required to pay CCAP the cost of storage retrieval for files that have been archived off-site.

Final claims may be submitted when services are “completed.” This can mean when the opinion is filed, unless a petition for rehearing or review or other work is contemplated. (i.e., after the Supreme Court has granted review or the time within which a petition for review can be filed has expired). The filing of a final claim waives any claim for later services, unless they are genuinely unforeseeable. Final claims are also permitted when counsel has been relieved; the court's order date is the final date.

Supplemental claims, either interim or final, may be filed only after obtaining CCAP permission upon a showing of good cause. An example of good cause would be where counsel has had to perform substantial and unforeseeable required services after the remittitur has issued. Supplemental claims have also been permitted by the project to correct an earlier error in compensation.

CLARIFICATION for Petition for Review time claimed on final claims:

The petition must be *filed* before the project can evaluate and recommend any time for it.

A final claim with time claimed for a prematurely “filed” petition for review will be considered premature for project recommendation if the time for the finality of the opinion has not yet *expired* (i.e., 30 days following the opinion). The project must hold the claim until the 31st day (the first day the petition can be filed in the Supreme Court and the opinion is final), or counsel may choose to have the claim processed prior to the 31st day with a zero recommendation for line 13 (but no supplemental final claim will be permitted for the purpose of later recapturing this time).

A final claim with de minimus time claimed for consideration-only of a petition for review but counsel has NOT filed a petition for review, can be processed without holding the claim for the 31st day to elapse.

Remember, if review is granted, a new case number is issued and all new work is billed by appointed counsel directly to the California Supreme Court. (See topic: SUPREME COURT CASES)

All claims are cumulative. That means that if 1.0 hour was claimed for “Line 1 Communications” in the Interim Claim, and the Final Claim has an additional 1.5 hours, the Final Claim for “Line 1 Communications” must be the full 2.5 hours not just the new time.

See also: [RELIEVED COUNSEL](#)
[SUPPLEMENTAL CLAIMS](#)
[WENDE CLAIMS](#)
[FRIVOLOUS ISSUES](#)

FRIVOLOUS ISSUES

Introduction: This process applies only to Third District opinions that specifically designate an argument as “frivolous” – it does not apply if the opinion uses other words such as “meritless,” “waived,” “defaulted,” etc. (For historical background, read the Third District's opinion in *People v. Craig* (1991) 234 Cal.App.3d 1066; *Craig* is the origination of the Third District’s frivolous-issue policy in appointed counsel cases.)

Frivolous Issue Designation in Third District Opinions: If the Third District Court of Appeal designates an issue as “frivolous” in the opinion, CCAP must treat the argument as an unbriefed issue on the final compensation claim recommendation forwarded to the JCC for payment. In addition, no compensation can be recommended for that portion of a petition for rehearing that only challenges the court’s characterization of the argument as frivolous.

A panel attorney who disagrees with the court’s designation of an issue as frivolous may send CCAP (as part of the final compensation claim) a letter request to authorize payment for the argument, addressed to the Court of Appeal. The letter should explain why the argument was not frivolous. CCAP will forward to the court a copy of the final claim, along with counsel’s request to authorize payment and CCAP’s final claim recommendation. If CCAP believes that the issue should not be treated as frivolous, CCAP will recommend that the court grant counsel’s request for payment. Please remember that all aspects of CCAP’s claim recommendations will be subject to court review for appropriateness.

If the court grants the payment request, CCAP will treat the argument as a briefed issue and make an appropriate recommendation that, along with the final claim, will be forwarded to the JCC for payment.

If the court denies the request to authorize payment on the issue found to be frivolous, the final recommendation will treat the argument as an unbriefed issue and reflect an appropriate reduction in the time recommended for it, or as otherwise ordered by the court. The final claim, the final recommendation, and the payment order will then be sent to the JCC.

On the subject of frivolous issues, it is important to remember that the appointed attorney is the final arbiter of what issues are included in the brief, whether appointed on an assisted basis or an independent basis. The CCAP staff attorney may suggest arguments and approaches, but the appointed attorney retains control over which issues will be argued and how they will be presented. Independent thinking is strongly encouraged. On the other hand, CCAP requests that panel attorneys thoroughly consider any suggestions we may make during the appeal.

See also: [WAIVER](#)

GUIDELINES

The official statewide compensation claim guidelines are on the CCAP website at <http://www.capcentral.org/claims/guidelines/statewide.asp>
See individual topics in this manual for specific guidelines for given services and expenses.

The guidelines serve as benchmarks, not absolutes. They do not guarantee a minimum payment nor set an upper limit; payment can be below or above guidelines. The ultimate test is “reasonableness” which is: *What an experienced appellate attorney would find reasonably necessary for handling the case appropriately.* This is an individualized judgment for each case.

In recommending compensation, the projects are acting as fiduciaries on behalf of the state and have an obligation to apply established state policy as well as individual court policies. This obligation means determining the reasonableness of each claim as defined above. Performing this function requires information from panel attorneys on such matters as research not obvious from the face of the filings and use of previously briefed materials. It can also require “hard” decisions, such as whether the service was necessary and appropriate in the case, whether the case was over-briefed, whether the quality justifies payment at the guidelines, and whether counsel sought preauthorization when required. CCAP is committed to doing its best to apply the guidelines in an even-handed and consistent manner, but review of a claim is a mix of both objective and subjective factors (such as quality of briefing), and we understand that there may be differences in this assessment.

See also: [QUALITY CUTS](#)
[USE OF PREVIOUS BRIEFING](#)

HABEAS CORPUS – LINE 11

The court’s preapproval by expansion of appointment is needed in both the Third and Fifth Appellate Districts to be compensated for most work on a habeas corpus petition. In addition, counsel should always seek preapproval for expert services and all other unusual out-of-pocket expenses.

Note: Preauthorization and expansion of the appointment is one of the biggest differences between our courts and other courts/projects, and may lead to some confusion for compensation. All CCAP panel attorneys are expected to know [expansion requirements](#) for the Third and Fifth District cases.

Enter time on line 11 for all habeas-related work, including investigation, the expansion request, communication with the client and trial counsel to investigate and/or develop the claim, and preparation of the preauthorized writ petition. Preliminary time spent investigating potential habeas issues in the context of preparing an application to expand the scope of the appointment should be identified by each potential issue investigated. Habeas-related communication time – including project consultation time – goes on line 11. Exception: Providing information to the client or trial attorney, such as explaining how a habeas petition works or the reasons for deciding *not* to file a petition, should remain in line 1. For further information, see [Billing Habeas Time and Expenses memo](#).

For authorized petitions, the statewide guideline is 12.0 hours, but in our courts is limited by the amount of time preapproved and/or specified in the court’s expansion order. Counsel who project they will exceed their estimated time requested, or the court’s time limit specified in the expansion order, may reapply for additional time based on extraordinary circumstances. The complexity of the issues, the extent of investigation needed, and similar factors will also be taken into consideration in determining how much will be recommended, but cannot exceed what the court preapproved.

See also: [FEDERAL HABEAS CORPUS HABEAS CORPUS PETITION FILED IN SUPERIOR COURT OTHER COMMUNICATIONS – LINE 23 PREAUTHORIZATION](#)

HABEAS CORPUS PETITION FILED IN SUPERIOR COURT

An attorney working under an appellate appointment who does not move to expand their appointment and who files a habeas petition in the first instance in the superior court should ask the superior court for an appointment. This will allow payment by the superior court for all services, including preparation of the petition and appearances at an evidentiary hearing. If the attorney has good reasons for not wanting a superior court appointment (i.e., lack of trial experience in a case requiring an evidentiary hearing), then counsel should file the petition in pro. per., together with a request for appointment of counsel from the local bar.

