

MEMORANDUM

To: Newly appointed counsel

From: Frank A. McGuire,
Court Administrator and Clerk of the California Supreme Court

Subject: **Avoiding unnecessary delay in processing fee and expense applications and applications for reimbursement of habeas corpus investigation services and expenses under the traditional “time and costs” Payment Guidelines, and the optional “Fixed Fee” Guidelines**

The Court has asked me to provide the following information, which is intended to help counsel avoid the more common errors and problems that delay the processing of fee and services/expense applications, including applications for habeas corpus investigation services and expenses, under the traditional “time and costs” Payment Guidelines, and the optional “Fixed Fee” Guidelines.

We urge you to familiarize yourself with the information described below. Additionally, we suggest that you share this information with your office’s accounting staff and any investigators or experts whom you may wish to retain, and that you encourage them to refer to it before they prepare each application or invoice. If you have any technical questions, please contact Appointed Counsel Claims Administrator Lori Rittweger. If you have any broader questions, please contact Automatic Appeals Monitor Robert Reichman or myself.

Part I of this memorandum describes common problems and special rules regarding fee and services/expense requests in “time and costs” appointments. For more detail, refer to the “time and costs” Payment Guidelines (“Payment Guidelines for Appointed Counsel Representing Indigent Criminal Appellants in the California Supreme Court”), published periodically in Advance Pamphlets of the California Official Reports, in the “Rules” pages. In addition, these and related materials are available on the California Supreme Court’s judicial branch Web site, www.courts.ca.gov/5641.htm, including any recent amendments (and in Deering’s and West’s California Rules of Court.)

As an alternative to the time-and-costs Payment Guidelines, the Court encourages counsel to consider the optional “fixed fee payment system,” which, experience has shown, significantly reduces both the administrative burdens on appointed counsel and the delay in payment of compensation. Part II of this memorandum describes common problems and special rules regarding fee requests and habeas corpus investigation services/expense requests in “fixed fee” appointments. For more detail, refer to the “Fixed Fee” Guidelines (“Guidelines for Fixed Fee Appointments, on Optional Basis, to Automatic Appeals and Related Habeas Corpus Proceedings in the California Supreme Court”), published periodically in Advance Pamphlets of the California Official Reports, in the “Rules” pages. These and related materials are available on the Supreme Court’s judicial branch Web site, www.courts.ca.gov/5641.htm, including any recent amendments (and in Deering’s and West’s California Rules of Court.)

Moreover, *all* appointed counsel must become familiar with the “Supreme Court Policies Regarding Cases Arising From Judgments of Death,” published periodically in Advance Pamphlets of California Official Reports, in the “Rules” pages. Again, see also the judicial branch Web site, www.courts.ca.gov/5641.htm, and Deering’s and West’s California Rules of Court. Policy 3, which contains the Court’s “timeliness standards” and “compensation standards,” sets forth, among other things, (1) the responsibilities and scope of representation expected of *all* appointed counsel in capital cases, and (2) the reimbursement of counsel for investigation services and expenses relating to habeas corpus representation.

I.

Common Problems and Special Rules Regarding “Time and Costs” Appointments

Lead appointed counsel must complete and submit an original and a copy of the “Cumulative Hours/Services and Expenses Compensation Form for Automatic Appeals and/or Related State Habeas Corpus/Executive Clemency Proceedings” (CHCF). As explained below, CHCF requests for payment of legal fees and related representation must be supported by an original and a copy of “activity logs.” (See series of model activity logs set forth in attachment #1.) As also explained below, CHCF requests for reimbursement of general (“incidental”) or habeas corpus investigation services and expenses must be accompanied by an original and a copy of a “Services and Expenses Reimbursement Request” (see attachment #II), which in turn must itemize and, as appropriate, provide documentation with activity logs for all service providers (see series of model activity logs for service providers, set forth in attachment #I) and original receipts.

A. *Discrepancies in Billed Hours*

In determining payment, the Court relies on the hours and amount listed by lead appointed counsel on the CHCF and supporting activity logs. Allowable hours are limited to the amounts reported on the CHCF, but if the individual entries on the activity log reflect a lower amount of billed hours, the Court will use the lower amount.

Sometimes the hours listed in the activity logs do not match the hours listed on the CHCF. Some possible sources of discrepancies are:

- calculation errors in the activity logs and/or the CHCF
- rounding up hours on the CHCF
- entries omitted from the activity logs
- page(s) missing from the activity logs
- typographical errors

B. *Upper-Benchmark Hours*

The upper range for the direct appeal benchmarks is generally reserved for those cases that have a record of 10,000 or more pages *and* that raise novel or difficult issues. (See “time and costs” Payment Guideline II, subpart *I*, 3, b.)

C. *Over-Benchmark Hours*

Over-benchmark hours may not be compensated unless counsel submits a detailed explanation for them. Please be aware of the limitations on allowable hours. (See “time and costs” Payment Guideline II, subpart *I* [“Special rules for capital cases”]) and Payment Guideline II, subpart *I*, 3 [“allowable hours” benchmarks].)

