COMPENSATION CLAIMS

– RULES AND PRACTICES –

INTRODUCTION

The following guide to claims is alphabetical by topic.

Claims policies are set by the judiciary. They are implemented by the appellate projects, which recommend payment in individual cases. The projects' recommendations are audited quarterly on a random basis by the Appellate Indigent Defense Oversight Advisory Committee (AIDOAC).

The process of articulating policy is often a sort of "common law" one, developing case by case as specific issues are resolved. Thus policy formulations are necessarily fluid and subject to constant modification, correction, and refinement.

The policies as stated in this paper are ADI's interpretation of the judiciary's position, or what ADI thinks the judiciary's position would be if a given issue were presented to it. While we believe the positions outlined accurately reflect the current claims policies of the state, as far as we can discern them, and of course we hope the organization and summary in this paper will be useful, this paper comes with an important caveat: *The policies described here are not "official" and are subject to change with or without notice*. Please be alert for modifications at all times.

ABANDONMENTS

Abandonments should be claimed under "other motions," line 5. The informal guideline is presumptively 0.3 hours. A *Sade C*. letter[1] (as opposed to a brief) is presumptively an abandonment.

ADMINISTRATIVE TASKS AND EXPENSES

For appointments made on or after October 1, 2004, the final claim may include up to 1.0 hours 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, or preparing the claim. Do not claim any 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. No detail of the time spent need be provided.

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

AIDOAC (Appellate Indigent Defense Oversight Advisory Committee)

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

Claims are chosen for an audit at random. A questionnaire to the attorney of record goes out when the claim is chosen. Unless there is some later adjustment in the claim, the attorney will hear nothing further from the committee.

In a few of the audited cases, the committee may not be satisfied the project's recommendation was justified and may ask it for further explanation. Then the committee decides whether an adjustment in the payment should be made. If the attorney owes money, the Administrative Office of the Courts (AOC) will make arrangements for repayment – either in one lump sum or in installments, and by direct payment or by

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[1] *In re Sade C.* (1996) 13 Cal.4th 952 (no appellate issues can be identified; see also *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493]; *People v. Wende* (1979) 25 Cal.3d 436.)

deduction from future claims. Attorneys who decline to cooperate will have the sums automatically deducted from future claims at the AOC level. If the adjustment is in the attorney's favor, ADI will submit the supplemental claim on the attorney's behalf.

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

APPEAL SUBJECT TO DISMISSAL

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

ADI will help assess what if any action would be appropriate. The steps to be taken will depend greatly on the situation. They might include notifying the court and/or proceeding until the court orders otherwise, abandoning, moving for abatement or dismissal, or seeking permission to continue the litigation despite the situation.[2]

APPELLANT'S OPENING BRIEF

The guidelines are the sum of the allowance for the statement of case and facts and the briefed issues. See STATEMENT OF CASE, FACTS; ISSUE CLASSIFICATIONS.

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 form. An attachment indicating the breakdown of the associate counsel's time spent is required, along with associate

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[2]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.)

counsel's name, state bar number, and signature. A form is available at http://www.adi-sandiego.com/claim_associate.html.

Per AIDOAC policy, attorneys in assisted cases are not to use associate counsel.

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

AUGMENTATIONS AND RULE 8.340(b) CORRECTIONS

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, rule 8.340(b) should be claimed under "other motions" line 5; the informal guideline is 0.5 hour. An extension request combined with the augmentation or correction request is also claimed on line 4.

BINDING

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

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

CERTIFICATION OF WORD COUNT

Preparing a certification of word count, as required by California Rules of Court, rule 8.360(b)(1), is an administrative task and is not separately compensable. It is included in the actual time on line 22, administrative tasks. See ADMINISTRATIVE TASKS AND EXPENSES.

CERTIORARI

We can compensate for certiorari, if it was justified. (Other districts may have a different practice.) The test is whether there is a reasonable chance of certiorari's being granted. That means there must a strong, well-preserved federal issue that has important societal implications. Only a handful of certiorari petitions are filed in our cases each year, so it is an exceptional step. ADI must preview the issues and give the attorney input as to whether it is worth filing.

CLAIM FORM

The claim form can be found at http://www.courts.ca.gov/9669.htm or http://www.adi-sandiego.com/claims_AOC_claim_form.html. Use of the approved form is mandatory. Handwritten entries on the form are not acceptable. Claims can also be filed electronically; contact the project. See E-CLAIMS.

COMMUNICATIONS

Line 1 ("Communications") is to be used solely for communications with the client and the trial attorney. The guideline is 3.5 hours. The claim may be paid if it is over the guideline, but an explanation is always required. *Be explicit about the number of hours, letters, calls, etc*. (If that is too onerous because of the extreme number, approximations will do -- e.g., "at least 50 letters from the client," "about 25 calls with the client.") While all recognize the importance of being responsive to an anxious or demanding client, counsel will be expected to exercise reasonable control over the client and limit the number and mode of communications appropriately, such as responding monthly to a client's frequent letters. Frequent status reports to clients when nothing has happened in a case can be compensated only in a de minimis amount or somewhat more if the client is very difficult.

Line 23 is to be use ONLY for *all other communications* (including with the court such as reviewing court orders and communications with co-counsel, opposing counsel, family when necessary, etc.) and will be renamed "Other Communications." These include communications that promote the attorney-client relationship but are unnecessary to the handling of the appeal (e.g., contacts with family members for the purpose of reassuring them, with prison officials on a client's medical condition, or with the client's attorney in a civil case) are compensable only to a de minimis extent. These also should be claimed under "other communications" on line 23. As always, only communication time that is explained and deemed reasonable can be compensated.

Line 24 will contain all miscellaneous services other than those related to communications.

NOTE: When communication *with the client* uses a family member or other person as a translator or conduit for that communication, the time should be claimed under line 1.