If appointed by the superior court, the attorney cannot claim the difference between the rate paid by the superior court and the Court of Appeal. By accepting the superior court appointment, the attorney accepts that court’s payment arrangements, including the rate of pay.

HOURLY RATES

The hourly-rate system is three tiered depending primarily on the complexity of the case and the date of the appointment. For current rates, see our online Rate Information page: <http://www.capcentral.org/claims/rates.asp>

The same hourly rates apply if a *Wende, Ben C.*, or *Sade C./Phoenix H.* brief is filed.

Mixed-rate consolidated cases: If an attorney is appointed to a case at one hourly rate and later to a related case at a different hourly rate and the cases are later consolidated, the attorney ordinarily will be paid at the higher rate for all work done on both cases after the consolidation. Work done before the consolidation will be paid at the rate applicable to each case at the time of the appointment. Work billed to a particular Court of Appeal number cannot be paid at different hourly rates. Thus, regardless of which case number the court designates for subsequent pleadings, claims (interim or final) for post-consolidation work should be submitted under the number of the higher rate case. Pre-consolidation work should be billed to the number of the individual case. At the time of the consolidation, if no interim claim has yet been filed on the lower rate case, the attorney may file a claim for pre-consolidation work on that case. When the consolidated case is over, the attorney may file a final claim in the lower rate case to recoup any holdback and to seek payment for any pre-consolidation work not yet compensated. The higher rate case is subject to the normal schedule for submitting interim and final claims.

INTERIM CLAIMS

An interim claim usually should be submitted when the AOB is filed. A pre-AOB interim is authorized after record review is completed if the record is 7,500 pages or more. In exceptional circumstances, the Judicial Council/Appellate Court Services may approve other early claims on the project director's recommendation. The normal justification for an exception would be a long, unavoidable delay between appointment and the claim, causing substantial hardship to the attorney. Permission may also be granted for an additional interim claim if substantial post-AOB work is followed by an excessive delay (e.g., stay of the proceedings pending a Supreme Court decision) and waiting for the final claim would cause hardship. Interim claims out of the normal timeline must be preapproved by the CCAP executive director on a case-by-case basis; normally, "business expenses" alone will not be sufficient to establish hardship.

At the interim stage, 5% of the recommended amount for attorney services is held back as a protection against inadvertent overpayment; the holdback is paid with the final claim. Expenses are paid in full at the interim.

Counsel should scrutinize the staff attorney's recommendations and comments on the interim claim worksheet and submit supplemental justification with the final claim if needed (for interim eClaims, these worksheets may be requested). The CCAP internal practice is to err on the conservative side in recommending interim payments, reserving difficult discretionary calls until the final, when all information about the case will be available. (While this often means not recommending a payment above the guidelines at this stage, exceptions are made for clearly reasonable claims in excess of the guidelines – for example, communication with a difficult client or a complex motion to augment.) Supplemental claims, either interim or final, have also been permitted by the project to correct an earlier error in compensation.

No interims may be filed in *Wende, Ben C.*, or *Sade C./Phoenix H.* cases. A panel attorney may file an early *final* claim either: (1) 30 days from the date of filing the opening brief or *Sade C./Phoenix H.*, or (2) after the opinion issues. However, in either case, the attorney waives any claim for later services in the case, such as reading the opinion or communicating with the client,

unless the court orders supplemental briefing. If the court does so, counsel may file a supplemental final claim after the opinion issues.

Unbriefed issues may be paid at the interim stage. Counsel should describe them in sufficient detail to permit assessment of their complexity, but must use care not to argue against the client or reveal damaging information such as adverse consequences of the appeal. If it is necessary to discuss information that is possibly harmful to the client (i.e., an adverse consequence), do so in a confidential communication to the CCAP staff buddy. Usually an adverse consequences issue can be rephrased as a factual question without revealing the negative impact to the appellant. (If counsel needs assistance in this, contact the buddy.) See more on [UNBRIEFED ISSUES](#) below.

INTERPRETERS

See: [TRANSLATORS](#)

ISSUE CLASSIFICATION

Time recommended for issues is rounded off to nearest 0.5 hour:

<u>Classification</u>	<u>Guideline</u>
Low simple (LS)	0.0 up to <4.0 hours
Simple (S)	4.0 hours
Simple/average (SA)	>4.0 up to <8.0 hours
Average (A)	8.0 hours
Average/complex(AC)	>8.5 up to <13.5 hours
Complex (C)	13.5 hours

Classification is based in part on page length, but that is only preliminary. Classifications also take into account quality, verbosity vs. conciseness, originality, depth of research, use of long block quotes or record quotes, legal analysis vs. simple summary of cases, factual analysis, use of previous briefing, conceptual intricacy, thoroughness (e.g., standard of review, prejudice), etc. String citations usually add little substance to the argument and will be discounted.

If there is a previous interim claim in the case, the issues may be reclassified for the final. This would be done, for example, if a superseded policy was applied at the interim, if later filings in the case (such as the respondent's brief or opinion) or supplemental information suggests greater or less complexity than had first appeared, or further information is received from counsel, or if an issue is designated as "frivolous" in a Third District opinion (see [FRIVOLOUS ISSUES](#)).

Cumulative error arguments are, per AIDOAC, presumptively low-simple. Summaries, introductions, conclusions, and other sections that cut across several arguments are not counted as issues: they are treated as spread out among the substantive issues covered by them and factored into the classification of the substantive issues.

See also: [QUALITY CUTS](#)
[USE OF PREVIOUS BRIEFING](#)

[SUBDIVISION OF ISSUES](#)
[UNBRIEFED ISSUES](#)
[FRIVOLOUS ISSUES](#)

LAW CLERKS/PARALEGALS

See: [ASSOCIATE COUNSEL](#)

MINOR'S BRIEFS

The Third and Fifth District expect minor's counsel to file a formal brief and will issue a briefing schedule. Minors are usually treated as a respondent; check the appointment order and use an appropriate court caption. (This policy may be different in other districts.)

MOOT APPEAL

See: [APPEAL SUBJECT TO DISMISSAL](#)

NEGATIVE RECOMMENDATIONS (attorney owes money to the state)

Although rare, it is possible that CCAP, the court, or AIDOAC may decide that too much was paid at the interim, to the extent the attorney owes the state money at the final stage. If this occurs, the recommendation will be shown as a negative balance due and the JCC will handle collection. Usually the attorney can either pay the money directly, or agree to have the amount owed withheld from a future claim.

NON-INDIGENT CLIENT

Work performed before appointment is non-compensable if the appointment is denied, except for urgent work necessary to prevent substantial detriment to the client. (For this reason, we urge CCAP panel attorneys not to begin work on a case until their appointment is made by the court.) However, if the client applies a second time and the appointment goes through, the pre-appointment work is compensable.

NOTICE TO ATTORNEY OF PROPOSED CUT

The project staff attorney should notify a panel attorney if they are proposing a cut of more than **five hours from a claim of 50 hours or less, or 10% from a claim of more than 50 hours**, from either: (a) the AOB on an interim claim (the holdback does not count as a cut), or (b) the total of a final claim. The panel attorney is given an opportunity to discuss the proposed cuts with the staff attorney. Notice may be given of a lower cut on the request of the panel attorney or at the discretion of the staff attorney.

