

**DESCRIPTION OF CATEGORIES ON THE CUMULATIVE HOURS/SERVICES AND EXPENSES
COMPENSATION FORM FOR AUTOMATIC APPEALS AND/OR RELATED
STATE HABEAS CORPUS/EXECUTIVE CLEMENCY PROCEEDINGS**

Part 1
“Final Fee Request”

For appellate counsel, this means the request submitted after the court’s opinion is final, unless either party files a petition for writ of certiorari, in which case it is the request submitted after counsel files the petition or opposition thereto, if that petition is denied.

For habeas corpus/executive clemency counsel (hereafter “habeas corpus” counsel), this means the request submitted after execution or reversal of the judgment of death.

Part 2
1a. Appellate Counsel’s Reading of the Record & Producing Computerized Transcript Notes

This category applies only to appellate counsel, and covers reading the clerk’s and reporter’s transcripts (including augmented record) for the first time and producing detailed, understandable and computerized transcript notes.

- This category does not include subsequent review of the transcripts, e.g., during preparation of briefs or for oral argument. (Subsequent review belongs under the category for which the review was done.)

1b. Appellate Counsel’s List of Potentially Meritorious Habeas Corpus Issues

This category applies only to appellate counsel, and covers the compiling and maintaining of a list of potentially meritorious habeas corpus issues that come to appellate counsel’s attention. This includes reasonable and necessary time spent reviewing trial counsel’s files for this purpose, prior to the appointment of separate habeas corpus counsel. After separate habeas corpus counsel is appointed, this includes appellate counsel’s time to update the “issues” list as warranted.

1c. Evidence Preservation by Appellate Counsel for the Use of Separate Habeas Corpus Counsel

This category applies only to appellate counsel, and until separate habeas corpus counsel is appointed. This category covers preservation of evidence that comes to appellate counsel’s attention if that evidence appears relevant to a potential habeas corpus investigation, and it is necessary for appellate counsel to preserve it at that time.

1d. Record Review

Regarding counsel appointed for appellate representation who does not produce computerized transcript notes, this category covers reviewing the clerk’s and reporter’s transcripts (including augmented record), and/or computerized transcript notes prepared by other appellate counsel, for the first time.

Regarding separate habeas corpus counsel, this category covers reviewing the clerk’s and reporter’s transcripts and/or computerized transcript notes from appellate counsel (including augmented record) for the first time, but not producing detailed, computerized transcript notes.

- This category does not include subsequent review of the transcripts, e.g., during preparation of a habeas corpus petition. (Subsequent review belongs under the category for which the review was done.)

2. Record Correction & Augmentation

This category covers the following tasks:

- Examining superior court files and exhibits;
- Examining trial attorney files to verify completeness of the record on appeal;
- Preparation of extension of time requests;
- Preparation of correction and augmentation motions;
- Preparation of settled statements;
- Conferences with trial counsel, the District Attorney or the Attorney General;
- Appearances in superior court; and
- Conferring with associate counsel, CAP staff attorneys or other assisting entity attorneys, law clerks and paralegals.

- This category does not include travel time, which has its own category.

3. Other Motions/Requests/Applications

This category covers the preparation of motions, requests or applications that do not have a defined category, e.g., judicial notice, review of transcripts of *in camera* proceedings and examination of exhibits.

- This category does not include Extension of Time Requests, which belong under the category for which the request was done.

4. 60-day Status Reports

This category covers the preparation of status reports, which must be submitted to the Supreme Court by

appellate counsel every 60 days through the filing of the opening brief; and by habeas corpus counsel, appointed prior to finality of the direct appeal, every 60 days through the filing of any related habeas corpus petition.

5. Research & Write Opening Brief

This category covers preparing an issues list and any extension of time requests; conferring with associate counsel, CAP staff attorneys or other assisting entity attorneys, law clerks, paralegals and trial counsel; and researching, writing, reviewing, revising and editing drafts.

6. Research & Write Reply Brief

This category covers reviewing the Respondent's Brief; conferring with associate counsel, CAP staff attorneys or other assisting entity attorneys, law clerks and paralegals; preparing any extension of time requests; and researching, writing, reviewing, revising and editing drafts.

