

# *Money is no Crime*

A PRIMER ON THE EFFICIENT  
AND ACCURATE PREPARATION  
OF YOUR FEE CLAIM

By: Paul Couenhoven

## A. INTRODUCTION

“Mr. Gideon, I am sorry, but I cannot appoint Counsel to represent you in this case. Under the laws of the State of Florida, the only time the Court can appoint Counsel to represent a Defendant is when that person is charged with a capital offense. I am *sorry*, but I will have to deny your request to appoint Counsel to defend you in this case. (Trial judge’s response to Clarence Earl Gideon’s request for an attorney to represent him at his trial for commercial burglary).

In *Gideon v. Wainwright* (1963) 372 U.S. 335 the Supreme Court held the Sixth Amendment right to counsel is so fundamental the Fourteenth Amendment required states to grant all criminal defendants that right. This was followed by *Douglas v. California* (1963) 372 U.S. 353, where the Supreme Court held indigent appellants had the right to appointed counsel on appeal under the equal protection clause of the United States Constitution. We now get paid to represent people who could never afford to pay us. The rate of pay, \$85 to \$105 an hour, will not make us millionaires. In addition, the **guidelines**, which govern compensation, generally limit the amount panel attorneys can get paid for any specific task. As a result, panel attorneys frequently do not get paid for all the time they put into a case. This article is an effort to help panel attorneys, especially those new to the practice, get paid as much as possible for the actual work spent on legal representation in an appellate case.

There are two components to maximizing your compensation for the work you do. First, keep accurate track of your time. Second, submit a claim which reflects all the time you have put into the case with detailed explanations for any item which exceeds the “ordinary range” for the task performed..

## B. KEEPING TRACK OF YOUR TIME

The first essential step in getting paid for all the time you actually spend on the case is to keep full and accurate billing records. In order to maintain accuracy you should prepare your billing log on a daily basis, preferably as you perform tasks. In our practice this is easy to do since we don't have to keep track of different billing rates. All you have to do is keep track of your time and a few expenses. Don't forget you sign your claims under penalty of perjury. In the event a claim is ever questioned, you should have billing records to back up the time you claim you have spent.

I have used Quicken for years to keep track of time. There are other products out there that will work just as well (e.g., "Office Time") but I am only familiar with Quicken, so I will illustrate keeping track of time and expenses using that software. If you already have Quicken to keep track of personal finances or your business expenses, you can simply start a new account for keeping track of appellate hours. If you don't have Quicken you can purchase a copy of Quicken 2014 Starter Edition for \$30 to \$40. There is no need for more sophisticated software.

### 1. Create an Account

In Quicken, go to File/New Quicken File. Choose New Quicken Account. Select "Cash." Give your account a name (e.g., "PC appeals"). Specify the opening balance is 0.00. Your account will appear on the upper left hand side of the screen. To open it, double click and you will be at the register which begins with the current date followed by columns for "Payee," "Memo," "Category," "Spend," "Receive," "Amount" and "Balance."

Date	Payee	Memo	Category	Spend	Receive	Amount	Balance
3/25/2014	Opening Balar		[Cash Accoun				0 00
3/25/2014	Payee	Memo	Category	Spend	Receive	Amount	

## 2. Entering your Time and Expenses

Have Quicken (or other program you are using) open whenever you are working. When you complete a task, switch to Quicken and enter your time right away. When you get a phone call, read a letter or do any other task, enter the time. If you are reviewing transcripts conducting research or writing an argument, you will usually enter a number of hours, rather than .1 or .2 for a phone call or letter.

When entering your time “Payee” is for your client (e.g., Sacher, Dallas). After you enter it the first time, Quicken will auto-complete the payee after you type the first few letters. You will have to exercise care only if you have separate clients with the same last name. “Memo” is for a description of what you did if that is necessary. For record review, no explanation is required. If it is a letter from or to your client, enter “ltr fr cl (5p)” or “ltr to cl (lp).” Keeping track of pages will help you if your claim for client communication exceeds the “ordinary range.” For a briefed or unbriefed issue the “memo” might read: “notice/premed”, the issue being whether the defendant received adequate notice the prosecutor was going to ask the jury to decide if an attempted murder was premeditated. If the issue is unbriefed, which typically requires a more detailed explanation on the claim form, keep a separate list on your computer describing the issue and summarizing your research.