Communications that are part of a habeas corpus investigation should be included on line 1, if with the client and/or trial counsel, or line 23, if with others.

Time spent facilitating client communication is compensable if reasonably necessary to handling the appeal. For example, taking a client out to a restaurant or activity in an attempt to gain rapport and put the client at ease during the interview may be reasonable in some situations (the cost of the meal or activity is not a reimbursable expense, however). Similarly, contacting family members and others may be necessary to communicate with the client or to translate. The attorney should claim the time spent on communication necessary to the appeal on line 1 and provide an explanation.

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

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

Helping the client with a pro per filing is usually compensable only to a de minimis extent. Counsel should consult with ADI in these situations.

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). Legislative history done by a specialized service is treated like computer research.

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). The projects convert these expenses into equivalent attorney hours for purposes of assessing the overall reasonableness of the claim for that service. Attorneys must include an explanation of the need for these materials.

Receipts or invoices for the computer research are not required unless they are needed to explain the claim or the time is extensive in comparison to counsel's own time.

CONSULTATION WITH STAFF ATTORNEY

The guideline for consultation with the project staff attorney is 4.0 hours if the case is assisted and 2.0 hours if independent. Specific justification for additional time should accompany the claim. Consultation time qualitatively or quantitatively inappropriate to the attorney's level of experience or disproportional to the needs of the case may not be compensable.

If the staff attorney's records and memory do not adequately correspond with the claim for this time, more specific information as to how the time was spent may be requested.

This service refers to consultation with the staff attorney about the handling of 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 matter related to the handling of the case (such as transmission of the record) or subsumed within the 1.0 hour allowance for administrative tasks if on other matters (such as 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 and he/she is entitled to it on request after the attorney's services are terminated. 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 that need to be sent may often just consist of letters from the client, research notes, etc. In sending any document such as a brief or letter during or after the case, the attorney should advise the client clearly that the client is receiving the original and/or the client's only copy, and the client will be responsible for its safekeeping. If the attorney has done so, the attorney may appropriately ask the client to reimburse the cost of copying and sending duplicates if those are lost.

In *Wende/Anders* and *Sade C.* cases,[3] the client is usually sent the record 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 ADI.

COUNTY APPEALS

See REPRESENTATION OF RESPONDENT

DATES (starting and ending of services)

Starting and ending dates of services performed, as shown on the claim, should be checked for general accuracy. The AOC (Administrative Office of the Courts) computer will reject claims with missing dates or those where the ending date is before the starting one. The AOC also uses these dates in making cash flow projections. The starting date is usually when the first service (such as a client letter) is performed; the appointment or other reasonable alternative may also be used. The ending date is when the last service is performed; the remittitur, final claim, etc., may be used.

DEATH OF CLIENT

See APPEAL SUBJECT TO DISMISSAL

DE MINIMIS OVERAGES

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[3]No appellate issues can be identified. (*Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493]; *In re Sade C.* (1996) 13 Cal.4th 952; *People v. Wende* (1979) 25 Cal.3d 436.)

Small amounts over guidelines are subject to being cut, just like more substantial overages.

DIRECT DEPOSIT

Payments from the Administrative Office of the Courts may be directly deposited into an attorney's bank account. Information is available from the AOC and on the ADI website.[4]

E-CLAIMS

Claims can be transmitted to ADI electronically via the form found under e-claims on the ADI website. Once transmitted, ADI generally cannot correct errors on claims. If ADI contacts the attorney about a mistake, the ADI terminal digit paralegal must unlock the claim first, and the attorney must re-submit the claim. Information is on the ADI website, www.adi-sandiego.com under "claims."

ESCAPE BY CLIENT

See APPEAL SUBJECT TO DISMISSAL

EXPERTS

Expert services should be preapproved. These services include investigators, physicians, psychiatrists, accident reconstruction experts, translators, etc.

Moderate translator fees are considered routine and do not need preapproval, but the fees must be reasonable in light of the prevailing local rate for the language and the complexity of the material translated. ADI must preapprove substantial translator fees. Translation of lengthy documents such as briefs is not compensable; the attorney should summarize the arguments in a letter, which will be translated. An interpreter for oral argument is not compensable.

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[4]Memo: http://www.adi-sandiego.com/PDFs/DirectDepositMemo.pdf; FAQ: http://www.adi-sandiego.com/PDFs/DirectDepositFAQ.pdf; authorization form: http://www.adi-sandiego.com/PDFs/NEW%20CAC%20Direct%20Depositdeb2.doc .

As an informal rule of thumb, panel attorneys should consult the assigned ADI staff attorney when cumulative translator fees apparently may exceed $200 or when the reasonableness of a lesser amount is not apparent on its face.

Because these expenses are usually high as compared with ordinary expenses, a receipt or other documentation is ordinarily required.

EXTENSION REQUESTS

The guideline is 0.5 hours per request. As a matter of statewide practice, routine extension requests are compensable at 0.3 hours per request. First extensions and more complex ones can be paid at 0.5 hours.

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 rule 8.63. The court's general policy is to require special justification for more than two extensions or for extensions that appear excessive given the special needs of the case (for example, fast-track cases under rule 8.416 and time-sensitive ones).

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

Time for an extension request included in an augmentation request should not be claimed separately under “extensions of time,” line 3; it is evaluated under the guideline for the augmentation request and should be claimed there.

FEDERAL HABEAS CORPUS

Federal habeas corpus is not paid by the state. The attorney may be able to get an appointment from the federal court after filing a petition, and then the work on the petition should be included in the federal court fee. Only a de minimis amount of time helping the client file a pro per habeas corpus petition in federal court will be compensated.

FILINGS DUE TO ATTORNEY ERROR

Filings required by the attorney's own error are not compensable. Examples include an erratum letter, correction of defective proof of service, motion to withdraw an improvidently filed *Wende/Anders* or *Sade C.* brief[5] or other document, a motion for relief from default or for leave to file a late brief where caused by counsel's negligence, and resubmission of a document when the first was rejected as defective. Payment for a motion to file a supplemental brief is not compensable if the issue should have been raised in the AOB (i.e., it is a fairly obvious issue). Similarly, printing and postage expenses and time for communicating with the court clerk, respondent's office, or ADI about the error are not compensable.

