

**APPELLATE DEFENDERS, INC
COMPENSATION CLAIMS MANUAL**

– RULES AND PRACTICES IN COURT-APPOINTED APPEALS –

REV. AUGUST 2015

ADI COMPENSATION CLAIMS MANUAL

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APPELLATE DEFENDERS, INC. COMPENSATION CLAIMS MANUAL

WHAT IS THE CLAIMS MANUAL?

Claims policies are set by the judiciary. They are implemented by the appellate projects, which recommend payment in individual cases. The projects' recommendations are overseen 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 manual 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, this manual 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.

The ultimate test is "reasonableness" – *what an experienced appellate attorney would find reasonably necessary for handling the case appropriately.* This is an individualized judgment for each case.

SUBMITTING A CLAIM TO ADI

Claims must be transmitted to ADI electronically via the [Panel Portal](#).¹ Counsel should consult the instructional s on using the Portal: a [Summary](#)² and a [Detailed Guide with Screen Shots](#).³ Other claims information is on the [ADI website](#),⁴ under "CLAIMS."

¹<https://cms.airsis.com/>

²http://www.adi-sandiego.com/pdf_forms/Creating_a_Claim_in_CMS_Summary.pdf

³http://www.adi-sandiego.com/pdf_forms/Creating_a_Claim_in_CMS_Detailed_Handout.pdf

⁴<http://www.adi-sandiego.com>

APPELLATE DEFENDERS, INC. COMPENSATION CLAIMS MANUAL

ABANDONMENTS

Abandonments should be claimed under “other motions,” line 5. The informal guideline is presumptively 0.3 hours. See also [APPEALS SUBJECT TO DISMISSAL OR ABATEMENT](#).

ADMINISTRATIVE OFFICE OF THE COURTS

See [JUDICIAL COUNCIL SERVICES](#).

ADMINISTRATIVE TASKS AND EXPENSES

The final claim may include up to one hour of attorney time spent on case-related administrative or clerical tasks, such as attorney’s address change, copying, mailing, communication with project paralegals about case offers or similar matters, formatting the brief, doing the table of authorities and topical index, or preparing the claim. Do not claim any “Administrative” time at the interim stage, even if already spent. Time should be claimed on line 22; no other time should be claimed on this line. 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.

ADVERSE CONSEQUENCES

Comments on claim should not include “adverse consequences” or other characterizations that may prejudice the client if disclosed. Use an indirect, generalized description, such as “strategic considerations.” (See [ADI Appellate Practice Manual](#),⁵ § 4.91 et seq.)

⁵<http://www.adi-sandiego.com/panel/manual.asp>

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 Judicial Council Services will make arrangements for repayment – either in one lump sum or in installments, and by direct payment or by deduction from future claims. Attorneys who decline to cooperate will have the sums automatically deducted from future claims at the Judicial Council Services level. If the 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.

AIDOAC audits of post-remittitur final claims are to be contrasted with reviews of claims over \$7,500 done by the JCS *before* approving them for payment. The [Appendix on Reviews by AIDOAC and Judicial Council Services](#) describes the mid-claim screening process and contrasts it with AIDOAC post-remittitur audits.

See [JUDICIAL COUNCIL SERVICES; APPENDIX: JCS AND AIDOAC REVIEWS](#) [APPENDIX: JCS AND AIDOAC REVIEWS](#)

APPEAL SUBJECT TO DISMISSAL or ABATEMENT

An appeal is subject to dismissal or other termination before a decision on the merits if basic requirements are lacking, such as jurisdiction, standing, or appealability, or if it can no longer materially affect the client's interests, as when, for example, it has

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become moot because of developments in the lower court or changes in the underlying situation, or the client has died or escaped. (See [ADI Appellate Practice Manual](#),⁶ § 1.38 et seq.) 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* (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.⁷

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. The state requires an attachment itemizing the associate counsel's time claimed and providing his or name and California State Bar number.⁸ These rules apply:

- *The appointed attorney must claim all of his or her own time first – do not cut it in order to claim associate counsel time.* Cutting one's own time will understate it, casting doubt on the adequacy of counsel's personal involvement and supervision.

⁶<http://www.adi-sandiego.com/panel/manual.asp>

⁷The 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.)

⁸Legal services by individuals not formally admitted to the California State Bar are compensable only as law clerk/paralegal time.

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- Associate counsel time may then be added to the claim to the extent counsel judges it properly compensable.
- The *claimed* associate counsel time should be clearly stated on the associate counsel attachment. If counsel feels the need also to state how much was waived, do so in the comments. But counsel must make sure the project is able to discern from the claim and the attachment how much actual time appointed counsel of record spent on each function.

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

See [ADI Appellate Practice Manual](#),⁹ § 1.79 et seq., on policies applicable to the use of associate counsel and other assistance.

Per AIDOAC policy, counsel in *assisted* cases are not to use associate counsel, except with the preapproval of the project director.