OPINION – LINE 8

The guideline for review of the opinion is 1.5 hours. The recommendation will be based on what is reasonable, given the length and content of the opinion, and may be more or less than the guideline. The guideline for a *Wende, Ben C.*, or *Sade C./Phoenix H.* opinion is 0.2 hour.

OPPOSING AND OTHER BRIEFS – LINE 10

The guideline is 2.5 hours for review of the opposing brief (Line 10). If a brief is unusually long

or short, CCAP may recommend over or under the guideline. If the AOB is a *Wende, Ben C.*, or *Sade C./Phoenix H.*, the guideline for this is presumptively 0.0.

Reviewing other briefs (e.g., those of a co-appellant, non-appealing minor, or amicus curiae) should be listed under “Other Services” (Line 24) on the claim form. If there is more than one, a breakdown of how much time was spent on each should be provided. The guideline for reviewing these is what is “reasonable.” Often the full guidelines allowance for each brief will not be warranted because of brevity, overlap with other briefs, lack of relevance of parts to the client’s case, and similar factors.

ORAL ARGUMENT – LINE 17

The guideline is 7.5 hours. CCAP may recommend over or under that figure if the case is unusually simple or complex. The claim may be cut or disallowed if oral argument was clearly unnecessary.

Reasonable payment can be made for consideration and reviewing the case before waiving oral argument. This time should now be claimed on Line 17 for “Oral Argument,” with a simple explanation that the case was reviewed before deciding to waive oral argument.

Unavoidable waiting time in court pending oral argument is compensable and may be claimed on line 17 as well. Always break out actual waiting time to list it separately from preparing and presenting oral argument; this time will not be applied to guideline calculations.

Here are other *Line-17-related tasks* that may be billed on this line:

- 1) Request for oral argument;
- 2) Waiver of oral argument;
- 3) Request for calendar preference;
- 4) Request to continue oral argument;
- 5) Review of court’s oral argument solicitation letter;
- 6) Preparation for oral argument;
- 7) In-court time for argument;
- 8) Time spent waiting in the courtroom for the case to be called;

Here some other related tasks that should be billed to a different line number:

- 9) Travel *time* incident to oral argument – use Line 18;
- 10) Travel *expenses* related to oral argument – use Line 5 of expenses including a detailed breakdown for each expense claimed;
- 11) Supplemental authorities for use at oral argument – use Line 9.

Obtaining a transcript of oral argument is an extraordinary expense and preauthorization should be sought first. See: [PREAUTHORIZATION](#)

Telephonic oral argument is optional in the both courts. Thus a claim for oral argument, including travel, is fully compensable if the attorney chooses to appear in person, even though telephonic oral argument was available. If the argument was by telephone, checkmark the

“telephonic” box on page 2 of the paper claim form, or choose “Telephone” in step 1 for eClaims. CourtCall expenses may be claimed on Expense Line 4 (telephone).

OTHER COMMUNICATIONS – LINE 23

Line 23 is now designated for “other” non-Line 1 communications, including opposing counsel, co-counsel, court clerks, court reporters, probation officers, prison officials, etc.

Time spent communicating with family members or others that facilitates client communication should be billed on Line 1 and is compensable when supported by an explanation that describes the circumstantial need for third-party communication. Communication with third-parties may be particularly justifiable when representing clients who do not speak English, are very young, suffer from mental illness, or have been convicted of a sex offense.

Other types of family communications that promote the attorney-client relationship but are unnecessary to the handling of the direct appeal (e.g., contacts with family members for the purpose of reassuring them, with prison officials on a client’s housing or medical condition, or with the client’s attorney in a civil case) should be claimed on Line 23 but are only minimally compensable and only when a detailed explanation is provided.

OTHER SERVICES – LINE 24

Time spent on a subject, whether completed or not, should now be entered on the line item for that subject, *not* on Line 24 for “other services.”

The guidelines for other services are what is “reasonable” for miscellaneous appeal-related activities which do not otherwise fit in a specific category (Lines 1-23).

Reviewing court and opposing counsel’s filings aside from the opinion and respondent’s brief (for example, documents related to extensions, augments, or oral argument) may be claimed on Line 24. (Communications related to those items is claimed on Line 23 “Other Communications.”) The allowable time depends on the complexity of the case and filings and nature of the document/activity, and if they are reasonably necessary to the handling of the case. If the claim for this service is substantial, the filings should be itemized.

Consider whether the service is billable in another category, such as applying in the superior court for a correction of credits under Penal Code section 1237.1 or a bail motion (claim both under “Other Motions,” Line 5); communication with court clerks (“Other Communications,” Line 23); a *Wende, Ben C.*, or *Sade C./Phoenix H.* filing (“AOB,” Line 6); or researching an issue that was not filed (“Unbriefed Issues,” Line 7).

Services are not billable if they are tangential to and not reasonably necessary for the handling of the appeal. For example, counsel cannot be paid under the appellate appointment for appearing at the client’s deposition in a civil action factually related to the criminal case in order to protect the client’s right against self incrimination, for helping the attorney in the civil matter, etc. Similarly, the appointment does not cover appearing as a witness in another case involving the client. Time spent in contact with the media about the case, although useful to the community, is not required

for representation of the client or discharge of duties to the court. Services in the superior court involving DNA testing under Penal Code section 1405 are compensated by that court and are not included in the appellate appointment.

On the other hand, some services are tangential to the appeal but may still be compensable. For example: 1) if necessary to keep further evidence used on criminal retrial, or 2) other superior court contacts such as follow up on remittitur, bail motions and *Fares* motion work in the trial court. Ask CCAP for [PREAUTHORIZATION](#) if travel or an appearance is necessary.

Filings required by the attorney's own error are not usually compensable. Examples include an erratum letter, correction of defective proof of service, motion to withdraw an improvidently filed *Wende* or *Sade C./Phoenix H.* brief or other document, a motion for relief from default or for leave to file a late brief where caused by counsel's negligence, and resubmission of a document when the first was rejected as defective. Similarly, printing and postage expenses and time for communicating with the court clerk, respondent's office, or CCAP about the error are not compensable.

Personal delivery of documents by the attorney is not compensable; it may be included in the 1.0 hour for administrative services.

See also [ADMINISTRATIVE TASKS](#)
[FILINGS DUE TO ATTORNEY ERROR](#)
[OTHER COMMUNICATIONS – LINE 23](#)

OTHER MOTIONS – LINE 5

Miscellaneous motions and applications other than augmentation and extension requests should be claimed on Line 5. These include requests to correct omissions in the normal record (Cal. Rules of Court, rule 8.340(b)), which have an informal guideline of 0.5 hour; letters or motions seeking to correct credits (Pen. Code, § 1237.1) or clerical errors; *Fares/Clavel* motions; motions to file supplemental or over-length briefs; abandonments or requests to dismiss an appeal; requests for judicial notice, bail motions, etc.

Note that some tasks which are specifically related to another line number should now be billed on that line number. For example, if a motion was prepared but not filed, claim the time on Line 5 with an explanation as to why it was reasonable to prepare but not file the motion. (See our "[How to Bill Related Time](#)" memo.)

OUT OF STATE ATTORNEYS

The project has expectations for an attorney who lives out of state but is allowed to be on the panel without keeping a regular office within the state. Permission for this arrangement must be obtained from the project executive director.

The JCC statewide compensation policy for work performed by an out-of-state panel member is there can be no claim for additional costs incurred as a result of working from another state.

Allowable expenses will be limited to no more than what it would cost “from the California border,” *including travel costs*.

