

***Case Management & Brief Writing:
How to Get Paid for the Work You Do***

August 7, 2013

EOT	Guideline for 1 st is .5 hours & for 2d is presumptively .3 hours. Any claim for 3 or more EOTs requires a comment.
	Any claim over guideline must include an explanation.
Good Cause	
	Attorney illness or illness or death of a family member is sufficient to establish good cause.
	The court expects attorneys to manage their case load, especially Div. 1. It is generally acceptable to indicate you have several other cases pending or that unexpected work, such as a habeas, has slowed your progress. The court has found good cause for an EOT for heavy work load, record completion or pre-planned vacation for the 1 st extension. A 2d EOT will need another reason to establish good cause.
	NOT SUFFICIENT: “having out-of-town company” resulted in denial of requested extension.
AUGMENT	
Div. 1	Prefers everything, even record corrections, by way of augment.
Div. 2	Accepts either augment request or record correction.
Div. 3	Prefers a separate request to correct the record when applicable & an augment when applicable, even when both are applicable. Do not combine the request with the augment.
	More than 1 augment or request to correct the record requires an explanation about why the subsequent request was necessary. Simple oversight on attorney’s part might be attorney error.
	If an EOT is included in the augment, the claim includes both & should be made under Augment (Item #4).
	A record correction request is claimed under Other Motions (Item #5).

	Review of other parties' EOT & arguments should be claimed under Other communication (Item #23).
PRIOR BRIEFING	All claims require the mandatory form be completed & provided even if no prior briefing is used.
	Must disclose <i>significant use</i> of prior briefing. Guideline already assumes use of short, obvious boilerplate, such as passages on standard of review, prejudice, elements of an offense, tests to be applied, general citations, etc. Copying most of an argument, or a complex part of an argument (e.g., lengthy legislative history) must be revealed.
	Copying from other documents in the same case (e.g., sections of the AOB or petition for rehearing used in the petition for review) must be disclosed.
Claim comment	Use a quantitative measurement to describe the use of prior briefing: <ul style="list-style-type: none"> - "30% of issue I. is recycled briefing" - "All but three pages of issue I. are recycled" - "the first four paragraphs of issue II. are recycled" - indicating you have made the argument before & updated the research does not provide much guidance in order to assess complexity and reasonableness.
SADE C. REVIEW REQUEST	When you request a <i>Sade C.</i> review by ADI, provide a draft SOF and a short analysis of the issues you considered and the reasons why each issue was rejected. Anticipate review of the record will take approximately 1 week.
SADE C. BRIEF	It is important in the statement of facts (SOF) & the list of <i>Anders</i> issues that you not argue against your client. For the list of issues for the court to consider, it is sufficient to present the possible issue and some legal authority. [e.g. Did the court err by failing to apply the c-1-B-i exception? <i>In re S.B.</i> and <i>Autumn H.</i>]
	The sample <i>Sade C.</i> brief on the ADI website is available. The sample has been edited by several attorneys & reviewed & approved by the Executive Director of ADI. It is also available so you don't have to reinvent the wheel.
Div. 1	Court usually denies request for supplemental briefing and immediately dismisses the appeal.

Div. 2	Court usually allows a parent 30 days to file supplemental briefing. After 30 days, if parent does not respond, the court dismisses appeal. Div. 2 wants the parent's current address to send the order directly to the parent.
Div. 3	In the recent past, the court has immediately dismissed the appeal but ADI is unsure of the court's current practice. Div. 3 wants the parent's current address to send the order directly to the parent.
claim	In general, ADI cannot recommend more than the guideline amount for preparation of the factual statement. In addition, ADI usually cannot recommend more than 1 hour for the legal argument. If more time is justified, an explanation is required.
unbriefed issues	Always claim time for any issue you considered and researched under Unbriefed Issues (Item #7). Claiming time for unbriefed issues informs the staff attorney that you considered all apparent issues.
UNBRIEFED ISSUES	The best description of an issue will identify the issue researched & the facts which necessitate research. [E.g.: notice because mother was absent from the hearing; sibling exception because the siblings are in different adoptive homes; c-1-B-i exception because the child is over 5 years old.]
	If little time is claimed for a specific unbriefed issue (e.g. less than 1 hour), it may be sufficient to provide a simple description of the issue researched & relevant facts.
	When a claim is over an hour, an explanation may need to include reasons for further research such as the facts were complex for these reasons & some results. [E.g. the number of cases reviewed, statutes reviewed, & maybe cites to same; ICWA because the mother claimed heritage initially but changed her response later.]
	Any claim over 2.5 hours will require extensive explanation as to why considerable research was necessary & time-consuming. In general, a simple description of the issue researched will not be sufficient to justify compensation. It is the rare issue that requires more than 2.5 hours of research. Unfamiliarity with the issue is not a sufficient reason.
ATTORNEY ERROR	Any filing caused by attorney error is usually not compensable. Examples are an amended proof of service, letters of errata, etc. Supplemental briefs may be considered attorney error if issue could have been identified at the time AOB was filed.