AUGMENTATIONS AND CORRECTIONS OF RECORD

Requests to augment the record should be listed on line 4. The guideline is 1.5 hours. Requests to correct omissions in the normal record (Cal. Rules of Court, rules 8.340(b), 8.410) should be claimed under “other motions” line 5; the informal guideline is 0.5 hours. An extension request combined with the augmentation request is also claimed on line 4. If a motion to augment or a request to correct was prepared but not filed, claim the time on line 4 or 5 as applicable, with an explanation as to why it was reasonable to prepare but not file the motion or request.

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

⁹<http://www.adi-sandiego.com/panel/manual.asp>

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cost can be claimed with photocopying expense if counsel paid for these services in a lump sum.

Service copies of hard-copy briefs should not be bound, but should simply be stapled in one corner; no taping is needed. This includes all copies required by the Rules of Court or ADI policy. (See [Filing and Service Chart](#) on ADI's website.¹⁰) *If electronic service is available, costs of providing paper copies are not compensable.* (See [E-Service \(ADI program\)](#)¹¹ for the most recent information on electronic service.)

CERTIORARI

ADI can compensate for a certiorari petition to the United States Supreme Court, but *only with the preapproval of the executive director.* (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, and so it is an exceptional step.

COMMUNICATIONS

Line 1 ("Communications") is to be used solely for communications with the client and the trial attorney, *except for those concerning a habeas corpus matter* (see [HABEAS CORPUS](#)). 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

¹⁰http://www.adi-sandiego.com/practice/filing_service_chart.asp

¹¹http://www.adi-sandiego.com/practice/eservice_adi.asp

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happened in a case can be compensated only in a de minimis amount or somewhat more if the client is very difficult.

Other than habeas related communications (see [HABEAS CORPUS](#)), line 23 is to be used 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 is denoted “Other Communications.” This category also includes 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); this time is compensable only to a de minimis extent. Communication time on line 23 must be explained and, as always, must be reasonable to be compensated.

Line 24 will generally be used only for reviewing co-counsel briefing, or other functions that do not fit appropriately in more specific categories.

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. Exception: If such time is related to a habeas corpus investigation, it should be claimed on line 11.

All communications that are part of a habeas corpus investigation should be included on line 11. (See [HABEAS CORPUS](#).)

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. Client visits over 50 miles round trip must be preapproved by the executive director.

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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 must be preapproved by the executive director.

Helping the client with a pro per filing is usually compensable only to a de minimis extent. An exception may occur when part of the pro per filing is something counsel would normally file.¹² Counsel should consult with the ADI staff attorney in these situations.

See [ADI Appellate Practice Manual](#),¹³ § 1.40 et seq. for guidance on client communication.

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.

¹²For example, counsel prepares a habeas corpus petition on a particular issue. The client wants to include a number of issues counsel assesses as frivolous and could not ethically file in counsel's name. Because of the successive petitions rule, the client insists. Counsel's part of the pro per filing is compensable. Counsel's time giving assistance on the remainder of the petition is compensable only to a de minimis extent.

¹³<http://www.adi-sandiego.com/panel/manual.asp>

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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 non-administrative matter related to the handling of the case (such as transmission of the record) or subsumed within the one hour allowance for procedural 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. 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.

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In *Wende/Anders* and *Sade C.* cases,¹⁴ the client is usually sent the record before or as soon as the brief is filed. Counsel may make copies of short records (e.g., 200 pages or less) or brief excerpts for their own later possible use. Any substantial copying requires specific justification and should be cleared with ADI.

COUNTY APPEALS

See [REPRESENTATION OF RESPONDENT](#)

DEATH OF CLIENT

See [APPEAL SUBJECT TO DISMISSAL or ABATEMENT](#)

DE MINIMIS OVERAGES

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

DIRECT DEPOSIT

Payments from the Judicial Council Services may be directly deposited into an attorney's bank account. Information is available from the Judicial Council Services and on the ADI website.¹⁵

DISMISSAL OF APPEAL

See [APPEAL SUBJECT TO DISMISSAL or ABATEMENT](#)

¹⁴No 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.)

¹⁵ Memo and forms: http://www.adi-sandiego.com/claims/direct_deposit.asp.

ELECTRONIC CLAIMS

Claims must be transmitted to ADI electronically via the [Panel Portal](#).¹⁶ Counsel should consult the instructional handouts on using the Portal: a [Summary](#)¹⁷ and a [Detailed Guide with Screen Shots](#).¹⁸ Other claims information is on the [ADI website](#),¹⁹ under “CLAIMS.”

ADI cannot correct errors on panel attorneys’ claims. If an error is material, ADI will unsubmit and return the claim for correction.

ESCAPE BY CLIENT

See [APPEAL SUBJECT TO DISMISSAL or ABATEMENT](#)

EXHIBITS

Exhibit review, even if it may ultimately not occur at the superior court exhibits room, is considered review of the superior court file and is to be billed on line 20. The guideline for review of the superior court file and the exhibits, is 2.0 hours.

