

## BILLING HABEAS CORPUS TIME AND EXPENSES

The Administrative Office of the Courts has agreed to a uniform set of rules for billing time and expenses for habeas corpus work. In the past, these have varied and also may have been articulated in confusing or contradictory ways. We apologize for this. The requirements imposed by the AOC have changed as the AOC has reassessed its requirements.

The following instructions apply statewide until further written notice. **The passages in red apply to stand-alone habeas petitions** – meaning not billed in conjunction with an appeal or other proceeding.

### HABEAS TIME

#### **General rule: line 11 is for habeas corpus-related work**

**Meaning of “habeas corpus-related work.”** If counsel judges a habeas is reasonably likely – more than a mere theoretical possibility, although it need not yet be a firm decision – time for any investigation, research, and drafting connected to the habeas or potential habeas should be included here, whether or not the ultimate decision is to file a petition.

**What habeas corpus-related work does not include.** Merely seeking very preliminary information in order to determine whether to go further, or explaining to the client or trial attorney the basics of habeas or the reasons for not pursuing one, is not “habeas-related work.”

#### **What should be included in line 11**

**Communications with client, trial attorney, and others in investigation and development of habeas corpus issues.** All of this now goes on line 11. We previously used lines 1 and 23.

**Investigation.** Report on line 11 time spent on investigation, work with an investigator, review of trial counsel’s files, etc. No habeas work should go on line 24.

**Any motion related to habeas work.** This category includes motions for expansion of the appointment to include habeas (primarily CCAP cases), requests for costs of investigation, etc.

**Preparation of filings.** Research and writing of petition, traverse, etc.

**Other time spent on habeas.** Include on line 11 other habeas time, such as review of respondent’s filings and opinion, travel or oral argument related primarily to habeas corpus, etc.

#### **Breakdown of attorney time in explanation field.**

Explain the components of the services claimed on line 11, using the general categories above. See example at end of this memo. This gives the project and judiciary essential information for reviewing the compensation claim. Take care to provide adequate detail, especially when the total time for habeas exceeds the guideline.

#### **Exception for stand-alone habeas: use usual lines of form for services, not line 11**

For a stand-alone habeas not combined with another proceeding, it is not necessary to move time to line 11. Use line 11 for the petition and investigation, but the usual lines for other services: 1 for client and trial counsel communication, 16 for traverse, 17 for oral argument, etc.

## **HABEAS EXPENSES**

### **General rule: Claim habeas expenses in section H of the form**

**Combine with other expenses in section H.** There are no dedicated fields for habeas expenses on the claim form. They should be combined with the non-habeas expenses in the appropriate line of section H, "Detail of Expenses."

**Example.** If photocopying for the non-habeas part of the case is \$200 and the habeas copying is \$150, line H-1 would show \$350 for photocopying.

### **Explain and itemize habeas-related expenses in explanation field for line 11**

**Line 11 comments.** The comments to line 11 should specify the amount of each expense item devoted to habeas. This allows the AOC to isolate habeas costs for administrative purposes.

**Exception for stand-alone habeas:** An expense breakdown on line 11 is not needed.

### **EXAMPLE OF EXPLANATION FIELD FOR LINE 11**

For a habeas combined with an appeal or other proceeding, the comments for line 11 should provide a breakdown of habeas-related time and expenses. These comments are needed to evaluate the claim.

We recommend providing the required information in a simple format, easy to read. For example, the explanation field for line 11 might say:

<b>SAMPLE EXPLANATION</b>	
<b>Hours on habeas corpus-related services</b>	
2.7 hrs	Communications with client and trial counsel re habeas: provide number and length of letters, number and length of phone calls, interviews, etc. <i>&lt;additional explanations&gt;</i>
4.5 hrs	Investigation - review of files, interviews with witnesses, work with investigator, etc. <i>&lt;any additional explanations&gt;</i>
4.0 hrs	Research, drafting petition. <i>&lt;describe issues or cases researched&gt;</i>
3.0 hrs	Travel to review trial counsel files
<b>Expenses incurred because of habeas corpus</b>	
\$ 23.00	Photocopying - 230 pages - petition
\$ 15.75	Postage – petition
\$173.00	Travel – flight to and return from trial counsel office

**Exception for stand-alone habeas:** These breakdowns on line 11 are not necessary.