



PROMOTING JUSTICE SINCE 1877

## FEE SCHEDULE FOR CRIMINAL CASES

*Effective January 1, 2009<sup>1</sup>*

*(Revised June 13, 2016)*

This fee schedule is subject to change under the terms and conditions of any subsequent Attorney Fee Contract entered into by the ACBA and Alameda County.

### I. DEFINITION OF TERMS

- A. **Billable Activity** Any activity reasonably required to represent a client and consistent with the CAAP Rules and Fee Schedule with regard to billable and non-billable activities. This includes in-court and out-of-court tasks. See Payment Guidelines Section VI subsections A-D for a representative list of billable activities.
- B. **Block Billing** Listing multiple tasks in a summary under a single date/time entry. Block billing is permitted for time increments up to a half an hour (.50 hour). This is also known as “cluster billing”.
- C. **Fee Cap:** The maximum amount of attorney fees that may be billed in a case prior to commencement of trial without an approved Waiver of the Presumptive Pretrial Cap (see section VI Payment Guidelines, subsection G, for additional information).
- D. **Dependently heard case:** A subsequent case involving a client with a primary case already assigned to the panel attorney that is pending in the same courthouse or court location as the primary case. Typically, a probation violation arising out of the same facts that led to criminal charges. The cases do not have to be filed at the same time, nor do they have to be heard or resolved at the same time.
- E. **Lower Superior:** A Superior Court department where the preliminary hearing takes place and where misdemeanors are prosecuted. Formerly the Municipal Court.
- F. **Non-Billable Activity** Any activity done in connection with representing a client, but identified in the Rules and/or Fee Schedule as a non-compensable service. See section VI Payment Guidelines, subsection E, Non-Billable Activities, for an exemplary list of non-billable activities.
- G. **MR:** Miscellaneous Representation refers to representation of witnesses during trial.

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<sup>1</sup> Previous revisions were 1/13/09; 5/15/09; 6/12/09; 3/25/10; 7/1/10; 6/15/12; 5/1/13; and 11/8/13.

- H. PV: Probation violation.
- I. PX: Preliminary examination.
- J. Waiver of Presumptive Pretrial Cap: Certain cases may require an attorney to provide more services before trial than the cap for that particular case allows. An attorney may request a waiver of the cap to the Program for approval. See section VI Payment Guidelines, subsection H for additional information on how to request a waiver.
- K. The Program: Refers to the Alameda County Bar Association Court Appointed Attorney Program (CAAP).
- L. The Committee: Advisory Committee

## II. TIME FOR SUBMISSION OF ATTORNEY FEES AND ANCILLARY EXPENSE REIMBURSEMENTS

- A. Attorney fees and expense reimbursements shall be submitted on a monthly basis for cases where there has been billable activity.
- B. Attorney fees and expense reimbursements for the previous month's activities and expenses are **due** on or before the 10<sup>th</sup> day of each month. Attorneys shall submit fee reimbursements for the previous calendar month's billable activities to the ACBA on or before that date.
- C. Attorneys shall submit their attorney fees using CAAP's online billing system.
- D. Attorneys are responsible for reviewing and approving an ancillary service provider's bill before submitting it to CAAP for reimbursement.
- E. Beginning 30 days after the declaration is due; there will be a 10% reduction per month in fees until the fee declaration is completed. For example, attorney has billable activity in a case during the month of February. Attorney's bill is due to the ACBA on (or before) March 10th. Attorney submits his/her bill for those services on April 10<sup>th</sup>. The attorney's bill would be reduced by 10% because the bill was due on March 10<sup>th</sup> and the bill was deemed late after April 9th.
- F. The ACBA will mail payments to attorneys on or about the 5th of each month, provided that funds from the County are available.

## III. CATEGORIES OF CRIMES

- A. **Criminal Cases:** There are *six (6)* Classes of criminal cases. The committee has set requirements and guidelines for determining which classes of cases an attorney will be authorized to take. Ultimately, the committee shall determine which class an attorney shall be assigned to take with the primary focus being the interests of the clients to be represented. An attorney assigned to a particular Class has been deemed qualified to handle cases in that Class by the Program. An attorney's CAAP Class may be changed at any time. The *six (6)* Classes are:

1. **Special Circumstances (Death):** Cases where a defendant is charged with Special Circumstances and the prosecution seeks the death penalty.

Qualifications: Must qualify for Class 1; must have at least 10 years criminal law litigation experience; must have been lead counsel on 10 serious or violent felony jury trials, including at least 2 murder cases, or 5 serious or violent felony jury trials, including at least 3 murder cases, all of which were submitted to the jury for decision; , must have conducted two trials of any kind where the member presented psychiatric testimony by use of an expert; must have completed, within 2 years prior to appointment, at least 15 hours of capital case defense training (MCLE); and must have handled an appeal, civil or criminal, from beginning to decision by an appellate court.

Alternate Qualifications: The committee may approve placement of an attorney on this panel even if he or she does not meet all of the qualifications if the attorney has demonstrated the ability to provide competent representation of the defendant. In determining whether the attorney demonstrates the ability to provide competent representation, the committee will comply with the requirements of Cal Rules of Court 4.117.

2. **Class 1 A & B & LWOP:**

LWOP—All criminal cases where the maximum prison exposure for the defendant is life without possibility of parole;

1A—All criminal cases where the maximum prison exposure for the defendant is life in prison excluding life without possibility of parole;

1B—All other criminal cases where the maximum prison exposure for the defendant is 25 years or more.

Qualifications: Certified criminal specialists and those who have the equivalent experience.

3. **Class II:** All other felonies for which the possible penalty, including enhancements, is more than 10 years, but less than 25 years.

