

***How to Get Your Compensation Claims Processed  
Efficiently and How to Get Full Compensation  
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Program)***<sup>1</sup>

**A. Introduction**

We may not like it, but unfortunately compensation claims are a necessary evil. It can be a rather confounding experience replete with nuances that seemingly make no sense. At SDAP we do our best to review and transmit these claims as soon as possible, with as few cuts as possible.

Given the somewhat labyrinthian process of entering time in the right places on the claims, it is not surprising that errors are made. These errors can cause delays in processing and transmission of the claims, or even cuts to the amount being claimed. Hopefully, this article will help you to prepare your claims correctly the first time, and also give you the best chance of being awarded all the time you bill.

Much of the advice here applies to claims for appellate projects other than SDAP, although it is likely that each project has some specific requirement not shared by all the others. In addition to this guide, the best – and certainly the most extensive – resource on claims is the Statewide Claims

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<sup>1</sup> Thanks to Anna Stuart and Patrick McKenna for previous work on the claims manual and panel handouts.

M a n u a l ,     w h i c h     i s     l o c a t e d     h e r e :

[https://www.capcentral.org/claims/statewide\\_claims\\_manual.pdf](https://www.capcentral.org/claims/statewide_claims_manual.pdf).

**B.    General Advice on Claims.**

**1.    Do Not Self-Cut**

Do not claim less time than you actually spent, even if it is over guidelines. It is very possible that SDAP would have considered the time you cut to be reasonably compensable, but we cannot add to claims. Bill all the time you actually spend and let us determine the appropriate amount of time to recommend. It is better to have your claim trimmed by our staff if necessary than to ensure you will not get paid for all the work done by cutting your own claims. The almost ironclad exceptions to this are record review time and omission letters pursuant to California Rules of Court, rule 8.340(b). It is virtually impossible to receive an award over guidelines in these categories.

**2.    Do Not Bill to the Maximum Guideline if You Did Not Actually Spend That Much Time**

As stated above, you should bill to the guideline *if* that is the actual time that you worked. If the work product does not indicate that the guideline maximum is reasonable, we will be forced to cut the hours claimed. Similarly, if it appears that the hours claimed are inflated to conform to the

guideline maximum, it will cause us to question the veracity of all the time being billed.

**3. Always Provide an Explanation For Claims Exceeding Guidelines**

A claim in excess of guidelines on any line *must* include an explanation justifying the time being spent. If a claim is submitted requesting an award above guidelines, we must contact you for an explanation. This of course causes a delay in processing the claim. The explanation should adequately explain the reason for the time claimed, but should also be as succinct as possible.

**4. When Providing an Explanation, Do Not Just Copy and Paste Your Billing Records Onto the Claim**

Sometimes panel attorneys simple copy and paste their billing records into the explanation field when claiming an amount over guidelines. This will almost certainly delay processing of your claim. It requires the staff attorney to distill your records - which we may or may not understand - into a comprehensive explanation for the Judicial Council of California. For example, if you are billing over 3.5 hours on client communication, it really delays processing to have a paragraph listing every letter or phone call and the time spent on each one. It is best to state the number of letters/phone calls/emails and then give a brief explanation as to why this amount of

communication was necessary. Examples include: a client who is very involved in the case and asked a lot of questions, length of time you're represented the client if it's unusually long, etc.

**5. If You are Uncertain About Where to Claim Something, Contact SDAP**

As referenced above, the Statewide Claims Manual is a valuable and useful tool which we encourage you to use. However, if you have questions about a claim, please do not hesitate to contact SDAP *before* you submit the claim. This may prevent the necessity of unsubmitting the claim for you to make corrections, which of course delays transmission and payment.

**6. Sending Copies of Client Communication**

Current SDAP policy requires that attorneys send copies of client letters to SDAP in *all assisted cases*. Client communication is vitally important, and we want to help train less experienced attorneys in this area. When submitting your claim, please forward electronic copies of all client letters to your SDAP assisting attorney. You may also simply email letters to us when you send them to your client. This will avoid potential processing delays. If we don't have the client letters, we will usually have to request them, meaning the claims cannot be transmitted until we receive them.

Attorneys in independent cases usually need not send their client letters. There is one exception. If the judgment was affirmed and you decide not to file a petition for review, we must have a copy of a letter to the client advising that you are not filing a petition; why you are not filing one; and giving the client all the relevant information about filing one on his/her own. You should forward the letter to SDAP when you write it or when you submit your claim.

