

Rules Adopted or Amended by the Judicial Council, Effective April 25, 2019

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FOR TRAINING PURPOSES ONLY

Official versions will be posted on April 25, 2019, the effective date of the rules.

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1 Title 4. Criminal Rules

2
3 Division 2. Pretrial

4
5 Chapter 1. Pretrial Proceedings

6
7 **Rule 4.119. Additional requirements in pretrial proceedings in capital cases**

8
9 **(a) Application**

10
11 This rule applies only in pretrial proceedings in cases in which the death penalty
12 may be imposed.

13
14 **(b) Checklist**

15
16 Within 10 days of counsel's first appearance in court, primary counsel for each
17 defendant and the prosecution must each acknowledge that they have reviewed
18 Capital Case Attorney Pretrial Checklist (form CR-600) by signing and submitting
19 this form to the court. Counsel are encouraged to keep a copy of this checklist.

20
21 **(c) Lists of appearances, exhibits, and motions**

22
23 (1) Primary counsel for each defendant and the prosecution must each prepare
24 the lists identified in (A)–(C):

25
26 (A) A list of all appearances made by that party during the pretrial
27 proceedings. Capital Case Attorney List of Appearances (form
28 CR-601) must be used for this purpose. The list must include all
29 appearances, including ex parte appearances; the date of each
30 appearance; the department in which it was made; the name of counsel
31 making the appearance; and a brief description of the nature of the
32 appearance. A separate list of Penal Code section 987.9 appearances
33 must be maintained under seal for each defendant.

34
35 (B) A list of all exhibits offered by that party during the pretrial
36 proceedings. Capital Case Attorney List of Exhibits (form CR-602)
37 must be used for this purpose. The list must indicate whether the
38 exhibit was admitted in evidence, refused, lodged, or withdrawn.

39
40 (C) A list of all motions made by that party during the pretrial proceedings,
41 including ex parte motions. Capital Case Attorney List of Motions
42 (form CR-603) must be used for this purpose. The list must indicate if a
43 motion is awaiting resolution.

1
2 (2) In the event of any substitution of attorney during the pretrial proceedings,
3 the relieved attorney must provide the lists of all appearances, exhibits, and
4 motions to substituting counsel within five days of being relieved.

5
6 (3) No later than 21 days after the clerk notifies trial counsel that it must submit
7 the lists to the court, counsel must submit the lists to the court and serve on
8 all parties a copy of all the lists except the list of Penal Code section 987.9
9 appearances. Unless otherwise provided by local rule, the lists must be
10 submitted to the court in electronic form.

11
12 **(d) Electronic recordings presented or offered into evidence**

13
14 Counsel must comply with the requirements of rule 2.1040 regarding electronic
15 recordings presented or offered into evidence, including any such recordings that
16 are part of a digital or electronic presentation.

17
18 *Rule 4.119 adopted effective April 25, 2019.*

19
20 **Advisory Committee Comment**

21
22 **Subdivision (b).** *Capital Case Attorney Pretrial Checklist* (form CR-600) is designed to be a tool
23 to assist pretrial counsel in identifying and fulfilling all their record preparation responsibilities.
24 Counsel are therefore encouraged to keep a copy of this form and to use it to monitor their own
25 progress.

26
27 **Subdivision (c)(1).** To facilitate preparation of complete and accurate lists, counsel are
28 encouraged to add items to the lists at the time appearances or motions are made or exhibits
29 offered.

30
31 **Subdivision (c)(3).** Rule 8.613(d) requires the clerk to notify counsel to submit the lists of
32 appearances, exhibits, and motions.

33
34
35 **Division 3. Trials**

36
37 **Rule 4.230. Additional requirements in capital cases**

38
39 **(a) Application**

40
41 This rule applies only in trials in cases in which the death penalty may be imposed.
42

1 **(b) Checklist**

2
3 Within 10 days of counsel’s first appearance in court, primary counsel for each
4 defendant and the prosecution must each acknowledge that they have reviewed
5 Capital Case Attorney Trial Checklist (form CR-605) by signing and submitting
6 this form to the court. Counsel is encouraged to keep a copy of this checklist.

7
8 **(c) Review of daily transcripts by counsel during trial**

9
10 During trial, counsel must call the court’s attention to any errors or omissions they
11 may find in the daily transcripts. The court must periodically ask counsel for lists of
12 any such errors or omissions and may hold hearings to verify them. Immaterial
13 typographical errors that cannot conceivably cause confusion are not required to be
14 brought to the court’s attention.