See also REJECTED FILINGS AND "OTHER" FILINGS AND SERVICES.

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. The filing of a final claim waives any claims for later services, unless they are genuinely unforeseeable. Final claims are also permitted when counsel has been relieved (see RELIEVED COUNSEL). See also SUPPLEMENTAL CLAIMS.

By state policy, final claims should be filed within *six months* of the opinion date for cases with a 5% holdback. Later filings are not expected. Counsel with late claims must pay storage retrieval costs for files that have been archived.

GUIDELINES

The official statewide compensation claim guidelines are on the ADI website at http://www.adi-sandiego.com/claim_guidelines.html . See individual topics in this guidebook for specific guidelines for given services and expenses.

The guidelines serve as benchmarks, not absolutes. They do not guarantee a minimum payment nor set an upper limit; payment can be below or above guidelines. The ultimate test is "reasonableness" – *what an experienced appellate attorney would find*

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[5]No appellate issues can be identified. (*Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493]; *In re Sade C.* (1996) 13 Cal.4th 952; *People v. Wende* (1979) 25 Cal.3d 436.)

reasonably necessary for handling the case appropriately. This is an individualized judgment for each case.

Attorneys should, as a normal rule, claim the time actually spent, even it if is over guidelines and it likely to be cut. The judiciary 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 are acting as fiduciaries on behalf of the state and have an obligation to apply established state policy. This obligation means determining the reasonableness of each claim as defined above. Performing this function requires information from panel attorneys on such matters as research not obvious from face of the filings and use of previously briefed materials. It can also require "hard" decisions, such as whether the service was necessary and appropriate in the case, whether the case was overbriefed, and whether the quality justifies payment at the guidelines. See also QUALITY CONSIDERATIONS, RECYCLING OF MATERIALS.

HABEAS CORPUS

For petitions supplementing AOB issues, the guideline is 12.0 hours. For major petitions, the guideline is still 12.0 hours, but more may be recommended. The complexity of the issues, the extent of investigation needed, and similar factors will be taken into consideration in determining how much over the guidelines will be compensated.

The court's preapproval is not needed in the Fourth Appellate District to file a habeas corpus petition (some districts do require it), but counsel should seek preapproval for expert services and other unusual out-of-pocket expenses. See also PREAPPROVAL.

The attorney's time for investigating the habeas corpus petition should be claimed on line 11, except that communications regarding the petition should be claimed on line 1, if with the client and/or trial counsel, or line 23, if with others. .

See also FEDERAL HABEAS CORPUS; HABEAS CORPUS PETITION FILED IN SUPERIOR COURT; COMMUNICATION.

HABEAS CORPUS PETITION FILED IN SUPERIOR COURT

An attorney working under an appellate appointment who files a habeas petition in the first instance in the superior court should ask the superior court for an appointment. This will allow payment by the superior court for all services, including preparation of the petition and appearances at an evidentiary hearing. If the 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 ADI about the possibility of requesting payment for the petition by the Court of Appeal. An attorney seeking Court of Appeal payment for a petition filed in the superior court should make sure ADI has a copy of the petition.

The panel attorney cannot claim the difference between the rate paid by the superior court and the Court of Appeal. By accepting the superior court appointment, the attorney accepts that court's payment arrangements.

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 will usually not be compensable under the appeal.

HOURLY RATES

The rate system is three-tiered.

Date of Appointment	Before 10/05	10/1/05 to 6/30/06	7/1/06 to 6/30/07	On or after 7/1/07
Upper tier independent	$85	$90	$100	$105
Other independent	$75	$80	$90	$95
Assisted	$65	$70	$80	$85

A case is upper tier if it is:

(a) independent, *and*
(b) in one of these classes:
  (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 of 3,000 pages or more (including augmentations and judicially noticed matters) or
(5) a 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 if a *Wende/Anders* or *Sade C.* brief is filed.[6]

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. Thus, regardless of which case number the court designates for subsequent pleadings, claims (interim or final) for post-consolidation work should be submitted under the number of the higher rate case. Pre-consolidation work should be billed to the number of the individual case.

- At the time of the consolidation, if no interim claim has yet been filed on the lower rate case, the attorney may file a claim for pre-consolidation work on that case. When the consolidated case is over, the attorney may file a final claim in the lower rate case to recoup any holdback and to seek payment for any pre-consolidation work not yet compensated. The higher rate case is subject to the normal schedule for submitting interim and final claims.

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[6]No appellate issues can be identified. (*Anders v. California* (1967) 386 U.S. 738; *In re Sade C.* (1996) 13 Cal.4th 952; *People v. Wende* (1979) 25 Cal.3d 436.)

INTERIM CLAIMS

An interim claim usually should be submitted when the AOB is filed. A pre-AOB interim is authorized after record review is completed if the record is 7,500 pages or more. In exceptional circumstances, the AOC may approve other early claims on the project director's recommendation. The normal justification for an exception would be a long, unavoidable delay between appointment and the claim, causing substantial hardship to the attorney.

Permission may be granted for an additional interim claim if substantial post-AOB work is followed by an excessive delay (e.g., stay of the proceedings pending a Supreme Court decision) and waiting for the final claim would cause hardship. Interim claims out of the normal timeline must be preapproved by ADI.

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

Counsel should scrutinize the staff attorney's recommendations and comments on the interim claim worksheet and submit supplemental justification with the final claim if needed. The ADI internal practice is to err on the conservative side in recommending interim payments, reserving difficult discretionary calls until the final, when all information about the case will be available. (While this often means not recommending a payment above the guidelines at this stage, exceptions are made for clearly reasonable claims in excess of the guidelines – for example, communication with a difficult client or a major habeas corpus petition.)

