

**LINE-BY-LINE INSTRUCTIONS FOR
APPOINTED COUNSEL'S CLAIM FORM**
(Updated 3/21/2017)

Before you submit your eClaim, is your time claimed on the right line?

NEWS ITEMS

Added 3/21/17: Pre-Approved Expenses for Experts are billed on Expense Line #9.

Pre-approved expenses for experts other than translators, should be placed on expense Line #9, not expense Line #8. Pre-approved expenses for translators should still be placed on Expense Line #8.

Watch for line # change – coming soon: TrueFiling expenses are billed on Expense Line #9.

All TrueFiling expenses should be listed on the claim, expense Line #9, with a written comment “TrueFiling” or “TrueFiling fees.” It is not necessary to itemize your TrueFiling fees. There should be no binding fees claimed for any briefs filed on or after implementation of TrueFiling, with one exception: binding for the Court’s copies of the petition for review until that Court moves to electronic filing.

BASIC PRINCIPLES FOR UNDERSTANDING WHAT GOES WHERE

(1) What are the claim guidelines?

The JCC/statewide guidelines for claims and travel expenses can be found on CCAP’s website at:
<http://www.capcentral.org/claims/guidelines/statewide.asp>

The claim guidelines are categories of services specifically created for all appointed appellate cases, including criminal, dependency and mental health

cases. The statewide guidelines set forth the amount of time to perform a given service based on a “reasonably experienced appellate attorney” standard. The guidelines are based on the average case. Some cases require services that may exceed the guidelines in one or more categories. When this occurs, detailed explanation for the overage is required, although not all categories are susceptible to recommendation of payment of overages. CCAP will consider all comments in determining whether payment over the guidelines may be recommended. The overarching purpose of the guidelines is to promote reasonable and fair standards for payment of appointed counsel. Therefore, counsel is encouraged to discuss with the CCAP buddy an individual case that falls outside the norm and requires special consideration.

In some instances, payment at the guidelines is not warranted because a particular service should not require the amount of time provided in the guidelines. For instance, if a respondent’s brief is four pages long and cites one case, it is unlikely that the full 2.5 hours guideline for reviewing this brief is reasonable. On the other hand, a filed brief may not reflect the amount of work that was put into it – this could best be clarified in an explanation for the work performed (without revealing adverse consequences).

(2) When can you file a claim?

A. Interim claims

An interim claim may be submitted after the opening brief is filed (or respondent’s brief in People’s appeals), unless a *Wende*, *Phoenix H.*, or *Ben C.* brief is filed. A pre-AOB interim claim is authorized after record review is completed if the record is 7,500 pages or more.

Statewide Policy: The JCC expects that all final claims will be submitted within 180 days of the *opinion* date.

B. Final claims

The final claim should not be submitted until all work on the case is complete. The final claim may be submitted after the Court of Appeal opinion issues unless appointed counsel intends to prepare and file a petition for review in the California Supreme Court, in which case the final claim is submitted after the

petition is *filed* by that court (do not use the “mailing date” per JCC/ACS policy).

A final claim may also be submitted when the appeal is dismissed (either voluntarily or by order) or at the time a substitution of attorney order is filed. The filing of a final claim waives compensation for later-performed services unless they were unforeseeable.

The petition must be *filed* before the project can evaluate and recommend any time for it. A final claim with time claimed for a prematurely “filed” petition for review will be considered premature for project recommendation if the time for the finality of the opinion has not yet *expired* (i.e., 30 days following the date of the opinion). The project must hold the claim until the 31st day (the first day the petition can be filed in the Supreme Court and the opinion is final), or counsel may choose to have the claim processed prior to the 31st day with a zero recommendation for Line 13 petition work.

A final claim with de minimus time claimed for consideration-only of a petition for review when counsel has decided not to file the petition, can be processed by the project without holding the claim for the 31st day to elapse.

C. *Claims for no-issue briefs*

For *Wende*, *Phoenix H.*, and *Ben C.* cases no interim claim is submitted. However, in these cases counsel may submit an early final claim before the opinion issues if the time has passed for the court to receive a pro per supplemental brief (i.e., AOB date + 30 days). If an early final claim is submitted, counsel waives claiming time and expenses for any subsequent services such as reading the opinion or further communication with the client. Should an early final claim be submitted and the court subsequently requests supplemental briefing, the work performed by counsel may be compensated in a supplemental final claim submitted after the opinion issues.

An exception which allows interim claims in *Wende* cases is where a concurrent habeas petition is filed. However, see CCAP’s claim manual regarding the need for an expansion of appointment request for habeas work.

D. *Supplemental claims – timing and justification*

In exceptional circumstances, the Judicial Council/Appellate Court Services may

approve supplemental claims on the project director's recommendation and a showing of good cause. An example of justification for an exception might be health reasons causing a substantial hardship to the attorney. Permission may also be given for submitting a supplemental interim claim if substantial post-AOB work is followed by an excessive delay and waiting to submit a final claim would cause hardship. A supplemental final claim may be based on substantial and unforeseeable required services after the remittitur has issued and a final claim has already been submitted.

All supplemental claims must be preapproved by the CCAP executive director on a case-by-case basis. Normally, "business expenses" alone will not be sufficient to establish hardship. CCAP will undergo a review of all of counsel's cases and claims as a part of the overall picture of hardship.

Supplemental claims have also been allowed to correct an earlier error in the compensation/claims process (whether the error was caused by counsel or CCAP).

(3) What information should be provided with the claim?

It is counsel's responsibility to provide information necessary to understand and evaluate the reasonableness of the claim, especially for any over-guideline or other unusual or extraordinary time or expense claimed. Familiarity with policies, procedures and statewide guidelines for claims - here and in combination with our [Panel Claims Manual](#) - will assist you to identify normal versus extraordinary claimed items. A claimed item may be recommended for payment over the guideline, but an explanation is always required. Providing necessary explanations will also speed up claims processing and help avoid errors and unnecessary claim cuts. Explanations should not only state *what* work was done, but also may require briefly explaining the reason *why* it was done.

The line-by-line instructions below will assist counsel in determining what type of information is useful to evaluate a claim.