OVERLAPPING CATEGORIES

Each category must stand on its own. The fact a claim is under the guideline in one category does not permit CCAP to use that underage to make up for an overage in a related category, either in calculating the guidelines or making our recommendation.

PETITIONS

See: [HABEAS](#)
[REHEARING](#)
[REVIEW](#)
[CERTIORARI](#)

PETITIONS: OTHER – LINE 14

This includes reviewing a response to a petition (the guideline is “reasonableness”), and a reply to a response to a petition (the guideline is one-third of the recommendation for the petition).

PHOTOCOPYING

The guideline is the actual cost, up to \$0.10 a page. Counsel should select the least expensive method reasonably available. Binding can be claimed on this line if counsel paid for it as a lump sum with photocopying. See also [BINDING](#). Receipts are not required unless necessary to understand the claim, but they can be very helpful in explaining unusual costs. Original receipts should be kept in the attorney’s file.

Copying the record for the client (other than excerpts or short records in *Wende/Sade C./Phoenix H.* cases) is usually not compensable. Get preapproval if it seems necessary to do it. Copying the file for the client is compensable, except to the extent it involves duplication of documents already sent to the client or making a copy of the file for counsel’s retention upon sending the original to the client. See [COPIES FOR CLIENT](#).

If a transcript must be copied at more than \$0.10 a page, it is necessary to get preapproval from CCAP, unless the record is very short (under 50 pages).

Copying cases, statutes, etc., as part of research is considered library overhead and is not compensable.

Re-copying of briefs, transcripts, and other documents because of a mistake by CCAP, the court, A.G., etc., is compensable for the panel attorney. If the loss was the panel attorney’s fault, it is not reimbursable.

Normally it is the superior courts’ policy to make copies free of charge for appointed counsel. The attorney should take the appointment order and ask for free copies. Costs incurred are not compensable unless the attorney has first requested free copies.

It is not necessary to separate out or list elsewhere the tax on photocopying or binding; include the tax with the expense item being claimed.

See also: [PREAUTHORIZATION
BINDING
COPIES FOR CLIENT](#)

POSTAGE

The policy is to reimburse the actual expense, if reasonable and express-type delivery is not used. Counsel should provide an explanation if the reasonableness is not self-evident. Receipts are not required unless necessary to understand the claim, but they can be very helpful in explaining unusual costs. Original receipts should be kept in the attorney's file.

Briefs and some petitions are deemed timely if they were sent by priority mail and bear a postmark stamped the day the filing is due. (See Cal. Rules of Court, rule 8.25(b)(3).) BUT the cost of overnight or express mail, messenger, attorney delivery service, personal delivery, and other extraordinary means of delivery are not compensable above and beyond the cost of ordinary means, unless use of them was due to the needs of the *case*, rather than the attorney's needs. (If the court allows only two days to file a supplemental brief, for example, the urgency may be attributed to the case; if the attorney could not get to the brief until the last minute because of work on other cases, that is attributed to the attorney's needs. A suggestion by a court clerk that the document be sent by express mail is not court approval to use that method.) If an extraordinary means is used but not for the needs of the case, CCAP will recommend what would be the ordinary cost for snail-mail delivery.

Fast-track cases do not automatically qualify for express treatment; check with CCAP for court policy.

PREAUTHORIZATION

Preapproval by CCAP or, where necessary, by the court is required before incurring any extraordinary expenses, including but not limited to: experts, interpreters, investigators, all travel (other than for oral argument), copying at more than 10¢ per page, and anything else where compensability is in doubt. **If preapproval is not sought, the attorney bears the risk of not being compensated for out-of-pocket expenses.** If preapproval is sought and actual expenses exceed what is preapproved, the presumption, though rebuttable, is strongly against payment above the amount preapproved.

CCAP may pre-approve some expenses; others require court preapproval. Before incurring any extraordinary expense, check the CCAP web site for current preauthorization policies at: http://www.capcentral.org/procedures/court_policies/preauthorization_procedures.asp

CCAP provides input to the Third District on court requests for preapproval; for that reason most requests must be submitted first to CCAP. Common mistakes are: not estimating how much time will be spent, and (for habeas requests) failing to explain why the appellant is unable to do a

habeas petition in pro. per. In the Fifth District, preauthorization requests should be submitted directly to that court. More tips and steps for obtaining preauthorization are at: http://www.capcentral.org/procedures/court_policies/preauthorization_procedures.asp

See also: [EXPERTS](#)
[HABEAS CORPUS](#)
[PHOTOCOPYING](#)

QUALITY CONSIDERATIONS

The quality of work is taken into consideration in determining what is reasonable compensation. If the work is of high quality, payment may be set higher than normal. If it is of fair or poor quality, it may be set lower. If the unusually high or low quality applies to only one or two services, only the applicable categories may be adjusted; if it applies to the case as a whole, an overall adjustment may be called for.

The amount of CCAP assistance needed is a factor in assessing quality. If the attorney has required CCAP assistance qualitatively or quantitatively inappropriate to the attorney's experience and the reasonable needs of the case, that will be factored into the claim recommendation.

Time unreasonably spent is not compensable, even if done at the urging of another attorney, including a project staff attorney. The panel attorney has some recourse when faced with a staff attorney demand that appears unreasonable. The panel attorney is counsel of record and can decline to follow the advice, explaining the reasons carefully. The panel attorney can also ask the staff attorney to get a second opinion or can contact the CCAP executive director or assistant director.

A briefed non-arguable issue may be compensated as an unbriefed one if an experienced attorney would at least have researched the point. Payment may be denied altogether if an experienced attorney would have spent any time on it.

See also: [FRIVOLOUS ISSUES](#)
[WAIVER](#)

RECEIPTS

Submit receipts for paper claims for all pre-approved travel expenses, computer research expenses, and any expense in excess of \$100. For eClaims, while rarely requested, a good business practice would be to maintain receipts in counsel's file in case of an audit.

For paper claims, copy all receipts onto an 8 ½ x 11" paper and submit the copied sheet to CCAP along with the claim.

See also: [PREAUTHORIZATION](#)

RECORD REVIEW – LINE 2

The page length listed on “review of record,” Line 2, should be the official filed record only, including all augmented portions. Documents received from others (e.g., trial counsel) and reviewed should be claimed under “Other Services” on Line 24, and a page length included as part of the explanation for that service.

The “Record Filed” date in Step 2 in eClaims should reflect the most recent information available when the claim is filed, updated to the most recent record filed date.

The guideline for record review is 50 pages per hour for appointments made on or after October 1, 2004. (The guideline for appointments before that date is 60 pages per hour.) Usually this allowance is absolute: the recommendation will not exceed the guideline. A rare exception might be made for dense, predominantly single-spaced records. The panel attorney should provide justification for the exception with the claim. A faster rate than 50 pages per hour may be required for records that do not need to be read as thoroughly as the normal record, such as a previous trial, parts concerning only a codefendant, or testimony relating to a count on which the defendant was acquitted.

Review of the preliminary hearing transcript may be compensated only if relevant to an appealable issue; if time is claimed for reviewing the preliminary hearing transcript, an explanation of the relevance is required. An explanation that the pages were read "for a statement of facts," is insufficient. In a guilty plea case, the statement of facts should come from the probation report, or from the stated factual basis. If, however, the preliminary hearing transcript was entered into evidence at the superior court level or otherwise considered by the judge, or the prelim was stipulated to as the factual basis for the plea, then reading the prelim pages can be justified with an explanation. No one wants to spend time that may not be compensated. Accordingly, CCAP urges panel members to talk with the assigned staff buddy on the case if there is a question whether reading the preliminary hearing pages will meet the above guidelines for compensation on a given case.