No interims may be filed in *Wende/Anders* or *Sade C.* cases.[7] A panel attorney may file an early *final* claim either (1) after the time has passed for the court to receive a pro per brief or (2) after the opinion issues. The attorney thereby waives any claim for later services in the case, such as reading the opinion or communicating with the client, unless the court orders supplemental briefing. If the court does so, counsel may file a supplemental claim after the opinion issues.

If a habeas corpus petition is filed along with a *Wende/Anders* or *Sade C.* brief, an interim claim is appropriate, since it is really not an issueless case.

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[7]No appellate issues can be identified. (*Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493]; *In re Sade C.* (1996) 13 Cal.4th 952; *People v. Wende* (1979) 25 Cal.3d 436.)

Unbriefed issues may be paid at the interim stage. Counsel should describe them in sufficient detail to permit assessment of their complexity, but must use care not to argue against the client or reveal damaging information. If it is necessary to discuss information possibly harmful to the client (i.e., an adverse consequence), do so in a confidential memorandum to ADI.

ISSUE CLASSIFICATION

Classification	Guideline
Low simple	Up to 3.5 hours, rounded off to nearest 0.5 hour. Set by staff attorney.
Simple	4.0 hours.
Simple/average	4.5 - 7.5 hours. Set by staff attorney.
Average	8.0 hours.
Average/complex	8.5 - 13.0 hours. Set by staff attorney.
Complex	13.5 hours.

Classification is based in part on page length, but that is only preliminary. Classifications also take account of 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 materials, conceptual intricacy, thoroughness (e.g., standard of review, prejudice) etc. String citations usually add little of substance to the argument and will be discounted.

If there has been a previous interim claim in the case the issues may be reclassified for the final. This would be done, for example, if a superseded policy was applied at the interim, 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.

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

See also QUALITY CONSIDERATIONS, RECYCLING OF MATERIALS, SUBDIVISION OF ISSUES, UNBRIEFED ISSUES.

LAW CLERKS/PARALEGALS

See ASSOCIATE COUNSEL, LAW CLERKS, PARALEGALS.

MINOR'S BRIEFS

If counsel for a non-appealing minor in a dependency appeal files a letter joinder, that should be put under "other" services, line 24. If minor's counsel submits an expanded treatment, it should be claimed under the AOB.

Usually the minor's expanded treatment does not need to include a statement of case and facts, but may simply point out material inadequacies in the other parties' briefs. Guidelines credit will be given for that category only if it was appropriate and necessary.

MOOT APPEAL

See APPEAL SUBJECT TO DISMISSAL.

NEGATIVE RECOMMENDATIONS (attorney owes money to the state)

It is possible to decide that too much was paid at the interim, to the extent the attorney owes the state money at the final stage. The recommendation will be shown as a negative; the AOC will take care of collection. Usually the attorney can pay the money directly, or agree to have the amount owed withheld from a future claim or claims.

NON-INDIGENT CLIENT

Work performed before appointment is non-compensable if the appointment is denied, except for urgent work necessary to prevent substantial detriment to the client. 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 ADI immediately and cease work on the case. Except for steps necessary to protect the client (such as an extension request to avoid default), work done after potential non-indigence is discovered may not be compensable if the client is ultimately determined to be ineligible for appointed counsel.

NOTICE TO ATTORNEY OF PROPOSED CUT

The staff attorney should automatically notify an attorney if ADI is proposing a cut of more than *5.0 hours from a claim of 50.0 hours or less, or 10% from a claim of more than 50.0 hours,* from either: (a) the AOB on an interim claim (the holdback does not count as a cut) or (b) the total of a final claim. The panel attorney is given a chance to discuss the proposed cuts with the staff attorney. Notice may be given of a lower cut on the request of the panel attorney or at the discretion of the staff attorney.

OPINION

The guideline for review of the opinion is 1.5 hours. The recommendation will be based on what is reasonable, given the length and content of the opinion, and may be more or less than the guideline. The guideline for a *Wende/Anders* or *Sade C.* opinion[8] is 0.2.

Review of a tentative opinion is claimed on the same line as the opinion. Only one opinion is used for calculating the guidelines. However, ADI may recommend over the guidelines if the opinion is very long or there are substantial changes between the tentative and the final.

OPPOSING AND OTHER BRIEFS

The guideline is 2.5 hours for review of the opposing brief. If brief is unusually long or short, ADI may recommend over or under the guideline. If the AOB is a

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[8]No appellate issues can be identified. (*Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493]; *In re Sade C.* (1996) 13 Cal.4th 952; *People v. Wende* (1979) 25 Cal.3d 436.)

Wende/Anders or *Sade C.*,[9] the guideline for reviewing the Attorney General's or County Counsel's form letter or request for dismissal is 0.0.

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

ORAL ARGUMENT

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

Reasonable payment can be made for reviewing the case before waiving oral argument. A simple waiver should be claimed on line 17.

Unavoidable waiting time in court pending oral argument is compensable and should be claimed on line 17. Always explain such items.

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

Videoconferencing is optional, where available. Thus a claim for oral argument, including travel, is fully compensable if the attorney chooses to appear in person, even though videoconferencing was available. If the argument was by videoconferencing, check the "telephonic" box on the claim form.

See also **TRAVEL**.

[9]No appellate issues can be identified. (*Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493]; *In re Sade C.* (1996) 13 Cal.4th 952; *People v. Wende* (1979) 25 Cal.3d 436.)

"OTHER" FILINGS AND SERVICES

The guidelines are what is "reasonable" for miscellaneous motions, briefs, petitions, etc., listed under the various "other" categories.