D. *Categorization of Hours*

Hours that are miscategorized on the CHCF can lead to delays in the processing of fee applications. Please note the following:

1. The category for appellate counsel's reading of the record and producing computerized transcript notes (category 1a), and the category for record review by separate habeas corpus/executive clemency counsel or any appellate counsel not producing computerized transcript notes (category 1d), refers to the record on appeal (reporter's and clerk's transcripts) certified by the trial court. Be sure to specify the number of pages reviewed.
2. Meetings with trial counsel and review of trial counsel's files should ordinarily be categorized as one of the following: appellate counsel's compiling and maintaining a list of potentially meritorious habeas corpus issues that come to appellate counsel's attention (CHCF category 1b), record correction/augmentation efforts to verify the completeness of the record on appeal (CHCF category 2), opening brief research and preparation (CHCF category 5) or investigation and writing of a habeas corpus petition (category 8).
3. Extension-of-time requests should be categorized according to the stage of representation to which they relate.
4. Travel time is compensable only if the travel was reasonably necessary. Travel time during which counsel could not perform legal work (e.g., driving time) is compensable at the hourly rate for legal services and is billed only under category 16 ("Travel"). However, counsel will not be compensated for driving time and mileage beyond the cost for the same journey by airline.

"In flight" travel time, or other non-driving time during which legal work could be performed, generally is not compensable unless counsel separately provides a written explanation indicating that counsel conducted case-related work during such travel time, and assigns that work to a specific category of representation on the CHCF, other than category 16 ("Travel").
5. CHCF category 17 ("Other") should be reserved for items clearly not identified in categories 1-16. Representation concerning trial court proceedings to set an execution date is billed under category 17a. Executive clemency representation is billed under category 17b.
6. Conferences with appellate or habeas corpus counsel, or an assisting entity (the Habeas Corpus Resource Center, the State Public

Defender, the California Appellate Project in San Francisco or other assisting counsel), should be categorized according to the relevant stage of representation.

7. The standard allowed for preparation of extension-of-time requests and 60-day status reports is up to 0.5 hours per request or report.

E. *General (“Incidental”) Paralegal/Law Clerk Hours*

Reimbursement for general (“incidental”) paralegal/law clerk hours (i.e., those hours not related to habeas corpus investigation) may be appropriate up to 30 percent of the corresponding attorney benchmark. However, it is expected that exceptionally high paralegal/law clerk hours will reduce attorney hours for those services. (See “time and costs” Payment Guideline III [“Necessary Expenses”], subpart C, 6, b, (1).)

Reimbursable habeas corpus investigation services and expenses include services and expenses of law clerks, paralegals, etc., serving as habeas corpus investigators (Policy 3, std. 2-2.1, 1st par.), discussed in further detail *post*, at section I.G. of this memorandum.

F. *General (“Incidental”) Services and Expenses*

Many fee requests have been delayed solely because of the failure to present claims for reimbursement of general (“incidental”) services and expenses in a clear and orderly fashion. As noted above, CHCF requests for reimbursement of general services and expenses must be accompanied by an original and a copy of a “Services and Expenses Reimbursement Request” (see attachment #II), which in turn must itemize and, as appropriate, provide documentation with activity logs (see series of model activity logs set forth in attachment #I) and original receipts.

Use the sample request set forth as attachment #II as a model. Note: Do not simply list all such services and expenses. Instead, itemize services and expenses chronologically by CHCF category and provide documentation -- activity logs and/or original receipts -- when required. Fee and services/expense applications with an otherwise straightforward hourly fee claim will require more time to process if the services and expenses are not in order.

1. Expenses that do not require documentation:

The “time and costs” Payment Guidelines do not require documentation for the following expenses:

- Photocopying up to \$100/month. (However, you must indicate the rate charged, which may not exceed \$.10/page.)
- Telephone up to \$50/month.
- Meals (the following amounts are allowable when the travel period is 24 hours or more):
 - Breakfast: Actual cost of meal not to exceed \$6.
 - Lunch: Actual cost of meal not to exceed \$10.
 - Dinner: Actual cost of meal not to exceed \$18.
 - Incidentals (may be claimed for 24-hour periods only): Actual cost, not to exceed \$6.
 - Limitations on meal reimbursement: Lunch allowance may not be claimed on a one-day trip. Breakfast allowance and dinner allowance may be claimed, at the actual cost of the meal, and limited to the above amounts, for any travel period, if the expenses were incurred at least 25 miles from home or office, and at least one hour before or after the normal work day (which is 8:00 a.m. to 5:00 p.m.).
 - Exceptions to meal-reimbursement limitations: Breakfast allowance may be claimed, at the actual cost of the meal, not to exceed \$6, if travel of at least 25 miles began before 7:00 a.m. If such travel is completed after 6:00 p.m., dinner allowance, at the actual cost of the meal, not to exceed \$18, may be claimed.
- Hotel/lodging up to \$47/night. (Note: State Board of Control rules currently allow reimbursement up to \$110/night plus tax and energy surcharge *if* original receipts are provided.)
- Rental car up to \$47/day. (Note: Collision coverage or loss damage waiver (LDW) is not reimbursable.)
- Parking/tolls/taxis up to \$47/day.

- All other single transactions up to \$100. But counsel must explain all postage expenses above \$50 per month.

2. Services and expenses that require documentation:

a. It is essential that the following services and expenses be accurately claimed and supported by documentation, as described below:

- Paralegals/law clerks.
 - All paralegal/law clerk time and expenses must be supported with activity logs [see *post*, model activity logs, attachment #I.D.].
 - All hours above benchmark must include justification.
- Photocopying (rate may not exceed \$.10/page).
 - Commercial photocopying jobs exceeding \$100 must be supported by an original receipt.
 - “In house” photocopying expenses exceeding \$100/month must be explained; additionally, provide a breakdown of photocopying expenses by month for the entire billing period.

b. State Board of Control rules require that the least expensive alternative be used. Accordingly, specify the reasonableness of and necessity for the following expenses:

- Travel.
 - Bill motor vehicle mileage no greater than prevailing amount established by Administrative Office of the Courts.
 - Provide the dates, destination and purpose for each trip.
 - Lodging will not be reimbursed beyond \$110/night, plus tax. Meals will not be reimbursed beyond the limits set forth above. LDW in the car rental contract, movies, laundry, mini-bar, etc., will not be reimbursed. (Note: See *ante*, section I.F.1. of this memorandum, listing expenses that must be itemized but do not require documentation.)