REHEARING – LINE 12

The guideline for a petition for rehearing is 6.0 hours. The appropriateness of the filing and content of the petition will be assessed.

See also: [USE OF PREVIOUS BRIEFING](#)

RELIEVED OR SUBSTITUTED COUNSEL

An attorney who is relieved before the AOB is filed may be compensated under certain conditions. Payment for reasonable services performed may be appropriate if the attorney was relieved for reasons beyond his or her own control – for example, if the client died or unexpectedly retained counsel, or the attorney suffered a serious accident or illness.

If the reason was personal to the attorney and for his or her own benefit – e.g., taking a new job – no compensation is usually rewarded. An exception may be made for work that has actually saved successor counsel time, such as an augment request that was granted, a draft statement of

case and facts, or research notes provided to new counsel; the time *saved* is the measure of the award.

A final claim may be submitted after the order relieving the attorney is filed. (Note: appointed counsel is counsel of record until the court *grants* the substitution. Due dates and other case requirements must continue to be met until the court order for substitution is issued.)

If the statements and/or issues are appropriately written up but no brief is ever filed, the time spent preparing it can now be claimed on Line 6. Provide the assigned project staff attorney with a copy of the draft.

REPLY BRIEF – LINE 8

The guideline is one-third of the AOB recommendation, excluding unbriefed issues. Payment over the reply guideline may be awarded if additional work is appropriate and necessary. For example, if the respondent’s brief has raised extensive new areas or cases that must be addressed.

Note: The principal purpose of a reply brief is *responsive* – to answer the points and authorities raised in the respondent’s brief. To raise a *new* issue on behalf of the appellant, counsel should seek leave to file a supplemental opening brief, not insert the issue into the reply brief.

See also: [SUPPLEMENTAL BRIEFS](#)

REPORTING AND RECORDING TIME

Actual time must be kept and reported to the nearest one-tenth of an hour. Estimating the time or just claiming to the guidelines is unacceptable. Rounding off to whole hours or larger fractions of an hour is also improper; counsel may be asked to redo the claim. Counsel who round *down* have the burden of explaining. Expenses likewise should not be rounded off.

REVIEW (petition for) – LINE 13

The guideline for a petition for review is 10.0 hours. Payment above or below the guidelines may be warranted, depending on the complexity of the case. The appropriateness of the filing and content of the petition will also be assessed.

Another highly relevant factor is the amount of copying from the AOB, ARB, or a petition for rehearing into a petition for review. Counsel *must* disclose this information, pointing out all original material, including the statement of reasons why review should be granted, analysis of the Court of Appeal opinion, new cases cited and analyzed, etc. See also: [USE OF PREVIOUS BRIEFING](#)

De minimus time for consideration-only for filing a petition for review can be claimed on this line.

IMPORTANT CLARIFICATION for Petition for Review time claimed:

The petition must be *filed* before the project can evaluate and recommend any time for it.

A final claim with time claimed for a prematurely “filed” petition for review will be considered premature for project recommendation if the time for the finality of the opinion has not yet *expired* (i.e., 30 days following the date of the opinion). The project must hold the claim until the 31st day (the first day the petition can be filed in the Supreme Court and the opinion is final), or counsel may choose to have the claim processed prior to the 31st day with a zero recommendation for line 13.

A final claim with de minimus time claimed for consideration-only of a petition for review but counsel has NOT filed a petition for review, can be processed by the project without holding the claim for the 31st day to elapse.

Remember, if review is granted, a new case number is issued and all new work is billed by appointed counsel directly to the California Supreme Court under that appointment. (See topic: SUPREME COURT CASES)

When because of post office error an attorney does not receive the opinion or remittitur, it may be reasonable to file a petition to recall the remittitur and then a petition for review, but only if filing the petition for review is reasonable (or the client wants to file one in pro. per.).

SADE C./PHOENIX H. CASES – LINE 6

Note: For claim purposes, “Wende” refers to any non-issue filing, such as a *Wende* opening brief (*People v. Wende* (1979) 25 Cal.3d 436), a *Ben C.* opening brief (*Conservatorship of Ben C.* (2007) 40 Cal.4th 529), or a document filed pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835. The JCC refers to all such filings collectively as “Wende.”

Sade C./Phoenix H. cases are treated like *Wende* cases for claim purposes. Only a final claim may be filed. For both the Third and the Fifth, time should be claimed under “opening brief,” Line 6, and the claim will be paid as a *Wende* brief. As in *Wende* cases, reviewing a county’s boilerplate request for dismissal or other response is not billable; if the court actually writes a substantive opinion, the maximum guideline would be 0.2 hour.

The *Phoenix H.* filing procedures in the Third and the Fifth differ a bit from the requirements in other districts and from each other. In the Third District counsel should file a formal opening brief and the appellant is given 30 days in which to file a *motion* requesting permission to file a supplemental brief supported by a showing of good cause that an arguable issue does exist. In the Fifth District, counsel may submit a *Phoenix H.* brief in letter format and the court will notify the appellant they have 30 days in which to personally file a letter stating a good cause showing that an arguable issue does exist. For a more detailed discussion of these procedures, see: http://www.capcentral.org/juveniles/dependency/sade_brief/index.asp

In both courts, similar to *Wende* cases, an attorney may file an early final claim either: 1) after 30 days from filing the *Phoenix H.* brief, or 2) after the opinion issues; counsel then waives any claim for later services that may arise in the case after submitting their final claim.

See also [WENDE CASES](#)

SENTENCE (or “how to list counts on the paper claim form”)

If the matter resulted in a commitment to state prison, record the TOTAL determinate term in the Years and Months boxes (Step 3 in eClaims). If one or more indeterminate life terms (e.g., 15 to life, or 25 to life) or terms of life without possibility of parole were imposed, record the quantity of such terms in their respective boxes (e.g., two sentences of 25 years to life would result in the number 2 appearing in the “Non-LWPO life-tops” box, whether they were ordered to be served concurrently or consecutively).

Insert an “X” in the appropriate blank if the defendant was sentenced to one or more terms pursuant to Penal Code sections 667(b)-(i) or 1170.12. (Step 1 choose either 2 strikes or 3 strikes from the pull-down menu in eClaims.)

If defendant was NOT committed to state prison, check ONLY ONE of the boxes in the lower portion of item (D) (Step 3 in eClaims). Then DO NOT check any boxes in that area if the defendant was committed to state prison. Examples of “Civil Commit” under “CRIMINAL” are commitments to CRC and commitments after a finding of not guilty by reason of insanity. Conservatorship appeals and support order appeals are examples of the main category “OTHER.”

For eClaims, check the sentence that pre-populates into the claim for correctness.

STATEMENT OF CASE, FACTS

The guideline is one-half of the record review time. Payment above or below the guidelines may be recommended whenever appropriate.

The length of the statements of case and facts and the level of detail in them should be appropriate to the case and related to the issues raised. AIDOAC encourages the panel to write more concisely. Generally, a lengthy statement of procedural events is ordinarily inappropriate and undesirable. Also, a detailed recitation of facts is usually unnecessary if the sole issue is a *legal* one dealing with the construction of a statute or narrow issues such as sentencing issues. CCAP can recommend payment only for what is reasonable for the particular case.

If the statement of case and facts is appropriately written up but no brief is ever filed, the time spent preparing it can now be claimed on Line 6. Provide the assigned project staff attorney with a copy of the draft.