Qualifications: Must have been chief counsel in at least twenty-five cases charged as felonies, three of which were felony jury trials where the case was submitted to the jury for decision, three of which involved PC§ 1538.5 hearings where evidence was taken before a judge and ten preliminary hearings, all within the preceding three years. Juvenile cases charged as felonies, up to a maximum of ten, may be counted toward the requirement of twenty-five felonies.

4. **Class III:** All other felonies and any misdemeanor that requires registration as a sex offender.

Qualifications: Must have been chief counsel in fifteen criminal cases, three of which were submitted to a jury for decision; an additional five of which involved contested factual hearings; and the remainder of which proceeded to disposition. A maximum of five juvenile cases charged as felonies may be counted toward the requirement of said fifteen cases.

5. **Class IV:** Any theft offense charged as a misdemeanor. All other misdemeanors in which the possible sentence range is one year in the county jail.

Qualifications: Must have handled three criminal cases in which a motion accompanied by points and authorities was filed and argued, a plea was negotiated or testimony was taken.

6. **Class V:** All other misdemeanors.

Qualifications: Must meet general membership requirements, and review trial advocacy tapes as approved by the Program or participate in mandatory training as directed by the Program. In the preceding three (3) months must have personally observed at least one court session in an Alameda County misdemeanor calendar department and two sessions of a criminal jury trial, including at least one jury selection session.

B. **Criminal Appeals:** Appeals of misdemeanor criminal convictions.

Qualifications: Must have prepared and presented one criminal appeal, from settling the record, research and writing, through submission, or provide a writing sample of briefs or motions to the CAAP Committee for review.

C. **Violent Sexual Predator Cases:** W&I 6600

Qualifications: Must qualify for Class 1.

D. **Juvenile Criminal Cases:** Eligibility for juvenile criminal cases shall be based on the same criteria as adult cases. New panel members who have not handled a juvenile case from detention to disposition in their class level, within the last three years, must shadow another juvenile CAAP attorney to observe one pretrial, one detention hearing, and one disposition hearing.

**IV. MAXIMUM CASELOADS BY CASE TYPE<sup>2</sup>:** The contract between the County of Alameda and the ACBA requires that attorney caseloads do not exceed certain maximums based on the types of cases an attorney handles. Below are maximum attorney caseloads based on case type.

- A. Attorneys who accept felony cases are expected to maintain a caseload—including CAAP, privately retained and pro bono cases—of fewer than 150 felony cases at any given time.
- B. Attorneys who accept misdemeanor cases are expected to maintain a caseload—including CAAP, privately retained and pro bono cases—of fewer than 400 misdemeanor cases at any given time.
- C. Attorneys who accept juvenile cases are expected to maintain a caseload—including CAAP, privately retained and pro bono cases—of fewer than 200 juvenile cases at any given time.
- D. Attorneys who accept misdemeanor appeals are expected to maintain a caseload—including CAAP, privately retained and pro bono cases—of fewer than 25 cases at any given time.

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<sup>2</sup> These caseload recommendations were stated in the Request for Proposal (RFP) #901054 for Court Appointed Counsel for Indigent Criminal Defense (Conflict Representation) issued by the County of Alameda. The recommendations at Appendix 4 of the RFP are based on an American Bar Association publication titled *Securing Reasonable Caseloads: Ethics and Law in Public Defense* by Norman Lefstein. These caseload recommendations are included in the CAAP Fee Schedule to give attorneys notice that attorneys participating in CAAP are expected to maintain caseloads at no more than these numbers.

- E. For attorneys who accept cases from more than one category above, it is expected that attorneys will maintain no more than a full caseload, weighting each category based on the maximum for each category. For example, an attorney's practice (including CAAP, privately retained and pro bono cases) is 50% misdemeanors and 50% felonies. The maximum for each is 400 and 150 cases, respectively. The attorney should have fewer than 200 misdemeanor cases and 75 felony cases open at any given time.
  
- F. Pursuant to the contract between the ACBA and Alameda County, CAAP will monitor attorney caseloads and will conduct an annual survey of panel members, to be completed on a voluntary basis, to ascertain their caseload levels with respect to privately retained cases.

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V. **HOURLY RATES PER CLASS/TYPE OF CASE:** Effective June 13, 2016, attorney fees in all juvenile cases and in adult cases Class 3 and more serious cases are not subject to fee caps.<sup>3</sup> Instead, attorney fees in all cases are subject to the presumptive billing guidelines set forth in the Billing Guidelines, subsection D, below. Classes 4, 5 and other types of cases are subject to fee caps as indicated.

<b>Class Type</b>		<b>Presumptive Pretrial Caps Up to Trial<sup>4</sup></b>
<b>Special Circumstances</b>	\$ 130 hour	n/a
<b>LWOP</b>	\$ 120 hour	n/a
<b>Class 1A</b>	\$ 105 hour	n/a
<b>Class 1B</b>	\$ 100 hour	n/a
<b>SVP</b>	\$ 100 hour	n/a
<b>Class 2</b>	\$ 90 hour	n/a
<b>Class 3</b>	\$ 85 hour	n/a
<b>Class 4</b>	\$ 75 hour	\$ 1100
<b>Class 5</b>	\$ 70 hour	\$ 850
<b>Contempt</b>	\$ 75 hour	\$ 1600
<b>Dependently Heard Probation Violations</b>	Bill time spent solely on the probation violation separately, at the same rate as the charged case, making reference to the charged case.	
<b>Independent Felony Probation Violations</b>	\$ 85 hour	\$ 600
<b>Miscellaneous Representations</b>	Hourly rate is the same as the charged case.	
<b>Misdemeanor Appeals</b>	\$ 80 hour	\$ 3,800

<sup>3</sup> Changes in hourly rate and fee caps apply to billings in all cases after June 13, 2016, without regard to when the attorney received the referral. These changes, however, do not apply to any case in which a fee cap increase was denied.