- Computerized Research.
- Describe with specificity the nature of the computer research conducted (Shepard's, Autocite, Westlaw or Lexis issue searches, etc.).
- Charges for extensive "on-line" reading and/or printing of cases are not reimbursable, unless counsel explains in writing why this was the least expensive alternative.
- Administrative overhead charges may not be billed and will not be reimbursed.
- Facsimile (FAX) Transmission, Overnight Mail and Messenger Services.
- State the rate used for FAX.
- Briefs and petitions may be delivered for filing by messenger; other uses of messenger services are discouraged and must be explained.

3. Non-reimbursable expenses:

The following expense items are not reimbursable:

- Supplies.
- Word processing or secretarial services.
- Overtime.
- Personal items for the appellant/petitioner.

G. *Habeas Corpus Investigation Services and Expenses*

1.a. \$25,000 in investigation services and expenses:

Habeas corpus/executive clemency counsel appointed on or after October 12, 1997, and many counsel appointed prior to that date, may incur habeas corpus investigation services and expenses up to a maximum of \$25,000, without prior court authorization. Reimbursement exceeding that amount will not be authorized before the issuance of an order to show cause. This

policy applies to both “time and costs” and “fixed fee” cases. (Policy 3, std. 2-2.1, 1st par.)

1.b. \$50,000 in investigation services and expenses:

Habeas corpus counsel may incur up to a combined total of \$50,000 for investigation services/expenses as to those cases in which, by January 1, 2008, a habeas corpus petition had not been filed in this court and the date by which to file a presumptively timely petition had not passed, but limited to reimbursement for services and expenses incurred on or after that date. (Policy 3, std. 2-2.1, 3d par., first sentence.)

Such funding for services/expenses incurred on or after January 1, 2008, up to \$50,000 without prior court authorization and in the absence of an order to show cause, also is available in those cases in which a presumptively timely petition was filed by January 1, 2008, but petitioner’s reply to the informal response had not been filed and the time to do so (with any time extensions) had not passed as of that date. (Policy 3, std. 2-2.1, 3d par., second sentence.)

2. Scope of duty to investigate:

The authorized maximum of \$25,000 per case (and, in some cases, up to \$50,000) is payable for habeas corpus investigation services and expenses reasonably incurred “pursuant to the duty to investigate as described in standard 1-1” of the Court’s Policies Regarding Cases Arising From Judgments of Death. (Policy 3, std. 2-2.1, 1st & 3d pars.)

- The duty to investigate is limited to investigating potentially meritorious grounds for relief that come to counsel’s attention in the course of reviewing appellate counsel’s list of potentially meritorious habeas corpus issues, the transcript notes prepared by appellate counsel, the appellate record, trial counsel’s existing case files and the appellate briefs, and in the course of making reasonable efforts to discuss the case with the defendant, trial counsel and appellate counsel. (Policy 3, std. 1-1, 2d par.)
- Counsel’s duty to investigate does not impose an obligation to conduct, nor does it authorize the expenditure of public funds for, an unfocused investigation having as its object uncovering all possible factual bases for a collateral attack on the judgment of death. Instead, habeas corpus/executive clemency counsel has a duty to investigate potential

habeas corpus claims only if counsel has become aware of information that might reasonably lead to actual facts supporting a potentially meritorious claim. (Policy 3, std. 1-1, 2d par.)

3. Reimbursement for services and expenses related to noncognizable claims:

Counsel generally will not be awarded compensation for fees or reimbursement for services and expenses relating to matters that clearly are not cognizable in a petition for writ of habeas corpus. (Policy 3, std. 2-5.)

4. Reimbursement for habeas corpus investigation services and expenses of law clerks, paralegals and State Bar members:

- Reimbursable habeas corpus investigation services and expenses include services and expenses of law clerks, paralegals, etc., serving as habeas corpus investigators, including any travel associated with such investigation. (Policy 3, std. 2-2.1, 1st par.) Use of law clerks, paralegals, etc., in this capacity is calculated against the \$25,000 (or \$50,000) limit for investigation services and expenses. (*Ibid.*)
- Law clerks who are not members of the State Bar of California may be compensated at a rate not to exceed \$40 per allowable hour. (Payment Guideline III, subpart C, 6, a, (1).)
- Paralegals may be compensated at a rate not to exceed \$40 per allowable hour. (Payment Guideline III, subpart C, 6, a, (2).)
- Active members of the State Bar of California who are not appointed to the case may be compensated at a rate not to exceed \$98 per allowable hour. (Payment Guideline III, subpart C, 6, a, (3).)
- For model activity logs of nonappointed supervised counsel and paralegals billing hours and expenses related to appointed counsel's habeas corpus investigation, see *post*, attachments #I.C. and #I.E., respectively.

