

# CALIFORNIA APPOINTED COUNSEL CLAIMS MANUAL

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## *Introduction from the Projects*

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The purpose of this manual is to provide consistent information to panel attorneys about the standards the appellate projects use to ensure that counsel are appropriately compensated for their work on appointed cases. Although this manual sets forth statewide broad-stroke policies and guidelines for California’s appellate Court Appointed Counsel (CAC) system, reasonableness remains the underlying touchstone for claim questions. Thorough explanations by panel attorneys are invaluable; they help both when the project staff is reviewing claims and when the JCC/ACS and AIDOAC are reviewing the projects’ recommendations (see, [APPENDIX A: Demystifying JCC/ACS and AIDOAC Reviews](#)).

Statewide [Compensation Guidelines are in APPENDIX B](#). Whenever panel attorneys have questions about compensation in a specific case or policies of a specific court, they should consult with the appropriate project.

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*Policies & Guidelines by Topic*

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## **ABANDONMENTS**

Abandonments should be claimed under “other motions,” line 5.

See also [APPEAL SUBJECT TO DISMISSAL OR ABATEMENT](#).

## **ABATEMENT**

See [APPEAL SUBJECT TO DISMISSAL OR ABATEMENT](#).

## **ADMINISTRATIVE TASKS AND EXPENSES – LINE 22**

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, communication with project paralegals about case offers or similar matters, formatting the brief, doing the table of authorities and topical index, or preparing the claim. Do not claim any “Administrative” time at the interim stage, even if already spent. Time should be claimed on line 22; no other time should be claimed on this line. Detail of the time spent is not needed.

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

## ADVERSE CONSEQUENCES

Comments for a claim should not include “adverse consequences” or other characterizations that may prejudice the client if disclosed. Use an indirect, generalized description, such as “strategic considerations,” or explain in a separate confidential memo to the project staff attorney.

## AIDOAC (Appellate Indigent Defense Oversight Advisory Committee)

Every quarter the Appellate Indigent Defense Oversight Advisory Committee (AIDOAC) of the Judicial Council of California (JCC), appointed by the Chief Justice, audits several claims from each district to ensure the projects’ recommendations are appropriate and in accordance with state policy.

Post-remittitur final claims are chosen by the JCC/Appellate Court Services (ACS) for an AIDOAC audit pool. A questionnaire is sent to the attorney of record when the claim is chosen to audit. *Unless there is 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 because of an audit cut, ACS arrange 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 Judicial Council Services level. If the audit adjustment is in the attorney’s favor, the project will submit a supplemental claim on the attorney’s behalf.

Besides audits, AIDOAC decides general issues of policy about appointed appellate counsel and makes recommendations to the Administrative Presiding Justices and the Chief Justice on major matters.

AIDOAC audits of post-remittitur final claims are to be contrasted with reviews of claims over \$7,500 done by the ACS before approving them for payment. [APPENDIX A](#) describes the mid-claim screening process by ACS and contrasts it with AIDOAC post-remittitur audits.

See [JUDICIAL COUNCIL/APPELLATE COURT SERVICES](#);  
[APPENDIX A: DEMYSTIFYING JCC/ACS AND AIDOAC REVIEWS](#).

## APPEAL SUBJECT TO DISMISSAL OR ABATEMENT

An appeal is subject to dismissal or other termination before a decision on the merits if basic requirements are lacking, such as jurisdiction, standing, 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 absconded. The steps to be taken will depend greatly on the situation.

Confer with the project staff attorney; the project will help assess what if any further work on the merits may be appropriate.

## **APPELLANT’S OPENING BRIEF or CLIENT’S FIRST BRIEF – LINE 6**

The guideline for the AOB is the sum of the guideline for the statements of case and facts plus the issue complexity guidelines for each issue.

Time claimed for a [NO-ISSUE CASE](#) brief or filing, a respondent’s brief in a People’s appeal, and drafted AOB work prior to an abandonment should all be claimed on line 6.

In the compensation claim, when entering a filing date for any brief or petition, the operative date must be what is shown on the court’s docket, not the date the brief or petition was submitted by counsel via TrueFiling.

See [STATEMENT OF CASE, FACTS;](#)  
[ISSUE CLASSIFICATION.](#)

## **APPENDIX A: Demystifying JCC/ACS and AIDOAC Reviews**

See [APPENDIX A.](#)

## **APPENDIX B: Statewide Compensation Guidelines**

See [APPENDIX B.](#)

## **APPENDIX C: Billing Habeas Time and Expenses**

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## **APPENDIX D: Guidance for Billing Unbriefed Issues**

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## **APPENDIX E: JCC Travel Guidelines**

SEE [APPENDIX E.](#)

## **APPENDIX F: Responsible Use of Associate Counsel and Law Clerks**

SEE [APPENDIX F.](#)

## **ASSOCIATE COUNSEL, LAW CLERKS, PARALEGALS**

Associate counsel’s time is added to the panel attorney’s, and the combined amount entered on the applicable line of the claim. The state requires an attachment itemizing

associate counsel's time claimed and providing his or her name and California State Bar number.<sup>1</sup>

These rules apply to use of associate counsel in CAC cases:

- *Court- or project-specific requirements*: Individual courts or projects may have additional or more specific requirements. Counsel must consult with the applicable project for such requirements.
- *Limitation for assisted cases*: Per AIDOAC policy, counsel in assisted cases may not use associate counsel, except with prior approval of the project director upon a showing of extraordinary circumstances.
- The appointed attorney must claim all of his or her own time first – do not cut it in order to claim associate counsel time. Cutting one's own time will understate it, casting doubt on the adequacy of counsel's personal involvement and supervision.
- Associate counsel time may then be added to the claim to the extent counsel judges it properly compensable.
- Only claimed associate counsel time is itemized on the claim. If counsel feels the need also to state how much time was waived, do so in the comments, do not add the time.
- Counsel must make sure the project is able to discern from the claim and the itemized associate time how much *actual* time appointed counsel of record spent on each function.

To read the full AIDOAC policy on use of associate counsel, see [APPENDIX F: Responsible Use of Associate Counsel and Law Clerks](#).

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 add these expenses to attorney time to assess the overall reasonableness of the claim.

#### **AUGMENTATIONS AND CORRECTIONS OF RECORD – LINES 4 and 5**

Requests 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, rules 8.340(b), 8.410) should be claimed under "other motions" line 5; 0.5 to 1.0 hour will usually be appropriate depending on the number of items requested.

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<sup>1</sup> Legal services by individuals not formally admitted to the California State Bar at the time the services are rendered are compensable only as law clerk/paralegal time.



If a motion to augment or a request to correct was prepared but not filed, claim the time on line 4 or 5 as applicable, with an explanation as to why it was reasonable to prepare but not file the motion or request. Send a copy of the unfiled draft to the project for claim review.

For courts that permit a combined augment and EOT filing, claim the combined time on Line 4.

## **BINDING – EXPENSE**

With the implementation of TrueFiling statewide, binding costs are generally more limited based on district requirements. Check with the project for binding exceptions according to differing court practices and policies. The least expensive method reasonably available should be chosen for serving copies on the parties, including e-service when available. Paper service copies should be stapled without taping or binding. Use of binding should be explained.

## **CERTIORARI (Petition for) – LINE 14**

Counsel may be compensated for a certiorari petition to the United States Supreme Court.

**Practice Tip:** The projects may have different steps and requirements for preauthorization and/or consultation with the project—check first.

## **COMMUNICATIONS – LINES 1 and 23**

Line 1 (“Communications”) is used solely for communications with the client and the trial attorney, except for those concerning a habeas corpus matter (see [HABEAS CORPUS](#) and [APPENDIX C](#)). The guideline is 3.5 hours.

**Practice Tip:** Communication time may be compensated if it is over the guideline, but an explanation is always required. Be explicit about the number of hours, letters, calls, etc. (If 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.”) In addition, include a brief qualitative explanation as to *why* above-guidelines communication was necessary to the case. However, counsel should be careful not to include any information that is protected by the attorney-client privilege.

While all recognize the importance of being responsive to a concerned and especially communicative client, counsel will be expected to exercise reasonable control over the client and limit the number and mode of communications appropriately, such as combining responses to a client’s frequent letters, while still communicating at all critical stages of the appeal process.

Other than habeas related communications (see [HABEAS CORPUS](#) and [APPENDIX C](#)), line 23 is to be used for all other communications (including with the court, co-counsel, opposing counsel, etc.) and is denoted “Other Communications.” Line 23 also includes

communications that promote the attorney-client relationship but are unnecessary to handling the appeal (e.g., contacts with family members to reassure them, with prison officials on a client’s medical condition, or with the client’s attorney in a civil case). Communication time on line 23 must be itemized and explained and, as always, must be reasonable to be compensated.

When communication with the client involves the use of a family member or other person as a translator or conduit for that communication, the time should be claimed on line 1. Exception: If such time is related to a habeas corpus investigation, it should be claimed on line 11.

All communications that are part of a habeas corpus investigation and/or development of habeas issues should be included on line 11. (See [HABEAS CORPUS](#) and [APPENDIX C.](#))

If the only time spent related to habeas is explaining to the client why a habeas petition is not appropriate, i.e., no investigation, research, or writing, that is simply considered client communication for line 1, not line 11.

If regular methods of communication 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. The projects may have different steps and requirements for preapproval—check first.

If necessary, the attorney may bring someone to facilitate the interview, such as an interpreter, sign language expert, psychologist, or family member or friend. These services and expenses must be preapproved by the project.

Helping the client with a pro per filing is usually compensable only to a de minimis extent. An exception may occur when part of the pro per filing is something counsel would normally file. The projects may have different steps and requirements for preapproval—check first.

## COMPUTER RESEARCH – EXPENSE

**Practice Tip:** Effective January 1, 2019, computer research expenses are claimed on the “Other Expenses” line. TrueFiling expenses (e-filing and e-service fees) are now claimed on a designated expense line (Crt e-filing/e-service fees).

*AIDOAC policy for Computer Research:* “The cost of computer research is compensable only if the research required access to unique materials outside a basic fee plan (California and U.S. Supreme Court cases) and must be supported by documentation (i.e., receipt or invoice).” Retain receipts or invoices in your business file.

Legislative history done by a specialized service is treated like computer research and may require preapproval in some districts—check with the project before incurring such an expense.

To the extent it is compensable, computer research is listed as an expense and itemized by the service to which it related (e.g., AOB, reply brief). Attorneys must include an explanation of the need for these materials.

See also, [RECEIPTS FOR EXPENSES](#).

## **CONSULTATION WITH STAFF ATTORNEY – LINE 21**

The guideline for consultation with the project staff attorney is 4.0 hours if the case is assisted and 2.0 hours if independent. Whether within or over guidelines, if consultation time seems high relative to counsel’s experience or the complexity of the case, further explanation may be requested.