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 review exhibits. If the trip is long or expensive, it needs strong justification; counsel should call ADI for advice on whether the travel is appropriate.

Before traveling to the superior court to review exhibits, it is best to contact the exhibit room clerk and arrange for an appointment. See [COMMUNICATIONS](#) . Staff attorney Anna Jauregui-Law has prepared an indispensable practice article:

¹⁶<https://cms.airsis.com/>

¹⁷http://www.adi-sandiego.com/pdf_forms/Creating_a_claim_in_CMS_Summary.pdf

¹⁸http://www.adi-sandiego.com/pdf_forms/Creating_a_Claim_in_CMS_Detailed_Handout.pdf

¹⁹<http://www.adi-sandiego.com>

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[Exhibit Review Process in the Fourth District](#),²⁰ which provides current procedures, telephone numbers, and addresses.

Alternatives to in-person review are often 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 exhibits and obtain any necessary documents or copies.

Sometimes, needed copies of exhibits can be easily obtained by mail and travel to the court is not even necessary. Counsel should contact the ADI buddy to determine if this possibility is available for the case. See also [SUPERIOR COURT FILE](#); ADI web pages on [Fourth Appellate District Practice](#).²¹

EXPERTS

Expert services must be preapproved by the executive director or, if the cumulative cost will, or seems likely to, exceed \$900, by the court. These services include investigators, physicians, psychiatrists, accident reconstruction experts, etc.

Before approving any request, ADI requires a realistic estimate of total anticipated costs, as well as an adequate explanation of the need for the expenditure and a well thought out plan for how the information sought will be used once obtained. ADI will examine the basis for the estimated cost, including hourly rates charged, for reasonableness in light of current locally prevailing costs and the estimate of time needed.

Exception: *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. The ADI staff attorney must preapprove substantial translator fees – meaning, as an informal rule of thumb, cumulative translator fees potentially exceeding \$200. (Or a lesser amount, when the reasonableness is not apparent on its face.) Translation of lengthy documents such as

²⁰http://www.adi-sandiego.com/news_alerts/pdfs/2010/EXHIBIT-REVIEW-UPDATED-2010.pdf

²¹http://www.adi-sandiego.com/practice/fourth_dist.asp

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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.

Because expert 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 an 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 in line 4.

See ADI web pages on [Fourth Appellate District Practice](#);²² guidance on extensions is in the [ADI Appellate Practice Manual](#),²³ § 3.32 et seq.

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

²²http://www.adi-sandiego.com/practice/fourth_dist.asp

²³<http://www.adi-sandiego.com/panel/manual.asp>

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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.

Federal habeas corpus is treated in chapter 9 of the [ADI Appellate Practice Manual](#).²⁴

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.* brief²⁵ 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; "OTHER" FILINGS AND SERVICES](#); see [WORK ULTIMATELY NOT USED IN THE CASE](#)

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 (but see [SADE C. CASES](#); [WENDE/ANDERS CASES](#)). 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](#).

²⁴<http://www.adi-sandiego.com/panel/manual.asp>

²⁵No 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.)

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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](#)²⁶ are on the ADI website. See individual topics in this manual 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 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 if it is over guidelines and is 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 [ISSUE CLASSIFICATION](#); [QUALITY CONSIDERATIONS](#); [RECYCLING OF MATERIALS](#).

²⁶http://www.adi-sandiego.com/claims/claims_guidelines.asp

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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 [EXPERTS](#) and [PREAPPROVAL](#).

“Line 11 rule”: When counsel has been appointed in an appeal and files a collateral habeas corpus petition, *all of the attorney's time related to the habeas corpus petition should be claimed on line 11*. In other words, communication, investigation, reviewing court files and exhibits, reviewing the response, replying, orally arguing, reviewing the portions in the opinion related to the habeas issues, and petitioning for review are all claimed on line 11. The time must be broken down by type of service in the comments field to line 11. In addition, expenses related to the habeas must be itemized in the *line 11 comments field*, as well as claimed under expenses.

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

More detailed guidance on billing habeas corpus work is on the [ADI website](#)²⁷ and in the [statewide policy memo](#) issued in July 2014.²⁸

²⁷http://www.adi-sandiego.com/claims/guidelines_policies.asp#habeas

²⁸http://www.adi-sandiego.com/pdf_forms/Habeas%20Time%20and%20Expenses_Statewide_rules_rev_July_2014.pdf

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See also [FEDERAL HABEAS CORPUS; HABEAS CORPUS PETITION FILED IN SUPERIOR COURT; COMMUNICATION](#). The [ADI Appellate Practice Manual](#)²⁹ treats state habeas corpus in chapter 8 and federal habeas in chapter 9.

HABEAS CORPUS PROCEEDINGS 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 must make sure ADI has a copy of the petition.

If the petition was first filed in the Court of Appeal, which then denied it “without prejudice to refileing it in the superior court” or issued an order to show cause returnable before the superior court, the *petition* is presumptively compensable under the appellate appointment. Compensation for any further proceedings in the superior court, however, must be under a superior court appointment. (See ADI [Appellate Practice Manual](#),³⁰ § 8.30, 8.32, 8.34.) 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.