**7. Use the General Notes Field for Additional Information**

At the end of eClaims, there is a notes field where you can provide any additional information about a case. These entries really only need to be made when there is something somewhat unusual about the case. Some examples are:

- Whether this appeal was “considered together” (the Sixth District does not usually consolidate) with another appeal (more information on this below);
- Whether the appeal was transferred from a different Court of Appeal (and, if so, include the case number);
- If the Court of Appeal issued an order to review the fee claim associated with a supplemental brief; and
- If the claim is being filed under the protocol permitting additional interim claims due to COVID-19, Penal Code section 1172.6, or the Racial Justice Act.

Each of these facts require SDAP to do specific things as we prepare the claim for transmission. While we check for these situations, noting them on the claim will alert us immediately and lead to quicker processing.

8. **If Two Appeals Were “Considered Together” by the Court, Contact SDAP Prior to Transmitting the Claim**

The protocol in such circumstances is a little complicated. Generally, this is how such claims should be handled. Bill almost all time spent on both cases on one of the claims, usually the one with the lower number. The exceptions are: (1) Record review time, which should be billed on the specific case in which the record was produced; and (2) any motions specific to only one case (i.e., before the cases were ordered to be “considered together.”) All the rest of your time should be billed on one of the cases only, with an explanation. SDAP is always happy to talk to you about this prior to transmitting the claims; doing this incorrectly almost always results in resubmissions.

9. **When Resubmitting a Claim, Alert the Staff Attorney of Any Changes From the Initial Claim**

It is sometimes necessary to unsubmit a claim so that you can make changes and resubmit. Sometimes, panel attorneys will make changes additional to those that necessitated the unsubmission. This is not a problem, but keep in mind that these changes do not automatically appear in

our system when you resubmit the claim. We must enter them manually. Therefore, alerting the staff attorney of any changes in addition to those expected will ensure that we catch them upon getting the resubmitted claim, so that we can manually enter them.

### **C. Line by Line Advice on the Hours Worksheet**

#### **Line 1: Communication**

Here is a sample explanation that we will write up when recommending an award over guidelines for client/trial counsel communication:

“An award over guidelines of 5.5 hours recommended for client and trial counsel communication as reasonable in this [type of appeal] which lasted [length of appeal] where client [who was out of custody] took an active interest in the appeal, contacting appellate counsel often to suggest issues. Substantial communication with trial counsel was necessary to resolve problems with the appellate record and to address ongoing parallel developments in the trial court. Overall, counsel sent 10 emails to trial counsel and 13 letters to the client in order to address these issues.”

Hopefully, this explanation indicates the type of information we need when recommending an award over guidelines. Mentioning the following factors is helpful when transmitting your claim:

- a. Type of appeal [more complicated appeals usually involve more communication];
- b. Duration of the appeal;
- c. Out of custody client;
- d. Client assumed an active interest in the appeal;
- e. Pre-approved client visit;
- f. Client unable to read/write;
- g. Client suffers from cognitive deficits;

- h.** Client represented self in trial court;
- i.** Client moved for substitution of appellate counsel;
- j.** Need to resolve problems with appellate record;
- k.** Need to obtain trial counsel's file;
- l.** Possible direct appeal IAC issues;
- m.** Difficulty locating client;
- n.** Ongoing parallel developments in the trial court.

*Note that communication with the client or trial counsel regarding a habeas investigation should be billed on Line 11 (Habeas), not Line 1.*

### **Line 2: Record Review**

As stated above, it is virtually impossible to obtain an award over guidelines for this item.

#### *Additional notes:*

-Review of documents outside the record on appeal obtained from the Superior Court, including exhibits, must be billed on Line 20.

-Review of documents outside the record on appeal obtained from trial counsel is generally compensable on Line 24.

-Review of documents from a judicial notice motion that are not considered part of the record on appeal should be claimed on Line 24.

A question often asked in multi-appeal dependency cases is whether an attorney who was appointed on an appeal from an earlier proceeding (e.g., jurisdiction/disposition) can bill to re-review the record in a later (i.e., termination) appeal. The determination is made on a case-by-case basis, and it is generally appropriate to bill some re-review time in most cases. An



award for the full time in re-reviewing the old record is rarely necessary. Factors we consider include the issues being raised on appeal, and the length of time between appeals.

**Line 3: Extensions of Time**

The guideline award for extensions of time is 0.5 hour. It is extremely rare to obtain an award above guidelines.

**Line 4: Motions to Augment**

Provide an explanation if you bill more than 1.5 hours on an augment motion. We will recommend awards over the guideline, particularly if you are requesting several items or if you are attaching many documents to the motion to incorporate into the record. We know that tracking down and collating these documents can be time-consuming.

Please be cognizant of the difference between motions to augment and record omission letters. Line 4 is for motions to augment *only*. Record omission letters are billed on Line 5 (Other Motions).