If the staff attorney’s records and memory do not adequately correspond with the claim for this time, an additional explanation may be requested.

This service refers to consultation with the staff attorneys about handling the case. Contact with non-attorney personnel at the project, such as a paralegal, should be billed on line 23 under “other” communications if on a non-administrative matter related to handling the case (such as transmission of the record) or subsumed within the one hour allowance for administrative tasks if on other matters, such as filling out the compensation claim, acceptance of a case offer, request for appointment outside the normal rotation, etc.

## **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; that postage is a compensable expense. The file is usually sent on request, and postage for that is also compensable. However, since the original is to 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 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. Check with the project before asking the client to reimburse the cost of copying and sending a lost record.

In [NO-ISSUES CASES](#) such as *Wende*, the client is usually sent the record before or as soon as the brief is filed. Counsel may make copies of short records (e.g., 200 pages or less) or brief excerpts for their own later possible use. Any substantial copying requires specific justification and should be cleared with the project.

## COUNTY APPEALS

See [RESPONDENT REPRESENTATION](#).

## DEATH OF CLIENT

See [APPEAL SUBJECT TO DISMISSAL OR ABATEMENT](#).

## DIRECT DEPOSIT

Payments from the JCC may be directly deposited into an attorney's bank account. Information and forms are available from the JCC website: <http://www.courts.ca.gov/4201.htm>.

## DISMISSAL OF APPEAL

See [APPEAL SUBJECT TO DISMISSAL OR ABATEMENT](#).

## ELECTRONIC CLAIMS & WEB PORTALS

Claims are now transmitted to the projects electronically via the portals available from each project's website. Counsel should consult the instructions built into the electronic claims programs and/or any other instructional materials provided by the projects.

Ordinarily, the projects cannot correct errors on panel attorney claims. If a project deems the error is material, it will unsubmit the claim and notify counsel for correction and resubmission.

Legacy cases that used a paper interim claim form cannot be processed electronically via the projects' web portals. A paper final claim form must be submitted to the project, which can be found on the JCC's website: <http://www.courts.ca.gov/4201.htm>.

## ESCAPE BY CLIENT

See [APPEAL SUBJECT TO DISMISSAL OR ABATEMENT](#).

## EXHIBITS

Exhibit review, even if it may ultimately not occur at the superior court exhibits room, is considered review of the superior court file and is billed on line 20, unless they become part of the appellate record. The guideline for review of the superior court file and the exhibits, is 2.0 hours. As usual, any time greater than the guidelines must be justified. For some projects, alternatives to review in person may be available—check with the project.

Travel to the superior court for review of the file is compensable under usual travel rules. See [TRAVEL](#) and [APPENDIX E: JCC Travel Guidelines](#). However, the time and expense spent on travel should be reasonable and proportional to the need to review exhibits. If the trip is

long or expensive, it needs strong justification; counsel should call the project for advice on whether the travel is appropriate, whether preauthorization is required, or whether another option might be available.

Before traveling to the superior court to review exhibits, it is best to contact the exhibit room clerk and arrange for an appointment. See [COMMUNICATIONS](#).

Sometimes, needed copies of exhibits can be obtained by mail and travel to the court is unnecessary. Counsel should contact the project staff attorney to determine if this possibility is available. See also [SUPERIOR COURT FILE](#).

**Practice Tip:** Travel and court copying expenses may require preapproval in some districts—check with the project before incurring such an expense.

## EXPERTS – EXPENSE

Expert services must be preapproved by the project and/or the court. These services include investigators, physicians, psychiatrists, accident reconstruction experts, etc.

**Practice Tip:** Because compensation rules for experts are based largely on differing court policies—check with the project before incurring such an expense.

Before making a request, counsel should gather a realistic estimate of total anticipated costs, as well as an adequate explanation of the need for the expenditure and a well thought out plan for how the information sought will be used once obtained. The project will examine the basis for the estimated cost, including hourly rates charged, as well as for reasonableness, given current locally prevailing costs and the estimate of time needed.

Because expert expenses are usually high as compared with ordinary expenses, a receipt or other invoicing documentation should be maintained in counsel's file. See [RECEIPTS FOR EXPENSES](#).

## EXTENSION REQUESTS – LINE 3

The guideline is 0.5 hour per request. A lesser amount may be recommended for EOT requests that are nearly identical to earlier requests.

Extension requests can be compensated if they are reasonable under the circumstances. Factors the courts consider in ruling on an extension request are spelled out in Cal. Rules of Court, rule 8.63(b). Generally, as more extensions are requested, a more detailed showing of necessity is needed.

The fact an extension is granted or denied is relevant to whether the request was reasonable or relevant to the time claimed, but is not necessarily determinative.

Time for an extension request included within an augmentation request should not be claimed separately under “extensions of time,” line 3.

## FEDERAL HABEAS CORPUS

Federal habeas corpus work is not generally paid by the state. In some districts a small amount may be compensable for helping the client file a pro per habeas corpus petition in the federal court; other districts may not compensate for such work at all. Check with the project for current court policy. The attorney may be able to get an appointment from the federal court after filing a petition, so that work on the petition can be included in the federal court fee request.

## FINAL CLAIMS

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. See [NO-ISSUE CASES](#) for timing of submitting a claim.

A final claim is permitted once counsel has been relieved by court order (see [RELIEVED COUNSEL](#)). See also [SUPPLEMENTAL CLAIMS](#).

By statewide policy, final claims should be filed within 210 days of the remittitur date. Later filings are not expected by the JCC. Counsel with late claims may be asked by the project to pay storage retrieval costs for files archived.

## GUIDELINES

The compensation guidelines serve as benchmarks, not absolutes. They guarantee no minimum payment nor set an upper limit; payment can be below or above guidelines. The ultimate test is “reasonableness” – what an experienced appellate attorney would find reasonably necessary for handling the case appropriately.

Attorneys should, as a normal rule, claim the time actually spent, even if it is over guidelines. The JCC needs to have a realistic understanding of the time required to perform services. If the attorney is concerned about appearing wholly unreasonable or being perceived as inflating claims, he or she may self-cut but should point out it was done in a cover letter or in the explanations section of the claim form.

In recommending compensation, the projects act 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 in explanations from panel attorneys on such matters as research not obvious from the face of the filings and use of previously briefed materials. For this reason, small amounts over guidelines require an explanation just like more substantial overages.

See [APPENDIX B: Statewide Compensation Guidelines](#).

See also [ISSUE CLASSIFICATION](#);  
[QUALITY CONSIDERATIONS](#);  
[RECYCLING OF MATERIALS](#).

## HABEAS CORPUS – LINE 11

**Practice Tip:** Habeas work may require expansion of the appointment or preapproval in some districts—check with the project first. Counsel may also need to seek project or court preapproval for expert services and other unusual out-of-pocket expenses.

For petitions filed in conjunction with a direct appeal, the guideline is 12.0 hours. If reasonable and not capped by court policy, a recommendation over guidelines may be appropriate. The complexity of the issues, the extent of investigation needed, and similar factors will be considered in determining how much will be recommended.

“Line 11 rule”: When counsel has been appointed in an appeal and files a collateral habeas corpus petition, all of the attorney’s time related to the habeas corpus petition should be claimed on line 11. Specifically, time related to the habeas investigation (including communications with the client or anyone else), research (including reviewing court files and exhibits), expansion requests (if required), reviewing the response, replying, the part of oral argument related to the habeas claims, reviewing those parts of the opinion related to the habeas claims, and those parts of any petition for rehearing or review related to the habeas issues are all claimed on line 11 whether or not a habeas petition is ultimately filed. This is to provide the JCC with statistical information about the cost of habeas work. The time must be broken down by type of service in the comments field for line 11. In addition, expenses related to the habeas must be itemized in the line 11 comment field, as well as claimed under expenses.

If counsel is directly appointed in a stand-alone habeas proceeding (not connected with an appeal), the regular lines are used for reporting time – e.g., line 1 for client and trial counsel communication, line 17 for oral argument, line 18 for travel, line 21 for consultation with project, etc. Preparation and investigation of the habeas corpus petition should go on line 11; review of the opponent’s informal response or return, on line 15; reply (informal reply or traverse) on line 16.

More detailed guidance on billing habeas corpus work is available in a statewide policy/memo distributed by the JCC and the projects. See [APPENDIX C – Billing Habeas Time and Expenses](#).)

See also,  
[COMMUNICATIONS](#);  
[FEDERAL HABEAS CORPUS](#);

[HABEAS CORPUS PROCEEDINGS IN SUPERIOR COURT;](#)  
[CHART/TIP: Where to claim original briefing, supplemental filings, and more;](#)  
[PREAPPROVAL.](#)

## HABEAS CORPUS PROCEEDINGS IN SUPERIOR COURT

An attorney working under an appellate appointment who files a habeas petition 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 superior court denies the appointment, or if the appellate 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 consult with the project about the possibility of requesting payment for the petition by the Court of Appeal.

If the petition was first filed in the Court of Appeal, which then denied it “without prejudice to refile in the superior court” or issued an order to show cause returnable before the superior court, the petition is presumptively compensable under the appellate appointment. Compensation for any further proceedings in the superior court, however, must be under a superior court appointment. If the superior court appoints other counsel, appellate counsel can be compensated for reasonable communications with that attorney, itemized and claimed on line 11.

A habeas corpus petition filed in the superior court should be reasonably contemporaneous with the appeal. If it is filed after the appeal has become final, it may not be compensable under the appeal; check with the project.

If the petition was first filed in the Court of Appeal, which then issued an order to show cause returnable before the Court of Appeal, but referred the matter to the superior court for fact finding by a referee, who is to report back to the Court of Appeal, all superior court proceedings are compensable under the appellate appointment. If the appellate attorney lacks sufficient trial experience to conduct the proceedings, the attorney may ask the Court of Appeal for permission to associate counsel or to appoint co-counsel.

## HOURLY RATES

The court appointed counsel rate system is three-tiered. Rates are based on date of appointment:

Appointments made on or after <b>July 1, 2016</b>	Upper tier independent Other independent Assisted	\$115 \$105 \$95
Appointments made on or after <b>July 1, 2022</b>	Upper tier independent Other independent Assisted	\$130 \$120 \$110



A case is upper tier if it is:

- (a) independent, *and*
- (b) meets one of these categories:
  - (1) Murder conviction (Pen. Code, § 187) after jury trial, or
  - (2) LWOP sentence after jury trial, or
  - (3) A violation of Penal Code section 209(b), 220, 261-269, or 281-294 after jury trial, or
  - (4) Record read was 3,000 pages or more (including augmentations and judicially noticed matters, if the latter was material that could have been obtained by way of an augment motion or normal record request), or
  - (5) People's appeal of a motion for new trial, where one or more of the above criteria ((b)(1) through (b)(4)) are met.