	Anytime a case-specific reason exists for the motion or filing, this should be used to show it was not caused by attorney error. [E.g. Supplemental brief necessary because augmented documents presented a new issue.]
	<u>TOP 17 REASONS</u> <u>YOUR CLAIM WILL BE DELAYED</u>
#1 REASON	Improperly claiming time for Other Services (Item #24)!
	Other Services is primarily reserved for review of co-appellant's & non-appealing minor's briefs only. AIDOAC has requested this item be avoided except for these few tasks.
	Put the time for each task in whatever category most closely fits the task. It does not matter if the task was filed or not. [E.g. if investigating a possible IAC claim or habeas issue, whether filed or not, claim this in Petition: Habeas petition (Item #11).] Note, communication with client or trial attorney, even if it is part of a habeas investigation, must be claimed under Communication (Item #1).
#2 REASON	Missing documents for the file. Since e-service was started, many documents never arrive at ADI. In order to assess the reasonableness of a particular task, we must be able to review the document itself. When filing a claim, make sure all filings were e-served on ADI.
RECORD REVIEW (Item #2)	Double check the page count for records. When ADI receives the record/ transcript, ADI does a page-by-page count. ADI's review sometimes reveals that certain pages were left blank. [E.g. C.T. total is 265 pp., but 55 pp. were blank – this would make the total record count 210 pp.] Be sure to deduct any blank pages from your record count in the claim.
EOT (Item #3)	DO NOT claim separately for an EOT that is included within an augment. Time for the EOT is evaluated as part of an augment.
AUGMENT (Item #4)	Improperly claiming time for review of another party's augment. If another party has filed an augment, the time claimed to review it should be under Other Communication (Item #23) & not under this item.
OTHER MOTIONS (Item #5)	Cal. Rules of Court, rule 8.340(b), or motion to correct the record, should be claimed under this category because it is not an augment motion.

PETITION: HABEAS CORPUS (Item #11)	Communication with client and trial counsel MAY NOT be included in the habeas claim. All communication with the client & trial attorney is claimed on Communication (Item #1). This includes communication regarding a possible habeas. Communicating with others for a habeas investigation is claimed in Other Communication (Item #23).
	Comments describing any expenses associated with the habeas must be provided. [E.g: \$16.85 priority mail (flat rate box) for habeas regarding probable cause to Court of Appeal.]
ADMIN TASKS (Item #22)	This can ONLY be claimed at the final. If it is claimed at the interim it will be denied & will delay the claim because the staff attorney will have to make a comment about why it was cut.
OTHER COMMUNICA TION (Item #23)	This task is for communication with any person who is not the client or their trial attorney, along with review of miscellaneous motions which are not substantial briefing. [E.g.: Review of court orders, court notices, co-appellant's or respondent's augment or EOT, contact with other people for habeas investigation.]
CHANGES TO INTERIM CLAIM	Time listed in the interim & final claims is cumulative. On the final claim, do not change the time for the interim claim to match the recommendations. [E.g.: Panel attorney will list the time recommended at the interim as the claim on the final rather than the cumulative total for that category.] This change will have to be corrected. For example if 2.0 hours is claimed for Other communication (Item #23) at interim, then on final, the claim should remain 2.0 hours, or more, at final, not lower, even if cut.
ITEMIZE TIME	When claiming time for more than 1 task in a category, be sure to itemize the time. [E.g.: for 2 augments, specify 1 hour for 1st & .5 for 2d augment.] Note: For Communication (Item #1), DO NOT itemize each contact with the same person but only describe the approximate number of calls, letters or emails.
COMMENTS & HOURS MUST MATCH	The claimed time must be consistent with the comments. Often, the total in the comments section does not match the claim – claimed time is 3.0 but the comments total to 3.2. Recheck your math.
WHEN OMITTING A TASK	When purposely not claiming time for an item, please indicate it is an intentional omission in the comments. [E.g.: if you filed 2 EOTs, but only claimed time for 1; or travel time is claimed but not mileage.] This will alert the claim's processor & will avoid an email query.

LENGTHY COMMENTS	When writing a comment, keep it concise. Individual dates for a task are not usually necessary. Note: the claims processor must re-type your entire comment in another program. It is best if you summarize your actions. [E.g.: Calls: 3 to client; 5 to trial counsel.]
	When preparing a comment, please refer to yourself as “attorney” or “counsel.” If you use “I”, the claims processor must edit the comment & be alert to this change when re-entering the comment.
	Avoid abbreviations except the ones used on the claim form. Write out the complete word for clarity. If it is unclear, you will receive an email asking for an explanation. [E.g.: FA; TPR; etc.]
EXPENSE WORKSHEET	If you are not claiming any expenses at the interim but will be claiming them on your final, please indicate this in Miscellaneous Comments and Notes. This will allow the claims processor to be aware of your intention & not have to email you.
TRAVEL RECEIPTS	Travel receipts need to be sent in with or before the claim. These include air fare, car rental, etc.