15
16 **(d) Lists of appearances, exhibits, motions, and jury instructions**

17
18 **(1) Primary counsel for each defendant and the prosecution must each prepare**
19 **the lists identified in (A)–(D).**

20
21 **(A) A list of all appearances made by that party. Capital Case Attorney List**
22 **of Appearances (form CR-601) must be used for this purpose. The list**
23 **must include all appearances, including ex parte appearances, the date**
24 **of each appearance, the department in which it was made, the name of**
25 **counsel making the appearance, and a brief description of the nature of**
26 **the appearance. A separate list of Penal Code section 987.9**
27 **appearances must be maintained under seal for each defendant. In the**
28 **event of any substitution of attorney at any stage of the case, the**
29 **relieved attorney must provide the list of all appearances to substituting**
30 **counsel within five days of being relieved.**

31
32 **(B) A list of all exhibits offered by that party. Capital Case Attorney List of**
33 **Exhibits (form CR-602) must be used for this purpose. The list must**
34 **indicate whether the exhibit was admitted in evidence, refused, lodged,**
35 **or withdrawn.**

36
37 **(C) A list of all motions made by that party, including ex parte motions.**
38 **Capital Case Attorney List of Motions (form CR-603) must be used for**
39 **this purpose.**

40
41 **(D) A list of all jury instructions submitted in writing by that party. Capital**
42 **Case Attorney List of Jury Instructions (form CR-604) must be used for**

1 this purpose. The list must indicate whether the instruction was given,
2 given as modified, refused, or withdrawn.

3
4 (2) No later than 21 days after the imposition of a sentence of death, counsel
5 must submit the lists to the court and serve on all parties a copy of all the lists
6 except the list of Penal Code section 987.9 appearances. Unless otherwise
7 provided by local rule, the lists must be submitted to the court in electronic
8 form.

9
10 **(e) Electronic recordings presented or offered into evidence**

11
12 Counsel must comply with the requirements of rule 2.1040 regarding electronic
13 recordings presented or offered into evidence, including any such recordings that
14 are part of a digital or electronic presentation.

15
16 **(f) Copies of audio and visual aids**

17
18 Primary counsel must provide the clerk with copies of any audio or visual aids not
19 otherwise subject to the requirements of (e) that are used during jury selection or in
20 presentations to the jury, including digital or electronic presentations. If a visual aid
21 is oversized, a photograph of that visual aid must be provided in place of the
22 original. For digital or electronic presentations, counsel must supply both a copy of
23 the presentation in its native format and printouts showing the full text of each slide
24 or image. Photographs and printouts provided under this subdivision must be on 8-
25 1/2 by 11 inch paper.

26
27 *Rule 4.230 adopted effective April 25, 2019.*

28
29 **Advisory Committee Comment**

30
31 **Subdivision (b).** *Capital Case Attorney List of Appearances (form CR-601), Capital Case*
32 *Attorney List of Exhibits (form CR-602), Capital Case Attorney List of Motions (form CR-603),*
33 *and Capital Case Attorney List of Jury Instructions (form CR-604) must be used to comply with*
34 *the requirements in this subdivision.*

35
36 **Subdivision (d).** *-To facilitate preparation of complete and accurate lists, counsel are encouraged*
37 *to add items to the lists at the time appearances or motions are made, exhibits are offered, or jury*
38 *instructions are submitted.*

1 **Division 6. Postconviction, Postrelease, and Writs**

2
3 **Chapter 3. Habeas Corpus**

4
5 **Article 1. General Provisions**

6
7 **Rule 4.545. Definitions**

8
9 In this chapter, the following definitions apply:

- 10
11 (1) A “petition for writ of habeas corpus” is the petitioner’s initial filing that
12 commences a proceeding.
- 13
14 (2) An “order to show cause” is an order directing the respondent to file a return. The
15 order to show cause is issued if the petitioner has made a prima facie showing that
16 he or she is entitled to relief; it does not grant the relief requested. An order to show
17 cause may also be referred to as “granting the writ.”
- 18
19 (3) The “return” is the respondent’s statement of reasons that the court should not grant
20 the relief requested by the petitioner.
- 21
22 (4) The “denial” is the petitioner’s pleading in response to the return. The denial may
23 be also referred to as the “traverse.”
- 24
25 (5) An “evidentiary hearing” is a hearing held by the trial court to resolve contested
26 factual issues.
- 27
28 (6) An “order on writ of habeas corpus” is the court’s order granting or denying the
29 relief sought by the petitioner.
- 30
31 (7) The definitions in rule 8.601 also apply to this chapter.