The same rates apply to a [NO-ISSUE CASE](#) such as *Wende* or *Sade C.*

Only violations of the enumerated Penal Code sections qualify, not related offenses, such as manslaughter, attempts, or conspiracy to commit the enumerated violation.

The proceedings for the current appeal control the rate. For example, if an appeal in a murder case after jury trial results in a remand for re-sentencing, a new appeal from the re-sentencing would not qualify for the higher rate.

Mixed-rate consolidated cases:

- If an attorney is appointed to a case at one hourly rate and to a related case at a different 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. 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

There are four types of interim claims that may be submitted.

- 1. Pre-AOB:** An interim claim may be submitted before the filing of the opening brief under two circumstances: (1) where the record length exceeds 1,500 pages, or (2) where counsel has been waiting for an augmented or corrected record longer than 90 days. For these types of early interim claims, counsel will only be compensated for time spent on record review (Line 2). All other categories of work and expenses can and should be billed on the interim claim submitted after the AOB is filed.
- 2. Post-AOB:** An interim claim may be submitted for all hours and expenses incurred after the opening brief is filed, including unbriefed issues.
- 3. Post-ARB:** An additional interim claim may be submitted after the reply brief is filed. The only additional time billed should be for time spent on drafting the reply brief itself (Line 8) and for reviewing the opposing brief (Line 10). No additional time or expenses may be claimed with this claim.
- 4. Exceptional Circumstances:** In exceptional circumstances, the JCC/ACS may approve other early claims on the project director's recommendation on a case-by-case basis. The normal justification for an exception would be a long, unavoidable delay between appointment and the claim, causing substantial hardship to the attorney.

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 as recommended at the post-AOB interim claim.

Counsel should review the staff attorney's recommendations on the interim claim and submit supplemental justification with the final claim if needed. (See [NOTICE TO ATTORNEY OF PROPOSED CUTS](#).)

No interims may be filed in [NO-ISSUE CASES](#) such as *Wende* or *Sade C*. In these cases, a panel attorney may file a final claim either: (1) 30 days after the brief is filed, or (2) after the opinion issues. The attorney thereby waives any claim for later services, 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. See [SUPPLEMENTAL CLAIMS](#).

Unbriefed issues may be paid at the post-AOB 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. If it is necessary to discuss information possibly harmful to the client (i.e., an adverse consequence), do so in a confidential memorandum to the project. See also [APPENDIX D – Guidance for Billing Unbriefed Issues](#) memo.

## INTERPRETERS – EXPENSE LINE 8

See: [TRANSLATORS](#).

See also [RECEIPTS FOR EXPENSES](#).

## ISSUE CLASSIFICATION

Classification		Guideline (determined by project staff)
Low simple	LS	< 4.0 hours
Simple	S	4.0 hours
Simple/average	SA	> 4.0 to < 8.0 hours
Average	A	8.0 hours
Average/complex	AC	> 8.0 to < 13.5 hours
Complex	C	13.5 hours

Classifications consider quality, verbosity vs. conciseness, originality, depth of research, use of long block quotes, legal analysis vs. simple summary of cases, factual analysis, use of recycled or briefbank materials, conceptual intricacy, thoroughness (e.g., standard of review, prejudice), etc.

If there has been a previous claim, the issues may be reclassified by the project staff for the final. This would be done, for example, if a superseded policy was applied at the interim, or if later filings in the case (such as the respondent's brief or Court of Appeal opinion) or supplemental information suggests greater or less complexity than had first appeared. The Third District requires reclassification of any issue the court designates as frivolous in the opinion.

Joinder in another party's argument is presumptively low simple, but may become more complex as needed to tailor the point to the client's case and demonstrate error and prejudice. (See *People v. Bryant* (2014) 60 Cal.4th 335, 362-364.)

See also [QUALITY CONSIDERATIONS](#);  
[RECYCLING OF MATERIALS/USE OF PREVIOUS BRIEFING](#);  
[SUBDIVISION OF ISSUES](#);  
[UNBRIEFED ISSUES](#).

## JUDICIAL COUNCIL SERVICES

The Judicial Council Services is the administrative arm of the Judicial Council of California (JCC) Appellate Court Services (ACS) or Court Appointed Counsel Program (CAC), or other combinations of those words.

The ACS screens all claims (interim or final) over \$7500 before approving them for payment. This screening is by non-lawyers, mostly, and without access to the filings. Attorneys should take special care in explaining services rendered on more complex cases or where extraordinary time is being claimed.

The ACS promulgates and interprets claims policies (in addition to those decreed by AIDOAC or individual courts), in service to its budgeting functions. It may approve some irregularities in claims processing, such as early interim claims that do not meet published standards.

[APPENDIX A](#) describes the ACS mid-claim screening process and contrasts it with AIDOAC post-remittitur audit.

See also [AIDOAC](#).

## LAW CLERKS/PARALEGALS

See [ASSOCIATE COUNSEL](#);  
[APPENDIX F: Responsible Use of Associate Counsel and Law Clerks](#)

## MINOR'S BRIEFS

A minor's brief that is a client's first brief (whether appellant or respondent) should be claimed on line 6. Line 6 also includes a letter joinder filed by minor's counsel for a non-appealing minor in a dependency appeal.

## MOOT APPEAL

See [APPEAL SUBJECT TO DISMISSAL OR ABATEMENT](#);  
[PUBLIC INTEREST SERVICES](#).

## NEGATIVE RECOMMENDATIONS (CUTS EXCEED CLAIMED AMOUNT)

It is possible that final recommended cuts exceed the overall claimed/recommended amount, including the 5% holdback. The result is a negative claim recommendation where the attorney would have to pay back the overpayment received at the interim. If this occurs, ACS and JCC accounting will handle collection. Usually the attorney may either pay the money directly, or agree to have the amount owed withheld from a future claim or claims.

## NO-ISSUE CASES

**IMPORTANT NOTE: *Not all courts will accept an Anders brief— check with the project before filing!***

A conventional *Anders* brief lists the issues considered but not briefed and related authorities; a conventional *Wende* brief does not. Both must have a statement of the case and facts and the boilerplate statement.

All no-issue cases<sup>2</sup> are treated like *Wende* cases for claim purposes. Usually one hour is allowed for a boilerplate *Wende* statement – meaning counsel’s standard statement about reviewing the record, notifying the client, requesting the court to review the record, etc. If subsequent developments establish that the original filing of the no-issue brief was not a reasonable decision, the 1.0 hour for the *Wende* statement portion may not be compensable.

The time spent on the statement of case and facts and the *Wende* statement should be claimed under “Client’s First Brief/ AOB,” line 6. Time spent on unbriefed issues, including the time to write *Anders* issues (if permitted), should be claimed under “unbriefed issues,” line 7, and the time spent on each unbriefed issue itemized.

Only a final claim may be filed in no-issue cases. However, a panel attorney may file a final claim either (1) 30 days after filing the no-issue brief, or (2) after the opinion/dismissal, whichever comes first. If the final claim was submitted prior to issuance of the opinion or dismissal order, an attorney waives any claim for later services, 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 second final claim after the opinion issues. If a habeas corpus petition is filed along with a no-issue AOB, an interim claim can be submitted since it is no longer an issueless case. See [INTERIM CLAIMS](#).

The guideline for reading the opinion in a no-issue case is 0.2 hour.

In no-issue cases, the client is ordinarily sent the record before or as soon as the no-issue opening brief is filed. Counsel may make copies of short records or brief excerpts for their own later possible use. Any substantial copying requires specific justification and should be cleared with the project.

See also [COPIES FOR CLIENTS](#)

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<sup>2</sup> No-issue briefs are filed when no appellate issues can be identified: *Anders v. California* (1967) 386 U.S. 738 and *People v. Wende* (1979) 25 Cal.3d 436 [criminal appeals]; *In re Sade C.* (1996) 13 Cal.4th 952 and *In re Phoenix H.* (2009) 47 Cal.4th 835 [dependency appeals]; *Conservatorship of Ben C.* (2007) 40 Cal.4th 529 [mental health appeals]; *People v. Serrano* (2012) 211 Cal.App.4th 496 [postjudgment order appeals].

## NON-INDIGENT CLIENT

Check with the project if you have not received your appointment order prior to beginning work on a case. Work performed before appointment may be non-compensable if the appointment is denied, except for urgent work necessary to prevent substantial detriment to the client. However, if the client applies a second time and the appointment goes through, the pre-appointment work is compensable.

If it becomes apparent after appointment that a client may not be indigent, counsel should notify the project immediately and cease work on the case. Discuss with the project what steps may be necessary to protect the client (such as an extension request to avoid default), while the client's appointment status is sorted out.

See [WORK ULTIMATELY NOT USED IN THE CASE](#).

## NOTICE TO ATTORNEY OF PROPOSED CUT

Prior to the project transmitting its claim recommendation to the JCC, a project staff attorney will notify the panel attorney if there is a proposed cut of more than five hours that is also 10% or more of the total hours claimed. The panel attorney may then discuss the proposed cut at this level with the project staff attorney. If the project provided notification during a previous claim and the same proposed cut applies to the current claim, the project will not repeat the notification. The interim-claim holdback does not count as a cut.

## OPINION – LINE 19

The standard 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 [NO-ISSUE CASE](#) opinion is 0.2 hour.

Review of a tentative or modified opinion is claimed on the same line as the opinion. Only one opinion is used for calculating the guideline. The project may recommend over the guideline if reasonable – e.g., if the opinion is long or there are substantial changes between the tentative and the final.

## OPPOSING AND OTHER PARTIES BRIEFS, Review of – LINES 10 and 24

The guideline is 2.5 hours for line 10 for review of opposing briefs by the Attorney General, County Counsel or other opposing counsel (in most cases this is the respondent's brief). If a brief is unusually long or short, the project may recommend over or under the guideline.

Time related to reviewing supplemental respondent's briefs filed by opposing counsel should also be billed on line 10.

Review of other briefs (e.g., those of a co-appellant, non-appealing minor, or amicus curiae) should be claimed on [“Other Services,” line 24](#). If there is more than one item claimed, the comments to line 24 should provide a breakdown of how much time was spent on each. The guideline for reviewing these is what is “reasonable.”

See [“OTHER” FILINGS AND SERVICES](#);  
[CHART/TIP: Where to claim original briefing, supplemental filings, and more](#)

## ORAL ARGUMENT – LINE 17

The guideline is 7.5 hours. The project may recommend under or over guidelines if the case is unusually simple or complex. Reasonable time can be recommended for reviewing the case before waiving oral argument; explain unusual circumstances. A simple waiver may also be claimed on line 17. Unavoidable waiting time in court pending oral argument is compensable and should be claimed under line 17. Always itemize and explain such items.