**Line 5: Other Motions.**

In the notes field, break down all motions billed on this line and the time spent on each. Examples of motions to be billed on this line include: record omission letters (Rule 8.340(b), etc.), *Fares* letters, judicial notice motions, motions to transmit exhibits, and abandonment requests. You

should provide an explanation if you are seeking more than 0.5 hours on a record omission letter or 0.2 hours on an abandonment. There are no other guidelines as to the motions being billed on this line; we will evaluate the time billed for reasonableness.

**Line 6: AOB (or RB in a People's Appeal)**

When billing for time on the client's first brief, just include the total time spent on the brief. Do *not* break it down issue by issue; SDAP will do this prior to transmitting the claim to the JCC, but you do not need to do so.

When SDAP is evaluating the reasonable amount of time warranted for each issue, our starting point is often to assume that a panel attorney spent about 1.25 hours to draft each page in the argument. This is *only* a starting point, and we will review the argument to determine the proper award being made. For example, a voluminous argument that could have been sufficiently and adequately argued in 10 pages will very likely not be awarded at 1.25 hours per page. If you bill more than 1.25 hours per page on a brief (i.e., you bill 40 hours for a 20 page brief), it can be helpful to provide an explanation of your time on the claim. For example, the issues may have been particularly novel; it may be a new or changing area of law; or you may have had to do significant out-of-state research. Often, this is apparent in the resulting brief, and we will weigh these factors into our decision on the recommended

award. If there are factors not apparent from the briefing, then this is the type of information that should be included in the claim.

### **Line 7: Unbriefed Issues**

eClaims requires that you break down the time spent issue by issue. If you spend *more than 2.5 hours researching a single issue* or *10.0 hours cumulatively researching all unbriefed issues*, you should provide an explanation on the claim. Absent these explanations, it is likely that you will only receive an award at guidelines.

### **Line 8: Reply Brief**

Again, provide an explanation if the time billed is over guidelines (one-third the time spent on the AOB). For example, sometimes the Attorney General raises an issue not briefed in the AOB, such as the ever present forfeiture argument. Or a new case was decided or some other development in the law occurred after the AOB was filed.

**ARBs filed in response to supplemental AOBs and RBs should be billed on this line**, in accordance with recent changes to the Statewide Claims Manual.

### **Line 9: Supplemental Briefs**

If more than one supplemental brief is filed, you should make a note indicating the time you spent on each one. If the Court of Appeal issued an

order requiring review of the compensation claim associated with a supplemental brief, you should include this in the notes field. You should also note whether the supplemental brief was required due to a change in the law or at the request of the Court of Appeal.

**Line 11: Habeas**

JCC protocol requires that we provide an itemized list of all tasks and expenses being billed on this line. A sample explanation is provided below:

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

3.1 hours – Communications with client and trial counsel re: habeas (include number and length of letters and phone calls)

2.4 hours – Investigation, including (list steps down for investigation)

5.8 hours – Research and draft habeas corpus petition (with brief description)

2.1 hours – Draft review petition from habeas denial

**Expenses related to habeas corpus petition:**

\$15.00 – Photocopy petition (totaling 150 pages)

\$25.25 – Postage for petition

If no writ was ultimately filed, you should explain the issue researched or investigated. In the Sixth District, the Court of Appeal reviews habeas fee claims if the time spent on written work (i.e. petition, motions, informal reply, and review petition after a habeas denial) exceeds 12.0 hours.

In the rare stand alone habeas appointments (most often parole habeas cases), line 11 should only include the time claimed for the petition itself and supporting exhibits. Unlike companion habeas petitions in direct appeals, communication, motions, etc., are claimed on their usual lines.

### **Line 13: Petitions for Review**

We will award more than the guideline (10.0 hours) in cases presenting novel issues or in cases with many issues. In general, a simple rehash of the AOB – with little to no reference to the opinion – will not warrant an award at guidelines.

### **Line 18: Travel**

Time is compensable where the distance exceeds 25 miles one-way from counsel's office, and where counsel cannot reasonably work on the case while traveling. Any travel done on a case other than to attend oral argument should be pre-approved by the project. For example, if you need to travel more than 25 miles to visit a client in custody, or to go to the superior court, you must contact SDAP for approval ahead of time.

### **Line 22: Administrative Time**

We cannot award more than 1.0 hour for administrative time. We realize it is almost certainly not sufficient but we have no discretion to award more.

## **Lines 23 and 24: Other Communication and Services**

On each of these lines, provide an itemized breakdown of all tasks being billed.

Common examples of “other” communication compensated on Line 23 include:

- a. Opposing counsel (below and on appeal);
- b. Court clerks (trial and appellate);
- c. Custodial officials;
- d. Client relatives;
- e. Co-appellants’ counsel;
- f. Probation or parole officers;
- g. ICWA representatives;
- h. Amici; and
- i. Translators.