32
33 *Rule 4.545 adopted effective April 25, 2019.*

34
35 **Article 2. Noncapital Habeas Corpus Proceedings in the Superior Court**

36
37 **Rule 4.550. Habeas corpus application and definitions**

38
39 **(a) — Application**

40
41 This ~~chapter~~ article applies to habeas corpus proceedings in the superior court under
42 Penal Code section 1473 et seq. or any other provision of law authorizing relief from

1 unlawful confinement or unlawful conditions of confinement, except for death penalty–
2 related habeas corpus proceedings, which are governed by rule 4.560 et seq.

3
4 **(b) — Definitions**

5
6 ~~In this chapter, the following definitions apply:~~

7
8 (1) ~~A “petition for writ of habeas corpus” is the petitioner’s initial filing that~~
9 ~~commences a proceeding.~~

10
11 (2) ~~An “order to show cause” is an order directing the respondent to file a return.~~
12 ~~The order to show cause is issued if the petitioner has made a prima facie~~
13 ~~showing that he or she is entitled to relief; it does not grant the relief~~
14 ~~requested. An order to show cause may also be referred to as “granting the~~
15 ~~writ.”~~

16
17 (3) ~~The “return” is the respondent’s statement of reasons that the court should~~
18 ~~not grant the relief requested by the petitioner.~~

19
20 (4) ~~The “denial” is the petitioner’s pleading in response to the return. The denial~~
21 ~~may be also referred to as the “traverse.”~~

22
23 (5) ~~An “evidentiary hearing” is a hearing held by the trial court to resolve~~
24 ~~contested factual issues.~~

25
26 (6) ~~An “order on writ of habeas corpus” is the court’s order granting or denying~~
27 ~~the relief sought by the petitioner.~~

28
29 *Rule 4.550 amended effective April 25, 2019; adopted effective January 1, 2002; previously*
30 *amended effective January 1, 2007.*

31
32 **Article 3. Death Penalty–Related Habeas Corpus Proceedings in the Superior Court**

33
34 **Rule 4.560. Application of article**

35
36 This article governs procedures for death penalty–related habeas corpus proceedings in
37 the superior courts.

38
39 *Rule 4.560 adopted effective April 25, 2019.*

40
41 **Rule 4.561. Superior court appointment of counsel in death penalty–related habeas**
42 **corpus proceedings**

1 **(a) Purpose**

2
3 This rule, in conjunction with rule 4.562, establishes a mechanism for superior
4 courts to appoint qualified counsel to represent indigent persons in death penalty–
5 related habeas corpus proceedings. This rule governs the appointment of counsel by
6 superior courts only, including when the Supreme Court or a Court of Appeal has
7 transferred a habeas corpus petition without having appointed counsel for the
8 petitioner. It does not govern the appointment of counsel by the Supreme Court or a
9 Court of Appeal.

10
11 **(b) Prioritization of oldest judgments**

12
13 In the interest of equity, both to the families of victims and to persons sentenced to
14 death, California courts, whenever possible, should appoint death penalty–related
15 habeas corpus counsel first for those persons subject to the oldest judgments of
16 death.

17
18 **(c) List of persons subject to a judgment of death**

19
20 The Habeas Corpus Resource Center must maintain a list of persons subject to a
21 judgment of death, organized by the date the judgment was entered by the
22 sentencing court. The list must indicate whether death penalty–related habeas
23 corpus counsel has been appointed for each person and, if so, the date of the
24 appointment. The list must also indicate for each person whether a petition is
25 pending in the Supreme Court.

26
27 **(d) Notice of oldest judgments without counsel**

28
29 (1) Within 30 days of the effective date of this rule, the Habeas Corpus Resource
30 Center must identify the persons on the list required by (c) with the 25 oldest
31 judgments of death for whom death penalty–related habeas corpus counsel
32 have not been appointed.

33
34 (2) The Habeas Corpus Resource Center must notify the presiding judges of the
35 superior courts in which these 25 judgments of death were entered that these
36 are the oldest cases in which habeas corpus counsel have not been appointed.
37 The Habeas Corpus Resource Center will send a copy of the notice to the
38 administrative presiding justice of the appellate district in which the superior
39 court is located.