Use of “CourtCall” and other videoconferencing/audio-conferencing is optional, where available. A claim for oral argument is fully compensable if the attorney chooses to appear in person, even though a video/audio option was available. If the argument was by CourtCall, checkmark the “telephonic” option for oral argument “type”.

**Practice Tips:** For districts that use CourtCall service for telephonic oral arguments, the incurred expense can be claimed on the “Telephone” expense line. Time “waiting in line” while on CourtCall should be separately itemized and claimed on Line 17.

Oral argument types include: (T – telephone; V – video/audio; or I – in-person)

Obtaining a transcript of oral argument is an extraordinary expense and should be preapproved by the project.

See also [TRAVEL](#);  
[APPENDIX E: JCC Travel Guidelines](#);  
[CHART/TIP: Where to claim original briefing, supplemental filings, and more](#)

## “OTHER” FILINGS AND SERVICES – LINES 5, 9, 14, 23 and 24

The guideline is “reasonable” for miscellaneous filings and services, e.g., other motions (line 5), supplemental opening briefs and letter briefs (line 9), other petitions (line 14), other communications (line 23), and other services (line 24). The allowable time depends on the complexity of the case, number of filings, level of involvement of the client, etc.

**Practice Tip:** If there are multiple filings captured on one line, the filings and services should be itemized in a comment with a breakdown of time spent for each item claimed.

*Frequently asked items about “other” services:*

1. **Monitoring the case:** What is reasonable for the oversight of the case will depend on factors such as the duration of the appeal and number of filings. Include an explanation for time claimed.
2. **If a motion was prepared but not filed:** Claim the time on line 5 with an explanation on why it was reasonable to prepare but not file the motion.
3. **Review of other parties’ filings:** Review of the briefs of the Attorney General or County Counsel or other *opposing* counsel is billed on line 10. Review of other parties’ briefs, such as those of a co-appellant or non-appealing minor or amicus curiae, should be claimed on line 24. The allowable time depends on the complexity of the case, number of filings, level of involvement of the client, etc. (See [CHART/TIP: Where to claim original briefing, supplemental filings, and more](#))
4. **Services reasonably necessary to handle the ancillary aspects of appeal:** Miscellaneous “other services” (line 24) are billable if they are reasonably necessary to handling the case. For example: A compensable service would be purging the transcript of juror identification references, if the time frame did not permit sending the record back to the superior court for such changes and the changes could not reliably be done by clerical personnel.
5. **Services tangential to the appeal:** Matters not reasonably necessary for handling the appeal are not compensable. For example, counsel cannot be compensated under the appellate appointment for helping the client’s attorney in the civil matter. Services on behalf of the client for health and placement concerns may be compensable; discuss these issues with the project. 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. (See [PUBLIC INTEREST SERVICES](#).)
6. **Requests for publication or depublication** of the opinion may be compensable. Consult the project regarding the appropriateness of such a filing and the possibility of being compensated for it.
7. **Actions needed to protect client and ensure effectiveness of appeal:** Actions to assure that the objectives of the appeal are protected can be compensated. This category includes, for example, “other motions” (line 5), such as a superior court application to correct credits (Pen. Code, § 1237.1) or clerical errors (*Fares* motion), motion for release pending appeal<sup>3</sup> or for expedited appeal, motions to file

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<sup>3</sup> Trial counsel should be asked to apply for the client’s release first, but appellate counsel should monitor the situation and may have to take over in some cases.



supplemental or overlong briefs, abandonments or requests to dismiss an appeal, requests for judicial notice, etc. (See [AUGMENTATIONS AND CORRECTIONS OF RECORD.](#))

8. **Contact with the Department of Corrections and Rehabilitation about the client’s release and communication with the opposing counsel** on immediate issuance of the remittitur are compensable “other communications” (line 23).
9. **Minor’s briefs and joinders**, see [MINOR’S BRIEFS.](#)
10. **Review of records not part of the record on appeal** including contents of trial counsel’s file, goes on line 24, or line 11 if related to habeas investigation.
11. **Filings required by the attorney’s own error or fault:** Some corrections may be compensable depending on the circumstances. Using the reasonableness standard, the project will evaluate the content and appropriateness of the filings as it does with other completed work.

## 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 director.

The AIDOAC compensation policy for work performed by an out-of-state panel attorney is there can be no claim for additional costs incurred as a result of working from another state. Allowable reimbursement for travel is the lesser of actual travel cost and the “most economical travel mode computed from the California border.” This means that the attorney should calculate, and the project will verify, the least expensive mode of travel. The attorney will be reimbursed for round-trip travel between the California border and the California destination. For those driving, reimbursement is for time and mileage between the border and the destination. For those using commercial transportation, reimbursement is for the cost from a designated point of entry within California, although sometimes the cheapest mode of travel may be a direct flight. This cost is allowable if it is less expensive than travel—considering both time and mileage—from the designated vehicle point of entry at the border to the destination.

See [APPENDIX E: JCC Travel Guidelines](#)

## OVERLAPPING CATEGORIES

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

## PEOPLE'S APPEALS

See [RESPONDENT REPRESENTATION](#).

## PETITIONS

See [HABEAS CORPUS](#);

[REHEARING](#);

[REVIEW](#);

[CHART/TIP: Where to claim original briefing, supplemental filings, and more](#)

## PETITIONS: LATER SERVICES

Review response to petition: the guideline is reasonableness.

Reply to response to petition: the guideline is one third of the recommendation for the petition.

## PHOTOCOPYING – EXPENSE

The guideline is the actual cost, up to 10¢ a page. Counsel should select the least expensive method reasonably available. Receipts are not required unless necessary to understand the claim, and they can be very helpful in explaining unusual costs.

It is unnecessary to separate or list elsewhere the tax on photocopying, however, it is compensable only if it does not bring the total over 10¢ per page.

Copying the record for the client (other than excerpts or short records in *Wende/Sade C.* cases) is usually not compensable. Obtain preapproval from the project if it seems necessary to do it. Copying the attorney's case file at the client's request: see [COPIES FOR CLIENT](#).

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

Recopying of briefs, transcripts, and other documents because of a mistake by the project, the court, AG, 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. Check with the project to see if they can help.

See also [PREAPPROVAL](#);

[PRINTING A DIGITAL RECORD](#);

[RECEIPTS FOR EXPENSES](#);

## [SCANNING A PAPER RECORD.](#)

### POSTAGE – EXPENSE

The policy is to reimburse the actual expense, if reasonable. Counsel should provide an explanation if the reasonableness is not self-evident. Receipts are not required unless necessary to understand the claim or the postage amount is high, but they can be very helpful in explaining unusual costs.

**Practice Tips:** A short explanation is needed when postage and shipping expenses exceed \$50, addressing things such as the number of served paper-briefs or “very large record shipped to client.” Use of priority or expedited delivery is not compensable beyond ordinary cost absent a case-related justification.

See [RECEIPTS FOR EXPENSES.](#)

### PREAPPROVAL

Preapproval by project or, where necessary, by the court is strongly recommended before incurring any extraordinary expenses, such as experts, investigators, travel to see clients, 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 the original preapproved amount will be exceeded, counsel should seek further preapproval from courts that require a preauthorization process.

The projects may have authority to preapprove some expenses; others require court preapproval. Check with the project for current policy.

See also [EXPERTS;](#)  
[HABEAS CORPUS;](#)  
[PHOTOCOPYING;](#)  
[TRANSLATORS;](#)  
[TRAVEL.](#)

### PRINTING A DIGITAL RECORD

If the superior court provides the record only in digital format, counsel will not be reimbursed for the cost of printing the record for the client unless (1) the attorney requested a print copy and the superior court declined to provide it (or the superior court has a standing policy of only providing digital) and (2) the client is unable to receive the record electronically. Moreover, in addition to the circumstance when the client can receive the record electronically, there may be additional circumstances when it is not necessary or appropriate to print a digital record and ship it to the client, such as when the client does not want the record or where the client is unlikely to actually receive it. Accordingly, in such or similar circumstances, in order to ensure reimbursement, it is recommended that counsel

consult with the appellate project before printing a digital record and shipping it to a client. Whether it is reasonable and necessary to print a digital record for shipping to the client will depend on a number of factors. In some districts consultation with the appellate project may be required or recommended prior to printing a digital record for shipment to the client.

See [SCANNING A PAPER RECORD](#).

## PUBLIC INTEREST SERVICES

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 should contact the project immediately if a case appears possibly to be moot to discuss next steps.

See [APPEAL SUBJECT TO DISMISSAL or ABATEMENT; WORK ULTIMATELY NOT USED IN THE CASE](#).

Depending on the case, time spent in contact with the media about an appointed case, although useful to the community, is not usually useful or required for representation of the client or discharge of duties to the court. Check with the project.

Requests for publication or depublication of the opinion may be compensable. Consult the project regarding the appropriateness of such a filing and the possibility of being compensated for it.

See ["OTHER" FILINGS AND SERVICES](#), under *Services Tangential to the Appeal*.

## QUALITY CONSIDERATIONS

The quality of work is considered in determining what is reasonable compensation.

A briefed non-arguable issue may be compensated as an unbriefed one if an experienced attorney would at least have researched the point. See [APPENDIX D: Guidance for Billing Unbriefed Issues](#) memo.

## RECEIPTS FOR EXPENSES

The JCC has informed the Project Offices that counsel in the California Appellate Court Appointed Counsel (CAC) Program must retain documentation for claimed expenses. Documentation includes, but is not limited to, invoices, receipts, copying and mileage logs, and other records that support claims for expenses. Although in most instances documentation need not be submitted with a claim, the projects or the JCC may request documentation with regard to claimed expenses. The burden of proof rests with appointed counsel to substantiate the claim. For tax purposes, the California Franchise Tax Board

suggests keeping such documentation for at least seven years, which would also cover audits of the CAC program.

## RECORD REVIEW – LINE 2

**Review of the preliminary hearing transcript** may be compensated in some circumstances if relevant to a potential issue in the case or it was relied on for the factual basis of a plea. If time is claimed for reviewing the preliminary hearing transcript, an explanation of the relevance is required. If only a portion of the preliminary hearing transcript was reviewed, the page-count-read must include only the number of pages read.

**The review of record time claimed** on line 2 should be for reading the official record and any judicially noticed materials, if the latter was material that could have been obtained by way of an augment motion or normal record request. Documents received from others (e.g., documents from trial counsel’s file) and reviewed should be claimed on the line most closely related to the purpose for the review or on line 24 (“other services”), if no other line is applicable (such as habeas, line 11). The purpose for the review and the amount of material examined should always be explained in a comment.