Review of court website and calendaring email notifications may be claimed in "other communications," line 23. The guidelines are what is reasonable for the oversight of the case. This will depend on factors such as the extent of litigation involved, the length of the appeal, number of filings, etc. It is appropriate to check the court website after mailing a document to confirm the court has received it; in the case where the client is a prolific writer or is logging complaints against the attorney, to determine whether the client has written to the court; to ascertain when opposing counsel's brief or extension request was filed, or whether it was filed if it is overdue; to look for any confidential or sealed transcripts filed in the Court of Appeal that might not have been provided to you. It is also appropriate to spend reasonable time registering for and reviewing automatic email notifications about developments in the case.

Reviewing court and AG filings aside from the opinion and respondent's brief (for example, documents related to extensions, augments, or oral argument) and communications related to these matters may be claimed in "other communications," line 23. Reviewing other parties' briefs (e.g., those of a co-appellant, non-appealing minor, or amicus curiae) should be listed under "other services" (line 24) on the claim form. (See OPPOSING AND OTHER BRIEFS.) The allowable time depends on the complexity of the case, length of representation, level of involvement of the client, etc. If the claim is substantial, the filings and services should be itemized.

Miscellaneous services are billable if they are reasonably necessary to the handling of the case. Applying in the superior court for a correction of credits under Penal Code section 1237.1 is compensable and should be claimed under "other motions," line 5. Another compensable service would be purging the transcript of juror identification references, if the time frame of the case 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. A modest time to request or oppose publication or depublication of an opinion may also be paid.

Reasonable efforts to keep the client from serving unnecessary time are also normally compensable. One such service might be bail or O.R. on appeal; trial counsel should be asked to apply for release first, but appellate counsel should monitor the situation and may have to take over in some cases. Other such services might be writs if appeal is inadequate, oppositions to Attorney General extensions, motions to expedite,

contact with the Department of Corrections and Rehabilitation about the client's release, and communication with the AG on immediate issuance of the remittitur.

Services are not billable if they are tangential to and not reasonably necessary for the handling of the appeal. For example, counsel cannot be paid under the appellate appointment for appearing at the client's deposition in a civil action factually related to the criminal case in order to protect the client's right against self incrimination, for helping the attorney in the civil matter, etc. However, a de minimis amount helping the client apply for appointed counsel for such an appearance (line 24) or communicating with the civil attorney (line 23) is compensable and should be claimed under "other" services. Similarly, the appointment does not cover appearing as a witness in another case involving the client. Time spent in contact with the media about the case, although useful to the community, is not required for representation of the client or discharge of duties to the court. Services in the superior court involving DNA testing under Penal Code section 1405 are compensated by that court and are not included in the appellate appointment.

Filings required by the attorney's own error are not compensable. Examples include an erratum letter, correction of defective proof of service, motion to withdraw an improvidently filed *Wende/Anders* or *Sade C.* brief[10] or other document, a motion for relief from default or for leave to file a late brief where caused by counsel's negligence, and resubmission of a document when the first was rejected as defective. Similarly, printing and postage expenses and time for communicating with the court clerk, respondent's office, or ADI about the error are not compensable. Payment for a motion to file a supplemental brief is not available if the issue should have been raised in the AOB (i.e., it is a fairly obvious issue). A request to file an over-long brief is not compensable if denied, unless the staff attorney judges the denial to have been objectively unreasonable or unforeseeable. See FILINGS DUE TO ATTORNEY ERROR and REJECTED FILINGS. Personal delivery of documents by the attorney is not a compensable service (except in extraordinary circumstances dictated by the needs of the *case*, not delay attributable to the attorney); it may be included in the 1.0 hour for administrative services. See ADMINISTRATIVE TASKS AND EXPENSES.

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[10]No appellate issues can be identified. (*Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493]; *In re Sade C.* (1996) 13 Cal.4th 952; *People v. Wende* (1979) 25 Cal.3d 436.)

"OTHER" MOTIONS

Motions and applications other than augmentation and extension requests should be claimed on line 5. These include requests to correct omissions in the normal record (Cal. Rules of Court, rule 8.340(b), which have an informal guideline of 0.5 hours; letters or motions seeking to correct credits (Pen. Code, § 1237.1) or clerical errors; motions to file supplemental or overlong briefs; abandonments or requests to dismiss an appeal, which have a guideline of 0.3 hours; requests for judicial notice, etc.

If a motion 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.

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 REPRESENTATION OF RESPONDENT

PETITIONS

See HABEAS, REHEARING, REVIEW.

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

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

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

If a transcript must be copied at more than $0.10 a page, it is necessary to get preapproval from ADI, unless the record is very short.

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 ADI, 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.

It is not necessary to separate out or list elsewhere the tax on photocopying or binding. However, tax on photocopying is compensable only if it does not bring the total over $0.10 per page.

See also PREAPPROVAL.

POSTAGE

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, but they can be very helpful in explaining unusual costs.

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

Fast-track cases do not automatically qualify for express treatment; check with ADI for division policy. Division 3 has stated it will accept as timely mail filing per rule 8.25(b)(3)(A) in dependency appeals. This provision deems briefs timely if postmarked priority mail (i.e., first class), or express mail on or before the due date. Thus counsel do not need to use overnight filing for briefs mailed on the due date and will not be compensated for it. However, to avoid a default notice counsel must contact the court clerk and advise of the mailing.

PREAPPROVAL

Preapproval by ADI or, where necessary, by the court is strongly recommended before incurring any extraordinary expenses, such as experts, investigators, travel to see clients, copying at more than $0.10 per page, and anything else where compensability is in doubt. If preapproval is not sought, the attorney bears the risk of not being compensated for out-of-pocket expenses. If preapproval is sought and actual expenses exceed what is preapproved, the presumption, though rebuttable, is strongly against payment above the amount preapproved.

ADI may preapprove some expenses; others require court preapproval. Check with ADI for current policy. ADI does not routinely provide input to the court on a request for preapproval but occasionally may do so. See also EXPERTS, HABEAS CORPUS, and PHOTOCOPYING.