Remember to keep track of your time to the tenth of an hour, for example 1.2 hours or 2.5 hours. Do not claim fractions of time less than 6 minute intervals. Claim only time actually spent, i.e., do not simply bill the guidelines, and do not round up. Similarly, expenses should not be rounded off, but should state the actual cost incurred.

TIP: Where do non-filed items go? Time spent on a subject, whether completed or not, should be on the line item related to that subject or task, not on Line 24 for “other” services.

We have added an Appendix for suggested line items by description. This list has been reviewed with other projects and represents our best efforts to consistently identify what goes where by task descriptions. (Samples taken from actual claims and JCC feedback.)

Finally, do not self-cut your actual time spent! There is no penalty for receiving a cut from a project. On the other hand, the project cannot recommend more than what is billed.

LINE-BY-LINE INSTRUCTIONS FOR CLAIM ITEMS

This line-by-line instruction is not intended to set forth the claim guidelines or full policies but only to provide instruction regarding the correct placement of services and expenses on the claim form. It is not intended to authorize any services or expenses for which preapproval is required. Appointed counsel is expected to know claim [guidelines](#) as well as the requirements for [preapproval](#) of services and expenses as set forth in the guidelines. For complete policies, consult our [panel claims manual](#) online.

Line 1
Communications with appellant & trial counsel

Enter time for all communications regarding the direct appeal with the appellant and trial counsel, whether written or oral. Do not enter time for communication with family members on this line unless the family member was acting as a conduit for client communications and this was reasonably necessary. For instance, if appellant has some disability which renders him or her able to communicate only via a family member, then such communications may be entered on Line 1; note that a comment is always necessary. All other contacts with family members, and all other communications, should be placed on Line #23 (other communications).

NOTE: We have found the biggest source of confusion in billing is in communication time: as in, what goes where?

We hope the details in this guide will help you, but in essence Line 1 is strictly for communication with the client and the trial attorney, Line 23 is to be used for “other communication” including communication with appellant’s family, the Attorney General, the Court of Appeal, superior court, prison locators, etc., and Line 24 is not used for billing communications at all. (See discussions under Lines 1, 23 and 24 for detail regarding allowable services for these lines.) If you put communication time on another line, we will contact you to move the time to the correct line number.

The JCC has implemented a statewide policy on where habeas-related work and expenses should be claimed on the compensation claim form.

Please review the posted [Billing Habeas Time and Expenses memorandum](#). Communication with appellant and trial counsel is split between Lines 1 and 11, depending on the type of communication; the memorandum explains these differences.

Do not enter communication with CCAP on this line; enter it on Line 21 (project communication).

What are the limits to communication time?

The guideline for communications with the client and trial counsel is 3.5 hours. If the overall client communication exceeds guidelines, include an explanation for the time, including the *quantity of* and *necessity for* communications but *without disclosing specific client confidences or adverse consequences of the appeal*. (Remember: counsel should treat all supporting comments entered on the claim as subject to review by a member of AIDOAC during an audit.) For CCAP cases, when a claim is chosen for the quarterly audit pool, both counsel’s claim form *with explanations* and CCAP’s recommendations are sent to AIDOAC. Thus, if confidential communications are necessary to explain a claim item, it is recommended that counsel either state it in more general terms that does not

reveal confidences, or if more explanation is needed, include it in a separate written communication to the assigned staff buddy for the case.

Appointed counsel is expected to keep appellant informed of developments in the case and respond to inquiries. Counsel should endeavor to keep communications within reasonable limits given the concerns of the appellant and the demands of the case. Counsel should attempt to contain unnecessary and repetitive contacts while maintaining an ethical and competent level of communication and trust with the appellant and trial counsel. If further guidance is needed regarding excessive or problem communications, contact your CCAP buddy.

Line 2 **Record review**

Enter your total time for review of the appellate record, excluding the preliminary hearing. Review of the preliminary hearing transcript may be compensated only if relevant to an appealable issue; if time is claimed for reviewing the preliminary hearing transcript, an explanation of the relevance is required. An explanation that the pages were read "for a statement of facts," is insufficient. In a guilty plea case, the statement of facts may be summarized from the probation report, or from the stated factual basis. If, however, the preliminary hearing transcript was entered into evidence at the superior court level or otherwise considered by the judge, or the prelim was stipulated to as the factual basis for the plea, then reading the prelim pages can be justified with an explanation. The explanation must be specific. For instance, it is insufficient to say the preliminary hearing was reviewed as part of an ineffective assistance of counsel inquiry; the type of ineffective assistance should be identified (unless it reveals a potential adverse consequence).

Do not enter review of other records on this line, such as viewing exhibits, a videotape, or listening to an audiotape of a police interview. These should be claimed on Line 24 (other services). Only items added to the appellate record that have a specific page count should be included on Line 2.

If an interim claim is submitted and the time for record review changes on the final claim time, an explanation for any additional time claimed should be provided.

What are the guidelines for record review?

For appointments after October 1, 2004, the record review guidelines are 50 pages per hour. Only actual time spent reviewing the record should be claimed, i.e., some records read faster than 50 pages per hour. For example, in some cases a portion of the record may not be relevant to one of the defendants or may contain testimony regarding a count for which appellant was acquitted. For this reason, a new JCC requirement is a separate page count for “number of pages read.” (*NOTE*: All project electronic-eclaim systems will reflect this change when they are updated.)

Line 3

Extensions of time

Enter the number of extension requests and the total amount claimed. Although the guidelines are 0.5 hour per extension, the amount of duplication of data will be considered in recommending time for the second and subsequent extensions. Both necessity for the extension *and* time claimed are taken into consideration. Where more than two extensions of time are filed an explanation should accompany the claim justifying the third and subsequent extensions. Absent such explanation there may be insufficient information for CCAP to recommend payment for more than two extensions.

NOTE: Extension requests included within another motion (e.g., motion to augment) are not necessary and even disfavored by the Third and the Fifth Districts. Accordingly, these statements not be counted by CCAP as a separate extension of time request.