See also: [RELIEVED COUNSEL](#)

SUBDIVISION OF ISSUES

Subdivisions of issues are classified as separate issues when and only when they are in fact completely distinct, that is, factually unrelated and involving different bodies of law. If they involve different aspects of factually and legally interrelated points, they are treated as one issue.

The attorney's numbering of the issues is not dispositive. For example, a "denial of a fair trial" argument based on cumulative error with prosecutorial misconduct, instructional error, and an evidentiary issue is really three separate issues, even if under one Roman numeral. But a search argument with an introduction, then various sections on the facts the officer relied on to establish probable cause (e.g., a section on informants, one on crime rate, and one on observations through binoculars), and then a prejudice discussion is only one issue, even if long and even if treated as several different Roman numerals in the brief.

A *Leon* argument is considered part of a search and seizure argument, not a separate issue. (*United States v. Leon* (1984) 468 U.S. 897 [104 S.Ct. 3405, 82 L.Ed.2d 677] (good-faith reliance on warrant).)

SUPERIOR COURT FILE

The guideline for in-person review of the superior court file or exhibits is 2.0 hours. Review of materials from the file or exhibit room sent to counsel, not part of the record, and not viewed onsite should be billed on Line 24 "Other Services" with an explanation of page length and the reason for reviewing it.

Travel to review the superior court file is compensable on Line 18. However, travel time and expenses are subject to travel rules and preauthorization requirements:

http://www.capcentral.org/procedures/court_policies/preauthorization_procedures.asp

If the trip is long or expensive, it needs strong justification; counsel should call CCAP for advice on whether to seek travel preapproval. The time and expense will need to be reasonable and proportional to the need to see the file.

Counsel may also ask the Court of Appeal to approve outlying courts to transfer a file or exhibit to a Court of Appeal nearest to counsel for temporary viewing.

See also: [TRAVEL](#)
[PREAUTHORIZATION](#)

SUPPLEMENTAL BRIEFS

Similar to the AOB, the issues are classified as simple, average, etc., and guidelines for the brief are set correspondingly.

A motion for leave to file a supplemental brief (Rules of Court, rule 8.200(a)(4)) should be billed under "Other Motions," Line 5. The motion is not compensable if the issue was fairly obvious and thus should have been raised in the opening brief. [Court procedures](#) must be adhered to in order for CCAP to recommend payment on the brief:

Third District Court of Appeal:

Step 1 - File a motion requesting permission to file a supplemental brief prior to filing the brief. The Third District requires that an appointed attorney who requests permission to file a supplemental brief needs to explain in great detail why the issue was not raised at

the time the opening brief was filed (e.g., the issue arose after the filing of the opening brief based on a new published opinion from the Supreme Court).

Step 2 - Next, obtain a ruling on your motion for permission to file a supplemental brief. The request for permission to file the supplemental brief should be filed and granted before counsel attempts to file the actual supplemental brief. Do not file the motion and the brief together – this is a common mistake.

Step 3 - File the brief. Once counsel has received a copy of the order granting permission, counsel may file the supplemental brief with the clerk. The brief must be formal with green covers, a table of contents, a table of authorities, a statement of any additional facts that apply to the new argument, a certification of page count, and a proof of service. A letter brief will not be accepted for filing unless the court's order specifically includes granting permission to file an informal brief.

Fifth District Court of Appeal:

Normally counsel should file a request for permission to file a supplemental brief along with the prepared supplemental brief. (Caveat: if counsel believes that it is likely that the court will not grant filing permission, then counsel should make the motion first, before spending time for which s/he will not be compensated. For example, if oral argument was 75 days ago and the case is likely to be decided soon, counsel would be wise to obtain a ruling first because there's a greater chance that the motion will not be granted under those circumstances.)

SUPPLEMENTAL CLAIMS

Supplemental interim or final claims may be filed with the permission of the court, JCC, or CCAP upon a showing of good cause. Mistakes by CCAP or the JCC, substantial unforeseeable services after the remittitur, a long delay in the court's handling of the case, and similar events may constitute good cause. (Getting a claim in before the annual budget crisis is not good cause.) A supplemental claim should be *cumulative* – i.e., the time shown should include what has previously been claimed, not just new time. A supplemental claim will ordinarily not be entertained for a de minimis amount.

SUPREME COURT CASES

CCAP does not review California Supreme Court claims, nor make recommendations for payment.

Submit a Supreme Court claim directly to: Lori Rittweger
Appointed Counsel Claims Administrator
350 McAllister Street
San Francisco, CA 94102

There are no specific guidelines for Supreme Court services: the test is the reasonableness of the time in light of the needs of the case. The Court of Appeal guidelines can serve as benchmarks,

but that is flexible. Preparation for oral argument, for example, will usually take longer in Supreme Court cases. Expenses should be about the same.

Attorneys not appointed to the Supreme Court case: Attorneys who are not appointed by the Supreme Court may file their final claim in their Court of Appeal case with CCAP once they have completed their work on the case, usually this is immediately following the filing the Petition for Review. If the Supreme Court subsequently remands the case to the Court of Appeal for further work, your Court of Appeal appointment reactivates and you may file a supplemental final claim for the additional work done on the case at the Court of Appeal level.

Use the JCC/Court of Appeal claim form located at: <http://www.courts.ca.gov/9669.htm>
eClaims is not available for Supreme Court cases.

For answers to frequently asked questions on filing Supreme Court claims go to:
http://www.capcentral.org/claims/tips/SupCourt_FAQ.asp

TELEPHONE

Actual long distance expenses and collect calls from appellant related to the case are compensable with reasonableness standards applied. Monthly charges and local calls are not compensable. Receipts are not required unless necessary to understand the claim, but they can be very helpful in explaining unusual costs. Original receipts should be kept in the attorney's file.

See also: [COMMUNICATIONS – LINE 1](#)

TRANSLATORS

The Third and the Fifth have different [policies](#) concerning translators or interpreter expenses, and appointed counsel should know and understand these differences before incurring any out-of-pocket expenses in this area.

Foreign Language Resource Tip

The CCAP web site has foreign language resources, including sample letters for milestones in a typical appeal, to facilitate communicating with the non-English speaking client. Select standardized letters from several languages. Use of translators may still be necessary for tailoring letters concerning issue discussions.

<http://www.capcentral.org/resources/language/index.asp>

Third District - Preauthorization for Translation Fees Required

The Third District has given CCAP the authority to preauthorize interpreter expenses, up to \$300 in a particular case. If you need to obtain pre-authorization, you may do so through CCAP; the standards for approval will be the same as if requesting preapproval from the court, however, the procedure should take less time.

If you need an interpreter and the amount you expect to spend will be \$300 or less, send your request to CCAP rather than the court. Your written request should include a description of the language to be translated, an evaluation of the need for translation, and an estimation of the fees needed for the entire case. Translation is limited to communication with your client; briefs and motions should not be translated. If you believe you need more than \$300, you should continue to address the request to the court but send it to CCAP for review. CCAP will then forward the request to the court along with our recommendation. If you get CCAP approval for an amount under \$300, and then discover a need for further interpreter services that will take you over \$300 total, the subsequent request will be treated as a request for more than \$300 and will be forwarded to the court with CCAP's recommendation. The subsequent request should indicate the amount that had previously been approved by CCAP.

Fifth District - Preauthorization for Translation Fees Required

The Fifth District has also given CCAP the authority to preauthorize interpreter expenses, up to \$300 in a particular case. If you need to obtain preauthorization, you may do so through CCAP; the standards for approval and the process is the same as described for the Third District: send your request to CCAP rather than the court.