<sup>4</sup> Presumptive pretrial caps apply to all work performed up to trial. Caps no longer apply once a case is sent to a department for trial unless a case is sent from a trial department back to the calendar department. If a case is sent from a trial department back to a calendar department before trial proceedings commence, the cap will remain in effect (absent a waiver). In certain cases, when necessary, a presumptive pretrial cap may be waived. See Payment Guidelines, Section G. Requests to Waive the Presumptive Pretrial Cap for additional information about waiver of caps. For trials heard in calendar departments, caps no longer apply once the court begins addressing *in limine* motions or the attorney begins picking a jury.

<b>Independent Misdemeanor Probation Violations</b>	\$ 75 hour	\$ 400
<b>Writs</b>	\$ 100 hour	\$ 3,000
<b>Juvenile cases (Class 1-5)</b>	Hourly rate is determined by calculating the maximum exposure as if the minor was charged as an adult.	

**Other Payments**

<b>Non-Appointment Fee</b>	\$ 95	\$ 95 per case
<b>Same Day First/Last Appearance<sup>5</sup></b>	\$ 100	\$ 100 per case
<b>Lineups</b>	\$ 250	\$ 250 per lineup
<b>In-Custody Client Visits (JJC, NCJ, SRJ)<sup>6</sup></b>	Hourly rate is based on class of case.	

The Program does not pay for infractions handled through the Traffic Case Management System (TCMS).

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<sup>5</sup> When an attorney is appointed in a charged case and the attorney resolves the case in less than one hour, an attorney should bill a same day first/last appearance fee.

<sup>6</sup> Visit must be independent from any court appearance at JJC and NCJ.

## **VI. PAYMENT GUIDELINES**

### **A. General Information**

1. The purpose of these guidelines is to promote uniformity in billing, to aid staff review and payment of billings, and to assist and educate panel attorneys in good billing practices. The guidelines are based on CAAP panel members' actual billing patterns and on the guidelines of indigent defense panels in other counties.
2. These guidelines cannot address all situations. The basic principles of billing are (a) bill for actual time spent; (b) work efficiently; and (c) provide staff with detailed explanations and descriptions of work performed. Billing activity inconsistent with these principles will not be compensated.
3. Attorneys must keep track of both in-court and out-of-court preparation time and are expected to use reasonable judgment in deciding what to request compensation for.
4. Attorneys may not bill more than ten hours each day for work completed on CAAP cases except when in trial.
5. Attorneys are expected to request compensation only for work performed for the case. This includes time spent modifying motions and other work done previously by themselves or other attorneys, but not for "recycled" material that is simply copied into a current motion or pleading.
6. Attorneys are expected to be experienced and knowledgeable in the practice of criminal law. The Program will not pay for attorneys to become familiar with law and procedure that criminal law practitioners are already expected to know.
7. Attorneys should work efficiently. The Program will pay only for work that is necessary for defending the client and appropriate for the stage of the case.
8. Attorneys are expected to use ancillary service providers as needed and whenever overall cost savings can be achieved (e.g., large copy jobs, messengers, process servers for serving subpoenas duces tecum, etc.).
9. Receipts are required for any reimbursable expenses.
10. Attorneys are required to use the least expensive form of duplication. Attorneys are encouraged to scan documents and transfer them as digital files as these methods are more cost effective.

### **B. Hourly Billing**

1. Attorney bills must include a clear itemization of the date and nature of each court appearance, and the date, nature and time expended for each out of court task. Below is an illustration of acceptable and unacceptable billing practices:

Date	Time	Acceptable	Unacceptable
1/1	.9	Discovery review – 38 pages plus charting witness statements	Discovery
1/2	1.4	PT in 501, long line, conf. w/client	PT
1/8	2.1	PX prep-review Joe's two statements, prep cross	PX prep
1/8	.4	Comm w/ client re: offer and exposure	Met with client
1/9	.60	PX D100 – put over to 2 b/c DA witness FTA'd	PX
1/9	2.5	PX D101 W1, begin W2	PX
1/3	.40	Disco review – Cooper PDRD 1 of 3 (15 minute long) – hard to hear	Reviewed PDRD
1/16	.20	Comm w/co-counsel re: co-Ds 995	Comm w/co-counsel
1/22	.10	(before court) tel conf w/client's mother	Tel conf with family
1/22	.10	(after court) tel conf with client's mother explaining new/dismissed charges.	Tel conf with family
3/10	3.70	Trial prep – reviewed 50 jury questionnaires; made jury chart	Trial prep

2. Discrete individual tasks must be delineated. Sufficient information must be provided to allow for meaningful review.
3. Attorney bills that are unclear or require excessive time to review may be rejected.
4. Attorney bills shall account for time in 0.1 hour (i.e., six-minute) increments.
5. Combine multiple small tasks and bill them as a single block up to one half hour (.5 hour).
6. When reviewing paper documents, identify what the documents are and indicate the number of pages reviewed.
7. When reviewing digital discovery and recordings such as CDs, DVDs and audiotapes, indicate the total number of images viewed, or duration of the recording, the actual time spent reviewing it and whether the recording and/or review were particularly complex. Describe the recording to make it clear what was reviewed. Reviewing printouts from electronic media should include the number of pages and a description of the content.
8. Reconstruction of time spent on a task (i.e. motion, discovery review, etc.) when finished, at the end of the day, or at the end of the month is prone to error and it is evident to staff. The better practice is to record the time and task throughout the day.
9. Formulaic billing is billing the same amount of time for a certain activity, no matter how long that activity actually took. For example, always billing 1.5 hours for the first court appearance, 1 hour for every 50 pages reviewed, or 1 hour for preparing before every court appearance is billing by formula and is impermissible.

