

***HOW TO GET
YOUR FEE
CLAIMS
PROCESSED
EFFICIENTLY
(AND HOW TO GET
PAID FOR ALL
THE TIME YOU
BILL)***

**By: Patrick McKenna
Executive Director
Sixth District Appellate Program**

***How to Get Your Fee Claims Processed Efficiently
(and How to Get Paid for All the Time You Bill)***
***by Patrick McKenna (Executive Director, Sixth District Appellate
Program)***

A. Introduction.

One of the realities of life on an appellate panel is the necessity to do fee claims. At SDAP, we know that these are important to you – after all, it’s how you get paid! With that said, we strive to process claims efficiently and to award you as many hours as possible under the statewide guidelines.

I see a lot of fee claims – I do the second review on pretty much every claim that comes through our office – and there are several errors that commonly arise. These mistakes result in processing delays or cuts in the time being claimed.¹ The goal of this handout is to provide advice on how to get your claims processed quicker and to give you the best chance of being awarded all the time you bill.

Most of the advice in this handout is also applicable to claims you file for appellate projects other than SDAP. We do have a few SDAP-specific quirks, and so I’ll try to point those out as appropriate. This handout is not intended as

¹At SDAP, we turn around roughly 90% of panel claims within 10 days of submission. The caveat here is that “problematic” claims (i.e., claims requiring resubmission or where additional information is needed) take about five additional processing days than other claims.

a comprehensive guide to fee claims. Instead, it will focus specifically on the most common problems that we see. The best – and certainly the most extensive – resource on claims is the Statewide Claims Manual, which is located here: https://www.capcentral.org/claims/statewide_claims_manual.pdf.

B. General Advice on Claims.

1. Don't self-cut.

Panel attorneys tell me all the time that they self-cut their claims. Don't do this. You will not impress us more with your perceived efficiency, and we may, in fact, have considered the time you cut to be reasonable and compensable. Bill all the time you actually spend and let us determine the appropriate amount of time to recommend.

2. But don't just bill to the guidelines (unless that's actually the time you spent).

It's painfully obvious when a panel attorney bills to the guideline max across all categories on a claim, and it happens surprisingly often. Of course, you should bill to the guideline when that is the actual time that you worked. If the work product does not indicate that the guideline max is reasonable, we will be forced to cut the hours claimed. And, if it appears that the hours are being inflated to conform to the guideline max, it will cause us to question the veracity of all the time being billed.

///

3. Always provide an explanation if you bill over guidelines.

Whenever you bill over guidelines, you should include an explanation justifying the time being spent. Below, I'll go through each line and list the type of information that is helpful to us when evaluating the time being claimed. When reviewing the claim, we will sometimes request additional information from the panel attorney; doing so, however, causes a delay in processing, so it's best to include this necessary information up front.

4. But when providing an explanation, don't just copy and paste your billing records onto the claim.

This is a personal pet peeve of mine, as it always requires follow up (and a delay) with the panel attorney. Some panel attorneys, when including an explanation for the time being billed, just copy and paste their billing records into the notes field. This is unhelpful because we don't always understand your billing records, nor does it provide context about why the time was necessary. For example, if you are billing over 3.5 hours on client communication, it's not helpful to copy and paste your billing records indicating you sent 12 letters. The fact that you sent twelve letters is useful, but we also need to know why this was necessary (serious case, anxious/communicative client etc.).

5. If you are unsure about where or how to bill something, contact SDAP prior to submitting your claim.

As referenced above, the Statewide Claims Manual is a tremendous tool at your disposal, and we encourage you to refer to it. With that said, if you have questions about a claim, please reach out to your SDAP buddy prior to transmitting it. The reason for this is simple: if you end up placing something on the wrong line, we'll have to unsubmit the claim, thereby delaying your payment.

6. Don't forget to send copies of client letters if necessary.

Current SDAP policy requires that attorneys send copies of client letters to SDAP in all assisted cases. Client communication is vitally important, and we want to help train less experienced attorneys in this area. When submitting your claim, please forward electronic copies of all client letters to your SDAP buddy. This will avoid a delay with the claim; if we don't have the client letters, we will usually delay transmitting the claim until we receive them.