In the “category” column use the numbers for each line on the claim form:

01	Communication with cl and tc	09	Supplemental brief
02	Record review	10	Review of opposition brief
03.	Request for extension of time	11	Habeas
04	Augment motion	12	Petition for rehearing
05	Other motions	13	Petition for review
06	AOB	14	Other petition
07	Unbriefed issues	15	Petition response brief
08	ARB	16	Petition reply

17	Oral argument	21	Project consult
18	Travel	22	Administrative tasks
19	Opinion review	23	Communication, other
20	Superior Court file	24	Other services

Using numbers rather than descriptions reduces typing time. Also, when you print out a case specific report it will be organized by line item which will simplify completing the claim. The first time you enter a category in Quicken (e.g., “03”) a window will pop up. You select “add category.” Describe it briefly and specify it is an expense category (everything is entered as an expense). Finally, enter the amount of time spent on the task, in tenths of an hour, in the “Spend” column. Tab until the “Save” button is highlighted and hit enter. You have made a billing entry.

For expenses, I use words rather than numbers. In most claims you only have 3 expense categories, “bind,” “copy” and “post.” You might also have “phone” and “trav” for telephone and travel expenses. Enter expenses the same way you enter time. The only difference is that in the “Spend” column you will have a money amount rather than a time amount. For copies, I enter a total amount based on 10 cents a page. For example, if I print 12 copies, I enter 1.20.

### **3. Produce and Print a Report**

When it is time to submit a claim, print a report which lists each task you performed with subtotals by category. In Quicken go to the “Reports” tab at the top, choose “Banking” and then “Transaction.” A report will appear which lists every transaction for the year to date. Go to “Subtotal by:” and select “category.” Then click on “Customize” located at the upper right corner of the window. If necessary, change the date range. For example, if you did some work on this case in the prior year, you don’t want your report limited to “Year to date”, which is the default. Then click on the “Payees” tab. A list of all your clients (i.e. payees) will appear. Click on “Clear **All.**” Then scroll until you find the specific case for

which you are submitting your claim and check that box. In the “Show Columns” box uncheck the boxes for “Account,” “Description” and “Clr” since these are not used when you enter data. Click on “OK.” You now have a report which includes each entry specific to this case with subtotals for each category. You are now ready to bill your time and expenses in a claim. You can expand the “memo” column to include everything you wrote about the task performed. Then print your report.

## **B. COMPLETING THE CLAIM**

### **1. Upper Tier case?**

If your case includes a charge of murder or a charged sex offense, check the “Counts of Conviction” page in eclaims and make sure the offense is listed. This ensures you will be paid the upper tier amount for the case. A case with a record in excess of 3,000 pages is also an upper tier case.

### **2. Augments?**

If you received any augments, make sure to add this information to the “Record/Transcripts” page in eclaims. Otherwise, the calculation of the guideline maximum for record review will not be accurate. Also, if the record exceeds 3,000 pages with the augment the rate of pay will increase. If you submit a paper claim explain the total page count in a cover letter.

### **3. Completing the Hours Worksheet.**

Use your report to enter your hours on the Hours Worksheet page in eclaims or on the paper form. While doing so, keep in mind the guidelines. If the amount you enter exceeds the “ordinary range,” you must provide an explanation. Otherwise, your claim may be cut to the ordinary range.

Every project has the guidelines listed on their web page. **A** copy is attached to this article. Since you have an accurate accounting of *all* your time, there are only two concerns: providing explanations, and entering your time on the correct line.

**a. Communication with Client and Trial Counsel: line 1.** If the amount you enter is above 3.5 hours, provide an explanation. List the number of each kind of contact you made and, if letters were long (especially letters from the client), the number of pages. For example: “I received 12 letters from the client totaling 56 pages and wrote 13 letters to the client. I exchanged 3 phone calls and 2 emails with trial counsel.”

When communication with a client involves a family member or translator who is serving a conduit for the client, bill the time on line 1.

Keep in mind under new AOC directives you must separate out communication with the client and trial counsel which concerns investigating habeas claims (e.g., alleged IAC). That time must be claimed on line 11, whether or not you actually file a habeas petition. If a letter, phone call or email specifically involves your investigation of a potential habeas claim, use “11” as the category when you enter your time in Quicken (or other billing software) rather than “01.”