10. Communication with your client is necessary and essential in order to provide excellent representation. The same is not necessarily true with communicating with your client's friends and family. You are expected to use your judgment when communicating with your client's friends and family and how frequently to do so.

C. **Billable Activities** Attorney billable activities are defined as follows:

1. Services performed while Court is in session either in court or in chambers. This includes time spent waiting for a case to be called. Attorney must note department when billing for court time.
2. Any out of court activities reasonably required to represent a client and not identified as non-billable.
3. An attorney may charge no more than one-hour for purchasing clothing for in-custody defendants.
4. Travel time to and from an institutional facility housing your client for the purposes of visiting him/her.
5. Time to review notes and/or summaries of a client's case in preparation for court dates will be compensated so long as an adequate description is provided of the work and its relation to the court date. "File review" as a description is inadequate. Reviewing the entirety of a client's file in preparation for a settlement conference, readiness conferences or progress report will not be compensated.
6. **Appeals, Motions, and Writs:** When an attorney is requesting payment for preparing an appeal, motion or writ, a copy of the document must be submitted to CAAP.
7. Attorneys shall personally perform or oversee all necessary services in the cases in which the attorney has been appointed, with the exception of court appearances for continuances and settings. When the attorney is not available to appear in court for a continuance or setting, the attorney may arrange for another panel attorney to appear in his or her place. Payment for the substitute attorney's services is the responsibility of the appointed attorney, who may bill for those services as if the appointed attorney personally performed them. Attorneys may not bill for communications with the substitute attorney. This rule may be waived in emergencies and other exceptional situations only with the prior approval of the Director.

D. **Billing Guidelines:** The guidelines set out here are intended to exemplify a reasonable amount of time for performing the specified activities under ordinary circumstances.

1. Tasks completed within the times specified in the guidelines will not need further explanation. You must justify claims exceeding the guidelines by providing an explanation for the amount of time billed, including a detailed description of the work. If staff determines your explanation is inadequate, then you may not be paid for the amount of time over the guideline.
2. You may, but are not required to, request prior authorization from staff for more time to spend on a task.

3. **The guidelines do not define either a maximum or a minimum.** You are expected to bill the actual time spent to perform the billed activity regardless of the guidelines. In other words, the guidelines do not automatically authorize you to bill for reading discovery at a rate of 50 pages per hour without regard to the actual time spent. Nor do they indicate that you will not be paid for time exceeding the guidelines.
4. The Director's decision to modify an attorney's fee claim may be appealed to the Advisory Committee in accordance with the Rules. The appeal must be submitted within ten days of receiving notice of the modification. The appeal must: 1) identify the client, case, date and billing item to be reviewed; 2) describe what was billed and how it was modified; and 3) explain why the modification should be changed. The appeal will be heard at the next Committee meeting. The Committee's decision is final.
5. CAAP reserves the right to deny payment for any billed service or expense that CAAP determines to be unreasonable, unnecessary or to have been done inefficiently.
6. The guidelines are not exhaustive. Attorneys are expected to follow the general billing practices outlined in subsection A, above, in section VI Payment Guidelines when billing for tasks not specified in the guidelines.

<b>Billing Activity/Task</b>	<b>Guideline (in tenths of an hour)</b>
Routine court appearances (except Class 4 and 5)	1.0
Reviewing paper discovery (includes time spent reading and reviewing and taking notes on facts and issues)	50 pages per hour
Telephonic communications with district attorney, court staff, and co-counsel (except in SC/LWOP cases)	.10 per call
Written correspondence with client over routine matters (e.g. future court dates, bench warrant letters, providing discovery)	.10 per letter/email
Preparing informal discovery request (except in SC/LWOP cases)	.30
Preparing Motion to Continue (except in SC/LWOP cases)	.30
Preparing Motion to Suppress (Williams/1538.5 notice and declaration)	1.0
Preparing Motion to Suppress (non-Williams)	2 to 8 hours depending on complexity of the issues.
Preparing Motions to Disclose Informant (MDI)	3 to 5 hours depending on complexity of the issues.
Reviewing PX transcripts	60 pages per hour
Preparing 995 Motion (except in SC/LWOP cases)	Statement of Facts: up to ½ of the time spent reviewing the PX transcript <i>plus</i> 1-3 hours to research and draft each distinct legal issue, depending on the complexity of the issue(s).
Preparing Pre-sentencing letter following a plea	1.0
Preparing Return of Property Motion	.50

E. **Non-Billable Activities:** Attorney non-billable activities are defined as follows:

1. Travel time to and from the courthouse and to and from the attorney's office and/or home.
2. Clerical & support staff activities including preparation of proofs of service, faxing, filing, copying, or preparation of bills for CAAP. These are considered overhead costs.
3. Time spent waiting for copies, faxes, emails, walking to the post office or time spent waiting for other administrative tasks to be completed.
4. Being available to the Court on telephone standby.
5. Service of documents and subpoenas on the District Attorney, Public Defender or any other agency or attorney that accepts service by fax, mail or email.
6. Attorneys will not be compensated for the preparation of multiple subpoenas for a single witness or agent once the witness or agent has appeared in Court. Attorneys must have the court recognize and order back all witnesses who appear pursuant to a subpoena.
7. File maintenance is not billable. Opening, labeling and storing a client's file is an overhead expense. Many file-related activities, such as breaking down discovery and exhibits and creating trial notebooks, are billable so long as the activity is specifically described.