5. Reimbursement for habeas corpus investigation services and expenses of investigators and experts:

- Counsel must establish that the use of an expert's services is reasonably necessary under the facts of the case. (Payment Guideline III, subpart C, 7, a.)
- Counsel must include in the request for reimbursement a representation that the rate requested does not exceed the investigator's or expert's customary rates for the services performed (Payment Guideline III, subpart C, 7, a, (1)) *and* that the rate requested does not exceed local prevailing rates for the services performed (Payment Guideline III, subpart C, 7, a, (2)).
- As a general rule, the Court will not provide reimbursement for the services of experts and investigators above the maximum specified rates. (Payment Guideline III, subpart C, 7, a.) In exceptional circumstances, when the need is documented and prior authorization is obtained, reimbursement for services beyond the maximum rates may be provided. (Payment Guideline III, subpart C, 7, c.)
- Maximum rate range for investigators is \$55-90 per hour. (Payment Guideline III, subpart C, 7, b, (1).)
- Maximum rate range for penalty phase consultants is \$60-125 per hour. (Payment Guideline III, subpart C, 7, b, (2).)
- Maximum rate range for psychiatrists and other medically licensed mental health experts is \$200-350 per hour. (Payment Guideline III, subpart C, 7, b, (3).)
- Maximum rate range for other forensic experts is \$125-225 per hour. (Payment Guideline III, subpart C, 7, b, (4).)
- Maximum rate range for psychologists (Ph.D.'s) is \$150-275 per hour. (Payment Guideline III, subpart C, 7, b, (5).)
- The maximum rate range for attorneys serving as experts is \$125-145 per hour. (*Note: Until an order to show cause is issued, or counsel for the respondent submits an expert declaration in its informal opposition to a habeas corpus petition, the Court will not approve payment for attorney "expert opinion" in the form of declarations, etc.*) (Payment Guideline III, subpart C, 7, b, (6).)

- For model activity logs of investigators and experts billing hours and expenses related to appointed counsel’s habeas corpus investigation, see *post*, attachments #I.F. and #I.G., respectively.

H. *Reimbursement for Compensation of Persons Performing Legal Services, Other Than Appointed Counsel*

1. Appointed counsel shall describe with specificity the legal services and number of hours of work performed by each nonappointed counsel, so the Court can evaluate the reasonableness of the services and expenses as part of appointed counsel’s overall claim. (Payment Guideline III, subpart C, 6, b, (1).)
2. The hours devoted to legal services by nonappointed counsel, and any “exceptionally high” hours attributed to law clerks and paralegals (i.e., hours exceeding 30 percent of the benchmark hours for appointed counsel for any given stage), are expected to reduce the hours that appointed counsel will devote to those services. (Payment Guideline III, subpart C, 6, b, (1).)
3. Appointed counsel shall not delegate to others those functions that require the ability and experience for which counsel was appointed. (Payment Guideline III, subpart C, 6, b, (2).)
4. Appointed counsel shall supervise and have full responsibility for the services performed by others. (Payment Guideline III, subpart C, 6, b, (3).)

I. *Documentation and State Board of Control Rules*

1. Activity logs of appointed counsel and service providers:

All appointed counsel, and all service providers (nonappointed counsel, law clerks, paralegals, experts and investigators), must separately prepare an activity log in support of all hours billed in the CHCF. Each activity log should contain a current name, address and telephone number for the attorney or service provider; the relevant billing period; the case name; the total number of hours billed; the rate billed; and, for each activity billed, the date, the category on the CHCF for which the hours are reported, the hours billed (in increments of a tenth of an hour) and a short description of the

activity. (See series of model “activity logs” for lead appointed counsel, associate appointed counsel, nonappointed supervised counsel, paralegals, experts and investigators, set forth in attachment #I.)

2. Itemization and original receipts:

In support of a CHCF request for reimbursement of services and/or expenses, lead appointed counsel must attach an original and a copy of a “Services and Expenses Reimbursement Request,” which itemizes all services and expenses, and must provide in the request the *original* receipts for travel expenses (airfare, car rental, hotel bills, etc.) exceeding \$47 per day, telephone and copying expenses exceeding \$50 and \$100 per month, respectively, and all other single transactions that exceed \$100. (Payment Guideline III, subpart C, 1st par.) The Court advises counsel to keep all receipts in the event documentation is later required. (*Ibid.*) (See model request set forth in attachment #II.)

Note: See *ante*, section I.F.1. of this memorandum, listing expenses that must be itemized but do not require documentation.

3. Original and copy of request:

Lead appointed counsel must submit an original and one copy of each request for hourly compensation and/or reimbursement for services and expenses, including all required activity logs, original receipts and other documentation.

4. Reimbursement of itemized, reasonable services and expenses:

Services and expenses will be reimbursed to the extent they are itemized, reasonable and necessarily incurred during the course of the capital representation, and otherwise comply with the Court’s procedures. (Payment Guideline III, subpart A.)

- *Note:* State Board of Control rules require that the least expensive alternative be used for all expenses. Therefore, specify the reasonableness of and necessity for all expenses not authorized by Payment Guideline III, subpart C (“Reimbursable expenses”).

5. Current 60-day status report:

Each request for hourly compensation and/or reimbursement of services and expenses must be accompanied by a current 60-day status report, if a status report is required. Status reports must be submitted by lead appellate counsel every 60 days through the filing of the opening brief, and by lead habeas corpus/executive clemency counsel, appointed prior to finality of the direct appeal, every 60 days through the filing of any related habeas corpus petition.

6. Declaration pursuant to Penal Code section 1241:

Each request by lead appointed counsel for hourly compensation and/or reimbursement of services and expenses also must be accompanied by a declaration, under penalty of perjury, pursuant to Penal Code section 1241, stating that the figures set forth in Parts 2-3 of the CHCF represent the hours and expenses incurred in the discharge of counsel's duties under the appointment, and that appointed counsel has neither received nor been promised any compensation for those hours and expenses from any *other* source whatsoever. The approved declaration is contained in Part 4 of the CHCF.

J. *Partial Hourly Payments Prior to Court Review*

In order to reduce delay in payment of attorney claims for hourly fees, the Court automatically makes partial payments on interim hourly fee claims while these claims are pending full court review. These accelerated payments include automatic initial payment of 75 percent of hourly fee claims up to 75 percent of the upper benchmark established for each specific stage of capital representation, excluding reimbursement for general ("incidental") appellate and/or habeas corpus investigation services and/or expenses.