**The guideline for record review** is 50 pages per hour. It is unusual for the recommendation to exceed the guideline. A very rare exception might be made for dense, predominantly single-spaced or convoluted 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 need not be read as thoroughly as the normal record, such as records containing duplicative or very similar documents, such as dependency cases involving more than one minor. Consult with the project regarding unusual records.

**In a *Sade C.* situation**, minor’s counsel can normally bill for reading the record (given the short time frames, reading it before the parent’s AOB is usually considered reasonable). See also [NO-ISSUE CASES](#).

## RECYCLING OF MATERIALS (USE OF PREVIOUS BRIEFING)

**Mandatory information: Use of Previous Briefing.** Each claim, interim or final, must indicate “Use of Previous Briefing,” stating whether and to what extent previous briefing was used. By statewide policy, this statement is required even when no recycling was used.

**NOTE:** The recycling disclosure requirement is not intended as a 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 in determining originality, complexity, and reasonableness. In making a recommendation for compensation, the projects act 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.

***Policy; how the time needed is evaluated.*** The state encourages use of previously prepared material (briefbanked, borrowed, or personal). Recycling can be exceedingly efficient. At the same time the state can pay only for the attorney’s actual work on the particular case. While copying undeniably requires 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.

***Panel attorney’s duty to disclose significant use of previous briefing.*** Panel attorneys must 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 need not 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) affects complexity and must be acknowledged. Between these poles, judgment calls must be made. The test is whether the staff attorney could recognize an argument as recycled without disclosure and whether knowing it was recycled would materially affect the judgment on 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 be disclosed as previously used briefing.* 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.

***When briefbank use is required.*** Standard briefbanked arguments are expected to be used, e.g., the court of appeal has a standing order for an issue; if not used, the attorney must explain.

See also [GUIDELINES](#);  
[ISSUE CLASSIFICATION](#);  
[REVIEW \(petition for\)](#).

## REHEARING (Petition for) – LINE 12

The guideline for a petition is 6.0 hours. Using the reasonableness standard, the project will evaluate the content and appropriateness of the petition as it does other briefs.

## REJECTED FILINGS

If a filing is rejected by the court, the order is not dispositive. Using the reasonableness standard, the project will evaluate the content and appropriateness of the filing as it does other completed work.

## RELIEVED COUNSEL

An attorney 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, eliminating some cases because of a heavy workload – no compensation is usually awarded. An exception may be made for work that has actually saved successor counsel time, such as an augment request 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.

See [WORK ULTIMATELY NOT USED IN THE CASE](#).

## REPLY BRIEF – LINE 8

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

Time related to drafting supplemental reply briefs should be billed on this line (not review of others').

**Practice Tip:** The principal purpose of a reply brief is *responsive*, i.e., 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 new issue into the reply brief. (See also [SUPPLEMENTAL BRIEFS](#); [CHART/TIP – what goes where](#))

## 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. Expenses likewise should not be rounded off.

### [RESPONDENT'S BRIEF \(See OPPOSING PARTY BRIEFS\)](#)

## RESPONDENT REPRESENTATION

When filing a claim for representing a respondent, as in a People's or County's Appeal, the attorney should claim the time spent preparing the respondent's brief *on line 6* (i.e., Client's First Brief line) and time spent reviewing opposing parties' briefs on line 10. The comments should explain the nature of the filing.

## 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 issues. Using the reasonableness standard, the project will evaluate the content and appropriateness of the petition as it does other briefing.

Another highly relevant factor is the amount of copying from the AOB, ARB, or petition for rehearing in 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 [RECYCLING OF MATERIALS;](#)  
[OTHER FILINGS AND SERVICES;](#)  
[CHART/TIP: Where to claim original briefing, supplemental filings, and more](#)

A petition for review that is submitted prematurely to the Supreme Court can be recommended for compensation only after it is filed by the court. The filing date is the clerk's stamp date, not the date it was served or submitted via TrueFiling.

See also [WORK ULTIMATELY NOT USED IN THE CASE.](#)

## SADE C./PHOENIX H. CASES (Dependency No-Issue Brief)

See [NO-ISSUE CASES.](#)

## SCANNING A PAPER RECORD

Counsel will not ordinarily be compensated for their time or reimbursed for the cost of scanning a paper record. If counsel believes special circumstances warrant compensation or reimbursement for this task, they should consult with the appellate project prior to spending the time or incurring the expense.



See [PHOTOCOPYING – EXPENSE](#);  
[PRINTING A DIGITAL RECORD](#).

## SENTENCE

When counsel enters the projects' electronic claims systems, information regarding charges and sentence may already have been populated in the claim; if so, counsel must check the accuracy of the information. If this data has not been pre-populated, counsel must enter it accurately. If a determinate enhancement or term has been added to an indeterminate sentence, show the total of the enhancement or term time under "determinate sentence" on the claim and the number of LWOP or non-LWOP indeterminate terms in the appropriate spaces. Determinate and indeterminate sentences are never entered on the same row. Best practice is to enter the indeterminate sentence as the first line (line 1).

## STATEMENT OF CASE, FACTS

The guideline is generally one half of the guideline for record review. Payment above or below the guidelines may be recommended when 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. For example, a lengthy statement of procedural events is ordinarily inappropriate and undesirable. A detailed recitation of facts is usually unnecessary if the sole issue is a legal one dealing with construing a statute. The project can recommend payment only for what is reasonable for the particular case.

If the statement of case and facts is appropriately drafted but no brief is ever filed, the time for preparing it can be claimed on line 6. Provide the assigned project staff attorney with a copy of the draft. See [WORK ULTIMATELY NOT USED IN THE CASE](#).

## SUBDIVISION OF ISSUES

When evaluating a brief, the project attorney divides the issues by content, which may or may not reflect the format in the brief. Issues are classified as separate only when they are 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 will be evaluated as three separate issues, even if under one Roman numeral.

## SUPERIOR COURT FILE – LINE 20

The guideline for review of the superior court file and the exhibits, whether viewed onsite or otherwise, is 2.0 hours and is billed on line 20.

**NOTE:** The following policies may not apply to all cases. Alternatives to in-person review may be available; check with the individual project prior to incurring time and expenses for travel.

*Travel* to the superior court for review of the file is compensable under usual travel rules. See TRAVEL. However, the time and expense spent on travel should be reasonable and proportional to the need to see the file. If the trip is long or expensive, it needs strong justification; counsel should contact the project for advice on whether the travel is appropriate.

Counsel may also ask outlying courts to transfer files to a more central location for viewing (for example, from Victorville to Fourth District, Division Two, or from El Centro to Fourth District, Division One).

See also [APPENDIX E: JCC Travel Guidelines; EXHIBITS](#).

## **SUPPLEMENTAL OPENING BRIEFS – LINE 9**

The projects classify and evaluate supplemental brief issues using the same standards as used for the [AOB \(or Client’s First Brief\)](#).

A motion for leave to file a supplemental brief (Cal. Rules of Court, rule 8.200(a)(4)) should be billed under “other” motions, line 5.

Time related to drafting supplemental reply briefs should be billed under [Reply Briefs, line 8](#).

See also: [CHART/TIP: Where to claim original briefing, supplemental filings, and more](#)

## CHART/TIP: Where to claim original briefing, supplemental filings, and more

Choose who filed the document. Then choose the appropriate line #:

1. Panel attorney's briefing and petition work for their client is captured on Lines 6, 8, 9, and 13:
  - **Line 6:** Client's First Brief, whether an AOB or Respondent's Brief (when representing respondent)
  - **Line 9:** Client's Supplemental AOBs or Respondent's Brief (when representing respondent) or Supplemental Authorities Letters.
  - **Line 8:** All client Reply Briefs, whether original or second (Supplemental) or more
  - **Line 13:** All client Petitions for Review, whether first or additional
2. Review of others' briefing and petition work is captured on Lines 10 and 24:
  - **Line 10:** Review of all Opposing Briefs, whether original or second (Supplemental) or more
  - **Line 24:** Review of all co-appellant's and non-party briefs, including amicus
3. Oral argument is captured on Line 17:
  - **Line 17:** All oral arguments, whether first or more

## SUPPLEMENTAL CLAIMS

Supplemental or early interim claims may be filed with the permission of the court, the JCC/ACS, or the project director upon a showing of hardship, evaluated on a case-by-case basis. Also, mistakes by the project or the JCC/ACS in processing a prior claim, a long delay in the court's handling of the case, or substantial, unforeseeable services rendered after the remittitur issues, or similar events may provide a context for submitting a supplemental claim.

For review granted cases, cases that are subsequently transferred back to the Court of Appeal for further work, one supplemental final claim may be submitted once all further work is completed. If the case is not transferred back, all post-review petition time should be billed to the Supreme Court case.

A supplemental claim should be cumulative – i.e., the time shown should include what has been claimed previously, not just the new time. In the comments, counsel should expressly

spell out the newly added supplemental time, to expedite the review of the claim for new time.

See [INTERIM CLAIMS](#) for early interims.

## **SUPREME COURT CASES**

The filing of a petition for review and/or answer is compensated on the claim submitted for the Court of Appeal work. The Supreme Court handles claims for case work executed after review has been granted and the claim should be submitted directly to that Court.

There are no specific guidelines for Supreme Court services: the test is the reasonableness of the time claimed, given the needs of the case. The Court of Appeal [GUIDELINES](#) can serve as benchmarks, but that is very flexible. Preparation for oral argument, for example, will usually take longer in the Supreme Court because of the importance of the argument.

In a review-granted case, the attorney is compensated at the same rate as in the Court of Appeal for that case, unless a new intervening appointment rate applies.

If the case is transferred back to the Court of Appeal for further case work, one supplemental final claim may be filed in the Court of Appeal for all work performed following transfer.

See [SUPPLEMENTAL CLAIMS](#) for transfer cases

## **TELEPHONE – EXPENSE**

Actual long distance expenses related to the case, if reasonable, are compensable if they are separately paid for and not if part of an overall long distance plan. Monthly charges and local calls are not compensable. Receipts are generally not required, but they can be very helpful in explaining unusual costs.

For courts utilizing CourtCall, these expenses can be claimed on this line.

See [RECEIPTS FOR EXPENSES](#).

## **TRANSLATORS – EXPENSE**

The projects have authority to preapprove translator fees. Because there may be different steps, caps and/or requirements for preapproval, always check procedures with the project before incurring this expense.

Translation of lengthy documents such as briefs is not compensable; the attorney should summarize the arguments in a letter, which can be translated. An interpreter for oral argument is not compensable.

Because translation and other expert fees are extraordinary expenses, receipts or other invoicing documentation should be maintained in counsel's file.

See [RECEIPTS FOR EXPENSES](#).