**b. Record Review: line 2.** There is rarely any basis to approve time claimed above the ordinary range of 1 hour for every 50 pages of transcript. If it takes you longer, there is no harm in listing your actual time, even though you won’t be compensated for time which exceeds the ordinary range.

Reading the preliminary hearing transcript is not ordinarily compensated. If you have a specific reason for reading the preliminary hearing transcript enter this information on the “Record/Transcripts” claims page. For example, a suppression motion may have been denied at the preliminary hearing and renewed in the superior court based on the testimony at the preliminary hearing. Reading the preliminary hearing is necessary to evaluate the merits of the suppression motion. Or, your client might allege IAC for failing to impeach a witness with inconsistent testimony at the preliminary hearing. Such a claim would justify reading the preliminary hearing testimony of that witness and claiming time for reading those pages.

**c. Extension Request: line 3.** The ordinary range is .5 hours for each request. Time above .5 hours will rarely be compensated. Develop forms which you can complete quickly for each district. Subsequent requests which only differ slightly from the first request should not take .5 hours to complete. Keep in mind time spent e-filing, printing, copying and mailing extension requests and other motions is not legal work, and is not compensable except as “Administrative Time” which is billed on line 22.

**d. Augment Requests: line 4.** The ordinary range is 1.5 hours. If you filed more than one augment request list your time separately for each request in the explanation box. This makes review by the project easier and increases your chances of getting paid in full. Time over the ordinary range can be reasonable based on the number of items requested, the length of the motion and the complexity of legal analysis necessary to explain the reasonableness of the request.

**e. Other motions: line 5.** Any motion filed in the superior court or the court of appeal which is not an augment motion or an extension request should be billed here. This includes rule 8.340 letters for items missing from the normal record, requests to abandon the appeal, *Fares* letters filed in the superior court, etc. In the explanation box separately list each motion with the time spent on that motion. This facilitates review of the claim. There is no “ordinary range” for this. The only guideline is “reasonable time.” If a motion involved work (e.g. extensive research) not reflected in the document filed, include an explanation.

**f. Opening Brief: Line 6:** The “ordinary range” for the statement of case and facts is ½ the time for record review up to 10 hours. If you exceed the ordinary range provide an explanation. Here’s an explanation in one case where we decided 28 hours was reasonable compensation for the statement of case and facts:

The Statement of Facts was longer than usual because it was necessary to go into a fair amount of detail to precisely describe the state of the evidence and gauge the strength of the prosecution case for second degree murder verdicts, for purposes of setting up the assignments of prejudice as to the various appellate arguments. Also, there was complex neurological expert testimony

that tied into several of my appellate arguments and, thus, needed to be explained in some detail.

Using subheadings in your argument not only helps organize the argument; it can help you get paid more. Subheadings make it easier for the reviewer to see there were several sub-arguments (e.g., challenging several different grounds to admission of evidence), which provide a basis to conclude the time spent was reasonable.

**g. Unbriefed Issues: line 7.** Under relatively new AOC guidelines, any single unbriefed issue for which you claim over 2.5 hours should have a detailed explanation. If your total time claimed for unbriefed issues exceeds 10 hours, you should provide a detailed explanation. In general, as the time claimed for an unbriefed issue increases the explanation should be more detailed if you want to get paid for all your time. If the unbriefed issue appears to be related to an argument raised in the AOB, explain why it is different.

**h. Reply Brief: line 8.** The “ordinary range” is 1/3 the time awarded for the AOB. If you exceed that, provide an explanation. For example, respondent’s brief may have raised an issue you did not anticipate, requiring new research and a new argument in response. Or, you may have reasonably decided to search for additional authority (e.g., law from other states) to support an argument.

**i. Supplemental Brief: line 9.** Whether bound or in a letter, any supplemental brief is claimed here. Arguments are evaluated under the same guidelines as arguments in the AOB.

**j. Review of Opposing Brief: line 10.** The “ordinary range” is 2.5 hours. If you exceed 2.5 hours provide an explanation. If the AG’s brief is really long, raises unanticipated claims or cites many new cases on a material points, time above 2.5 hours could be justified. On the other hand, claiming 2.5 hours for a 10 page respondent’s brief would usually be unreasonable.