II.

Common Problems and Special Rules Regarding "Fixed Fee" Appointments

Procedures for obtaining fixed fee progress payments are set forth below. In addition, although general ("incidental") services and expenses are included within any fixed fee (see *post*, section II.F. of this memorandum), counsel who have opted for a fixed fee appointment must nevertheless familiarize themselves with these rules in order to obtain reimbursement of habeas corpus *investigation*

services and expenses. (See model “Services and Expenses Reimbursement Request,” set forth in attachment #III.)

A. *Progress Payment Schedules*

All fixed fee progress payments are subject to counsel’s compliance with Fixed Fee Guideline 5 (“Progress Payments”). Separate schedules of requisite progress stages are set forth for counsel appointed to (a) the direct appeal and habeas corpus/executive clemency proceedings, (b) the direct appeal only, and (c) habeas corpus/executive clemency proceedings only.

B. *Written Request for Progress Payment*

Lead appointed counsel shall present a written request for each fixed fee progress payment, serve a copy of that request on any appointed associate counsel and the assisting entity, and specify completion of all requisite tasks of representation set forth in Fixed Fee Guideline 5. A copy of any declaration or other writing by appointed counsel to the Court, in support of a request for a progress payment, shall indicate service on all other appointed counsel and the assisting entity.

C. *Declaration Pursuant to Penal Code Section 1241*

Each written request for a fixed fee progress payment must contain a declaration by lead appointed counsel, pursuant to Penal Code section 1241, as follows:

Declaration pursuant to Penal Code section 1241

I, _____, was appointed by the Supreme Court of California as lead counsel in the above-entitled matter, and have completed the requisite tasks set forth in Fixed Fee Guideline 5 (“Progress Payments”).

I have not received, nor have I been promised, any compensation for the above-described tasks from any other source whatsoever.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _____, at _____.

D. *Current Status Report by Lead Appellate Counsel*

Until the appellant’s opening brief has been filed, lead appellate counsel must have a current status report on file. (Fixed Fee Guideline 5, 1st par.)

E. *Current Status Report by Lead Habeas Corpus/Executive Clemency Counsel*

Until a habeas corpus petition has been filed, lead habeas corpus/executive clemency counsel must have a current status report on file. (Fixed Fee Guideline 5, 1st par.)

F. *General (“Incidental”) Services and Expenses*

General (“incidental”) services and expenses (i.e., services and expenses not related to a habeas corpus investigation), are not separately reimbursable to counsel, because those services and expenses are already included within the fixed fee. (Fixed Fee Guideline 2 [“Incidental and Investigative Expenses”].)

G. *Habeas Corpus Investigation Services and Expenses*

1. In all fixed fee appointments, lead habeas corpus/executive clemency counsel seeking reimbursement for habeas corpus investigation services and/or expenses must complete and submit Part 1, category 20b of Part 3 (“Habeas Corpus *Investigation Services and Expenses*”), and Part 4 of the CHCF.

Counsel also must submit an original of a “Services and Expenses Reimbursement Request” (see attachment #III), which in turn must itemize and, as appropriate, provide activity logs for all service providers and original receipts. Copies are not required of “fixed fee” counsel. (See “Documentation and State Board of Control Rules,” *ante*, section I.I. of this memorandum, regarding itemization, presentation of original receipts, presentation of original of reimbursement requests, etc.)

Note: See *ante*, section I.F.1. of this memorandum, listing expenses that must be itemized but do not require documentation.

All service providers (nonappointed counsel, law clerks, paralegals, experts and investigators) must separately prepare an activity log in support of all investigation hours billed in category 20b of Part 3 of the CHCF. Each activity log should contain a current name, address and telephone number for the attorney or other service provider; the relevant billing period; the case name; the total number of hours billed; the rate billed; and, for each activity billed, the date, the hours billed (in increments of a tenth of an hour) and a short description of the activity. (See series of model “activity logs” for nonappointed supervised counsel, paralegals, investigators and experts, set forth in attachment #I.)

2. Reimbursable habeas corpus investigation services and expenses include services and expenses of law clerks, paralegals, etc., serving as habeas corpus investigators, including any travel associated with such investigation. (Policy 3, std. 2-2.1, 1st par.) Use of law clerks, paralegals, etc., in this capacity is calculated against the \$25,000 (or \$50,000) limit for investigation services and expenses. (*Ibid.*)
3. Appointed counsel will be reimbursed for habeas corpus investigation services and expenses reasonably incurred pursuant to the duty to investigate as described in standard 1-1 of the Court’s Policies Regarding Cases Arising From Judgments of Death (Policy 3, std. 2-2.1, 1st par.).
4. Reimbursement for habeas corpus investigation services and expenses of law clerks, paralegals, State Bar members, investigators, penalty phase consultants, psychiatrists and other medically licensed mental health experts, other forensic experts, psychologists, and other attorneys serving as experts, is limited to services and expenses incurred in compliance with the State Board of Control rules set out in “time and costs” Payment Guideline III (“Necessary Expenses”), subpart C, regarding travel, lodging, the use of investigators and experts, etc. (see Fixed Fee Guideline 2 [“Incidental and Investigative Expenses”]), described *ante*, at section I.G. of this memorandum.

5. Counsel generally will not be awarded reimbursement for services and expenses relating to matters that are clearly not cognizable in a petition for writ of habeas corpus. (Policy 3, std. 2-5.)
6. Each request by lead appointed counsel for reimbursement of habeas corpus investigation services and/or expenses also must be accompanied by a declaration, under penalty of perjury, pursuant to Penal Code section 1241, stating that the figures set forth in Parts 2–3 of the CHCF represent the hours and expenses incurred in the discharge of counsel’s duties under the appointment, and that appointed counsel has neither received nor been promised any compensation for those hours and expenses from any other source whatsoever. The approved declaration is contained in Part 4 of the CHCF.