7. Research & Write Supp. Brief(s)

This category covers the preparation of supplemental briefs and the preparation of "letter" briefs.

This category also covers conferring with associate counsel, CAP staff attorneys or other assisting entity attorneys, law clerks and paralegals; reviewing previous briefs; and researching, writing, reviewing, revising and editing drafts.

8. Investigate & Write Habeas Corpus Petition

This category covers investigating and preparing a habeas corpus petition, plus any petition to exhaust state remedies; conferring with associate counsel, CAP staff attorneys or other assisting entity attorneys, law clerks, paralegals, investigators and experts; interviewing trial counsel, the client's family and others; reviewing trial counsel's files; reviewing investigative and expert reports; and researching, writing, reviewing, revising and editing drafts.

- This category does not include client communication or travel time, each of which has its own category.

9a & 9b. Reply to Informal Response to Habeas Corpus Petition and/or Traverse to Return to OSC

These two categories cover, respectively, reviewing the Informal Response to the habeas corpus petition and/or the Return to the OSC; conferring with associate counsel, CAP staff attorneys or other assisting entity attorneys, law clerks and paralegals; any further investigation; and researching, writing, reviewing, revising and editing drafts.

10a. Evidentiary Hearing Preparation

This category covers preparation for the hearing (including counsel's review of materials and any further investigation), the drafting of all pre-hearing pleadings,

and all conferences with the Referee, District Attorney or Attorney General.

This category also covers conferring with associate counsel, CAP staff attorneys or other assisting entity attorneys, law clerks, paralegals, investigators, experts and witnesses.

- This category does not include travel time, which has its own category.

10b. Evidentiary Hearing Presentation

This category covers all appearances at the evidentiary hearing and all related conferences with the Referee, District Attorney or Attorney General.

This category also covers conferring with associate counsel, CAP staff attorneys or other assisting entity attorneys, law clerks, paralegals, investigators, experts and witnesses, and researching, writing, reviewing, revising and editing all draft pleadings.

- This category does not include travel time, which has its own category.

10c. Post-hearing Litigation Before the Referee

This category covers review of, and response to, the Referee's findings and the response of the District Attorney or Attorney General.

This category also covers conferring with associate counsel, CAP staff attorneys or other assisting entity attorneys, and researching, writing, reviewing, revising and editing all draft pleadings.

- This category does not include travel time, which has its own category.

10d. Post-hearing Briefs in Supreme Court

This category covers the preparation of all post-hearing briefs in the Supreme Court (brief on the merits, response brief and supplemental brief).

This category also covers conferring with associate counsel, CAP staff attorneys or other assisting entity attorneys, and researching, writing, reviewing, revising and editing drafts.

- This category does not include travel time, which has its own category.

11. Oral Argument (prepare & argue)

This category covers preparation for oral argument (including review of briefs, submission of a list of additional authorities to be relied on at oral argument and moot court) and appearance at oral argument.

This category also covers conferring with associate counsel, CAP staff attorneys or other assisting entity attorneys, law clerks and paralegals.

- This category does not include preargument supplemental briefing, which belongs under “Research & Write Supp. Brief(s),” and it does not include travel time, which has its own category.

12. Post-oral Argument Representation

This category covers continuing research on new developments affecting issues presented in the case and, as necessary, bringing those developments to the attention of the court before the court’s opinion is filed.

- This category does not include supplemental briefing or letter briefing, which belong under “Research & Write Supp. Brief(s).”

13. Rehearing Petition or Opposition

This category covers reviewing the court’s opinion to determine whether a petition for rehearing is warranted; reviewing respondent’s petition or opposition; conferring with associate counsel, CAP staff attorneys or other assisting entity attorneys, law clerks and paralegals; and researching, writing, reviewing, revising and editing drafts.

14a. Certiorari Petition or Opposition

This category covers reviewing respondent’s petition or opposition; conferring with associate counsel, CAP staff attorneys or other assisting entity attorneys, law clerks and paralegals; researching, writing, reviewing, revising and editing the petition or opposition; and preparing, as necessary, an application for stay of execution pending final determination of a certiorari petition.