**k. Habeas Corpus Petition: line 11.** Whether you file a petition or not, any time spent investigating and researching a possible habeas claim should go here. If you file a

motion for funds to hire an investigator or an expert, claim it here, not on line 5. Review of trial counsel's file would ordinarily be claimed here. Separately list each task and time spent on that task in the explanation box. Specify the number of letters and phone calls.

If you actually file a petition, the AOC wants us to list our itemized expenses on line 11. This is for AOC record keeping purposes, not for compensation. Your expenses for copying, binding and postage should still be included on the expense worksheet.

In the Sixth District, payment above the "ordinary range" of 12 hours requires submission to Presiding Justice Rushing for approval. You should provide a detailed explanation why it took longer than 12 hours. We will use your explanation in a letter to the court requesting approval for time over 12 hours. If your interim claim includes a line 11 claim over 12 hours, you can request immediate payment for the 12 hours without court review, deferring that review for additional compensation to the final claim.

**l. Rehearing Petition: line 12.** The "ordinary range" is 6 hours. It is rare spending more than six hours can be justified as reasonable. A rehearing petition must be short to be effective.

**m. Review Petition: line 13:** The "ordinary range" is 10 hours. If you exceed 10 hours, provide an explanation. This could include the number of issues raised or new cases cited by the opinion which required additional research or time spent editing your arguments to come under the word count limit.

**n. Other Petition: line 14.** Includes Certiorari petitions filed with the United States Supreme Court and Petitions for Writ of Mandate.

**o. Lines 15 and 16: Read response to petition or reply to response.** These are rarely used, except in lifer parole cases.

**p. Oral Argument: line 17.** The ordinary range is 7.5 hours. If you exceed this time provide a detailed explanation. The number of issues you prepare to argue could be a factor. Another factor could be review of new cases published since briefing was finished.

Spending an inordinate amount of time in the courtroom waiting for your case to be called is another possible factor.

Even if you don't argue the case, if you spend any time reviewing the briefing and checking for recent opinions in deciding whether or not to request oral argument, you can claim that time. Time spent requesting or waiving oral argument, although minimal, can be claimed as well.

**q. Travel: line 18.** If one-way travel is over 25 miles, you can claim the time spent traveling if you cannot work while traveling. If your travel is by plane or train, the assumption is you can work during that time. If the total one-way distance from your office to the departure airport and from the arrival airport to your final destination exceeds 25 miles, you can claim travel time as long as you could not work while traveling.

If you wish to make a prison visit which entails round trip travel in excess of 50 miles, the trip must be pre-approved by the appellate project.

**r. Review Opinion: line 19.** The ordinary range is 1.5 hours. If the opinion is 5 to 7 pages long, claiming 1.5 hours would generally not be reasonable. Time above the ordinary range can be justified if the opinion is really long. If claiming over 1.5 hours provide an explanation, including the length of the opinion.

**s. Review Superior Court File: line 20.** The ordinary range is 2 hours. This typically involves reviewing exhibits when necessary to understand the evidence or when relevant to an issue (e.g., an objection to an exhibit). Provide a detailed explanation if you exceed 2 hours.

**t. Consult With Project: line 21.** The ordinary range is 2 hours for independent cases and 4 hours for assisted cases. We can recommend payment above those time limits. If you exceed the ordinary range provide a detailed explanation why the case justified above-average communication.

**u. Administrative Time: line 22.** One hour maximum. There is no official definition of "administrative time." Presumably it includes time spent preparing claims,

keeping track of your hours, e-filing, etc. In almost every case your administrative time will exceed one hour, so claim the full amount.

**v. Other Communication: line 23.** Any communication with persons other than the client, trial counsel or the project goes here. This includes communication with the courts, with client's relatives, with probation or parole officers and with attorneys representing co-appellants. Unless you make phone calls or write letters, time spent communicating with the court and the department of corrections should be minimal. You can claim time for checking the CDCR locator or the court of appeal web site or for reviewing court orders. However, the time you spent on each contact was probably 30 seconds to 1 minute. You will not be paid .1 hours for each time you review a court order or get an email from the court. Rather the measure of the award will be the actual total time.

**w. Other Services: line 24.** If you have a co-appellant, you claim the time for reviewing their briefs and substantive motions here. If you review a large amount of legislative history that could also be claimed here. In addition, you should use this line for any other service that does not specifically fit under lines 1-23. For example, if you review police reports or trial counsel's file for background purposes, your time would go here. If you do so as part of a habeas investigation, bill that time on line 11.