

GUIDANCE FOR BILLING UNBRIEFED ISSUES

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.