14b. Representation in U.S. Supreme Court After Grant of Certiorari

This category covers the preparation and filing of a brief or briefs on the merits and the preparation for and presentation of oral argument. Appointed counsel first must seek compensation and expense reimbursement from the United States Supreme Court. Should that court deny counsel’s request, this court will authorize reasonable compensation up to a maximum of \$6,000, plus expenses reasonably and necessarily incurred pursuant to State Board of Control rules.

15. Client Communication/Visits

Regarding appellate counsel, this category covers communication with and visits to interview the client.

- This category does not include travel time, which has its own category.

Regarding counsel appointed for habeas corpus/executive clemency representation, this category covers communication with and visits to interview the client for habeas corpus investigation.

- This category does not include travel time, which has its own category, and it does not include visits to interview the client’s family, etc., for habeas corpus investigation, which belong under “Investigate & Write Habeas Corpus Petition.”

16. Travel

This category covers only the travel time that is not and could not reasonably be spent doing work on the case; e.g., driving from San Francisco to San Quentin in order to visit a client is covered here, but reviewing a draft statement of facts while flying from Los Angeles to San Francisco or Oakland in order to visit a client is covered under “Research & Write Opening Brief.”

17. Other (specify)

This category covers activities that do not fit into any of the other categories.

17a. Trial Court Proceedings to Set Execution Date

Regarding appellate counsel, this category covers trial court services pursuant to Penal Code section 1193.

Regarding counsel appointed for habeas corpus/executive clemency representation, this category covers trial court services pursuant to Penal Code section 1227.

17b. Habeas Corpus Counsel’s Executive Clemency Representation

Regarding counsel appointed for habeas corpus/executive clemency representation, this category covers researching, writing, reviewing, revising and editing a clemency petition and related documents, and proceedings before the Governor of California.

18. Total Hours

This category combines the total number of hours billed for appointed lead counsel, all appointed associate counsel, all nonappointed associate counsel and all paralegals and/or law clerks, respectively.

Note: Model “activity logs” for all hours requested in Part 2 of this form are appended to the Supreme Court memorandum, “Avoiding unnecessary delay in processing fee and expense applications and applications for habeas corpus investigation services and expenses under the ‘time and costs’ Payment Guidelines and the optional Fixed Fee Guidelines.”

Part 3

19. Total Attorney Fees

This category combines the total attorney fees billed for all appointed and nonappointed counsel (total hours multiplied by the respective hourly rates).

Concerning the hourly rates for appointed counsel and nonappointed counsel, see the “Payment Guidelines for Appointed Counsel Representing Indigent Criminal Appellants in the California Supreme Court,” Guidelines II, subpart A, and III, subpart C, 6, a, (3).

Concerning hourly *nonappointed* counsel hours reported under any stage of capital case representation and billed under category 19, note that the court expects that “*the hours devoted to legal services by nonappointed counsel . . . will reduce the hours that appointed counsel will devote to those services.*” (Payment Guideline III, subpart C, 6, b, (1), italics in original.)

20a. General Services and Expenses

For a detailed discussion of reimbursement for general and habeas corpus investigation expenses, as well as billing for hourly fees, see the Supreme Court memorandum, “Avoiding unnecessary delay in processing fee and expense applications and applications for habeas corpus investigation services and expenses under the ‘time and costs’ Payment Guidelines and the optional Fixed Fee Guidelines.”

Note: All “general” services and expenses must be itemized, and supported by activity logs of all service providers, in documents appended to the Cumulative Hours/Services and Expenses Compensation Form. However, as explained below, all expenses need not be documented. A model “Services and Expenses Reimbursement Request” in a “time and costs” appointment case, and “activity logs” of service providers, are appended to the above-described memorandum.

20a(1). General Expenses

This category includes such allowable, noninvestigation (“incidental”) expenses as photocopying, postage and delivery, telephone, computerized legal research and travel costs.

- This category does not include supplies, word processing, overtime or personal items for the

appellant/petitioner, and does not include habeas corpus investigation expenses.

Specified expenses, such as photocopying up to \$100 per month, telephone charges up to \$50 per month, hotel/lodging up to \$47 per night, rental car costs up to \$47 per day, parking/tolls/taxis up to \$47 per day and all other single reimbursable transactions up to \$100, must be itemized but do not require documentation.