Line 4

Motions to augment the record

On this line enter motions to augment the record directed to the Court of Appeal pursuant to California Rules of Court rule 8.340(c). Do NOT include requests for supplemental record directed to the superior court pursuant to rule 8.340(b). Rule 8.340(b) requests are included on Line 5 (other motions), not on Line 4.

Actual time spent preparing the augment document should be claimed. In the

event time in excess of 1.5 hours is claimed, specific comments regarding the complexity and volume of the items requested should accompany the claim. If multiple motions to augment were filed, explain the reason this was necessary.

Line 5

Other motions

Enter time for preparation of other motions filed, including supplemental record requests filed in the superior court under rule 8.340(b), *Fares* motions, motions to correct the abstract of judgment, abandonment requests, CPC motions (filed in the superior court before the 60th day from judgment), motions to unseal records, requests to expedite/for calendar preference, etc.

Motions to expand the appointment for other petitions (such as mandate or cert) go on Line 5; motions to expand the appointment for habeas go on Line 11 (habeas petitions).

A CPC motion in the superior court is typically in the range of 2.0 to 2.5 hours or what is reasonable for the case. If the preapproval order does not set forth the allowable time, CCAP will look at what time and expenses were requested.

Bail on appeal, *Fares* motion or other superior court motions are generally 0.5 to 1.5 hours, depending on the complexity.

Steps for Obtaining Preauthorization:

http://www.capcentral.org/procedures/court_policies/preauthorization_procedures.asp

For example, travel for a required appearance on trial court motions must be pre-approved. Discuss with the CCAP buddy the possibility of asking trial counsel to make the appearance on the motion.

Where several motions are claimed on Line 5, please specify how much time was spent on each motion. In addition, where a significant amount of time was spent on a motion, provide detailed comments regarding the time required for the service.

A useful list of suggested items billed to this line is in the Appendix.

Line 6

Appellant's Opening Brief - Including *Wende/Phoenix H./Ben C.*

Enter the sum of the time spent preparing the statements of case and facts plus the briefed issues. Do not include unbriefed issues on this line (see Line 7). Do not break down the time issue-by-issue!

In a People's appeal, the time appointed counsel spends preparing the respondent's brief should be included on this line.

In a habeas appointment, the original (or supplemental) petition for the stand-alone petition case is billed on Line 11 (if counsel filed it), not Line 6; the traverse (petition reply) is billed on Line 16, and all other items are billed on the appropriately-related line numbers on the Hours Worksheet (e.g., all client communication on Line 1, etc.).

Dependency and mental health cases: enter time for a *Phoenix H.* or *Ben C.* letter brief on Line 6, and select the correct briefing type in the eClaims case information screen. If minor's counsel in a dependency proceeding files a brief, it should be included on this line.

Time claimed for draft AOB work prior to an abandonment is claimed on Line 6. In order for the project staff attorney to be able to evaluate any claimed draft statement and/or issues, please provide a copy of your draft to the assigned staff buddy for our file. An explanation as to the work performed prior to appellant's decision to abandon should also be provided.

The allowance for the statements of case and facts is generally ½ the time allowed for record review up to 10.0 hours, with an explanation by the project needed for statement recommendations that exceed 10.0 hours. If the statements of case and facts were unduly complex you can help us by providing an explanation why they were difficult to prepare. Consideration will then be given to a recommendation in excess of guidelines. In other cases, the full guidelines amount may not be reasonable because the statements were simple or the issues raised did not require an extensive factual recitation.

Provide any relevant information regarding the complexity of the arguments which may assist in classifying the issue. For example, counsel should explain if research was conducted that is not reflected in the filed argument.

For every claim (both interim and final), disclosure of significant use of previous briefing is required. Your description should reflect *the use of significant portions of sample arguments and/or the re-use of complex authorities and analysis from either a briefbank source or in the briefs and petitions filed in the same case*. If this was the first time the sample briefing was used, provide comments regarding that fact, as the initial use of the argument will take more time than its subsequent use. A short description of the portion of the sample material is useful, for example: "Approximately 25% of the authorities in the sufficiency issue were copied from previous briefing I have written. That portion required approximately 1.5 hours to adapt to this case."

NOTE: "Use of Previous Briefing" includes copying of briefing within the same case (i.e., copying AOB paragraphs into the Petition for Review is a significant use of previous briefing).

Associate counsel time is always added to appointed counsel's time line-by-line in eClaims Step 6. *Your time should always be claimed first*, then add in any additional associate counsel time that you are also *claiming*. The "Associate Counsel Hours" step must be completed with the claim, hours inserted by claim line number, time expended, and service performed (this is Step 8 in the eClaims program). Do not list associate counsel time that is not being *claimed* (i.e., DO NOT list, for example, 15.0 hrs. of associate counsel time spent in Step 8, but only claim 5.0 hrs. of associate counsel time added to your time in Step 6, the hours claimed page).

Note: By statewide policy, associate counsel cannot be used for cases appointed on an assisted basis except under extraordinary circumstances and by first obtaining approval from the project director. Further, in Third District independent cases, under current court policies, appointed counsel must first obtain the court's approval for services rendered by associate counsel if the associate is going to sign any pleading or appear at oral argument.

A habeas petition (in a stand-alone petition case) should be claimed on Line 11, not Line 6. (See the [JCC approved memo for billing all habeas-related time](#).) The traverse on Line 16.

Line 7

Unbriefed issues

This line should include discrete legal matters researched but deemed not arguable and therefore excluded from the opening brief. Describe each issue in sufficient detail to permit the evaluator to assess its depth of complexity. A detailed explanation is especially helpful for any single unbriefed issue that exceeds 2.5 hours, or where the total for all unbriefed issues exceeds 10.0 hours. Use care not to describe the issue in language that argues against the client or discloses adverse consequences. An issue that describes an adverse consequence will cause the claim to be returned for revision.

Issue descriptions should be complete. The JCC approved memorandum "Guidance for Billing Unbriefed Issues," can be found on CCAP's website at:
<http://www.capcentral.org/claims/guidance%20for%20billing%20UBI.pdf>

Also enter on Line 7 viable issues which were researched but *not* drafted before appellant decided to abandon the appeal. Time claimed for draft AOB work prior to an abandonment is now claimed on Line 6 (the AOB line).