Superior court habeas corpus is discussed in § 8.45 et seq. of the [ADI Appellate Practice Manual](#).³¹

²⁹<http://www.adi-sandiego.com/panel/manual.asp>

³⁰<http://www.adi-sandiego.com/panel/manual.asp>

³¹<http://www.adi-sandiego.com/panel/manual.asp>

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If the petition was first filed in the Court of Appeal, which then issued an order to show cause returnable before the *Court of Appeal*, but referred the matter to the superior court for fact finding by a referee, who is to report back to the Court of Appeal, all superior court proceedings are compensable under the appellate appointment. If the appellate attorney lacks sufficient trial experience to conduct the proceedings, the attorney may ask the Court of Appeal for permission to associate counsel or for appointment of co-counsel. (See ADI [Appellate Practice Manual](#),³² § 8.35.)

HOURLY RATES

The rate system is three-tiered:

Upper tier independent	\$105
Other independent	\$95
Assisted	\$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.³³

³²<http://www.adi-sandiego.com/panel/manual.asp>

³³No 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.)

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.

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 Judicial Council Services may approve other early claims on the project director's recommendation. The normal justification for an

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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 the ADI executive director.

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 on the interim claim and submit supplemental justification with the final claim if needed. (See [NOTICE TO ATTORNEY OF PROPOSED CUTS](#).) 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.³⁴ 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. See [SUPPLEMENTAL CLAIMS](#).

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.

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

³⁴No 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.)

possibly harmful to the client (i.e., an adverse consequence), do so in a confidential memorandum to ADI.

ISSUE CLASSIFICATION

<u>Classification</u>	<u>Guideline</u>
Low simple	Up to 3.5 hours, rounded off to nearest 0.5 hours. 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.

Joinder in another party's argument is presumptively low simple, but may become more complex as needed to tailor the point to the client's case and demonstrate error and

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prejudice. (See *People v. Bryant* (2014) 60 Cal.4th 335, 362-364; [ADI news alert of October 2014](#).³⁵)

JUDICIAL COUNCIL SERVICES

The Judicial Council Services the administrative arm of the Judicial Council. It was formerly known as the Administrative Office of the Courts (AOC), now aka Judicial Council of California (JCC) or Appellate Court Services (ACS), or other combinations of those words.

The JCS screens all claims (interim or final) over \$7500 before approving them for payment. This screening is by non-lawyers, for the most part, and without access to the filings in the case. Attorneys should take special care in explaining services rendered.

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

The [Appendix](#) describes the JCS mid-claim screening process and contrasts it with AIDOAC post-remittitur audits.

See also [AIDOAC](#).

LAW CLERKS/PARALEGALS

See [ASSOCIATE COUNSEL](#).

³⁵http://www.adi-sandiego.com/news_alerts/pdfs/News_Alert_October_2014.pdf

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, line 6.

Usually a non-appealing 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 OR ABATEMENT; PUBLIC INTEREST SERVICES](#)

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 Judicial Council Services 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

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non-indigence is discovered may not be compensable if the client is ultimately determined to be ineligible for appointed counsel.

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

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 an opportunity to discuss the proposed cuts with the staff attorney.

OPINION

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

Review of a tentative opinion is claimed on the same line as the opinion. Only one opinion is used for calculating the guideline. ADI may recommend over the guideline, however, if reasonable – e.g., 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 brief of the Attorney General or County Counsel or other opposing brief. If brief is unusually long or short, ADI may recommend over or under the guideline. Often the full guidelines allowance for “opposing” briefs will not be warranted because of brevity, overlap with other briefs, lack of relevance of parts to the client’s case, and similar factors.

Review of other briefs (e.g., those of a co-appellant, non-appealing minor, or amicus curiae) should be reported on line 24. If there is more than one of these, the

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comments to line 24 should provide a breakdown of how much time was spent on each. The guideline for reviewing these is what is “reasonable.”

See [“OTHER” FILINGS AND SERVICES](#).

ORAL ARGUMENT

The guideline is 7.5 hours. ADI may recommend under or over 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 under line 17. Unavoidable waiting time in court pending oral argument is compensable and should be claimed under line 17. Always explain such items.

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

Chapter 6 of the [ADI Appellate Practice Manual](#)³⁶ discusses oral argument.

Videoconferencing/audioconferencing 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/audioconferencing was available. If the argument was by videoconferencing, check the “telephonic” box on the claim form.

See [TRAVEL](#). (See also ADI web pages on [Fourth Appellate District Practice](#).³⁷)

“OTHER” FILINGS AND SERVICES

The guidelines are what is “reasonable” for miscellaneous filings and services – e.g., other motions (line 5), supplemental briefs and letter briefs (line 9), other petitions (line 14), other communications (line 23), and other services (line 24). The allowable time

³⁶<http://www.adi-sandiego.com/panel/manual.asp>

³⁷http://www.adi-sandiego.com/practice/fourth_dist.asp

depends on the complexity of the case, number of filings, level of involvement of the client, etc. If the claim is substantial, the filings and services should be itemized.