F. **Non-Reimbursable Costs and Expenses:** The following are considered non-reimbursable costs or expenses:

1. Parking.
2. Telephone charges – collect or otherwise.
3. Fax charges.
4. Office supplies including audiotapes, videotapes, DVDs, CDs, and USB flash drives. In extraordinary cases, prior approval may be obtained for reimbursement of DVDs, CDs and USB flash drives.

G. **Presumptive Pretrial Caps**

1. Caps apply to all work performed up to trial or probation violation hearing absent an approved waiver of the presumptive pretrial cap (see Section H below).
2. Caps remain in effect even after the client has pled guilty or makes an admission of guilt.
3. Caps no longer apply once a case is sent to a department for trial or probation violation hearing or unless a waiver of the presumptive pretrial cap has been approved. (See Section H. below.)
4. For trials or probation violation hearings heard in calendar departments, caps no longer apply once the court begins addressing *in limine* motions or the attorney begins picking a jury.

5. For trials or probation violation hearings heard in trial departments, caps no longer apply a) to courtroom time once the case is in a trial department; and b) to preparation time once motions begin.
6. If, however, a case is sent from a trial department back to the calendar department before trial or probation violation hearing proceedings commence, the presumptive pretrial cap will remain in effect.
7. Time spent negotiating in court on a trial date will not be counted against the cap.

#### H. **Requests to Waive the Presumptive Pretrial Cap**

1. An attorney may request a waiver of the applicable cap if the additional work is reasonable and necessary to provide an adequate defense.
2. Requests must be submitted in writing to the CAAP Director and must include the following information: (a) facts of the case; (b) what is unusual about the case; (c) description of the work performed; (d) description of the future work or task anticipated; and (e) itemization of the time needed to complete the anticipated work or tasks.
3. Requests shall be submitted prior to reaching the cap. Requests received after an attorney has exceeded the cap may be denied.
4. Decisions to approve or deny waiver requests are guided by the standards of representation outlined in the State Bar of California's Guidelines on Indigent Defense Services Delivery Systems (2006). Decisions to approve or deny requests are based on the information provided by the attorney's request for waiver of the presumptive pretrial cap and any additional information or documentation provided by the attorney. Boilerplate requests will be denied.
5. The decision of the Director of CAAP may be appealed to the CAAP Advisory Committee.
6. No payment shall be made for services which are not reasonable and necessary to provide an adequate defense.

#### I. **Miscellaneous Payment Issues**

1. **Multiple Cases in One Calendar Session:** Except for dependently heard probation violations, an attorney with multiple cases on calendar shall apportion any wait time equally between/amongst the cases. Dependently heard probation violations shall be billed only on the charged case unless the time was spent solely on the probation violation.
2. **Multiple Cases for One Defendant:** When an attorney is handling multiple cases for a defendant concurrently, the attorney must apportion time amongst the cases as accurately as possible. If any of the cases include trailing probation violations being handled simultaneously with an open case, the attorney may not bill on the probation violation until and unless there are independent court dates.

3. Withdrawing From Case: An attorney may not accept appointment in a new case if the attorney has professional, personal or calendar commitments that adversely affect the attorney's ability to represent the client. Where it is the client's wish or in the client's best interest to proceed on a no-time-waiver basis, an attorney may not accept the case if the attorney will not be available to represent the client.
  - a. Attorneys must check for ethical conflicts which would prevent the attorney from representing the client. The attorney must check for conflicts throughout the pendency of the case. The attorney may not accept appointment if a conflict is evident. After the attorney accepts appointment, if a conflict arises, the attorney must withdraw immediately.
  - b. An attorney who accepts appointment to represent a client must continue to represent the client until the case is resolved. Examples of when the attorney must continue representation include: 1) When the attorney withdraws after a bench warrant issues, the client is arrested on the warrant and the court requests the attorney to resume representing the client; 2) When the court requires the attorney to represent the client at post-sentence hearings; 3) In Special Circumstances cases, when the prosecutor chooses not to seek death.
  - c. An attorney who withdraws from a case in violation of these rules may not be paid and, if already paid, the attorney may have to return the fee to the Program. If the attorney withdraws, the attorney must submit a letter setting forth the reasons for the withdrawal. Except in extraordinary circumstances, an attorney who accepts appointment in a case and thereafter withdraws from it because of previous commitments will not be paid for the case. Except in extraordinary circumstances, an attorney who withdraws from a case due to a conflict will not be paid for services performed after the date the attorney reasonably should have discovered the conflict.
4. Attorney Not Appointed: If an attorney is referred to a case, travels to the court for the sole purpose of being appointed on that case, and for any reason is not appointed, a fee of **\$95** will be paid. It shall be the attorney's responsibility to notify the CAAP, within one working day that he/she was not appointed to the case, at which time the attorney will be placed back into the rotation as if he or she had not been referred to that case. If the attorney is paid and then subsequently is appointed to represent the client, the **\$95** payment shall be deducted from the attorney's earnings for representing that client.
5. Harris Motions: An attorney who requests or accepts an appointment from the bench, including an appointment under *Harris v. Superior Court* (1977) 19 Cal. 3d 786, without a referral by the Program is not entitled to compensation from the Program. The Program will pay attorney fees and/or expenses only in those cases in which the Program has referred the attorney for appointment.

#### J. Attorney Fees

1. All requests for payment of attorney fees must be submitted using CAAP's online billing system. Attorney fees must be submitted on a monthly basis for all cases where billable activity has occurred.