Line 8

Reply brief

Enter time spent researching and preparing the reply to the respondent's brief. The guidelines generally allow one third of the time recommended for the opening brief. If the reply brief time spent exceeds the guidelines, provide comments detailing the complexity of the reply. For instance, if the respondent asserted waiver or forfeiture, it may take longer to prepare the reply. Counsel's comments will assist in evaluating whether to recommend payment over the formulaic guidelines.

Do not claim time spent raising a new issue in the reply brief as this does not effectively raise the matter under current court policies and will be treated as an unbriefed issue. See Line 9 (supplemental briefs).

Line 9

Supplemental or letter briefs

Include time spent preparing briefs which supplement appellant's opening or reply briefs, or which were written at the court's request. This includes draft supplemental briefs submitted but not filed by the Fifth District. Time for letter briefs or notice of additional cases to be cited at oral argument should also be listed on Line 9.

Do not include on this line a motion for leave to file a supplemental brief - time for this service should be listed on Line 5 (other motions).

Line 10

Review of opposing briefs

Enter the time for review of the opposing brief (usually the Attorney General/County Counsel), and all other *adverse* parties. If multiple opposing briefs were reviewed, each should be identified with the time spent in review. In a People's appeal, enter the time spent reviewing the prosecution's opening brief. If the guidelines of 2.5 hours is exceeded because the opposing brief is lengthy, provide comments regarding the need to spend extra time in review.

Is the case a *Wende* or *Phoenix H./Sade C.* case? If so, you may not claim time for review of the respondent's brief unless the court orders supplemental briefing.

Do not include on this line time spent reviewing other briefs such as those of the co-appellant, a non-appelling minor, or amicus curiae. Review of these briefs is itemized on Line 24 (other services).

Line 11

Habeas corpus petition

IMPORTANT: Counsel must move to expand their appointment in order to be compensated for habeas work in both the Third and the Fifth Districts.

The original petition *for the stand-alone petition case* (a case in which the initial

appointment is to represent a petitioner) is billed on Line 11 (if counsel filed it), not Line 6. The traverse (petition reply) is billed on Line 16, and all other items are billed on the appropriately-related line numbers on the Hours claimed page (e.g., all client communication on Line 1, etc.).

Line 11 is used for all habeas corpus related work when attached to a related appeal case. Specifically, time for any **investigation, expansion, research**, and/or **drafting** connected to habeas or possible habeas claims should be included here, whether or not the ultimate decision is to file a habeas petition. Please review the [JCC approved memo for billing all habeas-related time](#). Line 11 for these purposes is also used for a companion habeas to the direct appeal case *where all time is being claimed on one claim*.

Line 11 now includes all of the following habeas-related time when not a stand-alone petition/appointment:

- 1) Communications with the client and/or trial attorney (previously billed in Line 1) where the communication is focused on investigation of potential habeas-related facts and/or development of habeas issues.
(NOTE: Providing information to the client or trial attorney, such as explaining how a habeas petition works or the reasons for deciding not to file a petition, should remain in Line 1.)
- 2) Preliminary time spent investigating potential habeas issues in the context of preparing an application to expand the scope of the appointment, identified by each potential issue investigated;
- 3) All miscellaneous communications specifically related to habeas-issue investigation (rather than on Line 23);
- 4) The motion to expand appointment (rather than on Line 5);
- 5) All project staff attorney habeas-related consultation time (rather than on Line 21);
- 6) Review of trial counsel's file to evaluate potential habeas issues discussed with the client (rather than on Line 24); include a page count.

For compensation purposes, preapproval from the Third or Fifth is needed before a writ petition may be filed. The guideline for preparation of a petition is 12.0 hours, *although compensable time may be further limited by the court's specific preapproval order and/or reasonableness*. Given that all habeas-related activity now goes on Line 11, it may be necessary to breakdown the total time spent in this category if multiple tasks are claimed here. The same is true for

habeas-related expenses.

Counsel should estimate the total time necessary in their application to expand the scope of their appointment. In addition, counsel should estimate and obtain preapproval for any related expenses incident to preparation of a petition, such as expert services or travel costs.

NOTE: CCAP's recommendation for investigation and preparation of the petition is limited to the amount preapproved by the court. If the original preapproved amount will be exceeded for either time or expenses, counsel must seek further preapproval from the court.

At this time, CCAP does not have discretion to approve time or expenses not covered by the court's preapproval order for petition work.

Do not include any time for a federal habeas petition as such work is not within the scope of the counsel's state appointment order for the Third and the Fifth Districts. Similarly, do not include time for preparation of a superior court habeas petition filed by appointed counsel or on behalf of the appellant, in pro. per. without first obtaining expansion of your appointment to assist your client in doing so.

Line 12 **Petition for rehearing**

Enter time for preparation of the petition and provide information regarding any matter copied from other briefs on the Use of Previous Briefing eClaim stage.

Line 13 **Petition for review**

Include time spent preparing the petition for review. On the Use of Previous Briefing eClaim stage, declare use of copied arguments in the petition, including material copied from the opening and reply briefs and the petition for rehearing. The guidelines are what is reasonable up to 10.0 hours, unless the petition is unusually complex.

The projects' recommendation for a review petition on the final claim may not be transmitted until the petition is eligible for *filing* with the California Supreme Court (e.g. 31st day after opinion). The project must hold the claim until the 31st day (the first day the petition can be filed in the Supreme Court and the opinion is final), or counsel may choose to have the claim processed prior to the 31st day with a zero recommendation for Line 13. Do not use the mailing-service date (rule 8.25) for claims.

A final claim with de minimus time claimed for consideration-only of a petition for review but where counsel has NOT filed a petition for review, can be processed by the project without holding the claim for the 31st day to elapse.

Line 14

Other petitions

Enter on this line time spent preparing a petition other than a petition for writ of habeas corpus (which goes on Line 11), such as a petition for writ of certiorari or mandate. Such petitions require preapproval from the court or project for payment. The expansion order may limit the amount of time which may be claimed; if the preapproval order does not set forth the allowable time, CCAP will look at what time and expenses were requested in the expansion request.