If you get CCAP approval for an amount under \$300, and then discover a need for further interpreter services that will take you over \$300 total, the subsequent request will be treated as a request for more than \$300 and must be sent directly to the court. The subsequent request should indicate the amount that had previously been preapproved by CCAP.

See: [PREAUTHORIZATION](#)

TRAVEL

Time and expenses for travel, other than for oral argument, must be preapproved.

See: http://www.capcentral.org/claims/tips/preauthorization_expenses.asp [Tips for Obtaining Preauthorization]

See also: <http://www.capcentral.org/claims/guidelines/statewide.asp> [Statewide Travel Guidelines]

See also: [PREAUTHORIZATION](#)

Time for travel is compensable only if the distance is more than 25 miles one way, regardless of the purpose of travel. The attorney is expected to work during travel if feasible.

Expenses are not subject to the minimum distance limitation. The attorney will be reimbursed only for the least expensive form of travel. They are compensable at rates set by the JCC for the panel:

- See Travel Guidelines http://www.capcentral.org/claims/travel_guidelines_for_CAC.pdf
- Personal car mileage: Travel on or after January 1, 2007 is 48.5 cents per mile. Travel on or after July 1, 2006 (and before January 1, 2007) is paid at \$0.445 per mile. Travel

before July 1, 2006 is paid at \$0.34 per mile. Reimbursement for this expense is not subject to the 25-mile minimum.

- Use of a taxi will not be reimbursed, unless it is shared and the cost is less than a shuttle.
- Rental cars are not reimbursable unless it is unavoidable. In general reimbursement will be made for round-trip mileage only, at \$.485 per mile. When it is absolutely necessary, the use of a rental car must be pre-approved by the project.
 - TIP: The distance is measured from counsel's home or office, whichever is closer.
 - TIP: Use www.MapQuest.com for a baseline determination of time and mileage point-to-point (also used by the JCC for this purpose). Extraordinary time/expenses beyond the MapQuest benchmark should be explained by the panel attorney to support a higher (extraordinary) recommendation.
- Meals: actual up to \$6.00 for breakfast (if leave home before 7:00 a.m.); actual up to \$10.00 for lunch (only if overnight); actual up to \$18.00 for dinner (if return home after 7:00 p.m.). **Meals will be reimbursed only for overnight trips.**
- Lodging: actual up to \$110, plus tax. (Only if necessary.)
- Parking: amount claimed if reasonable and kept to a minimum. When traveling to and from an airport, a shuttle or other form of public transportation should be used. The least expensive long-term parking option must be used. Valet parking is non-reimbursable.

Only the least expensive method of transportation, considering both time and expense, is compensable. The burden is on the panel attorney to show the travel mode was the least expensive. For overnight travel, include dates of travel with departure and return times.

Receipts are required for airfare, rental cars, accommodations, and other relatively high expenses. Receipts for other travel expenses are recommended. Additional airline baggage fees are not reimbursable.

Travel-related expenses for client visits must be [preauthorized](#) by CCAP.

If an attorney must travel a long distance and has an early morning calendar appearance, s/he should ask the court if it is possible to switch to the afternoon. Courts will often accommodate such requests. If the appearance cannot be rescheduled, necessary overnight stays are compensable at the above rates.

If an attorney travels more than 25 miles one way to a locale for several cases, all claims should show the full mileage, but the attorney must divide up the time and expenses between cases, so that the total claimed equals actual time and costs.

If a rental car is used, the claim should be for the actual cost of the rental, not the mileage. If the total car rental expense is reasonable, fuel is also compensable. Public transportation should be used where available as the least expensive mode of travel.

It is acceptable to opt out of air travel if an attorney is concerned about safety, as long as the switch does not increase the cost, otherwise, only the equivalent of the least expensive method of travel will be compensated. A MapQuest showing the project the mileage from their departure location to their destination location and a copy of an airfare estimate may be submitted to the project for a comparison and proof of claimed amount.

Time and expenses for travel to libraries for research are overhead and not compensable. The same restriction applies to parking for such purposes.

For attorneys traveling from outside California, pursuant to statewide policy only the portion of travel “from the California border” is compensable. See: [OUT OF STATE ATTORNEYS](#) policy.

See also: [SUPERIOR COURT FILE](#)
[PREAUTHORIZATION](#)

TRUEFILING

All TrueFiling expenses should be listed on the claim, expense Line #9, with a written comment “TrueFiling” or “TrueFiling fees.” It is not necessary to itemize your TrueFiling fees. There should be no binding fees claimed for any briefs filed on or after implementation of TrueFiling, with one exception: binding for the Court’s copies of the petition for review (until that Court moves to electronic filing). TrueFiling was implemented in the Fifth District on May 11, 2015 and on September 14, 2015 for the Third District.

UNBRIEFED ISSUES – LINE 7

Time spent on an issue considered but not briefed (“Unbriefed Issues) may be compensated at the interim or final stage. The test for compensability is reasonableness. Compensation may be awarded if an experienced attorney would at least have researched the point. Payment may be denied altogether if an experienced attorney would not have spent any time on it. Researching an apparently waived issue or obviously trivial error to any substantial extent would be unreasonable unless there was some plausible way to get around the waiver or prejudice problem.

The guidelines are whatever is recommended. The issues are classified according to the recommendation. Time is set by 0.1 hour increments, not rounded:

<u>Recommendation</u>	<u>Unbriefed Classification</u>
0.0 up to <0.5 hour	Low simple (LS)
0 .5 hour	Simple (S)
> 0.5 up to <2.5 hours	Simple/average (SA)

2.5 hours	Average (A)
> 2.5 up to <5.0 hours	Average/complex (AC)
5.0 hours	Complex (C)

Unbriefed issues should be described in enough detail to evaluate the time claimed and assess the complexity of each issue – e.g., include a specific description of the issue researched and the type and extent of research. A more detailed explanation is especially helpful for any one unbriefed issue that exceeds 2.5 hours, or where the total for all unbriefed issues exceeds 10.0 hours. Attach the list and explanations to a paper claim form, or in eClaims in Step 6 click the blue link on Line 7 that says: “Enter individual issues and time.”

What to do with adverse consequences research?

Counsel should use care not to argue against the client or disclose a potential adverse consequence in describing unbriefed issues; the easiest way to do this is to restate it as a question in factual terms that do not disclose an adverse effect (e.g., Correct: “Are the presentence credits properly calculated?” Incorrect: “Appellant’s hospital credits should not be included in his presentence time.”). If it is necessary to discuss information possibly harmful to the client, do so in a confidential memorandum or email to the CCAP buddy, separate from the claim itself.

What to do with unfiled draft statements and draft issues:

If the statements or issues are appropriately drafted *but no brief is ever filed*, the time spent preparing them can now be claimed on Line 6. Provide the assigned project staff attorney with a copy of the draft.

UNSUBMIT REQUESTS IN eCLAIMS

1) By the panel attorney:

Counsel may still unsubmit their own eClaim without going through the project anytime after submitting the claim to the project AND before the claim is gathered by the project. Click the blue “unsubmit claim” link at the bottom of the Claims Checklist page. (This blue link will disappear and the claim will be locked after it is gathered by the project.)

Counsel may request that a gathered claim be unsubmitted for any reason prior to CCAP sending it to the JCC. Please contact [Lisa Eger](#) with your request and claim information.

2) By CCAP:

When time is billed on the wrong line or in the wrong category, the project may unsubmit an eClaim; other line-billing errors may be ignored and processed as is.