Actions needed to protect client and ensure effectiveness of appeal:

Compensation covers actions to assure that the objectives of the appeal are protected. This category includes, for example, “other motions” (line 5), such as a superior court application to correct credits (Pen. Code, § 1237.1) or clerical errors, motion for release pending appeal³⁸ or for expedited appeal, 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.³⁹ (See ADI’s [guide to motion practice](#)⁴⁰ on types of motions and applicable law; see also [AUGMENTATIONS AND CORRECTIONS OF RECORD](#).) It also includes “other petitions” (line 14), primarily meaning writ or similar petitions preapproved by the ADI executive director. Contact with the Department of Corrections and Rehabilitation about the client’s release and communication with the opposing counsel on immediate issuance of the remittitur are compensable “other communications” (line 23). Minor’s counsel’s joinders are reported on line 24, whereas expanded treatments go on line 6. Review of records not part of the record on appeal, including contents of trial counsel’s file, goes on line 24.

If a motion was prepared but not filed, claim the time on line 5 with an explanation as to why it was reasonable to prepare but not file the motion.

Monitoring the case. Review of court website and calendaring email notifications may be claimed as “other communications” (line 23). What is reasonable for the oversight of the case will depend on factors such as the duration of the appeal and number of filings. 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 lodging 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

³⁸See [ADI Appellate Practice Manual](#), § 3.37 et seq. 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.

³⁹It may include a request for or opposition to publication or depublication, but only if necessary to protect the client’s interests.

⁴⁰http://www.adi-sandiego.com/news_alerts/pdfs/2012/Motion_Practice_2.pdf

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 counsel. It is also appropriate to spend reasonable time registering for and reviewing automatic email notifications about developments in the case.

Review of other parties' filings. Reviewing routine, non-substantive 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 should be claimed in "other communications" (line 23). Review of the briefs of the Attorney General or County Counsel or other opposing counsel is billed on line 10. Review of other parties' briefs, such as those of a co-appellant or non-appealing minor or amicus curiae, should be listed on line 24 of the claim. See [OPPOSING AND OTHER BRIEFS](#). The allowable time depends on the complexity of the case, number of filings, level of involvement of the client, etc. If the claim is substantial, the filings and services should be itemized.

Services reasonably necessary to handle the ancillary aspects of appeal: Miscellaneous "other services" (line 24) are billable if they are reasonably necessary to the handling of the case. For example: A 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.

Services tangential to the appeal: Matters not reasonably necessary for the handling of the appeal are not compensable. 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 or communicating with the civil attorney is compensable and should be claimed on line 23. Similarly, the appointment does not cover appearing as a witness in another case involving the client. 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. 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. Requests for publication or depublication of the opinion are compensable only to the extent needed to protect the client's interests, not just for the benefit of clients in general. See also [PUBLIC INTEREST SERVICES](#).

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Filings required by the attorney's own error or fault: These 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.* brief⁴¹ 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). Personal delivery of documents by the attorney is not a compensable service if the urgency is due in part to the attorney's own avoidable delay. See [FILINGS DUE TO ATTORNEY ERROR](#). A request to file an over-long brief is not compensable if denied, unless the staff attorney concludes the denial to have been objectively unreasonable. (See [REJECTED FILINGS](#).)

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 CORPUS](#); [REHEARING](#); [REVIEW](#).

⁴¹No 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.)

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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.

If electronic service is available, costs of providing paper copies are not compensable. (See [E-Service \(ADI program\)](#)⁴² for the most recent information on electronic service.)

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.

Copying the record for the client (other than excerpts or short records in *Wende/Sade C.* cases) is usually not compensable. Get preapproval from the ADI executive director if it seems necessary to do it. Copying the attorney's case file at the client's request 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](#), Chapter 1, § 1.60 et seq. of the ADI [Appellate Practice Manual](#)⁴³ discusses transcripts and attorney files.

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

⁴²http://www.adi-sandiego.com/practice/eservice_adi.asp

⁴³http://www.adi-sandiego.com/pdf_forms/Manual_February_2014/Chapter_1_%20Basic_Information.pdf

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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.

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 or the postage amount is very high, but they can be very helpful in explaining unusual costs.

If electronic service is available, costs of providing paper copies are not compensable. (See [E-Service \(ADI program\)](#)⁴⁴ for the most recent information on electronic service.)

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).) Counsel must, however, contact the court clerk and advise of the mailing. 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.

⁴⁴http://www.adi-sandiego.com/practice/eservice_adi.asp

PREAPPROVAL

Preapproval by the ADI executive director or, where necessary, by the court is strongly recommended before incurring any extraordinary expenses, such as experts, investigators, travel to see clients, and anything else where compensability is in doubt. If preapproval is not sought, the attorney bears the risk of not being compensated for out-of-pocket expenses. If 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](#); [PHOTOCOPYING](#).