H. “Second Counsel Override”

There is no “second counsel override” in fixed fee cases (see Fixed Fee Guideline 7).

Attachments:

- I. Series of Model “Activity Logs” to Accompany Completed CHCF.
- II. Model “Services and Expenses Reimbursement Request” in “Time and Costs” Appointment Case to Accompany Completed CHCF, Parts 1–4.
- III. Model “Services and Expenses Reimbursement Request” in “Fixed Fee” Appointment Case to Accompany CHCF, Part 1, category 20b of Part 3, and Part 4.

Attachment #I

***SERIES OF MODEL “ACTIVITY LOGS”
(to accompany completed CHCF)***

- I.A. “Activity Log” for Lead Appointed Counsel
- I.B. “Activity Log” for Associate Appointed Counsel
- I.C. “Activity Log” for Nonappointed Supervised Counsel
- I.D. “Activity Log” for Paralegal (showing case file management and related activities)
- I.E. “Activity Log” for Paralegal (showing habeas corpus investigation activities)
- I.F. “Activity Log” for Investigator
- I.G. “Activity Log” for Expert

I.A. "Activity Log" for Lead Appointed Counsel

Bruce James
Attorney at Law
1212 Main Street
Anycity, CA 90000
(123) 525-8500

Confidential

People v. John Q. Appellant

Daily Activity Log for Billing Period 1/1/98 to 4/1/98
(Lead Appointed Counsel)

DATE	CHCF CATEGORY	TIME	ACTIVITY
1/4/98	4	.5	Status report
1/12	17	3.4	Prepare motion for record correction
1/17	5	1.4	Prepare AOB statement of case and statement of the facts
1/24	8	1.2	Phone CAP & letter to AG re discovery
2/4	15	.8	Client phoned
2/12	8	2.7	Review AG discovery
2/13	1	7.5	Review CT 210-525
2/15	1	8.0	Review RT 1100-1400
2/17	2	7.5	Prepare draft record corr. motion
2/20	5	2.0	Conference with associate re potential AOB issues
2/23	2	6.0	Continue draft of record corr. motion
2/26	2	5.5	Continue draft of record corr. motion
3/2	16	2.5	Round-trip travel to San Quentin for client visit.
3/2	15	3.0	Client interview
Total Fees		52 hours @ \$145 per hour =	\$7,540.00

I.B. "Activity Log" for Associate Appointed Counsel

Marilyn Johns
Attorney at Law
1313 Mockingbird Lane
Anycity, CA 90000
(123) 525-3200

Confidential

People v. John Q. Appellant

Daily Activity Log for Billing Period 1/1/98 to 4/1/98
(Associate Appointed Counsel)

DATE	CHCF CATEGORY	TIME	ACTIVITY
1/4/98	4	.5	Status report
1/12	17	3.4	Prepare motion for record correction
1/17	5	1.4	Prepare AOB statement of case and statement of the facts
1/24	8	1.2	Phone CAP & letter to AG re discovery
2/4	15	.8	Client phoned
2/12	8	2.7	Review AG discovery
2/13	5	7.5	Outline of potential AOB issues
2/16	5	7.0	Outline of potential AOB issues
2/22	1	8.0	Review transcript notes
2/23	1	7.5	Review transcript notes
2/25	1	6.0	Prepare draft record corr. motion
3/2	5	7.5	Outline potential AOB issues
3/7	16	1.0	Travel to San Quentin for client visit
3/7	15	3.0	Interview client

Total Fees 64.7 hours @ \$145 per hour = \$9381.50

I.C. "Activity Log" for Nonappointed Supervised Counsel

Alice Johnson
Attorney at Law
1000 Elm Street
Anycity, CA 90000
(123) 525-7700

Confidential

People v. John Q. Appellant

Daily Activity Log for Billing Period 1/1/98 to 4/1/98
(Nonappointed Supervised Counsel)

DATE	CHCF CATEGORY	TIME	ACTIVITY
1/4/98	8	.5	Telephone petitioner's mother to set up interview
1/12	8	3.4	Interview petitioner's mother
1/17	8	1.4	Interview petitioner's aunt
1/24	8	1.2	Phone CAP & letter to AG re discovery
2/4	8	.8	Conference with lead counsel
3/12	8	2.7	Draft declarations of family members
Total Fees		10.0 hours @ \$98 per hour =	\$980.00

Expenses

	Car rental	\$160.00	
	Gas	\$10.00	
	Lodging	\$180.00	
Total expenses			\$350.00
TOTAL FEES & EXPENSES			\$1,330.00

I.D. "Activity Log" for Paralegal
(showing case file management and related activities)

Jane Smith
Paralegal
222 Ash Lane
Anycity, CA 91234
(123) 456-7890

Confidential

People v. John Q. Appellant

Daily Activity Log for Billing Period 1/1/98 to 4/1/98

DATE	CHCF TIME Category		ACTIVITY
3/2/98	8	7.5	Case file management
3/4	8	6.5	Case file management
	8	1.0	Indexing
3/6	8	4.3	Indexing trial counsel's files
3/10	8	7.5	Search add/request records/ update journal
3/15	8	7.5	Case file management
3/25	8	6.2	Case file management
3/26	8	3.0	Indexing
Total Fees		43.5 hours @ \$25 per hour =	\$1,087.00

I.E. "Activity Log" for Paralegal
(showing habeas corpus investigation activities)

Jane Smith
Paralegal
222 Ash Lane
Anycity, CA 91234
(123) 456-7890

Confidential People v. John Q. Appellant

Daily Activity Log for Billing Period 1/1/98 to 4/1/98

DATE	CHCF TIME Category	ACTIVITY
3/2/98	8 2.0	Interview with client/obtain client authorizations for hospital and school records.
3/4	8 1.0	Consult with lead counsel
	8 2.8	Request for medical records
3/6	8 .3	Telephone re school records
	8 2.3	Search add/request records/ update journal
3/15	8 1.6	Request for school records.