Here is a list of common scenarios where CCAP will request that a claim be unsubmitted for appointed counsel to correct time that has been billed incorrectly:

- 1) The hours must be moved because it affects a system calculation of guideline time (e.g., *Sade C./Phoenix H.* time that belongs on line 6);

- 2) The expenses must to be moved (e.g., billed on the wrong line #);
- 3) Either an interim or final comment made by counsel needs to be edited (e.g., the comment discloses an adverse consequence that should be reworded to protect integrity of the claim and counsel's ethical duty to their client);
- 4) Lines 1, 23, or 24 must be re-sorted as to communication time per JCC directive as to which communication time goes on which line number;
See: http://www.capcentral.org/claims/tips/family_communications.asp;
- 5) Draft statement of facts for a brief that was not filed goes on line 6, not line 7;
- 6) Superior court review (line 20) reflects any time other than time spent at any court reviewing the file or exhibits. Claim should be for actual time spent at the court for this activity;
- 7) Line 2 (review record) includes any time other than record review time (i.e., listening to audio tapes or reviewing a DVD), move this portion of time to line 24.
- 8) All habeas related time now goes on line 11, including a motion to expand the appointment. (See [Billing Habeas Time & Expenses memo.](#))

USE OF PREVIOUS BRIEFING

Mandatory form usage: For every claim (both interim and final), attach a Use of Previous Briefing form to the claim (this is Step 7 in the eClaims program), reflecting the use of significant portions of sample arguments and/or the re-use of complex authorities and analysis from either a briefbank source or in the briefs and petitions filed in the same case. (This form is available on CCAP's website under "[Forms.](#)") If this was the first time the prior briefing was used, provide comments regarding that fact, as the initial use of the argument will often take more time than its subsequent use. A brief description of the portion of the borrowed material is useful, for example: "Approximately 25% of the authorities in the sufficiency issue were borrowed from previous briefing I have written. That portion required approximately 1.5 hours to adapt to this case." "Use of Previous Briefing" also includes copying of briefing within the same case (i.e., copying AOB paragraphs into the Petition for Review is a use of previous briefing). By statewide policy, the form is required even when no recycling of previous briefing was used.

Exception: *Wende, Ben C., & Sade C./Phoenix H.* filings do not require this form.

Policy; how the usage of materials is evaluated. The state encourages appropriate use of previously prepared material (briefbank, borrowed, or personal). Recycling can be exceedingly efficient. But the state can pay only for the attorney's actual work on the particular case. While copying undeniably does require work – checking citations, updating, adapting the material to

the individual situation, etc. – it is efficient precisely because it takes a good deal less time than writing the original argument. Such factors as how much was copied, what additional work was performed, and whether the attorney had used the borrowed materials before are critical in assessing how difficult the work was and thus what time was reasonably necessary. The staff attorney has an obligation to consider this information, which only the panel attorney can provide.

The recycling disclosure requirement is not intended as some kind of check on whether the panel attorney *actually* spent the time claimed. The truthfulness of a claim is assumed; it is questioned only when there is actual evidence to the contrary – an exceedingly rare occurrence. Rather, it is an aid to determining *complexity* and *reasonableness*. In making a recommendation for compensation, the projects are acting as fiduciaries of the state and have an obligation to apply state policy – which is to compensate for what an experienced appellate attorney would reasonably spend on a given service. This judgment is impossible without knowing whether the attorney’s work was entirely original or whether and to what extent recycled materials were used

Panel attorney’s duty to disclose significant use of previous briefing. Panel attorneys are required to tell the project if, but only if, they have made use of previous briefing *to a significant extent*. Simple use of short, obvious boilerplate, such as passages on standard of review, prejudice, elements of an offense, tests to be applied, general citations, etc., is assumed and is already built into the guidelines; it does not affect the complexity analysis and does not need to be disclosed by the panel attorney. At the other extreme, copying of most of an argument or a complex part of one (e.g., state-by-state cruel and unusual punishment survey, lengthy legislative history) does affect complexity, however, and must be revealed. Between these poles, judgment calls must be made. The test is whether the staff attorney would be able to recognize an argument as recycled without disclosure and whether knowing it was recycled would materially affect the judgment as to how much time would be reasonable. When in doubt, the panel attorney should disclose recycling.

Copying from other documents in same case. Copying of documents in the same case, such as copying sections of the AOB or petition for rehearing in the petition for review or a habeas corpus petition, must also be disclosed here. The recommendation will consider the degree of copying, the need for updating and adaptation of the reused passages, and the amount and complexity of original materials.

Is use of previous briefing expected? Standard brief-banked arguments are expected to be considered; if they are not used, the attorney should explain. Strictly boilerplate issues that involve little or no updating or adaptation will probably be assigned a flat value, usually a fraction of an hour.

See also: [GUIDELINES](#)

WAIVER

If the opinion treats an issue as procedurally defaulted or waived, the project staff attorney will evaluate the complexity of the issue according to the court’s treatment of the issue in the opinion

(whether it discusses the merits of the issue, or bypasses the issue as being procedurally defaulted) and/or whether appointed counsel has made a reasonable effort to preserve the issue or address the waiver problem in further briefing or a petition.

WENDE CASES

Note: For claim purposes, “Wende” refers to any non-issue filing, such as a *Wende* opening brief (*People v. Wende* (1979) 25 Cal.3d 436), a *Ben C.* opening brief (*Conservatorship of Ben C.* (2007) 40 Cal.4th 529), or a document filed pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835. The JCC refers to all such filings collectively as “Wende.”

Usually 1.0 hour is allowed for a boilerplate Wende statement – meaning counsel’s standard statement about reviewing the record, notifying the client, offering to withdraw, requesting the court to review the record, etc. If an issue is later found and briefed that reasonably should have been briefed at the outset, the *Wende* statement is not compensable.

The time spent on the statement of case and facts and the Wende statement should be claimed under “Opening Brief,” Line 6. Time spent on unbriefed issues, should be claimed under “Unbriefed Issues,” Line 7, and the time spent on each issue itemized separately.

No interim claims may be filed in Wende cases. But a panel attorney may file an early *final* claim either: (1) 30 days after the brief has been filed, or (2) once the opinion issues. After submitting a final claim, the attorney waives any claim for later services in the case, such as reading the opinion or communicating with the client, unless the court orders supplemental briefing. If the court does so, counsel may file a supplemental final claim after the opinion issues. If a habeas corpus petition is filed along with a Wende AOB, an interim claim can be paid, since it is really not an issueless case.

Review of any opposing brief or letter is not compensable in Wende cases. The maximum guideline for reading a Wende opinion is 0.2 hour.

In Wende cases, the client is ordinarily sent the record as soon as the brief is filed. Counsel may make copies of short records or excerpts for their own later possible use. However, any substantial copying requires specific justification and should be cleared with CCAP.

See also: [SADE C./PHOENIX H. CASES](#)
[COPIES FOR CLIENTS](#)
[PHOTOCOPYING](#)

WORK ULTIMATELY NOT USED IN THE CASE

The fact that an attorney’s draft, research, investigation, or other services are not put to use in documents filed in court or arguments before a court does not necessarily mean they are non-compensable. The test is whether the attorney’s good-faith efforts were reasonably necessary at the time *and* whether an experienced appellate attorney would find the work reasonably necessary for handling the case. Work that became unusable for reasons beyond the control of the attorney may be compensable – e.g., unexpected abandonment, client death or escape,

mootness, a finding of non-indigence, retained counsel substitution, and intervening Supreme Court law disposing of an issue in a brief drafted but not yet filed.