PUBLIC INTEREST SERVICES

The court might elect to proceed with a moot or quasi-moot case, if the issues are important and an opinion would provide guidance in similar cases: public interest can be considered. (*In re William M.* (1970) 3 Cal.3d 16, 23-25.) To avoid doing non-compensable work and ensure appropriate action, the attorney must contact ADI immediately if a case appears possibly to be moot. In general, if the case has in fact become moot and no longer can potentially benefit the client, the court must be advised immediately. *Before* doing any work, the panel attorney needs to get the court's permission to proceed on the basis of public interest alone. See [APPEAL SUBJECT TO DISMISSAL or ABATEMENT](#); cf. [WORK ULTIMATELY NOT USED IN THE CASE](#).

Time spent in contact with the media about an appointed case, although useful to the community, is not required for representation of the client or discharge of duties to the court.

Requests for publication or depublication of the opinion are compensable only to the extent needed to protect the client's interests, not just for the benefit of clients in general.

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

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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 was explained in the [June 2001 ADI newsletter](#),⁴⁵ 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](#).⁴⁶

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. An opinion's criticism of an issue as frivolous creates a strong presumption, though rebuttable, that an 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.

⁴⁵www.adi-sandiego.com/news_alerts/pdfs/bef2005/2001_june.pdf

⁴⁶<http://www.adi-sandiego.com/panel/ombudsman.asp>

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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 on the line most closely related to the purpose for the review or on line 24 (“other” services), if no other line is applicable. The purpose for the review and the amount of material examined should always be explained.

The guideline for record review is 50 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 or convoluted records. The panel attorney should provide justification for the exception with the claim. A faster rate than 50 pages per hour may be required for records that 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.

In a *Sade C.* situation,⁴⁷ minor’s counsel can normally bill for reading the record (given the short time frames, reading it before the parent’s AOB is usually considered reasonable). See [SADE C. CASES](#), [WENDE/ANDERS CASES](#).

RECYCLING OF MATERIALS

Mandatory information. Each claim, interim or final, must indicate “Use of Previous Briefing,” stating whether and to what extent previous briefing was used in the case. By [state policy](#),⁴⁸ this statement is required even when no recycling was used.

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

⁴⁷*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; *People v. Wende* (1979) 25 Cal.3d 436.

⁴⁸http://www.adi-sandiego.com/claims/guidelines_policies.asp#recycled

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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.⁴⁹

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 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 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](#), [ISSUE CLASSIFICATION](#), [REVIEW \(petition for\)](#).

⁴⁹The 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.

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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 preparing 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.

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

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

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. (See [SUPPLEMENTAL BRIEFS](#).)

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 opposing parties' briefs on line 10. The comments should explain the nature of the filing.

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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 delay *and* failure of email notification by the Court of Appeal 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. (Counsel is expected to sign up for email notifications of the case on the Court of Appeal website. See [OTHER FILINGS AND SERVICES](#).)

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.

A premature petition for review can be paid only *after* it is filed; if it is never filed because, e.g., the Court of Appeal grants rehearing, it is payable only to the extent early work was necessary to ensure a timely filing, because of the petition's length and complexity.⁵⁰

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

⁵⁰See [October 2012 news alert](#) on appropriateness of filing premature petitions (p. 6).

***Sade C.* CASES**

No-issue dependency appeals, *Sade C.* cases, are treated like *Wende/Anders* cases for claims purposes.⁵¹ Only a final claim may be filed. It may be filed when the court dismisses the appeal as abandoned in response to the *Sade C.* letter brief. If the court responds in some other way, the *Wende* rules apply. The opinion guidelines are those for *Wende/Anders* cases.

Time for a *Sade C.* letter brief (with facts, boilerplate statement, listed issues, etc.) should be claimed under “opening brief,” line 6, and the claim will be paid as a *Wende/Anders* brief. Because all three divisions of the Fourth District accept *Sade C.* briefs in letter form, the additional costs of preparing it as a formal brief are not compensable without a showing of good cause.

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.* letter brief of the parent, communicating with the minor and trial counsel, and reviewing the superior court file. Review of a *Sade C.* letter brief is presumptively 0.5 hours. No payment will be recommended in a *Sade C.* situation for a letter to the court stating the minor’s position unless there are extraordinary circumstances.

See also [WENDE/ANDERS BRIEFS](#).

SENTENCE

When counsel enters the Panel Portal, information regarding charges and sentence may already have been populated in the claim; if so, counsel must check the accuracy of the information. If this data has not been pre-populated, counsel must enter it accurately. If a determinate enhancement or term has been added to an indeterminate sentence, show the total of the enhancement or term time under “determinate sentence” on the claim. Indicate the number of LWOP or non-LWOP indeterminate terms in the appropriate spaces.

⁵¹*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, and *People v. Wende* (1979) 25 Cal.3d 436 (same for criminal appeal).