## TRAVEL

The Judicial Council Services has published official guidelines for travel, which can be found in [APPENDIX E: JCC Travel Guidelines](#). They are reflected in this section of the Claims Manual but not in detail. These policies are subject to change. Always check current travel guidelines.

Time for travel is compensable only if the distance is more than 25 miles one way.

Travel time during which counsel could possibly be working (such as on a flight or waiting in an airport) is not compensable. Reasonable airport processing time may be compensable.

Expenses are not subject to the minimum distance limitation.

### *Frequently asked questions relating to travel expenses:*

- 1. Receipts:** The JCC has informed the projects that counsel in the California Appellate Court Appointed Counsel (CAC) Program must retain documentation for claimed expenses. Documentation includes, but is not limited to, invoices, receipts, copying and mileage logs, and other records that support claims for expenses. Although documentation need not be submitted with a claim, the projects or the JCC may request documentation with regard to certain expenses claimed (e.g., hotel and airfare). The burden of proof rests with appointed counsel to substantiate their claims. For tax purposes, the California Franchise Tax Board suggests keeping such documentation for at least seven years, which would also cover audits of the CAC program. (See [RECEIPTS FOR EXPENSES](#).)
- 2. Preapproval:** Travel for non-routine purposes must be preapproved by the executive director or assistant director. Going to oral argument is routine. Travel to review the superior court file is routine for counsel in the same area as the superior court, but not for those who must go long distances. Client visits (except local ones of less than 50 miles round trip) must be preapproved. (See [PREAPPROVAL](#); [SUPERIOR COURT FILE](#).)
- 3. Multi-purpose travel:** 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.

4. **Libraries:** Time and expenses for travel to libraries are overhead and not compensable. The same restriction applies to parking and photocopies for such purposes.
5. **Out-of-state travel:** See [OUT-OF-STATE ATTORNEYS](#).

See also [APPENDIX E: JCC Travel Guidelines EXHIBITS](#);  
[SUPERIOR COURT FILE](#).

## TRUEFILING – EXPENSE (“CRT E-FILING/E-SERVICE FEES”)

As of January 1, 2019, all court e-filing and e-service related fees (currently “TrueFiling”) are claimed on a dedicated expense line.

With TrueFiling implemented statewide, reimbursement for binding costs are generally more limited based on district requirements. The least expensive method reasonably available should be chosen for service copies; most should be stapled with no taping or binding. See also [BINDING EXPENSE](#).

## UNBRIEFED ISSUES – LINE 7

Time spent on an issue considered but not briefed may be compensated at the post-AOB interim or final stage. (See [INTERIM CLAIMS](#).) A compensable unbriefed issue is not a mere question the attorney thought about briefly and rejected. It must be sufficiently substantial that an experienced attorney would reasonably research or investigate it.

**Practice Tip:** More than 2.5 hours may be recommended for an unbriefed issue, but an over-guideline comment is required by the JCC and helpful to the project staff.

AIDOAC has adopted a formal policy on unbriefed issues, which the projects have posted on their respective websites called, “Guidance for Billing Unbriefed Issues.” This guide “codifies” and clarifies but does not change long-standing policies for compensation for unbriefed issues as outlined here. The guide does suggest how panel attorneys may describe unbriefed issues so as to get maximum compensation with minimum delay. See [APPENDIX D: Guidance for Billing Unbriefed Issues](#) for the full-text memo.

Because there is no briefed issue to evaluate, the burden is on the panel attorney to explain the issue and describe the work in enough detail for the reviewer to evaluate the time claimed and assess the complexity of each issue. Although an elaborate analysis is neither expected nor very helpful, the other extreme – such as a sentence fragment without citations – will rarely, if ever, persuade a reviewer the unbriefed issue was potentially significant and relevant. To optimize the chances for compensation, it can be useful for the description to clarify how the issue would have related to the case. Indicating the type and extent of research can be beneficial; for example, a list of authorities consulted helps to

show the issue was a substantial one warranting research. A claim for time spent re-reading parts of the record should explain why the initial review with transcript notes was inadequate.

Unbriefed issues are classified according to the chart:

<b>Recommendation (determined by project staff)</b>		<b>Classification</b>
< 0.5 hours	LS	Low simple
0.5 hours	S	Simple
> 0.5 and < 2.5 hours	SA	Simple/average
2.5 hours	A	Average
> 2.5 and < 5.0 hours	AC	Average/complex
5.0 hours	C	Complex

Appellate Court Services routinely screens all claims over \$7,500 and a random sampling of smaller claims from daily batches received before approving them and sending them to Accounting and the Controller. They look closely at unbriefed issues in these cases so panel attorneys should explain these carefully, especially when any given unbriefed issue is more than 2.5 hours or the aggregate of unbriefed issues is more than 10.0 hours. (See [APPENDIX A](#) discussing this review.)

Counsel should use care not to argue against the client or disclose a potential adverse consequence in describing unbriefed issues on the claim form; if it is necessary to discuss information possibly harmful to the client, do so in a confidential memorandum to the project attorney and describe the issue as “Confidential as discussed with project.”

See [APPENDIX D: Guidance for Billing Unbriefed Issues](#)  
[WORK ULTIMATELY NOT USED IN THE CASE.](#)

**USE OF PREVIOUS BRIEFING**

See [RECYCLING OF MATERIALS.](#)

**WENDE CASES (CRIMINAL CASE NO-ISSUE BRIEF)**

See [NO-ISSUE CASES.](#)

**WORK ULTIMATELY NOT USED IN THE CASE**

The fact that an attorney’s draft, research, investigation, or other services are not used 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. Reasonably researched unbriefed issues and reasonable but unfruitful habeas corpus investigations are examples. Work necessitated by the exigencies of the case, such as a minor’s counsel’s review of the record in a fast-track case before the appellant’s brief is filed (even if it turns out to be a *Sade C.* brief) may also be reasonable. 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.

A premature petition for review can be recommended for payment only after it is *filed*; if it is never filed because, e.g., the Court of Appeal grants rehearing, it is payable only to the extent early work was necessary to ensure a timely filing because of the petition’s length and complexity.

See also [APPENDIX D: Guidance for Billing Unbriefed Issues](#)  
[APPEAL SUBJECT TO DISMISSAL OR ABATEMENT](#);  
[NON-INDIGENT CLIENT](#);  
[PUBLIC INTEREST SERVICES](#);  
[RELIEVED COUNSEL](#);  
[UNBRIEFED ISSUES](#);  
[REJECTED FILINGS](#).

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*APPENDIX A*  
*Demystifying JCC/ACS and AIDOAC Reviews*

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Project claim recommendations are subject to several levels of state agency review. This appendix describes those and also advises attorneys how to maximize the chances of getting a claim through both levels the first time.

1. *JCC/ACS screening*: The first review after the project transmits the claim recommendations is by Judicial Council/Appellate Court Services. ACS screens every claim recommendation totaling over \$7,500, and a random sampling of smaller cases, before their approval is sent to the Controller to generate payment. The purpose of this review is to make sure the project has adequately justified an award of that size and added explanations where needed. The ACS reviewers are not lawyers, for the most part, and have access to just the project recommendation, not case materials, such as briefing. The ACS scrutinizes over guideline items looking for explanations for these items.
2. *AIDOAC audits*: The second is the audit of randomly selected claims by the Appellate Indigent Defense Oversight Advisory Committee (AIDOAC), after the final claim has been filed. AIDOAC reviewers are appellate justices and attorneys, and they have access to the entire file, including the briefs, selected motions, and opinions. The purpose is to make sure that claim recommendations are justified by the needs of the case and the quality of the work, and also to oversee the project's claim review and panel management processes.

The accompanying Audit Comparison Chart sets forth the two different types of review in more detail.

***ULTIMATE PURPOSE OF REVIEWS:  
ACCOUNTABILITY AND PROTECTION OF THE CAC SYSTEM***

The ACS and AIDOAC, like the California Judicial Council, are subject to periodic scrutiny by other governmental agencies. These multiple audits drive many of the cautionary policies and procedures the ACS, AIDOAC, and projects have adopted. Even though it sometimes seems like frustrating “nitpicking,” those policies and procedures are protecting both the panel and the projects during scrutiny. The appointed counsel system is reviewed regularly by the Department of Finance, the Governor, the Legislature, and such agencies as the Bureau of State Audits (BSA). Both the ACS and AIDOAC need to supply evidence in the form of explanations that support the recommendation, to potentially skeptical, non-attorney outsiders.

***1. EXPLANATIONS THAT REALLY EXPLAIN: JCC/ACS SCREENING***

Attorneys should not take it for granted that the ACS reviewers will understand the implications of the facts marshaled to support the claim.

First, these reviewers are rarely lawyers. They will not necessarily understand what arguments are complex or difficult and why. Do not just say an argument is “complex,” instead explain *why* it is complex – novelty, difficulty of finding applicable law, number of co-defendants, component parts of the arguments, etc. Or, in explaining unusual client communication, state the client wrote X-letters or made Y-calls and give the circumstances— e.g., rapidly changing law, court requests for supplemental briefing, etc.; if the cause was an obsessive client, describe counsel’s efforts at control.

Second, the ACS or outside auditors have only a claim worksheet in front of them, not the underlying documents. They don’t know how long the briefs were, the number of co-appellants, and any other complicating factors. Comments must explain the complicating factors that might not be obvious to a non-lawyer.

2. *EXPLANATIONS THAT REALLY EXPLAIN: AIDOAC AUDITS*

AIDOAC auditors are appellate justices and attorneys who understand legal concepts and terminology. They have the file – the briefs, the opinion, and other selected documents for which time was claimed—in endeavoring to understand and evaluate the time claimed.

AIDOAC auditors’ main focus is not only the clarity and adequacy of the explanations, but also the underlying reasonable value of the work. The panel attorney’s comments, therefore, need to explain circumstances that required efforts not obvious from the face of the documents, especially if a claim is above guideline. (Staff attorneys also need such explanations in making the original recommendation.)

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*JCC/ACS SCREENING v. AIDOAC AUDITS*

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Topic	JCC/ACS screening	AIDOAC audits
<b>Timing of review</b>	For all interim and final claims, while the claim is in progress: after transmission from project and before giving approval for Controller to pay.	Three to six months after case becomes final.
<b>Pool of claims from which reviewed claims are chosen</b>	Recommendations of more than \$7,500 and random sampling of smaller claims	Audit pools are selected from all claims, with certain exclusions. Separate pools for "trigger" cases (unusually high time for the record length) and staff cases.
<b>Criteria for selection from pool</b>	100% of recommendations > \$7,500	A specified % are selected at random from each pool.