Line 15

Review of response to petition

Enter time for reviewing the opponent's response to the petition for writ of habeas corpus or mandate. Time for this service may be specified in the court's expansion order; if the preapproval order does not set forth the allowable time, CCAP will look at what time and expenses were requested in the expansion request.

Line 16

Reply to response to petition

Time includes preparation of a reply to the opponent's response to a petition for writ of habeas corpus or mandate. Time for this service may be specified in the court's expansion order; if the preapproval order does not set forth the allowable time, CCAP will look at what time and expenses were requested in the expansion

request.

Line 17 **Oral argument**

Include time spent preparing for and presenting oral argument. If the time expended exceeds the 7.5 hours guideline, provide a detailed explanation for this overage. Indicate whether the argument was telephonic.

Time spent reviewing the case to determine *whether or not to argue* should now go on Line 17 (not Lines 5 or 24), with an explanation for the service.

Include a comment separating out the time for the task(s) claimed on this line.

Other *Line-17-related tasks* that may be billed on this line:

- 1) Request for oral argument;
- 2) Waiver of oral argument;
- 3) Request for calendar preference;
- 4) Request to continue oral argument;
- 5) Review of court's oral argument solicitation letter;
- 6) Preparation for oral argument;
- 7) In-court time for argument;
- 8) Time spent waiting in the courtroom for the case to be called.

Other oral argument-related tasks that should be billed to a different line:

- 1) Travel *time* incident to oral argument - use Line 18;
- 2) Travel *expenses* related to oral argument - use Line 5 of expenses including a detailed breakdown for each expense claimed;
- 3) Supplemental authorities for use at oral argument - use Line 9.

Effective July 1, 2014, Court Call (www.courtcall.com) will be used for any party appearing telephonically for oral argument in the Fifth District. (Their aging teleconferencing equipment has now been retired.) Fees for Court Call use are paid directly to Court Call and can be claimed as an expense item on the final claim. Use Expenses, Line 4 [telephone], and separate it in the comment field if other telephone charges are also claimed.

Line 18

Travel (time)

Is travel more than 25 miles in each direction? If not, stop. You may not claim travel time on this line, although you may be able to claim your travel expense on the expenses page, Expense Line 5.

If travel exceeds 25 miles in each direction you may claim reasonable travel time for *attending oral argument*. Indicate on the claim the destination, purpose, time and mileage.

Tip: MapQuest your travel time and distance for a benchmark on reasonableness.

Use www.MapQuest.com for a baseline determination of reasonable time and mileage point-to-point (also used by the JCC/ACS and CCAP for this purpose). If you find that your actual time and/or mileage expenses are above the MapQuest benchmark, include an explanation to support your higher (extraordinary) amount claimed.

All other travel time, such as a trip to the superior court to review a file, visit the client, or travel to the trial attorney's office, must be pre-approved. CCAP previews travel requests for Third District cases. The written request for preapproval should include the reason and need for travel, the time needed to perform the service, an estimate of the travel time, the number of miles of travel (if driving) and other expenses related to the travel. CCAP must provide this information to the JCC when processing the claim. In the Fifth District, requests for preapproval should be directed to the court.

Attorneys are compensated for the most economical means of travel, regardless of the mode actually used. If travel is by mass transit, counsel is expected to use the time during travel to work.

Statewide Policy: Receipts should be retained in counsel's file for audit purposes. Project staff may ask for copies of travel receipts, especially airline and hotel expenses.

The current mileage rate for travel is \$.50/mile for cases appointed on or after

January 1, 2017. The distance is measured from counsel's home or office, whichever is closer to the function. (See **Expenses: Line 5**, below.)

See *Statewide Travel Guidelines* on the CCAP website at:
<http://www.capcentral.org/claims/guidelines/statewide.asp>

Line 19 **Review of court opinion**

Enter the time spent for reviewing the court's opinion, including any opinion on rehearing. The guideline is 1.5 hour, although the time recommended is based on what is reasonable, given the length and content of the opinion. The guideline in *Wende*, *Phoenix H.*, and *Ben C.* cases is 0.2 hour, unless the appellant files a supplemental brief and it is addressed in the opinion.

Line 20 **Review of the superior court file**

Enter only time expended reviewing the superior court file and/or exhibits *while at the superior court*. If exhibits and/or material from the superior court file is sent to appointed counsel, the time spent reviewing such matter should be included in Line 24 (other services), with a page count in your comment whenever applicable.

The guideline for review of the superior court file and exhibits is 1.0 to 2.0 hours unless the court has pre-approved a greater expenditure of time. Do not include any travel time to the superior court on this line. Pre-approved travel time should be entered on Line 18 (travel).

Line 21 **Consultation with project staff**

Enter communication time with the project staff attorney, including review of written correspondence, emails, telephone calls and conferences. The *maximum time allowable* for this service is 2.0 hours in independent cases and 4.0 hours in assisted cases.

Line 22

Administrative services

Administrative time may be entered on the *final* claim for cases appointed on or after October 1, 2004. Enter actual time up to a maximum of 1.0 hour for matters such as setting up the file, preparing tables of contents and authorities, arranging for copies, mailing letters, TrueFiling, etc. The time in this category does not allow for overages and no time over 1.0 hour can be recommended. No breakdown/explanation of the services is required.

Do not include on this line the services of paralegals and law clerks; these services should be entered as an expense on Expense Line 7.

Line 23

Other communication(s)

For claims submitted after April 4, 2008, all communications other than with appellant and trial counsel should be placed on Line 23. Include communications with the courts, Attorney General, co-appellant's counsel, contacts with the Department of Corrections, arranging for an attorney-client telephone call, etc. Also included is time spent reviewing court orders and notices. Communications directly related to a habeas investigation should be placed on Line 11.

An itemized breakdown of all communications by category and the time for each should be provided in a comment. For instance, "Communication with the Court of Appeal, 0.3 hour," or "Communications with Attorney General, 0.4 hour." If the time claimed in one or more itemized categories is substantial, include comments regarding the necessity for the time spent.