PUBLIC INTEREST

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

QUALITY CONSIDERATIONS

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

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

Time unreasonably spent is not compensable, even if done at the urging of another attorney, including a project staff attorney. As has been explained in the ADI newsletter (see http://www.adi-sandiego.com/newsletters/2001_june.pdf), the panel attorney has some recourse when faced with a staff attorney demand that appears unreasonable. The panel attorney is counsel of record and can decline to follow the advice, explaining the reasons carefully. The panel attorney can also ask the staff attorney to get a second opinion or can contact the ADI executive director or the ADI liaison/ombudsman (see http://www.adi-sandiego.com/panel_ombudsman.html.)

A briefed non-arguable issue may be compensated as an unbriefed one if an experienced attorney would at least have researched the point. Payment may be denied altogether if no experienced attorney would have spent any time on it. The opinion's criticism of an issue as frivolous creates a strong presumption, though rebuttable, that the issue was not worth briefing.

RECORD REVIEW

Review of the preliminary hearing transcript may be compensated only if relevant to an issue in the case; 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 must include only the number of pages actually reviewed.

The page length listed on "review of record," line 2, should be the official filed record only. Documents received from others (e.g., documents from trial counsel's file) and reviewed should be claimed under "other" services, line 24.

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

In a *Sade C.* situation,[11] 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), reviewing the *Sade C.* brief of the parent, communicating with the minor and trial counsel, and writing a short letter to the court stating the minor's position, if appropriate in the case.

As in *Anders/Wende* cases, reviewing a county's boilerplate request for dismissal is not billable; if the court actually writes a *Sade C.* opinion, the guideline would be 0.2 hours.

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[11] *In re Sade C.* (1996) 13 Cal.4th 952 (no appellate issues can be identified; see also *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396; 18 L.Ed.2d 493]; *People v. Wende* (1979) 25 Cal.3d 436.)

See *WENDE/ANDERS* CASES.

RECYCLING OF MATERIALS

Mandatory form. Each claim, interim or final, must be accompanied by a form, "Use of Previous Briefing," indicating whether and to what extent previous briefing was used in the case. By state policy, it is required even when no recycling was used. It is available on the ADI website at http://www.adi-sandiego.com/claim_previous.html.

Policy; how the time needed is evaluated. The state encourages appropriate use of previously prepared material (briefbanked, borrowed, or personal). Recycling can be exceedingly efficient. But the state can pay only for the attorney's actual work on the particular case. While copying undeniably does require work – checking citations, updating, adapting the material to the individual situation, etc. – it is efficient precisely because it takes a good deal less time than writing the original argument. Such factors as how much was copied, what additional work was performed, and whether the attorney had used the borrowed materials before are critical in assessing how difficult the work was and thus what time was reasonably necessary. The staff attorney has an obligation to consider this information, which only the panel attorney can provide.[12]

Panel attorney's duty to disclose significant use of previous briefing. Panel attorneys are required to tell the project if, but only if, they have made use of previous briefing *to a significant extent*. Simple use of short, obvious boilerplate, such as passages on standard of review, prejudice, elements of an offense, tests to be applied, general citations, etc., is assumed and is already built into the guidelines; it does not affect the complexity analysis and does not need to be disclosed by the panel attorney. At the other extreme, copying of most of an argument or a complex part of one (e.g., state-by-state cruel and unusual punishment survey, lengthy legislative history) does affect complexity, however, and must be revealed. Between these poles, judgment calls must be made. The test is whether the staff attorney would be able to recognize an

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

argument as recycled without disclosure and whether knowing it was recycled would materially affect the judgment as to how much time would be reasonable. When in doubt, the panel attorney should disclose recycling.

Copying from other documents in same case. Copying of documents in the same case, such as copying sections of the AOB or petition for rehearing in the petition for review or a habeas corpus petition, must be disclosed. 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; if they are not, the attorney should explain. Strictly boilerplate issues that involve little or no updating or adaptation will probably be assigned a flat value, usually a fraction of an hour.

See also GUIDELINES.

REHEARING

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

REJECTED FILINGS

If an attorney submits an overlong brief and it is rejected, the presumption is that the request and excess length were unreasonable, because that is what the court has implicitly decided. Thus time for doing the request, writing the original excess pages, and the condensing, as well as the expenses for the original brief, will not be compensated. However, the presumption against payment is rebuttable, if the attorney demonstrates the effort was reasonable even with foreknowledge of the court's general strong policy to reject such filings.

Similarly, if a request for leave to file a supplemental brief is denied, the court's order creates a rebuttable presumption that the attorney acted unreasonably. The order is not dispositive, however: the work preparing the brief and request may be compensable if a reasonable attorney would have done it under the circumstances of the case.

RELIEVED COUNSEL

An attorney who is relieved before the AOB is filed may be compensated under certain conditions. Payment for reasonable services performed may often 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 rewarded. An exception may be made for work that has actually saved successor counsel time, such as an augment request that was granted, a draft statement of case and facts, or research notes provided to new counsel; the time *saved* is the measure of the award.

A final claim may be submitted after the order relieving the attorney is filed.

REPLY BRIEF

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 extensive new areas that must be addressed.

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

REPORTING AND RECORDING TIME

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

REPRESENTATION OF RESPONDENT

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 (ordinarily the AOB line) and time spent reviewing other parties' briefs on line 10. The comments should explain the nature of the filing.

REVIEW (petition for)

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

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.

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

Drafting an anticipatory answer to an Attorney General petition for review that is never filed should be paid only if doing that would be reasonably necessary. If the answer could have been done in the 20 days permitted, as is usually the case, then it should not have been necessary to write it beforehand. But if the issues were very complex, and the answer would have had to go into a lot of new material, it might be necessary.

SADE C. CASES

Sade C. cases are treated like *Wende/Anders* cases for claims purposes.[13] Only a final claim may be filed; it may be filed early if the attorney waives time for later services. The respondent's brief and opinion guidelines are those for *Wende/Anders* cases.

