

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

May 4, 2016

<p>Communication Line 1</p>	<p>Guideline: 3.5 hours. All communication with the client and trial counsel (except habeas related communications, which are claimed on line 11).</p>
	<p>If over the guideline amount, do two things: – explain why it was necessary to go over the guideline, what it was about this case that made more communication necessary; – breakdown how the time was spent and on what tasks, e.g., 15 phone calls with client (2.6 hrs.); 5 emails with client (.8 hr.); 3 calls with trial counsel (.6 hr.).</p>
<p>Record Review Line 2</p>	<p>Guideline: 50 pages per hour; less time for non-appealing minor’s counsel who file less than a full brief.</p>
	<p>Review of only the official record designated by the court.</p>
	<p>Review of other material such as prior writ record that is not incorporated into the record, prior writ petition and decision on the petition, exhibits, should be claimed on line 20 (superior court record).</p>
	<p>Review of documents the client gives you: –if related to a possible habeas claim, claim on line 11, Habeas. –if not habeas related, claim on line 24. – describe the volume of material reviewed and why it was necessary to review it.</p>
<p>EOT Line 3</p>	<p>Guideline: .5 hour. Any claim for 3 or more EOTs requires a comment. – EOTs with an augment motion cannot be claimed separately; it should be claimed with the augment motion on line 4.</p>
	<p>Any claim over guideline must include an explanation.</p>
<p>Good Cause</p>	
	<p>Attorney illness or illness or death of a family member is sufficient to establish good cause.</p>

	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 Line 4	Guideline: 1.5 hour.
Div. 1	Prefers everything, even record corrections, by way of augment.
Div. 2	Accepts either augment request or record correction; can combine the two.
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 (Line 4).
	A record correction request is claimed under Other Motions (Line 5).
	Review of other parties’ EOT & augments should be claimed as an “Other communication” (Line 23).
Other Motions Line 5	Guideline: Record correction letter .5 hour; abandonment .3 hour; anything else, reasonableness.
	If more than one motion is filed, itemize the filings and corresponding time spent on each.
	Oppositions you prepare in response to another party’s filing (augment, judicial notice, EOT, motion to strike, request for publication).
	Any motions related to habeas, including motion to consolidate habeas and appeal, must be claimed on Line 11.

	Motions prepared but not filed, explanation must be provided and a draft of the motion should be sent to the staff attorney.
	Request for/Waiver of oral argument should be claimed on Line 17, oral argument.
Client's First Brief Line 6	<ul style="list-style-type: none"> – AOB/Sade C. (client is appellant). – Minor's letter brief that is more than a mere joinder. – Respondent's brief (client is a respondent).
	Partially briefed issues in unfiled AOB or RB should be claimed as unbriefed issues on Line 7, but time for statements of case and facts can be claimed on Line 6. Provide a draft of the unfiled briefing to the assigned staff attorney
	If a brief is stricken and it is replaced with a new brief, the time for issues in the stricken brief that were dropped from the new brief should be claimed as unbriefed issues on Line 7.
Prior Briefing	All claims require the disclosure of prior briefing
	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	<p>Use a quantitative measurement to describe the use of prior briefing:</p> <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	<p>A Sade C. request should provide the staff attorney with:</p> <ul style="list-style-type: none"> – statements or summaries of facts – what you discussed with trial counsel – what the parent told you – analysis of issues considered and reasons for rejecting them (including authorities consulted) – any consultation with counsel for a co-appellant (where appropriate). – due date for the opening brief.
	<p>Check with the staff attorney before requesting an extension. Review of the record will take approximately 1 week, though if a lot of requests come in at the same time, the staff attorney may need longer.</p>
SADE C. BRIEF	<p>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>]</p>
	<p>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.</p>
Div. 1	<p>Court usually denies request for supplemental briefing and immediately dismisses the appeal.</p>
Div. 2	<p>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.</p>
Div. 3	<p>In the recent past, the court has immediately dismissed the appeal but ADI is unsure of the court's current practice.</p>
claim	<p>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 <i>Anders</i> boilerplate. If more time is justified, an explanation is required.</p>
unbriefed issues	<p>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. This includes time spent describing the issue in the <i>Anders</i> list of issues in the brief.</p>

	Time spent preparing the analysis memo/email for the assigned staff attorney should be claimed as project communication time on line 21
UNBRIEFED ISSUES	List issues individually with the corresponding time spent on each issue.
	Don't describe adverse consequences or confidential information. Focus on explaining why time should be paid, not why the issue is not arguable.
	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 more 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.
Reply Brief Line 8	Guideline: 1/3 of the time recommended for the first brief.
	If over the guideline, explain why the guideline amount is insufficient, e.g.: – the opposing brief raised a new issue that required additional, original research (describe the issue). – the briefing cites to __ (number of) new authorities.
	ADI policy: counsel should file a reply brief or request oral argument. Please confer with the staff attorney if you plan to do neither.