40
41 (3) The presiding judge must identify the appropriate judge within the court to
42 make an appointment and notify the judge that the case is among the oldest
43 cases in which habeas corpus appointments are to be made.

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- (4) If qualified counsel is available for appointment to a case for which a petition is pending in the Supreme Court, the judge must provide written notice to the Supreme Court that counsel is available for appointment.
- (5) On entry of an order appointing death penalty–related habeas corpus counsel, the appointing court must promptly send a copy of the appointment order to the Habeas Corpus Resource Center, which must update the list to reflect that counsel was appointed, and to the clerk/executive officer of the Supreme Court, the Attorney General, and the district attorney. The court must also send notice to the Habeas Corpus Resource Center, clerk/executive officer of the Supreme Court, Attorney General, and district attorney if, for any reason, the court determines that it does not need to make an appointment.
- (6) When a copy of an appointment order, or information indicating that an appointment is for any reason not required, has been received by the Habeas Corpus Resource Center for 20 judgments, the center will identify the next 20 oldest judgments of death in cases in which death penalty–related habeas corpus counsel have not been appointed and send out a notice identifying these 20 judgments, and the procedures required by paragraphs (3) through (6) of this subdivision must be repeated.
- (7) The presiding judge of a superior court may designate another judge within the court to carry out his or her duties in this subdivision.

(e) Appointment of counsel

- (1) After the court receives a notice under (d)(2) and has made the findings required by Government Code section 68662, the appropriate judge must appoint a qualified attorney or attorneys to represent the person in death penalty–related habeas corpus proceedings.
- (2) The superior court must appoint an attorney or attorneys from the statewide panel of counsel compiled under rule 4.562(d)(4); an entity that employs qualified attorneys, including the Habeas Corpus Resource Center, the local public defender’s office, or alternate public defender’s office; or if the court has adopted a local rule under 4.562(g), an attorney determined to be qualified under that court’s local rules. The court must at this time also designate an assisting entity or counsel, unless the appointed counsel is employed by the Habeas Corpus Resource Center.
- (3) When the court appoints counsel to represent a person in a death penalty–related habeas corpus proceeding under this subdivision, the court must

1 complete and enter an *Order Appointing Counsel in Death Penalty–Related*
2 *Habeas Corpus Proceeding* (form HC-101).

3
4 *Rule 4.561 adopted effective April 25, 2019.*

5
6 **Rule 4.562. Recruitment and determination of qualifications of attorneys for**
7 **appointment in death penalty–related habeas corpus proceedings**

8
9 **(a) Purpose**

10
11 This rule provides for a panel of attorneys from which superior courts may appoint
12 counsel in death penalty–related habeas corpus proceedings.

13
14 **(b) Regional habeas corpus panel committees**

15
16 Each Court of Appeal must establish a death penalty–related habeas corpus panel
17 committee as provided in this rule.

18
19 **(c) Composition of regional habeas corpus panel committees**

20
21 (1) The administrative presiding justice of the Court of Appeal appoints the
22 members of each committee. Each committee must be composed of:

23
24 (A) One justice of the Court of Appeal to serve as the chair of the
25 committee;

26
27 (B) A total of three judges from among those nominated by the presiding
28 judges of the superior courts located within the appellate district; and

29
30 (C) A total of three attorneys from among those nominated by the entities
31 in the six categories below. At least two of those appointed must have
32 experience representing a petitioner in a death penalty–related habeas
33 corpus proceeding.

34
35 (i) An attorney nominated by the Habeas Corpus Resource Center;

36
37 (ii) An attorney nominated by the California Appellate Project–San
38 Francisco;

39
40 (iii) An attorney nominated by the appellate project with which the
41 Court of Appeal contracts;

1 (iv) An attorney nominated by any of the federal public defenders’
2 offices of the federal districts in which the participating courts are
3 located;

4
5 (v) An attorney nominated by any of the public defenders’ offices in
6 a county where the participating courts are located; and

7
8 (vi) An attorney nominated by any entity not listed in this
9 subparagraph, if the administrative presiding justice requests such
10 a nomination.

11
12 (2) Each committee may also include advisory members, as authorized by the
13 administrative presiding justice.