Do not claim time spent for communications with the media or for assisting the appellant with personal matters such as medical concerns or housing, as these types of services are considered beyond the scope of counsel's state appointment.

A useful list of suggested items billed to Line 23 is in the Appendix.

Line 24

Other services

TIP: Where do non-filed items go?

Time spent on a subject, whether completed or not, should be on the line item related to that subject or task, *not* on Line 24.

Enter all other services for which a specific line entry is not otherwise provided. Such claims may include review of trial counsel's file (should it be on Line 11 instead?), oppositions to Attorney General extension requests, time spent reviewing other briefs such as those of the co-appellant, a non-appealing minor, or amicus curiae, etc. If there was more than one brief reviewed, provide a breakdown of how much time was spent reviewing each brief. A similar breakdown of the other time claimed on Line 24 must be provided. The guidelines are what is "reasonable" given the necessity and nature of the service. Provide a page count if reviewing pages.

TIP: Did you review trial counsel's file?

Often this is claimed on Line 24. However, if the review is to evaluate potential habeas issues, this time should shift to Line 11. [See the JCC [habeas billing memo](#) posted on our website.] If it is listed on Line 24, you can help us evaluate the time by including an explanation stating the *purpose* of reviewing the file - otherwise we will contact you to determine if the service should be moved to Line 11. Please include a page count.

A useful list of suggested items billed to Line 24 is in the Appendix.

Expenses

TIP: Itemize your habeas expenses line-by-line

Similar to the itemization for Line 11 of habeas-related work in the *hours* claimed, related habeas *expense* items should also be included along with any appeal-related expenses for the relevant expense lines and itemized in your comment for each expense line.

Line 1

Photocopy expense

Include the cost of mailed service copies, correspondence, and other necessary copying costs, at actual cost up to 10¢/page.

Do not claim expenses for copying cases, statutes, etc. as part of legal research. Do not include the costs of copying the record on appeal. In some instances a small amount of copying from the record for the client is compensable, not to exceed 50 pages without preapproval. Do not include costs of copying the attorney's file where the original file was sent to the appellant.

Expenses for copying superior court file material may be compensable where appellate counsel presented a copy of the appointment order but was denied free copies. Include the expense here if it is 10¢/page; include it on Expense line 9 if it is at a different rate (e.g., 15¢/page). Please include an explanation.

Line 2

Binding expense

Include on this line the expense for binding the Supreme Court's original and filed copies of the petition for review. If the binding expense includes some copy costs, provide an explanation for the combined invoice to avoid possible claim cuts.

TIP: Combined invoice?

Photocopying may be included on this line if counsel paid for both copying and binding as one sum and received a unified receipt for the print job. Provide an explanation to this effect.

The current binding allowance for a petition for review is \$70. Additional expenses may be allowed if the petition is over-length. *Do not include binding expenses for service copies, as these are stapled not bound.* (See [AIDOAC binding expenses policy](#).) Excepting older filings, with the implementation of TrueFiling in our courts we would expect to see binding expenses only for the petition for review (until that Court joins TrueFiling).

TIP: TrueFiling vs Binding Fees

There should be no binding fees claimed for Fifth District briefs filed on or after May 11, 2015 or Third District briefs filed on or after September 14, 2015 (dates of implementation of TrueFiling).

If any binding expenses are claimed, it is helpful to the project staff if you include a comment itemizing what the binding cost is for.

Line 3

Postage/Delivery expense

Enter the costs of ordinary/first class mail for filing or serving briefs, petitions, motions, supplemental record requests, letters, etc. Do not include expenses for priority, express or overnight mail, messenger delivery, attorney service delivery, personal delivery, delivery by attorney staff or other types of extraordinary means of delivery, unless the expense was genuinely *case created*, for example, if the court orders supplemental briefing filed with a very short deadline. Any expense for extraordinary delivery *must be disclosed and justified*. If the extraordinary expense is disallowed, a comparable first class delivery expense will be recommended.

Line 4

Telephone/Court Call expense

Enter actual long distance expenses. These will be compensated if reasonable. Do not claim phone plan expenses. Receipts are not generally necessary unless required to understand the claim, but they are helpful in justifying unusual costs.

TIP: Court Call is Billed on Expense Line #4

Effective July 1, 2014, Court Call (www.courtcall.com) will be used for any party appearing telephonically for oral argument in the Fifth District. (Their aging teleconferencing equipment has now been retired.) Fees for Court Call use are paid directly to Court Call and can be claimed as an expense on the final claim (Expenses, Line 4 [telephone]).

Line 5
Travel expense

The statewide guidelines for travel expenses may be found on CCAP's website at: <http://www.capcentral.org/claims/guidelines/statewide.asp>

Include travel *costs* (not *time*) incident to oral argument and other, pre-approved, travel. Reimbursement is based on appointed counsel rates. Unlike the travel *time*, the *distance* need not be more than 25 miles in each direction. Travel other than to oral argument must be **pre-approved** by the project in Third and Fifth District cases.

The current rate is \$0.50/mile for automobile travel. (Check for **current mileage rates** the JCC has specifically approved for the appointed counsel program, which may or *may not* match the "state rate" for capital cases, for state employees, or for income tax rates.)

Tip: MapQuest your travel time and distance for a benchmark on reasonableness.

Use www.MapQuest.com for a baseline determination of reasonable time and mileage point-to-point (also used by the JCC/ACS and CCAP for this purpose). If you find that your actual time and/or mileage expenses are above the MapQuest benchmark, include an explanation to support your higher (extraordinary) amount claimed.

Enter the number of miles traveled. Do not enter any per diem expenses for trips of 25 miles or less, one way. The distance is measured from counsel's home or office, whichever is closer to the function.

Counsel is always expected to travel by the least costly means and engage in only necessary and appropriate travel. If counsel chooses to drive and the cost is greater than air travel would have been, reimbursement is limited to that airfare plus ground transportation and parking.

If travel is by air, counsel will be allowed coach fare plus reasonable costs of ground transportation to and from the airport. Parking expenses incident to oral argument are compensable; guidelines are based on use of economy/long-term parking lots only. If parking expenses are incurred for other reasons, such as a visit to superior court, this cost should not be included unless it was pre-approved. Additional baggage fees are not compensable.