Opposing Brief Line 10	Guideline: 2.5 hours. – Review of all opposing briefs, including minor’s letter brief. – review of petitions for rehearing and review filed by opposing parties. – review of other, non-opposing briefs in the case are claimed on Line 24.
Petition for Habeas Corpus Line 11	All time related in any way to investigating and preparing a habeas petition, even if no petition is filed. Any expenses incurred must be itemized here even though claimed on the expense worksheet. This includes travel time.
	Communication with client, trial counsel, assigned staff attorney and anyone else you spoke to with respect to investigating/preparing the habeas petition, must be itemized here.
	Research, drafting the petition, oral argument, petition for review of the habeas are also claimed here on Line 11.
	Reviewing the response, preparing the reply, reviewing the opinion
	The time spent on each of these tasks must be itemized in the comments section of Line 11.
	See “Billing Habeas Corpus Time and Expenses” memo on ADI website.
Oral Argument Line 17	Guideline: 7.5 hours. Includes preparation time, presenting argument and unavoidable wait time.
	If over the guideline, explain why. – if there was a lot of wait time, note this. –saying the case was complicated is too general. – be specific, e.g., it was necessary to prepare for three complex issues, two of which were novel; the respondent raised an issue of first impression; the briefing in the case totaled over 150 pages.
	If waived, time spent reviewing the case and completing the waiver; should be de minimus.
Travel Time Line 18	Only for trips of more than 25 miles one way. Note purpose and mode of transport, and distance traveled or destination.
	Travel to and from airport and home or office must be greater than 25 miles one way to be claimed.

	Travel time should be itemized if more than one mode of transport: time spent on the road, on the plane, at the airport.
Superior Court File Line 20	Guideline: 2.0 hours. – Review of court file, or material that would be in court file (e.g., prior writ petition filings). – review of exhibits at court or at office.
Consult with Project Line 21	Guideline: 4.0 hours assisted cases; 2.0 hours independent cases; can recommend more time. Only includes: –time spent conferring with staff attorney (not related to habeas); includes Sade C. memo/email. – times spent conferring with paralegal re issues with the record or the client’s address. – routine correspondence re case offers, record receipts, change of your address/email, etc. are administrative tasks compensable on line 22.
Other Communication Line 23	All non-client, non-trial counsel, non-habeas communication. Includes court, co-counsel, opposing counsel, other parties’ trial counsel, family, prison/jail, therapist, social worker.
	Review of routine non-substantive court and filings by other parties (aside from opinion and opposing briefs).
	Examples: review of docs and orders related to extension requests, augments, judicial notice corrections, oral argument.
	Review of court website; signing up for email notification.
	Time breakdown for each task must be provided in the comments for all items claimed, e.g., 3 emails co-appellant’s counsel (.5 hr.); review 8 court orders/correspondence (.5 hour); review 3 EOTS filed by respondent and co-appellant’s counsel (.3 hr.).
Other Services Line 24	Review of substantive briefs filed by non-opposing counsel (itemize if more than one). Review of supplemental briefs filed by the client.
	Review of substantive motions filed by other parties, such as a motion to dismiss the appeal.
	Preparation of simple joinder letter by non-appealing minor.
	Other services ancillary to the appeal that cannot reasonably be claimed on another line.
	Reviewing trial counsel’s file for non-habeas reason.

	Each task must be itemized with the corresponding time claimed noted in the comments.
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 due to new case authority indicating this is now an issue in this case.]
Expenses	
Photocopying Line 1	Guideline: 10 cents per page Must manually update the page count from interim to final claim.
Total Travel Expenses Line 5	List all travel expenses here, including the car mileage expense (calculated on Line 6) and –parking –meals –lodging –transportation.
Mileage Expense Line 6	Guideline: 48.5 cents per mile, driven by personal car. Line 6 is merely a mileage calculator and is not separately added for reimbursement; the total mileage expense must be included in line 5 expenses to be reimbursed.
Other Expenses Line 10	Truefiling expenses are claimed here. More than one filing, list each filing for which the Truefiling expense was incurred and itemize the expense.