<b>Topic</b>	<b>JCC/ACS screening</b>	<b>AIDOAC audits</b>
<b>Reviewers</b>	ACS personnel. None are criminal or appellate lawyers, and most are not lawyers.	AIDOAC members. The committee is appointed by the Chief Justice and is composed of one appellate justice from each district, two or more project directors, a civil appellate attorney, and a panel attorney.
<b>Materials available to reviewers</b>	Claims worksheet. No briefs or other filed documents.	All parties' briefs, the opinion, the claim and claim worksheet. If the case had a co-appellant or appointed counsel, that claim is provided for informational purposes.
<b>Consequences if reviewer is not satisfied</b>	If inquiries are necessary, that holds up the claim for the panel attorney, requires the project director to get involved, and requires the staff attorney to review the claim once more, often to resubmit it with additional explanation(s).	<p>Auditor contacts project director. Director will generally consult the responsible staff attorney. After project input, the auditor reports to the committee on any proposed adjustment. The committee decides at its next meeting.</p> <p>The attorney must repay any amount cut (often by deduction from next claim). Or, the project will create a supplemental claim and ACS will send payment for any restoration</p>

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*APPENDIX B*  
*Guidelines for Appointed Counsel Compensation (rev. January 2019)*

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<b>Line</b>	<b>Category of Attorney Time</b>	<b>Guideline</b>
1	<a href="#">Communication with Client and Trial Counsel</a>	3.5 hours
2	<a href="#">Review of Record</a>	1.0 hour for each 50 pages of record
3	<a href="#">Extensions of Time</a>	0.5
4	<a href="#">Motions to Augment the Record</a>	1.5
5	<a href="#">Other Motions</a>	Reasonable time; itemize multiple items
6	<a href="#">Appellant's First Brief</a> (Usually AOB)	
	<a href="#">Statement of the Case and Facts</a>	1/2 review record, up to 10.0
	<a href="#">No-Issue brief</a>	Usually 1.0
	Low Simple Issue	< 4.0
	Simple	4.0
	Simple to Average	>4.0 to <8.0
	Average	8.0
	Average to Complex	>8.0 to <13.5
	Complex	13.5
7	<a href="#">Unbriefed Issues</a>	
	Low Simple Issue	< 0.5
	Simple	0.5
	Simple to Average	>0.5 to <2.5

<b>Line</b>	<b>Category of Attorney Time</b>	<b>Guideline</b>
	Average	2.5
	Average to Complex	>2.5 to <5.0
	Complex	5.0
8	<a href="#">Reply Brief, including supplemental Reply</a>	1/3 of hours awarded for AOB
9	<a href="#">Supplemental Opening Brief</a> (including letter briefs)	Same as first brief guidelines
10	<a href="#">Review of Opposing Brief, including supplemental brief</a>	2.5
11	<a href="#">Habeas Corpus Petition</a>	12.0
12	<a href="#">Petition: Rehearing</a>	6.0
13	<a href="#">Petition: Review (or Answer)</a>	10.0
14	<a href="#">Petition: Other</a>	Reasonable time
15	<a href="#">Petition: Read Response</a>	Reasonable time
16	<a href="#">Petition: Reply to Response</a>	1/3 of hours awarded for petition
17	<a href="#">Oral Argument</a>	7.5
18	<a href="#">Travel</a>	Reasonable time
19	<a href="#">Review Opinion</a>	
	After Substantive Brief	1.5
	After No-Issue Brief	0.2
20	<a href="#">Review Superior Court File</a>	2.0
21	<a href="#">Consult with Appellate Project</a>	
	Assisted Case	4.0
	Independent Case	2.0
22	<a href="#">Administrative Tasks (only on final claim)</a>	Up to 1.0

<b>Line</b>	<b>Category of Attorney Time</b>	<b>Guideline</b>
23	<a href="#">Other Communication</a>	Reasonable time
24	<a href="#">Other Services</a>	Reasonable time

<b>Category of Expense</b>	<b>Standards</b>
<a href="#">Photocopy</a>	Actual cost, up to \$0.10 per page
<a href="#">Binding Briefs</a>	Actual cost if reasonable; explain need; explain if over \$25
<a href="#">Postage/Delivery</a>	Actual cost if reasonable; explanation if over \$50
<a href="#">Telephone/Court Call</a>	Actual cost if reasonable
<a href="#">Travel Expenses</a>	Actual necessary expenditures; preapproval policies and/or limitations may apply
<a href="#">Crt e-filing/e-service Fees</a>	Actual cost
<a href="#">Paralegal/Law Clerks</a>	\$25 per hour
<a href="#">Translator/Interpreter</a>	Actual cost; up to local prevailing rate
Misc./Other Expenses	Actual cost if reasonable; itemize items claimed

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*APPENDIX C*  
*Billing Habeas Time and Expenses (rev. July 2014)*

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The JCC has agreed to a uniform set of rules for billing time and expenses for habeas corpus work. In the past, these have varied and also may have been articulated in confusing or contradictory ways. We apologize for this. The requirements imposed by the JCC have changed as the JCC has reassessed its requirements.

The following instructions apply statewide until further written notice. **The passages in red apply to stand-alone habeas petition cases** – meaning not billed in conjunction with an appeal or other proceeding.

## **HABEAS TIME**

### **1. General rule: line 11 is for habeas corpus-related work**

- **Meaning of “habeas corpus-related work.”** If counsel judges a habeas is reasonably likely – more than a mere theoretical possibility, although it need not yet be a firm decision – time for any investigation, research, and drafting connected to the habeas or potential habeas should be included here, whether or not the ultimate decision is to file a petition.
- **What habeas corpus-related work does not include.** Merely seeking very preliminary information in order to determine whether to go further, or explaining to the client or trial attorney the basics of habeas or the reasons for not pursuing one, is not “habeas-related work.”

### **2. What should be included in line 11**

- **Communications with client, trial attorney, and others in investigation and development of habeas corpus issues. All of this now goes on line 11. We previously used lines 1 and 23.**
- **Investigation.** Report on line 11 time spent on investigation, work with an investigator, review of trial counsel’s files, etc. No habeas work should go on line 24.
- **Any motion related to habeas work.** This category includes motions for expansion of the appointment to include habeas (primarily CCAP cases), requests for costs of investigation, etc.
- **Preparation of filings.** Research and writing of petition, traverse, etc.
- **Other time spent on habeas.** Include on line 11 other habeas time, such as review of respondent’s filings and opinion, travel or oral argument related primarily to habeas corpus, etc.

### 3. Breakdown of attorney time in explanation field.

Explain the components of the services claimed on line 11, using the general categories above. See example at end of this memo. This gives the project and judiciary essential information for reviewing the compensation claim. Take care to provide adequate detail, especially when the total time for habeas exceeds the guideline.

### 4. Exception for stand-alone habeas: use usual lines of form for services, not line 11.

For a stand-alone habeas not combined with another proceeding, it is not necessary to move time to line 11. Use line 11 for the petition and investigation, but the usual lines for other services: 1 for client and trial counsel communication, 16 for traverse, 17 for oral argument, etc.

## HABEAS EXPENSES

### 1. General rule: Claim habeas expenses in the expenses section

- **Combine with other expenses in the appeal.** There are no dedicated fields for habeas expenses. Instead, they should be combined with the non-habeas expenses in the appropriate line of the expenses.
  - **Example.** If photocopying for the non-habeas part of the case is \$200 and the habeas copying is \$150, claim \$350 for photocopying.

### 2. Explain and itemize habeas-related expenses in explanation or comments field for line 11

- **Line 11 comments.** The comments to line 11 should specify the amount of each expense item devoted to habeas. This allows the AOC to isolate habeas costs for administrative purposes.
- **Exception for stand-alone habeas:** An expense breakdown on line 11 is not needed.

### 3. EXAMPLE of explanation field for line 11

For a habeas combined with an appeal or other proceeding, the comments for line 11 should provide a breakdown of habeas-related time and expenses. These comments are needed to evaluate the claim.



We recommend providing the required information in a simple format, easy to read. For example, the explanation field for line 11 might say:

#### **SAMPLE COMMENT FOR LINE 11**

##### **Hours on habeas corpus-related services**

2.7 hrs Communications with client and trial counsel re habeas: provide number and length of letters, number and length of phone calls, interviews, etc. *<additional explanations>*

4.5 hrs Investigation - review of files, interviews with witnesses, work with investigator, etc. *<any additional explanations>*

4.0 hrs Research, drafting petition. *<describe issues or cases researched>*

3.0 hrs Travel to review trial counsel files

##### **Expenses incurred because of habeas corpus**

\$ 23.00 Photocopying – 230 pages - petition

\$ 15.75 Postage – petition

\$173.00 Travel – flight to and return from trial counsel office

- **Exception for stand-alone habeas:** These breakdowns on line 11 are not necessary.

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*APPENDIX D*  
*Guidance for Billing Unbriefed Issues*

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1. Counsel may bill for an unbriefed issue if a reasonably experienced appellate lawyer would need to perform work in order to determine if a viable issue existed. If a settled rule is dispositive, compensation will not be awarded if a reasonably experienced appellate lawyer should have known of the rule without conducting research.
2. Unbriefed issues are not just possible questions that you thought about and rejected. In order to be compensable, an unbriefed issue must involve legal research or the application of legal principles to the record if you are already familiar with the controlling legal principles.
3. An unbriefed issue is a question that raises sufficient concern to merit either: (1) some research (checking of case law, statutes, or other authorities); or (2) the application of already known legal principles by examining the record to see if an issue exists. An example of category 2 would be the application of already known cases regarding the Miranda rule to review of the Evidence Code section 402 hearing and ruling on the Miranda motion.
4. The more you help the reviewer by articulating information regarding the work you had to do to reject the issue, the more likely you will be paid for that work. Thus, it would be wise to include a reference to the specific authority or authorities you consulted prior to deciding to reject the issue. This is an important part of the process of distinguishing real unbriefed issues from rejected thoughts.
5. Explain the possible relationship between the issue and the case clearly enough to provide the reviewer with an understanding of the reasonableness of your consideration of the issue. Reading your brief may not be sufficient to give the reviewer an understanding of the appropriateness of investigating the issue, especially if the issue is not related to the main thrust of the brief.

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*APPENDIX E*  
*Travel Guidelines & Policies for Court-Appointed  
Counsel in Non-Capital Appointments (rev. March 2017)*

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The guidelines referenced below are travel guidelines and policies that are appropriate and applicable to court-appointed counsel appointed by the Courts of Appeal.

Receipts for travel expenses should be maintained by panel attorneys for claim audit purposes and may be requested by either the project staff or the JCC/AIDOAC to document claimed amounts.

Court-appointed counsel should make all travel decisions based on the least costly method of travel. The projects and/or the JCC will update you in writing with any applicable changes in the CAC program's travel guidelines and policies.

**1. Time-Overnight travel**—Panel attorneys should provide the day, month, and year of the travel. Include the departure time and the return time.