Per [Statewide Travel rules](#), use of a taxi will not be reimbursed unless it is shared and the cost is less than an airport shuttle. If the panel attorney does use a taxi, the attorney will only be reimbursed up to the cost of the least expensive form of travel.

Enter on this line appeal-related [per diem](#) costs for lodging (\$110/day + tax) and meals (\$8.00/breakfast; \$12/lunch; \$20/dinner). (These rates apply in cases where counsel was appointed on or after January 1, 2017. For cases where counsel was appointed prior to January 1, 2017, see the [Statewide Compensation Guidelines](#).) Such expenses must be reasonably necessary to attend oral argument. In all other cases such expenses must be pre-approved. Per diem expenses including meals now requires a qualifying overnight stay (see, [Statewide Travel rules](#)).

The per diem allowance applies only to meals and lodging. Do not include other expenses such as room video rentals or clerk copying charges. Copying charges must be anticipated and pre-approved.

Receipts should be provided for airfare, rental cars, accommodations, meals, and other relatively high expenses. An airline itinerary is acceptable with ticketless travel. As in the case for all expenses, receipts for other travel expenses should be retained and produced upon request by the project staff or by the JCC/AIDOAC as part of an audit.

IMPORTANT: Special rules apply to out of state travel.

Pursuant to JCC policy, reimbursement is the lesser of actual travel cost and the most economical travel mode computed from the California border.

Still confused? Please read our [FAQ article on per diem expenses](#) and consult the [Statewide Travel rules](#) prior to incurring any travel expenses.

Expenses Line 6

Computer research expense

Statewide policy for online library usage includes only the cost of research that requires access to unique materials outside of appointed counsel's basic plan *and must be supported by documentation for that research*. Retain documentation in your file; the project staff attorney may ask that you scan/email or fax it to them. Counsel must justify this expense; include an explanation of need and identify the briefing it was used for. Do not include all or a pro-rated portion of regular monthly fees for on-line computer research service.

Line 7

Paralegals and law clerks

Enter paralegal and law clerk time as an expense, itemizing hours, hourly rate, and activity. Paralegal/clerk time is allowable for working on briefs and motions to the extent that the expense, when converted into equivalent attorney time, does not exceed the guidelines for the particular service. It is anticipated that appropriate paralegal and law clerk services, such as cite checking, will reduce the amount of attorney time for a given task. Do not claim paralegal time for administrative services such as taking briefs to the copy shop or TrueFiling.

Line 8

Translators

Enter pre-approved [translator expenses](#) in an amount not to exceed that approved. Do not include costs of translating briefs or other pleadings, as this is

generally non-compensable. Counsel is encouraged to use standardized pre-translated letters for milestone steps in the course of the appeal where customized advice is not included. (See CCAP [Foreign Language Resources](#).)

Line 9

Miscellaneous fees/costs - itemize and explain!

TrueFiling expenses are billed here. Include a written comment “TrueFiling” or “TrueFiling fees.” It is not necessary to itemize your TrueFiling fees. There should be no binding fees claimed for any briefs/petitions filed on or after implementation of TrueFiling, *with one exception*: binding for the Supreme Court’s copies of the petition for review (until that Court implements electronic filing). The JCC is considering changing which line TrueFiling expenses are billed on. Watch for project announcements regarding this.

Do not include sales tax on this line; combine and enter it on the appropriate expense line.

Pre-approved expenses for experts other than translators (Line 8), should be placed on Line 9.

Always remember to first check with CCAP before incurring any extraordinary fees or costs.

TIP: Maintain Your Receipts

CCAP staff attorneys may request to see copies of receipts for all travel expenses and any other unusual expense before evaluating expense claim items. For example, for out-of-contract online computer research (such as WestLaw or Lexis) [statewide policy](#) requires documentation to support unusual online research expenses. Finally, **in all cases**, it is good business practice to maintain all receipts in your business file in case of an individual case audit. All final claims are subject to JCC/AIDOAC audit, even after payment is received.

APPENDIX

Suggested Claim Line & Frequent Errors!

The below list is not exhaustive. Consistency between projects may vary slightly on some items due to court expansion requirements, although many items are on a designated line by JCC request. Red items are frequent errors that are noted and may require the time moved to the correct billing line before we can submit the claim for payment to the JCC.

ITEM 5, OTHER MOTIONS

- Motion to Unseal Juror Information
- Motion to File Oversized Brief
- Rule 8.340 letter – use Line 5 for omission letters to trial court; **use Line 4 for augment motions**
- Request for Publication or Depublication
- Incomplete Record Notice
- Motion to Unseal Transcripts
- Motion to File Supplemental AOB
- *Fares* letter
- Motion to Transmit Exhibits
- Motion to Vacate/Dismiss/Abandon
- Motion to Consolidate
- Motion to Expand Appointment for mandate or cert
- **Motion to Expand Appointment for habeas – use Line 11**
- Request for Judicial Notice
- Motion to Settle Record
- Code of Civil Procedure § 909 Motion (new evidence on appeal)
- Motion for Probable Cause
- Motion to File Amended Notice of Appeal
- Motion to Correct Minutes
- Motion to File Late AOB, Reply, Petition, etc.
- Motion to Strike AOB
- Motion to Unseal *Marsden* Transcripts
- Motion for Summary Reversal
- Joinder in other party's motion – use the same line as applicable motion
- Motion to Reinstate Appeal and Recall Remittitur
- **Motion to Augment / Joinder in Augment Motion – use Line 4**
- ***Sade C./Phoenix H.* Letter – use Line 6**

- Notice of Change of Address (client's or attorney's) - use Line 23 (communication to court)
- Errata Letter - use Line 24