Total Fees 10.0 hours @ \$25 per hour = \$250.00

Expenses Copies of Medical Records
2 @ \$12.25 = \$24.50

Copies of School Records
3 @ \$8.00 = \$24.00

Total Expenses \$48.50

TOTAL FEES & EXPENSES \$448.50

I.F. "Activity Log" for Investigator

John Gumshoe
ABC Investigation
77 Mystery Court
Anycity, CA 93214
(123) 789-3567

Confidential People v. John Q. Appellant

Daily Activity Log for Billing Period 1/1/98 to 4/1/98

DATE	TIME	ACTIVITY
2/2/98	3.0	Review materials from attorney; prepare confirmation memo
3/14	2.5	Telephone interview with witness #1
	3.0	Summary of interview
3/16	4.5	Multiple calls to witness #2 to arrange scheduling of in-person interview; telephone conversation with counsel; telephone interview with witness #3
	2.5	Interviewed three witnesses
3/18	4.6	Research locating case witness
3/22	2.4	Investigation & research locating case witness

Total Fees 22.5 hours @ \$55 per hour = \$1,237.50

Expenses	Vehicle Mileage	
	141.5 miles @ 44.5 cents per mile	
Total Expenses		\$62.97

TOTAL FEES & EXPENSES \$1,300.47

I.G. "Activity Log" for Expert

Art Vandelay
Art Vandelay and Associates
Ballistics Experts
1 Less Drive
Anycity, CA 90044
(123) 378-3567

Confidential

People v. John Q. Appellant

Daily Activity Log for Billing Period 1/1/98 to 4/1/98

DATE	TIME	ACTIVITY
1/15/98	7.5	Review/analysis of case materials
2/14	3.5	Review /analysis of case materials
	3.0	Meeting with counsel and investigator
3/16	4.5	Analysis of case materials; draft declaration
3/18	1.5	Finalize declaration; telephone conversation with counsel
TOTAL		20.0 hours @ \$125 per hour = \$2,500.00

Attachment #II

**MODEL “SERVICES AND EXPENSES REIMBURSEMENT REQUEST”
IN “TIME AND COSTS” APPOINTMENT CASE
(to accompany completed CHCF, Parts 1–4)**

People v. _____, No. S _____

Billing period: 2/1/98 - 5/1/98

A. General (“Incidental”) Expenses

1. “In House” Photocopying

(billed at \$.10/pg.)

February 1998 (1,000 pp.)	\$100.00
March 1998 (500 pp.)	\$ 50.00
April 1998 (2,000 pp.) ¹	\$200.00
	\$350.00

2. Commercial Photocopying

2/1/98 (\$.05/page)	\$ 8.32
2/18/98 (\$.10/page)	\$ 50.11
2/20/98 (\$.20/page) ²	\$ 40.20
4/15/98 (\$.05/page) ³	\$250.15
	\$348.78

¹ The opening brief was filed on April 15, 1998. We photocopied several sets of drafts before filing the brief.

² The February 20, 1998, expense was incurred for copying records at the Placer County Courthouse. We were not allowed to remove documents from the premises and had to use on-site photocopiers at \$.20/page.

³ The April 15, 1998, expense was for copying the opening brief (20 copies). Documentation, including an original receipt, is attached.

3. Telephone

February 1998	\$ 8.56
March 1998	\$ 12.87
April 1998 ⁴	\$ 50.96
	<hr/>
	\$ 72.39

4. Postage

February 1998	\$ 3.53
March 1998 ⁵	\$ 51.22
April 1998	\$ 34.85
	<hr/>
	\$ 89.60

5. Facsimile

4/12/98 ⁶	\$ 7.50
	<hr/>
	\$ 7.50

6. Messenger Delivery/Express Mail

4/15/98 ⁷	\$ 12.50
	<hr/>
	\$ 12.50

⁴ Telephone expenses for April 1998 exceeded \$50 because our client made numerous collect calls, which we felt was proper to accept.

⁵ Postage for March 1998 exceeded \$50/month because our office sent associate counsel and CAP several drafts of the opening brief.

⁶ The rate used for facsimile transmissions was \$.50/page. We used facsimile to transmit to associate counsel last minute corrections on the opening brief. Because time was short, we could not rely on the usual methods of delivery.

⁷ We used a messenger to timely file the opening brief with the Court.

7. Computerized Research

4/1/98 ⁸	\$112.89
	<hr/>
	\$112.89

8. Travel

2/2/98 Airfare--to review sealed declaration at county clerk's office (SFO-LAX-SFO; see attached original ticket).	\$210.00
2/2/98 Car rental for two days (no LDW).	\$89.84
2/2/98 Hotel (overnight stay required to meet with trial counsel on one day and visit the county clerk's office the next day; see attached original receipt).	\$95.33
2/2/98 Actual cost of breakfast/lunch/dinner.	\$33.86
3/12/98 Mileage to visit the client in prison (SF-Tamal-SF; 35 miles @ 44.5 cents/mile)	\$15.58
	<hr/>
	\$444.61

9. Paralegal General ("Incidental") Services and Expenses

Jane Smith (paralegal) (activity logs attached [see <i>ante</i> , model "activity logs," attachment #I.D.] for paralegal case file management and indexing; 43.5 hours at \$25/hour).	\$1,087.50
	<hr/>
	\$1,087.50

B. Habeas Corpus Investigation Services and Expenses

1. Paralegal Investigation Services and Expenses

Jane Smith (paralegal)

⁸ We used Autocite to check cites for the opening brief. We estimate that, as a result, we saved more than eight hours of billable attorney or paralegal/law clerk time. Documentation is attached.