**2. Location**—State the location of where the expenses were incurred and the purpose of the trip.

**3. Lodging**—For cases where counsel was appointed on or after January 1, 2017, the reimbursement rate for lodging is generally up to \$110 plus taxes per evening. However, the following rates apply in the specified counties:

- \$150 in San Francisco County
- \$140 in Alameda, San Mateo, and Santa Clara Counties
- \$120 in Monterey, San Diego, Los Angeles, Orange, and Ventura Counties

Panel attorneys are expected to seek out the most reasonable lodging and to use free hotel shuttle when available.

See the Statewide Compensation Guidelines for the lodging rates for cases where counsel was appointed before January 1, 2017.

**4. Meals**—For cases where counsel was appointed on or after January 1, 2017, the State rates for meals are the actual cost up to:

- \$8 for breakfast
- \$12 for lunch

- \$20 for dinner
- Meals will only be reimbursed for overnight trips.

See the Statewide Compensation Guidelines for the meal rates for cases where counsel was appointed before January 1, 2017.

## 5. **Transportation**

- **Use the least costly and most efficient mode**
  - Transportation costs will only be reimbursed for the least costly and most efficient mode of travel. For example, if a panel attorney chooses to drive to their destination but it is less expensive to fly, the attorney will only be reimbursed for the cost of flying.
- **Documenting distance travelled**
  - The attorney may provide to the project a MapQuest showing the mileage from their departure location to their destination location and a copy of an airfare estimate. If the attorney does drive, please provide the mileage.
- **Current mileage rate**
  - The current mileage rate for court-appointed counsel is \$.50 (see the Statewide Compensation Guidelines for the mileage rate for cases where counsel was appointed before January 1, 2017).
- **Travel to visit the client**
  - Travel to visit the client in prison, if round trip is over 50 miles, must be authorized by the appellate project director or assistant director.

**6. Carfares and Parking**– Carfare and parking expenses should be kept to a minimum. When traveling to and from an airport, a shuttle or other form of public transportation should be used.

- Use of a taxi will not be reimbursed, unless it is shared and the cost is less than a shuttle. If the panel attorney does use a taxi, the attorney will only be reimbursed up to the cost of the least expense form of travel.
- Parking is reimbursed based on the least costly parking method. When using airport parking, the attorney must use the least expensive long-term parking lot. Valet parking is not reimbursable, therefore, use self parking.

- Rental cars are not reimbursable unless it is unavoidable. In general reimbursement will be made for round-trip mileage only, at \$.50 per mile. When it is absolutely necessary, the use of a rental car must be pre-approved by the project director or assistance director.

**7. Traveling from Out of State**– Current policy is to reimburse the out-of-state attorney for round-trip travel to their destination from the California border. The attorney will need to calculate, and the project should verify the least expensive mode of travel. If driving, calculate the cost from the border to your destination or travel by train or air from a border point of entry into California. Sometimes, however, the cheapest mode of travel may be a direct flight from say Chicago to San Diego. This would be allowable as long as it is less expensive than travel from the border to the destination.

**8. Shuttles and Parking at Court Location Airports**

District	Airport	Shuttle Cost One-way to Appellate Court	Long Term Parking Cost
First	SFO	\$19	\$14.00 plus tax
Second	LAX	\$16	\$9.00 plus tax
Third	Sacramento	No airporter; App based ride share is the most economical	\$10.00 plus tax
Fourth Div 1	San Diego	\$15	\$10.00 plus tax
Fourth Div 2	Ontario	\$39	\$8.75 plus tax
Fourth Div 3	John Wayne	\$16	\$14.00 plus tax
Fifth	Fresno	No airporter; Taxi @ \$20 or App based ride share is most economical	\$8.00 plus tax
Sixth	San Jose	\$19	\$13.00 plus tax

Tips are not reimbursable.

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*APPENDIX F*  
*Responsible Use of Associate Counsel and Law Clerks (rev. 2015)*

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The Appellate Indigent Defense Oversight Advisory Committee (AIDOAC) provides the following guidelines for appropriate use of associate counsel and law clerks. The guidelines are based on principles articulated by the California Supreme Court and Courts of Appeal and reflect the appellate projects' standards for assessing the performance of appointed counsel. They are based, as well, on the broad ethical responsibilities of attorneys, recognizing that the failure adequately to supervise the work of subordinate attorney or non-attorney employees or agents is a failure to act competently on behalf of a client. (See Rules Prof. Conduct, rule 3-110, "Discussion," and cases cited therein.)

**Special considerations:**

- *Court- or project-specific requirements:* Individual courts or projects may have additional or more specific requirements. Counsel must consult with the applicable project for such requirements.
- *Limitation for assisted cases:* AIDOAC has determined that attorneys in assisted cases may not use associate counsel, except with prior approval of the project executive director upon a showing of extraordinary circumstances.

**Basic Principle of Personal Responsibility**

The attorney of record at all times has complete, final, and personal responsibility for the case. It is acceptable for the attorney in an independent case to employ others to *assist* in any of the attorney's functions. The attorney personally, however, is fully accountable for what has or has not been done on the case. The projects use a detailed, comprehensive method of evaluating attorneys' performance and selecting them for particular cases. The projects' quality controls would be undercut if attorneys were to allow others, not subject to this system, to take over important aspects of a case. The projects examine every category for which associate counsel or law clerk time is claimed, to determine whether appointed counsel has been sufficiently engaged to fulfill expectations.

The projects expect the quality of an attorney's work at all stages to reflect his or her own experience and other personal qualifications. This policy of personal accountability applies, not only to final filed documents, but also to preliminary drafts, if any, submitted to the projects and discussion of cases with a project staff attorney. Appointed counsel must be prepared to communicate personally with the project on all substantive, legal, strategic, ethical, and other important matters related to the case. Drafts and communications must conform to what is reasonably expected of attorneys at the experience level of appointed counsel.

Over-delegation may negatively affect the project's evaluation of appointed counsel's performance. Any substandard work produced by associates will damage the standing of the panel attorney personally.

### **Specific Responsibilities of Appointed Counsel**

The appointed counsel is responsible for the following tasks, among any others the handling of a case may require: reviewing the entire record, completing it, and selecting issues; filing appropriate briefs, motions, applications, and other pleadings; reviewing all filings; making any personal appearances that adequate representation might require, including oral argument; and ensuring prompt, proper, and thorough communication with the client, the project, counsel for all parties, trial counsel as necessary, and the court. In performing these tasks, counsel must also ensure all applicable deadlines are met. To expand on some of these areas:

- *Reviewing the entire record, completing it, and selecting issues*

Review of the entire record for issue selection and mastery of essential facts is an especially critical aspect of representation. Counsel must ensure the record is adequate for performing this task and complete it if necessary. While associate counsel may assist in record completion and review by performing such functions as taking notes on the transcript or writing a summary of the case and facts, ultimate delegation of this supremely important responsibility to another is unacceptable. The time appointed counsel spends personally reviewing the record must be adequate to assure *all* potential issues in the record have been spotted and considered. Counsel must also be familiar with the details of the record to understand nuances of fact that might affect the assessment and drafting of arguments.

- *Filing appropriate briefs and other pleadings*

The opening brief is usually the pivotal document in an appeal, and counsel must put substantial personal effort into filing a product of appropriate quality. It is the attorney's own responsibility to confirm that the facts are stated appropriately, in accordance with appellate standards, and are supported by accurate citations to the record; to ensure all appropriate authorities have been considered and all citations are accurate and up to date; and to see that the document is proper and complete in both form and substance, complies with all requirements of the Rules of Court, accurately states all facts and law, and is argued intelligibly, coherently, grammatically, and persuasively. Similar responsibilities apply to reply briefs, petitions for rehearing or review, motions and applications, and any other filing.

- *Reviewing all filings by others*

Other aspects of representation also require close personal attention. Decisions about reply briefs, oral argument, rehearing and review, etc., cannot be made properly

unless appointed counsel reviews such filings as the respondent's brief and the opinion, plus any co-appellant's briefing, court orders, and any other filing that may affect counsel's exercise of judgment.

- *Making personal appearances*

Personal appearances (such as oral arguments) require special care, because supervising another's work in a courtroom is essentially impossible. Unless advance arrangements have been made, the projects and the courts expect appointed counsel to make all appearances personally. The panel attorney must consult with the project before using associate counsel at oral argument. The court may have to pre-approve the appearance of associate counsel, as well. In certain circumstances, the court or project may also require the client's consent. Requirements may vary from one court and project to another.

- *Engaging in proper communication with the client, court, project, and others*

Counsel is personally responsible for ensuring prompt, proper, and thorough communication with the client, the court, the project, counsel for all parties, trial counsel as necessary, and any other person or entity the needs of the case may require. Counsel must fully comply with the ethical requirements of adequate client communication, including providing copies of significant documents and keeping the client informed of significant developments in the case. (Bus. & Prof. Code, § 6068, subds. (m) & (n); rule 3-500, Cal. Rules Prof. Conduct.)

## Compensation

Appointed counsel must report on all compensation claims any usage of associate counsel and indicate how much of that counsel's time is included in the hours claimed. These principles apply:

- *Meaning of "associate counsel"*

Associate counsel must have been an active member of the California State Bar at the time the services were performed for that individual's time to be billable as "counsel" time. If that was not the case, the time is billable only as law clerk or paralegal time – an expense not to exceed \$25 per hour.

- *Compensable costs of associate counsel*

A claim with associate counsel time will be judged under the same guidelines and standards of reasonableness as those applicable to single-attorney claims. The use of associate counsel does not increase the time payable for any service performed.



- *Claiming associate counsel's time:*

Associate counsel time is reported as a part of appointed counsel's time for any specific task. Associate counsel time included in the claim is then itemized in the associate counsel attachment, which must state the name and California State Bar number of the associate counsel. These special rules apply:

- ***Counsel must first claim all of his or her own billable time and only then add any associate counsel time deemed billable on top of that:*** It is essential for the project to know how much time appointed counsel personally spent on the case, in order to assess counsel's compliance with these associate counsel policies. Counsel must not cut his or her own time in order to claim associate counsel time: doing so will understate appointed counsel's own involvement and cause the project, AIDOAC, or court to question whether counsel exercised appropriate control over the case.
- ***In the claim step for itemizing associate counsel's time, the hours shown must be only those actually claimed (as opposed to those spent):*** In determining how much time appointed counsel personally spent on each function, the projects take the total hours reported for each function and subtract the itemized hours for associate counsel. That calculation requires that the itemized hours be only those actually included in the hours *claimed*. If counsel wishes to state unclaimed associate counsel time to show the extent of work performed on the case or give the attorney due credit, the comments are the appropriate place, not the itemization chart.