Common examples of other services claimed on Line 24 include:

- j. Reviewing co-appellant’s briefs;
- k. Reviewing opposing party motions and oppositions to motions;
- l. Reviewing non-appealing minor’s briefs;
- m. Reviewing amicus curiae briefs;
- n. Reviewing trial counsel’s file;
- o. Appearing in trial court (e.g., at a hearing on a credits motion or at a hearing on an application to settle the appellate record);
- p. Reviewing court orders;
- q. Reviewing client court filings (e.g. supplemental *Wende* brief or pro per writ);
- r. Reviewing record, opinion, and filings from prior related appeal;
- s. Registering for online docket notifications and checking the docket;
- t. Researching legal matters outside of the appeal when necessary;

- u. Locating client;
- v. Reviewing CDCR file (or other institutional records);
- w. Filling out forms for custodial client visit; and
- x. Redacting record or briefs.

**D. Line by Line Advice on Expense Worksheet**

**Line 1: Printing and Copying**

You are entitled to claim .10 cents per page on all printing and copying. Since the advent of electronic records, questions have arisen about whether panel attorneys can be compensated for printing the record for the client at the end of the case. Here are the general guidelines to follow, but **the best practice is to contact the SDAP staff attorney before doing anything:**

A. For clients in custody, first ask them whether they want a copy of the record. If they do, and have no way of receiving it electronically, you may print it for them. You may claim the actual cost of printing the record. This figure should be entered on Line 9 of the Expenses Worksheet.

B. For clients out of custody, you will not be reimbursed for printing the record unless it is impossible for them to receive it electronically. Again, first ask whether they want the record. If they do, find out whether it can be sent electronically, either to them directly or to a friend or relative.

**Line 2: Binding**

Since binding/hard copies are no longer necessary for briefs in the Court of Appeal, we only award this in limited circumstances – when a long habeas petition/exhibits must be bound, for example.

### **Line 3: Postage**

The guideline is \$50.00. However, we can and typically do award more. This requires an itemized breakdown from the panel attorney. It is not necessary to list every letter. It is sufficient to list the postage expense for mailing briefs and the record, and to simply state that the rest was for general correspondence.

### **Line 5: Travel**

Current JCC travel guidelines, which we abide by, can be found here: [http://www.adi-sandiego.com/news\\_alerts/pdfs/2010/TRAVEL-GUIDELINES-APPROVED-BY-AOCprojects.pdf](http://www.adi-sandiego.com/news_alerts/pdfs/2010/TRAVEL-GUIDELINES-APPROVED-BY-AOCprojects.pdf).

### **Line 7: Paralegal/Law Clerk**

The guideline for paralegal and law clerk expenses is \$25.00 per hour. An explanation is always required. Paralegal and law clerk work on a given task is expected to reduce the time an attorney must spend on the same task. Thus, if attorney time is over guidelines for a specific activity, no paralegal or law clerk expense for that activity will be approved.

### **Line 8: Interpreter**

The guideline for translator and interpreter expenses is \$30.00 per hour. An explanation is always required. This need be nothing more than “Translation expenses at \$xx.xx per hour.” The cost of translating briefs or



other pleadings is not compensable. If the amount exceeds \$250, the panel attorney must have received pre-approval from the Court of Appeal.

### **E. When Your Claim is Cut**

No one wants to see their claim cut. Believe it or not, SDAP does not like cutting claims, and we try to cut as little as possible. Nonetheless, it is sometimes necessary given the guidelines that have been set by the JCC and by which we must abide. The following points should be kept in mind:

#### **1. Notification**

You will only be notified of a cut in the following situations: (a) where your claim is 50 hours or greater and the cut is at least 10% of the total claimed; or (b) where your claim is less than 50 hours and the cut is 5.0 hours or more.

#### **2. Justification**

If your claim exceeds the limits above in section E.1., you will be given an opportunity to explain why the claim should not be cut. ***This must be in writing and it must be submitted by the date given you by the SDAP staff attorney.*** If we do not hear from you within that time period, the cuts will remain and the claim will be transmitted.

### **3. Civility**

We truly do not want to cut claims. In addition, we may on occasion make a mistake. In either case, if you need to communicate with SDAP, please do it professionally and civilly. We will always listen to your concerns and engage in productive discussion regarding whether or not adjustments can be made.

### **F. Conclusion**

We strive to have good working relationships with all panel attorneys, and we are committed to helping you get full compensation for your work whenever possible. Adhering to the above pointers will help you get what you have earned as quickly and painlessly as possible.