STATEMENT OF CASE, FACTS

The guideline is generally one half of the guideline for record review. Payment above or below the guidelines may be recommended 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 raised⁵². 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. See [WORK ULTIMATELY NOT USED IN THE CASE](#).

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 an argument that an officer lacked probable cause to arrest 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.

⁵²Guidance in preparing statements of the case and facts is in the ADI [Appellate Practice Manual](#), § 5.15 et seq.

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 is to 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 (for example, from Victorville to Division Two, or from El Centro to Division One). See also [EXHIBITS](#); ADI web pages on [Fourth Appellate District Practice](#).⁵³

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.

⁵³http://www.adi-sandiego.com/practice/fourth_dist.asp

SUPPLEMENTAL CLAIMS

Supplemental interim or final claims may be filed with the permission of the court, the Judicial Council Services, or ADI upon a showing of good cause. Mistakes by ADI or the Judicial Council Services, 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 an anticipated state 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. In the comments, counsel should expressly spell out with emphasis the newly added supplemental time, to expedite the review of the claim at ADI.

SUPREME COURT CASES

Generally, the Supreme Court handles claims for case work executed after review has been granted. The claim should be submitted directly to that Court.

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.

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TRANSLATORS

See [EXPERTS](#)

TRAVEL

The Judicial Council Services has published [official guidelines for travel](#).⁵⁴ They are reflected in this section of the Claims Manual. These policies are subject to change.

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 these rates:

- Personal car mileage: Travel on or after January 1, 2007, is 48.5 cents 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. (It is compensable 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. Suggested 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.

⁵⁴http://www.adi-sandiego.com/news_alerts/pdfs/2010/TRAVEL-GUIDELINES-APPROVED-BY-AOCprojects.pdf

- 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. Thus at an airport, hotel, court, etc., the attorney must use the least expensive 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. Reimbursement generally is for round-trip mileage only, at \$0.485 per mile.

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

*Preapproval:*⁵⁵ Travel for non-routine purposes must be preapproved by the executive director. Going to oral argument is routine. Travel to review the superior court file is routine for counsel in the same area as the superior court, but not for those who must go long distances. Client visits (except local ones of less than 50 miles round trip) must be preapproved. (See 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

⁵⁵“Preapproval” means by the executive director, unless specified otherwise.

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 using commercial transportation, reimbursement is for the cost from a designated point of entry within California. The designated points of entry for plane travel are these airports: Eureka/Arcata for northern states; Fresno for middle states; El Centro for southern states. (Sometimes the cheapest mode of travel may be a direct flight. This cost is allowable if it is less expensive than travel from the designated airport to the destination.)

See also [EXHIBITS](#); [SUPERIOR COURT FILE](#).

UNBRIEFED ISSUES

Time spent on an issue considered but not briefed may be compensated at the interim or final stage. A compensable unbriefed issue is not a mere question the attorney thought about briefly and rejected. It must be sufficiently substantial that an experienced attorney would reasonably research or investigate it. Researching or investigating 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.

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Because there is no briefed issue to evaluate, the burden is on the panel attorney to explain the issue and describe the work in enough detail for the reviewer to evaluate the time claimed and assess the complexity of each issue. Although an elaborate analysis is neither expected nor very helpful, the other extreme – such as a sentence fragment without citations – will rarely, if ever, persuade a reviewer the unbriefed issue was potentially significant and relevant. To optimize the chances for compensation, it can be useful for the description to make it clear how the issue would have related to the case. Indicating the type and extent of research can be beneficial; for example, a list of authorities consulted helps to show the issue was a substantial one warranting research. A claim for time spent re-reading parts of the record should explain why the initial review with transcript notes was inadequate.

The issues are classified according to the recommendation:

<u>Recommendation</u>	<u>Classification</u>
< 0.5 hours	Low simple
0 .5 hours	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

More than 5.0 hours may be recommended for an unbriefed issue, but the guideline remains 5.0 hours.

The Judicial Council Services screens all claims over \$7500 before approving them and sending them to the Controller. They look very closely at unbriefed issues in these cases, and so panel attorneys should explain these very carefully, especially when any given unbriefed issues is more than 2.5 hours or the aggregate of such issues is more than 10.0 hours. The staff attorney needs this information to support the recommendation and avoid any delays caused by the Judicial Council Services’s having to get in touch with the project about the claim. It is helpful if the explanation describes the issue, the

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nature and scope of research conducted (e.g., a list of cases reviewed), and similar factors affecting the time required. (See [APPENDIX](#) discussing this review.)

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

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

WENDE/ANDERS CASES

Usually one hour is allowed for a boilerplate *Wende/Anders* statement⁵⁶ – 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,⁵⁷ 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.

⁵⁶No appellate issues can be identified. (*Anders v. California* (1967) 386 U.S. 738; *People v. Wende* (1979) 25 Cal.3d 436; see also *In re Sade C.* (1996) 13 Cal.4th 952 [dependency appeals].)

⁵⁷A 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); 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. See [INTERIM CLAIMS](#).