Time for a *Sade C.* letter should be claimed under "other motions," line 5. If a brief is filed, with facts, boilerplate statement, listed issues, etc., the time should be claimed under "opening brief," line 6, and the claim will be paid as a *Wende/Anders* brief. Courts are divided on what kind of filing they will accept; check with ADI.

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), reviewing the *Sade C.* brief of the parent, communicating with the minor and trial counsel, and reviewing the superior court file. Review of a full *Sade C.* brief is presumptively .5 hours and .1 hours for a Division Three letter. No payment will be recommended for a letter to the court stating the minor's position unless there are extraordinary circumstances.

Visiting the minor in a *Sade C.* case should be pre-approved by ADI. As in *Wende* cases, reviewing a county's boilerplate request for dismissal is not billable; if the court actually writes a *Sade C.* opinion, the guideline would be 0.2 hours.

See also *WENDE/ANDERS* BRIEFS.

SENTENCE (claim form)

If a determinate enhancement has been added to an indeterminate sentence, show the total of the enhancement time under "determinate sentence" on the claim form. Indicate the number of LWOP or non-LWOP indeterminate terms in the appropriate spaces.

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[13] *In re Sade C.* (1996) 13 Cal.4th 952 (no appellate issues can be identified in dependency case); see also *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493], and *People v. Wende* (1979) 25 Cal.3d 436 (same for criminal appeal).

STATEMENT OF CASE, FACTS

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

The length of the statements of case and facts and the level of detail in them should be appropriate to the case and related to the issues raised. 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 the construction of a statute. ADI can recommend payment only for what is reasonable for the particular case.

If the statement of case and facts is appropriately written up but no brief is ever filed, the time for preparing it can be claimed on line 6.

SUBDIVISION OF ISSUES

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

The attorney's numbering of the issues is not dispositive. For example, a "denial of a fair trial" argument based on cumulative error with prosecutorial misconduct, instructional error, and an evidentiary issue is really three separate issues, even if under one Roman numeral. But a search argument with an introduction, then various sections on the facts the officer relied on to establish probable cause (e.g., a section on informants, one on crime rate, and one on observations through binoculars), and then a prejudice discussion is only one issue, even if long and even if treated as several different Roman numerals in the brief. A *Leon*[14] argument is considered part of a search and seizure argument, not a separate issue.

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[14]*United States v. Leon* (1984) 468 U.S. 897 [104 S.Ct. 3405, 82 L.Ed.2d 677] (good-faith reliance on warrant).

SUPERIOR COURT FILE

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

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 call ADI for advice on whether the travel is appropriate.

Alternatives to in-person review may be available. In a Division One case, for example, if counsel is located outside of San Diego county, counsel should request that ADI review the superior court file or exhibits. Attorneys who live outside of Divisions Two and Three may ask the assigned staff attorney to have the ADI "ambassador" (a staff attorney who regularly visits those divisions) review the file and exhibits and obtain any necessary documents. Counsel may also ask outlying courts to transfer files to a more central location for viewing.

SUPPLEMENTAL BRIEFS

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

A motion for leave to file a supplemental brief (Cal. Rules of Court, rule 8.200(a)(4) should be billed under "other" motions, line 5. The motion is not compensable if the issue was fairly obvious and thus should have been raised in the opening brief.

SUPPLEMENTAL CLAIMS

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

SUPREME COURT CASES

ADI makes a recommendation on panel claims for representation in the California Supreme Court only if the court requests it. We normally send the recommendation in letter form (not a worksheet). There are no specific guidelines for Supreme Court services: the test is the reasonableness of the time in light of the needs of the case. The Court of Appeal guidelines can serve as benchmarks, but that is very flexible. Preparation for oral argument, for example, will usually take longer in the Supreme Court because of the importance of the argument. Expenses should be about the same.

In a review-granted case, the attorney is paid at the same rate as in the Court of Appeal for that case.

TELEPHONE

Actual long distance expenses related to the case, if reasonable, are compensable. Monthly charges and local calls are not compensable. Receipts are not required unless necessary to understand the claim, but they can be very helpful in explaining unusual costs.

TRANSLATORS

See EXPERTS.

TRAVEL

The Administrative Office of the Courts has published official guidelines for travel.[15] They are incorporated here.

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

Expenses are not subject to the minimum distance limitation. They are compensable at state employee rates:

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[15] http://www.adi-sandiego.com/PDFs/TRAVEL%20GUIDELINES%20APPROVED%20BY%20AOC%20-%20projects.pdf

• Personal car mileage: Travel on or after January 1, 2007 is 48.5 cents per mile. Travel on or after July 1, 2006 (and before January 1, 2007) is paid at $0.445 per mile. Travel before July 1, 2006 is paid at $0.34 per mile. Reimbursement for this expense is not subject to the 25-mile minimum.

• Meals: actual up to $6.00 for breakfast, $10 for lunch, and $18 for dinner. **Meals will be reimbursed only for overnight trips.**

• Lodging: actual up to $110, plus tax or $140 plus taxes for lodging in the Bay area counties of Alameda, San Francisco, San Mateo and Santa Clara.. (Only if necessary.) Panel attorneys are expected to seek the most reasonable lodging and to use a free hotel shuttle when available. Try reserving at the Government rate and taking appointment order and oral argument calendar to hotel. Riverside hotels: Mission Inn; Comfort Inn

• Transportation and parking: Only the least expensive method of transportation, considering both time and expenses, is compensable. The burden is on the panel attorney to show the travel mode was the least expensive.

- Airline reservations must be booked at least 21 days in advance of oral argument date to take advantage of lower fares, unless the attorney provides adequate justification why this was not possible.

- When traveling to and from an airport, a shuttle or other form of public transportation should be used.

- Baggage fees are not reimbursable for a simple overnight trip, because a bag can be carried on board.