2. Beginning 30 days after billing declarations are due, there will be a 10% reduction per month in fees until the fee declaration is completed. For example, attorney has billable activity in a case during the month of February. Attorney's bill is due March 10. Attorney submits his/her bill for those services on April 11. The attorney's bill would be reduced by 10% because the bill was due on April 9<sup>th</sup>.
3. Expenses: All non-attorney fees and expenses, such as expert witness fees, investigator's fees, outsourced copying, etc., must be billed using CAAP's online billing system. The invoice or receipt must be uploaded with the client's monthly billing to CAAP's online billing system along with a copy of the authorization approving payment for such non-attorney fees or expenses. Receipts are not required for reimbursement of billable de minimis amounts (\$10.00 or less) where receipts ordinarily are not available. Expenses less than \$50.00 do not require prior approval. Neither of these allowances overrides any other rule set forth in this Fee Schedule or in the Rules and Regulations for the Program.
  - a. Attorneys are responsible for monitoring, reviewing, and approving investigators', expert witness, and other ancillary providers' bills before such bills are submitted to the Program for payment.
  - b. It is the attorney's responsibility to pay the ancillary service provider's invoice. It is also the attorney's responsibility to see that the expert/investigator's invoice does not exceed the authorized amount and to seek additional funds, when necessary. It is the attorney's responsibility to submit invoices for ancillary service providers within ninety (90) days of the date service is completed. The Program may refuse to pay expenses submitted after ninety (90) days from the date the service is completed.
  - c. The Program may refuse to pay expenses that exceed the amount authorized. The attorney must submit the invoice and an explanation for exceeding the authorized amount attached to the request for reimbursement. Generally, the Program will not pay unauthorized services performed by an investigator. Exception may be made where waiting for the Program to authorize an expense was impractical.
4. Per Diem Guidelines: Travel Per Diem for lodging and meals shall be reimbursed at the following rates:
  - a. The Per Diem rate for lodging (including taxes and fees) shall be a maximum of **\$150** per day unless specific exception is made prior to travel;
  - b. The Per Diem rate for meals shall be a maximum of **\$60** per day;
  - c. CAAP will not provide reimbursement for any of the following:
    - (1) Expenses incurred for spouse, family member, or any person not specifically authorized by CAAP;
    - (2) Alcoholic beverages of any kind;
    - (3) Snacks or soft drinks or other nonalcoholic beverages not consumed as part of a meal;

- (4) Personal telephone calls, whether charged local or long distance toll calls;
- (5) Any form of personal entertainment;
- (6) Any charge for which there is no receipt, except documented mileage;
- (7) Gasoline, where mileage rate is paid;
- (8) Any expense associated with travel, lodging, meals, or incidental costs where prior approval of CAAP is not requested and given.

K. **Expenses:** In accordance with the Rules, reasonable and necessary expenses shall be reimbursed only on prior written approval by the Director. The Director may approve expenses up to \$5000. In certain circumstances, an expense may require additional review by the Committee. When expenses in a case have/will exceed \$5000, the Committee shall review.

1. **Investigation:** It is the attorney's responsibility to read/review the discovery, develop a theory of defense of the case, and, if investigation is needed, communicate specific tasks to the investigator that need to be done. Investigators complete all work at the attorney's direction, and the attorney is responsible for the verification of the reasonableness of their services. This is not to discourage suggestions and input from an investigator to the attorney, but a reminder that the attorney makes all decisions with respect to what investigation is, or is not, to be done. These decisions shall not be delegated to an investigator.
  - a. All requests for investigation must be made in writing and approved by the Director of CAAP or CAAP Advisory Committee before the expense is incurred. The request must be on the approved form by the Program, prepared by the attorney (not the investigator), must be case specific and detail the tasks to be performed by the investigator, an estimate of the number of hours needed for the investigation, and a specific dollar amount requested. The request for investigation serves as both the justification for the funding requested as well as the written investigative request to the investigator. Boilerplate investigation requests will not be approved.
  - b. In case an emergency arises during trial, the Director of CAAP (or a Committee Member) should be contacted immediately so that approval can be given quickly for new investigation needs. All emergency authorizations must be followed up with a written request on the approved form as soon as possible but no later than seven days after the request was approved.
  - c. It is the attorney's responsibility to insure that investigators are aware of the guidelines and procedures set forth in the CAAP "Rules for Investigators" and the necessity to comply. The Program maintains a list of licensed investigators who have agreed to do CAAP Program investigation at the rates determined by the Program set out below. While that list is available to CAAP attorneys, the Program makes no recommendation as to any investigator.
  - d. **Billable Investigative Tasks:** The Program will pay **\$60.00** per hour and mileage at the current IRS rate for billable investigative tasks as outlined in the Rules for Investigators;