Attorneys in independent cases usually need not send their client letters. However, we do often request them in one specific scenario. If no review petition was filed (and the client lost the appeal), we want to be sure that the client was properly advised of his or her right to file one. If this occurs in one of your cases, it can be helpful if you forward any letter sent to the client about filing a review petition prior to submitting the claim.

7. Use the general notes field for additional information.

At the end of eClaims, there is a notes field where you can provide any additional information about a case. While you can include whatever information you deem pertinent, I recommend including the following information in this field (as applicable to each individual case):

- Whether this appeal was “considered together” (the Sixth District does not usually consolidate) with another appeal (more information on this below);
- Whether the appeal was transferred to a different Court of Appeal (and, if so, include the case number);
- If the Court of Appeal issued an order to review the fee claim associated with a supplemental brief; and
- If the claim is being filed under the current protocol permitting additional interim claims due to COVID-19 (currently set to expire at the end of this calendar year).

Each of these facts necessitate that we do specific things in our claims review process. We will pick up on these things anyway. Noting them on the claim, however, will alert us from the onset and lead to quicker processing.

8. If two appeals were “considered together” by the Court, contact SDAP prior to transmitting the claim.

The protocol in such circumstances is a little complicated. Usually, our preference is for you to bill almost all time spent on both cases on one of the claims. Record review time, however, should be billed on the specific case in which the record was produced, and any motions specific to only one case (i.e., before the cases were ordered to be “considered together”) should be billed on that specific claim. With that said, we are happy to talk to you about this prior to transmitting the claims; doing this incorrectly almost always results in resubmissions.

9. When resubmitting a claim, alert your buddy on any changes you made from the initial claim you submitted.

When we ask you to resubmit a claim, this is typically to correct one or two discrete issues. Sometimes, panel attorneys will also change their time on additional lines. This is fine, but these changes do not automatically appear in our system when you resubmit the claim. Alerting your buddy about any of these changes will ensure that we catch them upon getting the resubmitted claim, so that we can manually enter them.

C. Line by Line Advice on the Hours Worksheet.²

Line 1: Communication.

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

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

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

- a. Type of appeal [more complicated appeals usually involve more communication];
- b. Duration of the appeal;
- c. Out of custody client;
- d. Client assumed an active interest in the appeal;
- e. Pre-approved client visit;
- f. Client unable to read/write;
- g. Client suffers from cognitive deficits;
- h. Client represented self in trial court;
- i. Client moved for substitution of appellate counsel;
- j. Need to resolve problems with appellate record;
- k. Need to obtain trial counsel’s file;
- l. Possible direct appeal IAC issues;

²Many thanks to my colleague Anna Stuart, who drafted SDAP’s internal claims manual for staff attorneys. Considerable portions of this manual were utilized for purposes of this handout.

- m. Difficulty locating client;
- n. Ongoing parallel developments in the trial court.

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

Line 2: Record Review.

We almost never will award a claim over guidelines in this category.

Additional notes:

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

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

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

A question often asked in multi-appeal dependency cases is whether an attorney who was appointed on an appeal from an earlier proceeding (e.g., jurisdiction/disposition) can bill to re-review the record in a later (i.e., termination) appeal. The determination is made on a case-by-case basis, and it is generally appropriate to bill some re-review time in most cases. An award for the full time in re-reviewing the old record is rarely necessary. Factors we consider include the issues being raised on appeal, and the length of time between appeals.

Line 3: Extensions of Time.

We will almost never award more than 0.5 hours for an extension of time.

Line 4: Augment Motions.

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

Also, please remember that record omission letters are billed on Line 5 (Other Motions).

Line 5: Other Motions.

In the notes field, break down all motions billed on this line and the time spent on each. Examples of motions to be billed on this line include: record omission letters (8.340(b), etc.), *Fares* letters, judicial notice motions, motions to transmit exhibits, and abandonment requests. You should provide an explanation if you are seeking more than 0.5 hours on a record omission letter or 0.2 hours on an abandonment. There are no other guidelines as to the motions being billed on this line; we will evaluate the time billed for reasonableness.