- 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 be reimbursed only for the least expensive form of travel.

- Parking is reimbursed for the least costly option. At an airport, the attorney must use the least expensive long-term parking lot. Valet parking is non-reimbursable.

- Use of a rental car is not reimbursable unless unavoidable and must be pre-approved by the project director or assistant project director. Reimbursement generally is for round-trip mileage only, at $0.485 per mile.

• According to the Administrative Office of the Courts, in the Fourth Appellate District the following rates applied as of summer 2010 (attorneys must of course verify current rates when traveling):

Division	Airport	Shuttle to court (one way)	Long-term parking (plus tax)
One	San Diego	$15.00	$9.00
Two	Ontario	$35.00	$17.00
Three	John Wayne	$16.00	$8.75

Receipts are required for airfare, rental cars, accommodations, and other relatively high expenses. Receipts for other travel expenses are recommended. For overnight travel, panel attorneys should provide the date of the travel, including the departure and return times.

Preapproval: Except for routine services such as oral argument, travel must be preapproved. 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) must be preapproved. (See also PREAPPROVAL, SUPERIOR COURT FILE.)

Calendar change: If an attorney must travel a long distance and has an early morning calendar appearance in Divisions One and Three, he or she should ask the court if it is possible to switch to the afternoon or put the argument at the end of the morning calendar. They will often accommodate such requests. Division Two cannot change from morning to afternoon, but may be able to put the case at the end of the morning calendar. If the appearance cannot be rescheduled, necessary overnight stays may be compensable at the usual rates.

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.

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

Out of state: For attorneys traveling from outside California, pursuant to AIDOAC policy 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 mileage between the border and the destination. For those traveling by train or air, reimbursement is for the cost by such a mode of travel from the nearest border point of entry into California. (Sometimes the cheapest mode of travel may be a direct flight. This cost is allowable if it is less expensive than travel from the border to the destination.)

See also SUPERIOR COURT FILE

UNBRIEFED ISSUES

Time spent on an issue considered but not briefed may be compensated at the interim or final stage. The test for compensability is reasonableness. Compensation may be awarded if an experienced attorney would at least have researched the point. Payment may be denied altogether if no experienced attorney would have spent any time on it. Researching an apparently waived issue or obviously trivial error to any substantial extent would be unreasonable unless there was some plausible way to get around the waiver or prejudice problem.

The guidelines are whatever is recommended. The issues are classified according to the recommendation:

Recommendation	Classification
< 0.5 hour	Low simple
0 .5 hour	Simple
> 0.5 and < 2.5 hours	Simple/average
2.5 hours	Average
> 2.5 and < 5.0 hours	Average/complex
5.0 hours	Complex

Unbriefed issues should be described in enough detail to evaluate the time claimed and assess the complexity of each issue – e.g., include a specific description of the issue researched and the type and extent of research. A form is available at http://www.adi-sandiego.com/claim_unbriefed.html.

The AOC screens all claims over $7500 before approving them and sending them to the Controller. They look closely at unbriefed issues in these cases, and so panel attorneys should explain these very carefully, especially when any given unbriefed issue is more than 2.5 hours or the aggregate of such issues is more than 10.0. The staff attorney needs this information to support the recommendation and avoid any delays caused by the AOC's having to get in touch with the project about the claim. It is helpful if the explanation describes the issue, the nature and scope of research conducted (e.g., a list of cases reviewed), and similar factors affecting the time required.

Counsel should use care not to argue against the client or disclose a potential adverse consequence in describing unbriefed issues; if it is necessary to discuss information possibly harmful to the client, do so in a confidential memorandum to ADI.

WENDE/ANDERS CASES

Usually 1.0 hour is allowed for a boilerplate *Wende/Anders* statement[16] – meaning counsel's standard statement about reviewing the record, notifying the client, offering to withdraw, requesting the court to review the record, etc. If an issue is later found and briefed that reasonably should have been briefed at the outset, the *Wende/Anders* statement is not compensable.

The time spent on the statement of case and facts and the *Wende*/*Anders* statement should be claimed under "opening brief," line 6. Time spent on unbriefed issues, including the time to write the *Anders* issue,[17] should be claimed under "unbriefed issues," line 7, and the time spent on each issue itemized.

Issues discussed in the brief in an *Anders* statement will be assessed as unbriefed issues. The time needed to identify the issue, the complexity of the research and analysis, and the difficulties of describing the issue appropriately will be considered in the recommendation.

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[16]No appellate issues can be identified. (*Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493]; *People v. Wende* (1979) 25 Cal.3d 436; see also *In re Sade C.* (1996) 13 Cal.4th 952 [dependency appeals].)

[17]A conventional *Anders* brief lists the issues considered but not briefed and related authorities. A conventional *Wende* brief does not. Either is acceptable (*Smith v. Robbins* (2000) 528 U.S. 259 [120 S.Ct. 746, 145 L.Ed.2d 756]); in ADI cases the *Anders* brief is preferred but not strictly required. Both must have a statement of the case and facts and the boilerplate statement.

No interim claims may be filed in *Wende* or *Sade C*. cases. But a panel attorney may file an early *final* claim either (1) after the time has passed for the court to receive a pro per brief or (2) after the opinion issues. The attorney thereby waives any claim for later services in the case, such as reading the opinion or communicating with the client, unless the court orders supplemental briefing. If the court does so, counsel may file a supplemental claim after the opinion issues. If a habeas corpus petition is filed along with a *Wende/Anders* AOB, an interim claim can be paid, since it is really not an issueless case.

Review of the court's standard *Wende*/*Anders* letter and review of any opposing brief or letter is not compensable. The guideline for a *Wende/Anders* opinion is 0.2 hours.

In *Wende/Anders* cases, the client is ordinarily sent the record as soon as the 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 ADI.

See also *SADE C.* CASES; COPIES FOR CLIENTS; PHOTOCOPYING.