14
15 (3) The term of the chair and committee members is three years. Terms are
16 staggered so that an approximately equal number of each committee’s
17 members changes annually. The administrative presiding justice has the
18 discretion to remove or replace a chair or committee member for any reason.

19
20 (4) Except as otherwise provided in this rule, each committee is authorized to
21 establish the procedures under which it is governed.

22
23 **(d) Regional habeas corpus panel committee responsibilities**

24
25 The committee has the following responsibilities:

26
27 (1) Support superior court efforts to recruit applicants

28
29 Each committee must assist the participating superior courts in their efforts to
30 recruit attorneys to represent indigent petitioners in death penalty–related
31 habeas corpus proceedings in the superior courts.

32
33 (2) Accept applications

34
35 Each committee must accept applications from attorneys who seek to be
36 included on the panel of attorneys qualified for appointment in death penalty–
37 related habeas corpus proceedings in the superior courts.

38
39 (A) The application must be on a *Declaration of Counsel re Minimum*
40 *Qualifications for Appointment in Death Penalty–Related Habeas*
41 *Corpus Proceedings* (form HC-100).

1 (B) Except as provided in (C), each committee must accept applications
2 from attorneys whose principal place of business is within the appellate
3 district and from only those attorneys.

4
5 (C) In addition to accepting applications from attorneys whose principal
6 place of business is in its district, the First Appellate District committee
7 must also accept applications from attorneys whose principal place of
8 business is outside the state.

9
10 (3) Review qualifications

11
12 Each committee must review the applications it receives and determine
13 whether the applicant meets the minimum qualifications stated in this
14 division to represent persons in death penalty–related habeas corpus
15 proceedings in the superior courts.

16
17 (4) Provide names of qualified counsel for statewide panel

18
19 (A) If a committee determines by a majority vote that an attorney is
20 qualified to represent persons in death penalty–related habeas corpus
21 proceedings in the superior court, it must include the name of the
22 attorney on a statewide panel of qualified attorneys.

23
24 (B) Committees will provide to the Habeas Corpus Resource Center the
25 names of attorneys who the committees determine meet the minimum
26 qualifications. The Habeas Corpus Resource Center must consolidate
27 the names into a single statewide panel, update the names on the panel
28 at least quarterly, and make the most current panel available to superior
29 courts on its website.

30
31 (C) Unless removed from the panel under (d)(6), an attorney included on
32 the panel may remain on the panel for up to six years without
33 submitting a renewed application.

34
35 (D) Inclusion on the statewide panel does not entitle an attorney to
36 appointment by a superior court, nor does it compel an attorney to
37 accept an appointment.

38
39 (5) Match qualified attorneys to cases

40
41 Each committee must assist a participating superior court in matching one or
42 more qualified attorneys from the statewide panel to a person for whom

1 counsel must be appointed under Government Code section 68662, if the
2 court requests such assistance.

3
4 **(6) Remove attorneys from panel**

5
6 Suspension or disbarment of an attorney will result in removal of the attorney
7 from the panel. Other disciplinary action, or a finding that counsel has
8 provided ineffective assistance of counsel, may result in a reevaluation of the
9 attorney’s inclusion on the panel by the committee that initially determined
10 the attorney to have met minimum qualifications.

11
12 **(e) Consolidated habeas corpus panel committees**

13
14 The administrative presiding justices of two or more Courts of Appeal may elect,
15 following consultation with the presiding judges of the superior courts within their
16 respective appellate districts, to operate a single committee to collectively fulfill the
17 committee responsibilities for the superior courts in their appellate districts.

18
19 **(f) Recruitment of qualified attorneys**

20
21 The superior courts in which a judgment of death has been entered against an
22 indigent person for whom habeas corpus counsel has not been appointed must
23 develop and implement a plan to identify and recruit qualified counsel who may
24 apply to be appointed.

25
26 **(g) Local rule**

27
28 A superior court may, by adopting a local rule, authorize appointment of qualified
29 attorneys who are not members of the statewide panel. The local rule must establish
30 procedures for submission and review of a *Declaration of Counsel re Minimum*
31 *Qualifications for Appointment in Death Penalty–Related Habeas Corpus*
32 *Proceedings* (form HC-100) and require attorneys to meet the minimum
33 qualifications under rule 8.652(c).