Review of the court's standard *Wende/Anders* 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 before or 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](#).

WORKED ULTIMATELY NOT USED IN THE CASE

The fact that an attorney's draft, research, investigation, or other services are not put to use in documents filed in court or arguments before a court does not necessarily mean they are non-compensable. The test is whether the attorney's good-faith efforts were reasonably necessary at the time. Reasonably researched unbrieffed issues and reasonable but unfruitful habeas corpus investigations are examples. Work necessitated by the exigencies of the case, such as a minor's counsel's review of the record in a fast-track case before the appellant's brief is filed (even if it turns out to be a *Sade C.* brief⁵⁸) may also be reasonable. Work that became unusable for reasons beyond the control of the attorney may be compensable – e.g., unexpected abandonment, client death or escape, mootness, a finding of non-indigence, retained counsel substitution, and intervening Supreme Court law disposing of an issue in a brief drafted but not yet filed. A premature petition for review can be paid only *after* it is filed; if it is never filed because, e.g., the

⁵⁸*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; *People v. Wende* (1979) 25 Cal.3d 436.

Court of Appeal grants rehearing, it is payable only to the extent early work was necessary to ensure a timely filing because of the petition's length and complexity.

See also [APPEAL SUBJECT TO DISMISSAL OR ABATEMENT](#); [NON-INDIGENT CLIENT](#); [PUBLIC INTEREST SERVICES](#); [RELIEVED COUNSEL](#); [UNBRIEFED ISSUES](#); cf. [REJECTED FILINGS](#); [FILINGS DUE TO ATTORNEY ERROR](#).

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APPENDIX

DEMYSTIFYING JCS AND AIDOAC REVIEWS

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

JCS screening: The first review is by [Judicial Council Services](#) (formerly AOC), which screens every claim recommendation over \$7,500 after project transmission to the JCS and before approval sent to the Controller for payment. The purpose is to make sure the project has adequately justified an award of that size. The JCS reviewers are not lawyers, for the most part, and have access to just the project recommendation, not case materials, such as briefing. The JCS scrutinizes unbriefed issues and issues over guideline with special care.

AIDOAC audits: The second is the audit of randomly selected claims by the [Appellate Indigent Defense Oversight Advisory Committee \(AIDOAC\)](#), after the case is final. The reviewers are appellate judges and attorneys, and they have access to the entire file, including the briefs and opinions. The purpose is to make sure claim recommendations are justified by the needs of the case and the quality of the work and also to oversee the project's claim review and panel management processes.

The accompanying [chart](#) sets forth the two different types of review in more detail.

Ultimate purpose of reviews: accountability and protection of the system

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

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Explanations that really explain: JCS screening

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

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

Second, the JCS or outside auditors have only a claim worksheet in front of them, not the underlying documents. They don’t know how long the briefs were, the number of co-appellants, and any complicating factors. The comments have to *tell* them and to explain the *implications* of the facts if they are not obvious to a non-lawyer.

Explanations that really explain: AIDOAC audits

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

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

In short, claim comments have to be tailored to two very different audiences with very different resources at their disposal. The comments must explain satisfactorily to non-lawyers why the work required the time claimed and awarded. At the same time, they must justify and defend the work itself – and the award – to appellate experts. Counsel should consciously shape comments for both audiences and review them multiple times, from the viewpoint of each potential reader.

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JUDICIAL COUNCIL SERVICES (AOC) SCREENING
versus
APPELLATE INDIGENT DEFENSE OVERSIGHT ADVISORY COMMITTEE
(AIDOAC) AUDITS

Topic	JCS screening	AIDOAC audits
Timing of review	For both interim and final claims, while the claim is in progress: after transmission from project and before giving approval for Controller to pay.	Three to six months after case becomes final.
Pool of claims from which reviewed claims are chosen	Recommendations of more than \$7,500	Audit pools are selected from all claims, with certain exclusions. Separate pools for "trigger" cases (unusually high time for the record length) and staff cases.
Criteria for selection from pool	100% of recommendations > \$7,500	A specified % are selected <i>at random</i> from each pool.
Reviewers	JCS personnel. None are criminal or appellate lawyers, and most are not lawyers at all.	AIDOAC members. The committee is appointed by Chief Justice and is composed of one appellate justice from each district, two or more project directors, a civil appellate attorney, and a panel attorney.
Materials available to reviewers	Claims worksheet. No briefs or other filed documents.	All parties' briefs, the opinion, the claim and claim worksheet. If the case had a co-appellant or appointed counsel, that claim is provided for informational purposes.
Consequences if reviewer is not satisfied	If inquiries are necessary, that holds up the claim for the panel attorney, requires the project director to get involved, and requires the staff attorney to review the claim once more, often to resubmit it.	Auditor contacts project director. Director will generally consult the responsible staff attorney. After project input, the auditor reports to the committee on any proposed adjustment. The committee decides at its next meeting.
		The attorney must repay any amount cut (often by deduction from next claim). The JCS will send payment for any restoration.

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