20a(2). General Paralegal/Law Clerk Services and Expenses

This category covers the amount billed for reimbursement of all paralegal and law clerk services and expenses other than those related to habeas corpus *investigation*. Examples of such general paralegal/law clerk services and expenses include case file management or indexing for any stage of the capital case representation, and legal research assistance related to any stage of the capital case appeal or habeas corpus representation.

Concerning hourly paralegal/law clerk services and expenses reported under any stage of the capital case representation and billed under category 20a(2), note that the court expects that “*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), will reduce the hours that appointed counsel will devote to those services.*” (Payment Guideline III, subpart C, 6, b, (1), italics in original.)

20a(3). Other General Services and Expenses (specify)

This category covers general services and/or expenses that do not fit into any of the above subparts within category 20a.

20b. Habeas Corpus Investigation Services and Expenses

Note: Although the entire Cumulative Hours/Services and Expenses Compensation Form must be completed by lead counsel billing under the “time and costs” Payment Guidelines, lead “habeas corpus/executive clemency” counsel appointed pursuant to the “Guidelines for Fixed Fee Appointments” must complete and submit Part 1, category 20b of Part 3, and Part 4 to obtain reimbursement for habeas corpus investigation services and/or expenses. Such counsel also must append to this form an itemization of such investigation services and/or expenses, together with activity logs of all service providers, as described below.

For a detailed discussion of reimbursement for general and habeas corpus investigation expenses, as well as billing for hourly fees, see the Supreme Court memorandum, “Avoiding unnecessary delay in processing fee and

expense applications and applications for habeas corpus investigation services and expenses under the ‘time and costs’ Payment Guidelines and the optional Fixed Fee Guidelines.”

Note: All habeas corpus investigation services and expenses must be itemized and supported by activity logs of all service providers, and some expenses must be documented, in a written request appended to the Cumulative Hours/Services and Expenses Compensation Form. Model “Services and Expenses Reimbursement Requests” in both “time and costs” and “fixed fee” appointment cases, and model “activity logs” of service providers, are appended to the above-described memorandum.

Specified expenses, such as photocopying up to \$100 per month, telephone charges up to \$50 per month, hotel/lodging up to \$47 per night, rental car costs up to \$47 per day, parking/tolls/taxis up to \$47 per day and all other single reimbursable transactions up to \$100, must be itemized but do not require documentation.

20b(1). Paralegal/Law Clerk Services and Expenses for Habeas Corpus Investigation

This category covers the amount billed for reimbursement of paralegal and law clerk services and expenses for habeas corpus *investigation*.

- This category does not include paralegal or law clerk services and expenses not related to habeas corpus *investigation*, which belong under category 20a(2), “General Paralegal/Law Clerk Services and Expenses.”

Concerning the hourly rate for paralegals and law clerks, see the “Payment Guidelines for Appointed Counsel Representing Indigent Criminal Appellants in the California Supreme Court,” Guideline III, subpart C, 6, a, (1) & (2).

20b(2). Expenses for Investigator Services

This category covers the total amount billed for reimbursement for the services of investigators, and related expenses.

Concerning the hourly rate range for investigators, see the “Payment Guidelines for Appointed Counsel Representing Indigent Criminal Appellants in the California Supreme Court,” Guideline III, subpart C, 7.

20b(3). Expenses for Expert Services

This category covers the total amount billed for reimbursement for the services of experts and expert witnesses, and related expenses.

Concerning the hourly rate ranges for experts and expert witnesses, see the “Payment Guidelines for Appointed Counsel Representing Indigent Criminal Appellants in the California Supreme Court,” Guideline III, subpart C, 7.

20b(4). Other Habeas Corpus Investigation Services and Expenses (specify)

This category covers habeas corpus *investigation* services and/or expenses that do not fit into any of the above subparts within category 20b.

21. Total Attorney Fees and Services and Expenses

This category combines the total of all attorney fees in category 19, all general services and expenses in category 20a and all habeas corpus *investigation* services and expenses in category 20b.

Part 4

Declaration Pursuant to Penal Code Section 1241

The provisions of Penal Code section 1241 require that this declaration be provided by lead appointed counsel.