Line 6: AOB (or RB in a People’s Appeal).

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

When SDAP is evaluating the reasonable amount of time warranted for each issue, our starting point is often to assume that a panel attorney spent about 1.25 hours to draft each page in the argument. This is only a starting point, and we will review the argument to determine the proper award being made. One argument totaling 10 pages may be vastly more complex than another argument also totaling 10 pages. With that said, if you bill more than 1.25 hours per page on a brief (i.e., you bill 40 hours for a 20 page brief), it can be helpful to provide an explanation of your time on the claim. For example, the issues may have been particularly novel or you may have had to do significant out-of-state research. Often, this is apparent in the resulting brief, and we will weigh these factors into our decision on the recommended award. If there are factors not apparent from the briefing, then this is the type of information that should be included in the claim.

Line 7: Unbriefed Issues.

eClaims requires that you break down the time spent issue by issue. If you spend more than 2.5 hours researching a single issue or 10.0 hours

cumulatively researching unbriefed issues, you should provide an explanation on the claim. Absent these explanations, we are likely to recommend an award at guidelines.

Line 8: Reply Brief.

Again, provide an explanation if the time billed is over guidelines (one-third the time spent on the AOB). ARBs filed in response to supplemental AOBs and RBs should be billed on this line, in accordance with recent changes to the Statewide Claims Manual.

Line 9: Supplemental Brief.

If more than one supplemental brief is filed, you should make a note indicating the time you spent on each one. If the Court of Appeal issued an order requiring review of the fee claim associated with a supplemental brief, you should include this in the notes field. You should also note whether the supplemental brief was required due to a change in the law.

Line 11: Habeas.

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

Hours on habeas corpus-related services:

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

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

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

2.1 hours – Draft review petition from habeas denial

Expenses related to habeas corpus petition:

\$15.00 – Photocopy petition (totaling 150 pages)

\$25.25 – Postage for petition

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

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

Line 13: Review Petitions.

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

Line 18: Travel.

Time is compensable where the distance exceeds 25 miles one-way from counsel's office, and where counsel cannot reasonably work on the case while traveling. Any travel done on a case other than to attend oral argument should be pre-approved by the project.

Line 22: Administrative Time.

We cannot award more than 1.0 hour for administrative time.

Lines 23 and 24: Other Communication and Services.

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

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

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

Common examples of other services include:

- a. Reviewing co-appellant’s briefs;
- b. Reviewing opposing party motions and oppositions to motions;
- c. Reviewing non-appealing minor’s briefs;
- d. Reviewing amicus curiae;

- e. Reviewing trial counsel's file;
- f. Appearing in trial court (e.g., at a hearing on a credits motion or at a hearing on an application to settle the appellate record);
- g. Reviewing court orders;
- h. Reviewing client court filings (e.g. supplemental *Wende* brief or pro per writ);
- i. Reviewing record, opinion, and filings from prior related appeal;
- j. Registering for online docket notifications and checking the docket;
- k. Researching legal matters outside of the appeal when necessary;
- l. Locating client;
- m. Reviewing CDCR file (or other institutional records);
- n. Filling out forms for custodial client visit; and
- o. Redacting record or briefs.

D. Line by Line Advice on Expense Worksheet.

Line 2: Binding.

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

Line 3: Postage.

Please provide an itemized breakdown if postage costs exceed \$50.

Line 5: Travel.

Current JCC travel guidelines can be found here: http://www.adi-sandiego.com/news_alerts/pdfs/2010/TRAVEL-GUIDELINES-APPROVED-BY-AOCprojects.pdf.

Line 7: Paralegal/Law Clerk.

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

Line 8: Interpreter.

The guideline for translator and interpreter expenses is \$30.00 per hour. An explanation is always required. The cost of translating briefs or other pleadings is not compensable. If the amount exceeds \$250, the panel attorney must have received pre-approval from the Court of Appeal.