- e. **Billable Non-Investigative Tasks:** The Program will pay **\$25.00** per hour for billable non-investigative tasks as outlined in the Rules for Investigators; and
  - f. **MP3 Creation:** The Program will pay a maximum of **\$25.00** per disc for extracting the audio/video and creating an MP3 file and **\$18.00** per hour for editing/redacting material which may not be disclosed to the client. The attorney must listen to the CD/DVD first and mark where redaction should occur before the CD/DVD is given to the investigator.
2. Expert Witness: Requests for funds for expert witnesses must be in writing and must include a detailed explanation as to why the expert is needed and must be submitted for approval prior to incurring the expense. The attorney shall get a written estimate from the expert and submit that with the request for authorization. It is also recommended that several inquiries be made in order to take advantage of rate differentials. The Program will pay experts as follows:
- a. For out of court preparation, a maximum of **\$300** per hour for consultation and **\$200** per hour for travel up to a maximum of **\$3500**;
  - b. For testimony, a maximum of **\$300** per hour and **\$200** per hour for travel.
3. Immigrant Legal Resource Center (ILRC): Attorneys are expected to comply with their legal obligations to advise their clients of immigration consequences prior to the client accepting a plea or going to trial. Attorneys may consult with the Immigrant Legal Resource Center (ILRC) without prior approval or authorization. An ILRC Attorney of the Day (AOD) is currently available for consultation Monday through Thursday, 10:00 a.m. to 3:00 p.m. If you leave a message fax or e-mail, the AOD will get back to you as soon as possible, and certainly within no more than two business days. The ILRC charges \$200.00 per hour for attorney time. The minimum amount of attorney time logged for a consultation will be 1/10<sup>th</sup> of an hour.
4. Transcribers, Interpreters, Paralegals, etc.: Requests for funds for transcribers, interpreters for witnesses, paralegals, process servers, and other ancillary service providers must also be made in writing on the authorization form before the expense is incurred. As with experts and investigators, all bills are to be submitted to the Program by the attorney on the standard Fee Declaration form, which must include a copy of the invoice, along with a copy of the authorization form(s). Payment is made to the attorney, who is responsible for paying the service provider's invoice.
- a. **Securing Interpreters to interview clients:** Attorneys must follow the procedures set out by the Program to secure interpreters to communicate with clients. Interpreters will be provided through the Alameda County Interpreter Services.
  - b. **Certified Interpreters:** The Program will pay a maximum of **\$75** per hour for certified interpreters.
  - c. **Non-certified Interpreters:** The Program will pay a maximum of **\$50** per hour for non-certified interpreters.
  - d. **Paralegals:** In extraordinary cases, an individual attorney may submit a request for paralegal services. A paralegal is defined as: 1) a lawyer, 2) a person with at least one

year of law school, 3) a graduate of a paralegal program, or 4) one who has worked as a paralegal for at least two years. The CAAP Advisory Committee reviews all requests for paralegal services and approves funds for this purpose on an ad hoc basis. The Program will pay a maximum of **\$30** per hour for paralegals.

- e. **Transcription:** The Program will pay a maximum of **\$25** per hour for the actual time spent transcribing (or \$2.00 per minute of recorded statements) tapes/CDs/DVDs or other media. When more than one CAAP attorney is involved in a case, the Program will pay for only one transcription of tapes/CDs or other media. An attorney shall make the transcriptions available to all other CAAP attorneys in that case. This includes instances where one client is charged as a juvenile and another as an adult. If an attorney wants audio/video files transcribed, the attorney must identify which files are to be transcribed and explain why it is necessary.
5. Special Circumstances - Death Penalty - Procedure: The attorney must secure a court order for investigation and expert witness expenses pursuant to Penal Code Section 987.9 and present the order to the Auditor-Controller's Office for payment.
6. Copying Costs: The Program will reimburse attorneys for **in-house** copying at a rate not to exceed ten cents per page up to a maximum of 100 pages per case. Larger copy jobs may be sent out with prior approval.
7. Trial clothing: The Program will only reimburse attorneys \$75 for clothing purchased for in custody defendants. It is not necessary to seek prior approval for this expense.
8. Other Incidental Costs: The Program will not reimburse attorneys for long distance telephone calls, parking, mileage, or other such costs.

#### L. Additional Rules for Fee Payments

1. Case Exceeds Attorney's Class: An attorney may accept only those cases which are in the attorney's class. Where the attorney finds that the case exceeds the attorney's class, the attorney must inform the Program immediately. If, after the attorney has accepted a case for which he or she is eligible, the charging document is amended and causes the case to exceed the attorney's class, the attorney must inform the Program immediately. The Program shall reassign the case to another attorney absent extraordinary circumstances. The Program may impose sanctions for failing to abide by this rule, including nonpayment of attorney fees or removal from the panel.
2. Attorney Believes Case is a Higher Class: If the attorney believes a case is in a higher class than what Program staff indicated, and the attorney is eligible to take cases in the higher class, the attorney must send a copy of the charging document and ask that the case be set at the higher class. Otherwise, a case will be paid at the class level for which it was assigned. Attorneys will not be compensated retroactively for time billed at the lower rate. When calculating exposure, the Program does not consider uncharged priors, nor will priors be viewed as strikes when they are not specifically pled as strikes pursuant to 1170.12(c)(1) or 1170.12(c)(2).
3. Double Billing Not Allowed: As to any client, an attorney may bill only once for work performed at any given time. Examples of double billing that are not allowed include, but are

not limited to, the following: (1) billing for essentially the same motion on multiple cases for the same client; (2) billing for multiple dependently heard PVs for the same client on the same date, in the same dept.; (3) billing a probation violation hearing heard concurrently with a PX.

4. **Redacting Discovery**: All attorneys are expected to comply with PC § 1054.2 barring disclosure of telephone numbers and addresses of witnesses to anyone, including the defendant and the defendant's family. Redaction of discovery needs to be effective and complete. **Attorneys are responsible for reviewing and approving all redacted materials prepared by third parties before delivery to the client.** When billing for the time to redact documents, attorneys must include the total number of pages actually redacted.
5. **Appointments from the Bench**: An attorney who accepts an appointment from the bench, without a referral by the Program, is not entitled to compensation from the Program. If offered an appointment from the bench, the attorney is obligated to tell the Judge that they will not get paid by CAAP until and unless the court gets prior approval from CAAP. Attorneys who take appointments from the bench without the consent of the Program are in violation of CAAP Rules and subject to discipline or removal from the panel.
6. **Additional Compensation**: If an attorney believes that the services provided in a particular case warrant compensation above that which is authorized by this fee schedule, the attorney may write a detailed letter to the Committee explaining why additional compensation is justified. The committee, at its discretion, may award additional compensation for extraordinary efforts on the part of the attorney.
7. **Fee Audit**: The Program shall administer a fee audit program that reviews certain fee declarations from attorneys who accept referrals from CAAP in order to help ensure compliance with CAAP's billing policies and procedures.
  - a. ***Fee Audit Subcommittee***: A fee audit subcommittee of the Committee, in collaboration with the Director of CAAP (or designee), shall review fee declarations submitted by panel attorneys selected for audits. Members of the subcommittee shall be appointed by the Chair of the CAAP Advisory Committee. The subcommittee shall be comprised of three to five people and shall serve on the subcommittee for at least one year.
  - b. ***Audit Triggers***
    - (1) Claims for attorney fees and expense reimbursements will be subject to review by the fee audit subcommittee when any of the following occur:
      - a) The panel member's conflicts compensation exceeded \$60,000 in any six-month period;
      - b) The panel member's average compensation per case exceeded 150% of the average compensation per case of all other panel attorneys, in the same class, in any six-month period;
      - c) Questions are raised about a billing practice or specific fee declaration of a panel member;
      - d) The panel member's declaration(s) is randomly selected.
    - (2) Approximately ten percent of the total number of attorneys participating in CAAP will be audited each year.