34
35 *Rule 4.562 adopted effective April 25, 2019.*

36
37 **Advisory Committee Comment**

38
39 **Subdivisions (d) and (f).** In addition to the responsibilities identified in subdivisions (d) and (f),
40 courts and regional committees are encouraged to support activities to expand the pool of
41 attorneys that are qualified to represent petitioners in death penalty–related habeas corpus
42 proceedings. Examples of such activities include providing mentoring and training programs and
43 encouraging the use of supervised counsel.

1
2 **Rule 4.571. Filing of petition in the superior court**

3
4 **(a) Petition**

- 5
6 (1) A petition and supporting memorandum must comply with this rule and,
7 except as otherwise provided in this rule, with rules 2.100–2.117 relating to
8 the form of papers.
9
10 (2) A memorandum supporting a petition must comply with rule 3.1113(b), (c),
11 (f), (h), (i), and (l).
12
13 (3) The petition and supporting memorandum must support any reference to a
14 matter in the supporting documents or declarations, or other supporting
15 materials, by a citation to its index number or letter and page and, if
16 applicable, the paragraph or line number.

17
18 **(b) Supporting documents**

- 19
20 (1) The record prepared for the automatic appeal, including any exhibits admitted
21 in evidence, refused, or lodged, and all briefs, rulings, and other documents
22 filed in the automatic appeal are deemed part of the supporting documents for
23 the petition.
24
25 (2) The petition must be accompanied by a copy of any petition, excluding
26 exhibits, pertaining to the same judgment and petitioner that was previously
27 filed in any state court or any federal court, along with any order in a
28 proceeding on such a petition that disposes of any claim or portion of a claim.
29
30 (3) If the petition asserts a claim that was the subject of a hearing, the petition
31 must be accompanied by a certified transcript of that hearing.
32
33 (4) If any supporting documents have previously been filed in the same superior
34 court in which the petition is filed and the petition so states and identifies the
35 documents by case number, filing date and title of the document, copies of
36 these documents need not be included in the supporting documents.
37
38 (5) Rule 8.486(c)(1) governs the form of any supporting documents
39 accompanying the petition.
40
41 (6) If any supporting documents accompanying the petition or any subsequently
42 filed paper are sealed, rules 2.550 and 2.551 govern. Notwithstanding rule
43 8.45(a), if any supporting documents accompanying the petition or any

1 subsequently filed papers are confidential records, rules 8.45(b), (c), and 8.47
2 govern, except that rules 2.550 and 2.551 govern the procedures for making a
3 motion or application to seal such records.

- 4
5 (7) When other laws establish specific requirements for particular types of sealed
6 or confidential records that differ from the requirements in this subdivision,
7 those specific requirements supersede the requirements in this subdivision.

8
9 **(c) Filing and service**

- 10
11 (1) If the petition is filed in paper form, an original and one copy must be filed,
12 along with an original and one copy of the supporting documents.
13
14 (2) A court that permits electronic filing must specify any requirements
15 regarding electronically filed petitions as authorized under rules 2.250 et seq.
16
17 (3) Petitioner must serve one copy of the petition and supporting documents on
18 the district attorney, the Attorney General, and on any assisting entity or
19 counsel.

20
21 **(d) Noncomplying filings**

22
23 The clerk must file an attorney’s petition not complying with this rule if it
24 otherwise complies with the rules of court, but the court may notify the attorney
25 that it may strike the petition or impose a lesser sanction if the petition is not
26 brought into compliance within a stated reasonable time of not less than five court
27 days.

28
29 **(e) Ruling on the petition**

- 30
31 (1) The court must rule on the petition within 60 days after the petition is filed
32 with the court or transferred to the court from another superior court.
33
34 (2) For purposes of this subdivision, the court rules on a petition by:
35
36 (A) Requesting an informal response to the petition;
37
38 (B) Issuing an order to show cause; or
39
40 (C) Denying the petition.
41
42 (3) If the court requests an informal response, it must issue an order to show
43 cause or deny the petition within 30 days after the filing of the reply, or if

1 none is filed, after the expiration of the time for filing the reply under rule
2 4.573(a)(3).

3
4 *Rule 4.571 adopted effective April 24, 2019.*

5
6 **Rule 4.572. Transfer of petitions**

7
8 Unless the court finds good cause for it to consider the petition, a petition subject to this
9 article that is filed in a superior court other than the court that imposed the sentence must
10 be transferred to the court that imposed the sentence within 21 days of filing. The court in
11 which the petition was filed must enter an order with the basis for its transfer or its
12 finding of good cause for retaining the petition.