(activity logs and original receipts attached [see *ante*, model “activity logs,” attachment #I.E.] for paralegal habeas corpus investigation time to obtain hospital and school records; 10.0 hours at \$25/hour, plus \$48.50 in expenses). \$298.50

\$298.50

2. Licensed Investigator Services and Expenses⁹

John Gumshoe, ABC Investigation (activity logs and original receipts attached [see *ante*, model “activity logs,” attachment #I.F.]; 22.5 hours at \$55/hour, plus \$62.97 in expenses). \$1,300.47

\$1,300.47

3. Expert Services and Expenses¹⁰

Art Vandelay and Associates (ballistics experts) (activity logs attached [see *ante*, model “activity logs,” attachment #I.G.]; 20.0 hours at \$125/hour). \$2,500.00

ACME Investigation (penalty phase experts) (activity logs attached; 9.0 hours at \$60/hour). \$540.00

⁹ The investigator and expert habeas corpus investigation services and expenses claimed for this billing period fall within the \$50,000 now allowed for investigation services and expenses incurred without prior authorization, pursuant to Policy 3, standard 2-2.1.

Moreover, each of the listed experts and investigators billed at a rate that did not exceed his or her customary rate for the services performed, and did not exceed local prevailing rates.

¹⁰ See *ante*, footnote 9, second paragraph, regarding the hourly rates billed by the experts and investigators.

Robert Smith, M.D. (psychiatrist)
(activity logs attached; 20.0 hours at
\$200/hour). \$4,000.00

Allan Jones, M.D., Ph.D. (neuropsychologist)
(activity logs attached; 35.5 hours at
\$200/hour). \$7,100.00

\$14,140.00

4. State Bar Member Services and Expenses

Alice Johnson (nonappointed supervised
counsel conducting interviews of family
members; active member, State Bar of Cal.;
activity logs and original receipts attached
[see *ante*, model “activity logs,” attachment
#I.C.]; 10.0 hours at \$98/hour, plus \$350 in
expenses). \$1,330.00

\$1,330.00

SUMMARY OF SERVICES AND EXPENSES

A. General (“Incidental”) Services and Expenses

Photocopying (“in house”)	\$ 350.00
Photocopying (commercial)	\$ 348.78
Telephone	\$ 72.39
Postage	\$ 89.60
Facsimile	\$ 7.50
Messenger	\$ 12.50
Computerized research	\$ 112.89
Travel	\$ 444.61
Paralegal (incidental services and expenses)	\$1,087.50

Subtotal \$2,525.77

Attachment #III

**MODEL “SERVICES AND EXPENSES REIMBURSEMENT REQUEST”
IN “FIXED FEE” APPOINTMENT CASE
(to accompany completed CHCF, Part 1,
category 20b of Part 3, and Part 4)**

People v. _____, **No. S** _____

Billing period: 2/1/98 - 5/1/98

Habeas Corpus Investigation Services and Expenses

A. Paralegal Investigation Services and Expenses

Jane Smith (paralegal)
(activity logs and original receipts attached
[see *ante*, model “activity logs,” attachment
#I.E.] for paralegal time to obtain hospital and
school records; 10.0 hours at \$25/hour, plus
\$48.50 in expenses). \$298.50

\$298.50

B. Licensed Investigator Services and Expenses¹

John Gumshoe, ABC Investigation
(activity logs and original receipts attached
[see *ante*, model “activity logs,” attachment
#I.F.]; 22.5 hours at \$55/hour, plus \$62.97 in

¹ The investigator and expert habeas corpus investigation services and expenses claimed for this billing period fall within the \$50,000 now allowed for investigation services and expenses incurred without prior authorization, pursuant to Policy 3, standard 2-2.1.

Moreover, each of the listed experts and investigators billed at a rate that did not exceed his or her customary rate for the services performed, and did not exceed local prevailing rates.

expenses). \$1,300.47
\$1,300.47

C. Expert Services and Expenses²

Art Vandelay and Associates (ballistics experts) (activity logs attached [see *ante*, model “activity logs,” attachment #I.G.]; 20.0 hours at \$125/hour). \$2,500.00

ACME Investigation (penalty phase experts) (activity logs attached; 9.0 hours at \$60/hour). \$540.00

Robert Smith, M.D. (psychiatrist) (activity logs attached; 20.0 hours at \$200/hour). \$4,000.00

Allan Jones, M.D., Ph.D. (neuropsychologist) (activity logs attached; 35.5 hours at \$200/hour). \$7,100.00

\$14,140.00

D. State Bar Member Services and Expenses

Alice Johnson (nonappointed supervised counsel conducting interviews of family members; active member, State Bar of Cal.; activity logs and original receipts attached [see *ante*, model “activity logs,” attachment #I.C.]; 10.0 hours at \$98/hour, plus \$350 in expenses). \$1,330.00

\$1,330.00

² See *ante*, footnote 1, second paragraph, regarding the hourly rates billed by the experts and investigators.

TOTAL HABEAS CORPUS INVESTIGATION SERVICES AND EXPENSES:

\$17,068.97

[*Note:* Documentation as described above (activity logs and/or original receipts) should be attached to this request.]