- c. **Conflicts of Interest:** A member of the fee audit subcommittee shall recuse himself or herself from any and all participation in the consideration of a panel member's fee declarations, or from attempting to influence others with respect to such consideration, in the following circumstances:
- (1) He or she is the current or former law partner or associate of the panel member;
  - (2) He or she, or the law firm or office with which he or she is affiliated, represents the panel member;
  - (3) He or she, or the law firm or office with which he or she is affiliated, is a party to pending litigation in which the panel member, or the law firm or office with which the panel member is affiliated, is also a party or represents a party to that litigation;
  - (4) He or she, or the law firm or office with which he or she is affiliated, represents a party in pending litigation in which the panel member, or the law firm or office with which the panel member is affiliated, is a party;
  - (5) He or she or his or her spouse is related to the panel member by consanguinity or affinity within the third degree according to the rules of civil law;
  - (6) He or she stands in the relation of guardian and ward, conservator and conservatee, employer and employee, or principal and agent to a panel member;
  - (7) He or she has appeared as an expert witness or acted as a consultant or has been consulted with reference to an actual or threatened lawsuit against the panel member for malpractice.
  - (8) He or she has any personal bias or prejudice concerning the panel member which would prevent him or her from fairly evaluating all of the evidence concerning that panel member.
  - (9) He or she represents or represented a co-defendant in the case to be audited.
- d. A fee audit subcommittee member who represents one party to a pending legal matter other than the case to be audited where the panel member to be audited represents another party in the matter may recuse himself or herself, or be recused in the discretion of the Chair of the CAAP Advisory Committee.
- (1) In the event that a member of the fee audit subcommittee does not voluntarily recuse himself or herself, the Chair of the CAAP Advisory Committee shall, upon becoming aware of factors which may indicate a potential conflict of interest as described above, initiate an inquiry and make a determination as to whether or not such member should be disqualified. Any resulting determination in that regard shall be binding.
- e. **Confidentiality:** All references, communications, reference forms, and information gathered pertaining to a CAAP panel member during a fee audit shall be the property of the Alameda County Bar Association and are to be treated as confidential. Votes of the subcommittee shall be confidential. Members of the subcommittee shall not disclose to others in any manner, except for the purposes of confidential inquiry during the course of consideration of any fee audit, the name of the panel member audited, the discussions, deliberations or action of the subcommittee concerning any panel member's fee audit, information obtained during investigation or deliberation of the subcommittee, or any documents relating to the foregoing, unless ordered to do so by a court of competent jurisdiction.

- f. ***Fee Audit Investigation:*** The subcommittee or its designee shall conduct a review and investigation to determine whether the attorney's fees conform to CAAP's billing guidelines and is otherwise accurate, proper and reasonable. The investigation may include review of other attorneys' fees submitted in the same, or similar cases, a review of court files, review of records of detention facilities, and/or interviews of panel members including the panel member whose fee declaration(s) is (are) being reviewed. The panel member may be required to produce the client's entire case file including digital and paper documents. The subcommittee endeavors to render its preliminary recommendation to the CAAP Advisory Committee within 30 business days.
- (1) No provision of this section shall be construed as permitting disclosure to the panel member of information from which the panel member may infer the source, and no information shall either be disclosed to the panel member or be obtained by any process which would jeopardize the confidentiality of communications for persons whose opinions have been sought in the investigation.
  - (2) Failure to cooperate during a fee audit investigation may result in sanctions including but not limited to non-payment of fees or reimbursement of fees already paid.
- g. ***Determination:*** In the event that the fee audit subcommittee determines as a result of its review and investigation that an attorney's fee declarations do not comply with the CAAP's billing guidelines or is not otherwise accurate, proper or reasonable, the Director of CAAP (or designee) shall notify the panel member in writing, specifying the reasons for their recommendation. The panel member may provide a written response within 15 business days to CAAP, which will be forwarded to the CAAP Advisory Committee. After reviewing the panel member's response, the CAAP Advisory Committee has 15 business days to render a decision. The CAAP Advisory Committee may make any adjustment to the attorney's fee declarations it deems appropriate. A copy of such decision shall be given to the panel member. The decision of the CAAP Advisory Committee shall be final.
- (1) An adjustment of attorney's fees by the CAAP Advisory Committee does not necessarily constitute a finding of wrongdoing.
  - (2) In the event that the fee audit subcommittee makes a determination that a panel attorney's fee declarations do not comply with CAAP's billing guidelines or is not otherwise accurate, proper or reasonable, that determination may also be communicated to the Director of CAAP for administrative action including, but not limited to: suspension, reclassification or removal from CAAP.

(end)