ITEM 11, HABEAS CORPUS PETITION

- Motion to Expand Appointment for Habeas
- Petition for Habeas Corpus in Court of Appeal (CCAP: if appointment is expanded first)
- Petition for Habeas Corpus in the Supreme Court (CCAP: if appointment is expanded first)
- Petition for Habeas Corpus in Superior Court (CCAP: if appointment is expanded first)
- Habeas investigation - break time down by distinct issue investigated
- IAC investigation - break time down by distinct issue investigated
- Habeas communication discussions with client & trial counsel - use Line 11 where the communication is focused on investigation of potential habeas-related facts and/or development of habeas issues; otherwise use Line 1 for providing information to the client or trial attorney, such as explaining how a habeas petition works or the reasons for deciding not to file a petition
- Habeas communication with others as part of investigation (non-client & trial counsel)
- Project staff attorney primarily habeas-related consultation time
- Obtain/review of trial counsel's file if review is to evaluate potential habeas issues discussed with the client (otherwise use Line 24); include a page count and a brief explanation of review purpose

ITEM 14, OTHER PETITIONS

- Petition for Writ of Certiorari (U.S. Supreme Court) (CCAP: if appointment is expanded first)
- Petition for Writ of Supersedeas (CCAP: if appointment is expanded first)
- Opposition to Writ of Supersedeas (CCAP: if appointment is expanded first)
- Petition for Writ of Mandate (CCAP: if appointment is expanded first)
- Disclosure of Juvenile Records - use Line 5 if labeled "Motion", use Line 14 if labeled "Petition"
- Review of AG's Petition of Review - use Line 15
- Review of People's Petition for Rehearing - use Line 15
- Petition for Review from Denial of Writ of Habeas Corpus - use Line 13

ITEM 17, ORAL ARGUMENT

(Include a comment separating out the time for the task(s) claimed on this line)

- Request for oral argument
- Waiver of oral argument
- Request for calendar preference
- Request to continue oral argument
- Review of court's oral argument solicitation letter
- Preparation for oral argument
- In-court time for argument
- Time spent waiting in the courtroom for the case to be called
- Travel *time* incident to oral argument - use Line 18
- Travel *expenses* related to oral argument - use Line 5 of Expenses claimed
- Supplemental authorities for use at oral argument - use Line 9

ITEM 23, COMMUNICATION

- Attorney General
- County Counsel
- Other party's attorney (co-appellant's counsel, etc.)
- Appellant's family - unless it facilitates difficult communication with the client, add it to Line 1 with an explanation supporting need
- Court of Appeal clerk
- Court notices
- Superior Court clerk or reporter
- Prison locators
- Probation/parole officer
- Client - use Line 1 or Line 11 (see [Habeas Billing memo](#))
- Trial counsel - use Line 1 or Line 11 (see [Habeas Billing memo](#))
- Confer with project staff attorney - use Line 21, or if primarily habeas-related consultation time - use Line 11

ITEM 24, OTHER SERVICES

- Obtain/review trial counsel's file (give a page count and a brief explanation for the purpose of review) - use Line 11 if review is to evaluate potential habeas issues discussed with the client
- Review of co-appellant's brief
- Review exhibits/videotapes, CDs, DVDs, audio
- Review expert witness statements, qualifications (give page count)
- Review competency reports (give page count) - use Line 2 if part of record
- Trial court appearances (CCAP: may require preapproval, check with staff

buddy)

- Review Order to Show Cause
- Review Amicus briefs
- Review news coverage (describe relevance)
- Review police reports (give page count) - use Line 2 if part of record
- Review medical records (give page count) - use Line 2 if part of record
- Review Joint Application and Stipulation for Reversal
- Read pages of transcripts, exhibits sent to counsel by appellant (give page count)
- Redact record on court's order
- Review calendar/docket online
- Draft unfiled Motion - use Line 5 and explain why unfiled
- Review Appellant's Pro Per Habeas Petition
- File Amended NOA
- Review appellant's Supplemental Brief - use Line 10 or 24
- Visit appellant - use Line 1 or Line 11 (see [Habeas Billing memo](#)) for actual communication, including prison-processing time; use Line 18 for travel time (NOTE: CCAP: client visits require preapproval)
- Review AG's motions and briefs - use Line 10 if it's a brief; use Line 15 if petition; use Line 24 if motion; use Line 23 if it qualifies as "communication" to/from AG
- Court orders
- Court notices - use Line 23 if it qualifies as "communication" to/from the court
- Review appellant's prior cases - use Line 24 or use Line 2 if made part of current record
- Review social worker reports (give page count); use Line 2 if part of record on appeal
- Review Indian Child Welfare Act (ICWA) notices - use Line 2 if made part of current record on appeal and merely reading; use Line 7 if evaluating notice for an unbriefed issue; include in Line 6 if briefed
- Locating client - use Line 23 if phone (communication) or Line 24 (research online database)
- Review of briefs to determine if oral argument is necessary - use Line 17
- Review other party's AOB, reply, supplemental briefs, petitions - use Line 10 if opposing counsel, or use Line 24 if other
- Learning/navigating eClaim or TrueFiling website - not compensable time = overhead
- Copying and binding tasks - not compensable time = overhead
- Motion to Expedite Appeal - use Line 5

- Letter to AG - use Line 23 (“communication”)
- Motions to Dismiss or Abandon - use Line 5
- Ex-parte Motion in Superior Court to correct custody credits - use Line 5
- Draft work on unfiled AOB, before appellant abandons - use Line 6 [submit draft to project]
- Draft work on unfiled AOB, before appellant retained counsel - use Line 6 [submit draft to project]
- Draft work on unfiled AOB, before court dismisses - use Line 6 [submit draft to project]
- Rule 8.340 Motion - use Line 5
- Review of Opinion - use Line 19
- Application for Settled Statement - use Line 5
- Prepare Opposition to Motion to Dismiss - use Line 5
- *Sade C./Phoenix H.* letter or brief - use Line 6
- Motion to Consolidate Briefs - use Line 5
- Call with client's wife or girlfriend - use Line 23 (family communication)
- Obtain/review Superior Court file - use Line 20
- Review trial court's record - use Line 20
- Prepare Minor's Letter Brief - use appropriate Line 6 or 9
- Additional Writ work - use the line describing the work (CCAP: usually requires preapproval)
- Review file/Shepardize cases - use the line corresponding with document being filed
- Minor's full brief - use Line 6 if appellant
- Technical difficulties with TrueFiling system, through no fault of counsel - requires an explanation as to technical issue encountered