13
14 *Rule 4.572 adopted effective April 24, 2019.*

15
16 **Rule 4.573. Proceedings after the petition is filed**

17
18 **(a) Informal response and reply**

19
20 (1) If the court requests an informal written response, it must serve a copy of the
21 request on the district attorney, the Attorney General, the petitioner and on
22 any assisting entity or counsel.

23
24 (2) The response must be served and filed within 45 days of the filing of the
25 request, or a later date if the court so orders. One copy of the informal
26 response and any supporting documents must be served on the petitioner and
27 on any assisting entity or counsel. If the response and supporting documents
28 are served in paper form, two copies must be served on the petitioner.

29
30 (3) If a response is filed, the court must notify the petitioner that a reply may be
31 served and filed within 30 days of the filing of the response, or a later date if
32 the court so orders. The court may not deny the petition until that time has
33 expired.

34
35 (4) If a reply is filed, the petitioner must serve one copy of the reply and any
36 supporting documents on the district attorney, the Attorney General, and on
37 any assisting entity or counsel.

38
39 (5) The formatting of the response, reply, and any supporting documents must
40 comply with the applicable requirements for petitions in rule 4.571(a) and
41 (b). The filing of the response, reply, and any supporting documents must
42 comply with the requirements for petitions in rule 4.571(c)(1) and (2).

1 (6) On motion of any party or on the court’s own motion, for good cause stated
2 in the order, the court may extend the time for a party to perform any act
3 under this subdivision. If a party requests extension of a deadline in this
4 subdivision, the party must explain the additional work required to meet the
5 deadline.

6
7 **(b) Order to show cause**

8
9 If the petitioner has made the required prima facie showing that petitioner is
10 entitled to relief, the court must issue an order to show cause. An order to show
11 cause does not grant the relief sought in the petition.

12
13 *Rule 4.573 adopted effective April 24, 2019.*

14
15 **Rule 4.574. Proceedings following an order to show cause**

16
17 **(a) Return**

18
19 (1) Any return must be served and filed within 45 days after the court issues the
20 order to show cause, or a later date if the court so orders.

21
22 (2) The formatting of the return and any supporting documents must comply with
23 the applicable requirements for petitions in rule 4.571(a) and (b). The filing
24 of the return and any supporting documents must comply with the
25 requirements for petitions in rule 4.571(c)(1) and (2).

26
27 (3) A copy of the return and any supporting documents must be served on the
28 petitioner and on any assisting entity or counsel. If the return is served in
29 paper form, two copies must be served on the petitioner.

30
31 (4) Any material allegation of the petition not controverted by the return is
32 deemed admitted for purposes of the proceeding.

33
34 **(b) Denial**

35
36 (1) Unless the court orders otherwise, within 30 days after the return is filed, or a
37 later date if the court so orders, the petitioner may serve and file a denial.

38
39 (2) The formatting of the denial and any supporting documents must comply
40 with the applicable requirements for petitions in rule 4.571(a) and (b). The
41 filing of the denial and any supporting documents must comply with the
42 requirements for petitions in rule 4.571(c)(1) and (2).

1 (3) A copy of the reply and any supporting documents must be served on the
2 district attorney, the Attorney General, and on any assisting entity or counsel.

3
4 (4) Any material allegation of the return not controverted in the denial is deemed
5 admitted for purposes of the proceeding.

6
7 **(c) Ruling on the petition**

8
9 Within 60 days after filing of the denial, or if none is filed, after the expiration of
10 the deadline for filing the denial under (b)(1), the court must either grant or deny
11 the relief sought by the petition or set an evidentiary hearing.

12
13 **(d) Evidentiary hearing**

14
15 (1) An evidentiary hearing is required if, after considering the verified petition,
16 the return, any denial, any affidavits or declarations under penalty of perjury,
17 exhibits, and matters of which judicial notice may be taken, the court finds
18 there is a reasonable likelihood that the petitioner may be entitled to relief
19 and the petitioner’s entitlement to relief depends on the resolution of an issue
20 of fact.

21
22 (2) The court must assign a court reporter who uses computer-aided transcription
23 equipment to report all proceedings under this subdivision.

24
25 (A) All proceedings under this subdivision, whether in open court, in
26 conference in the courtroom, or in chambers, must be conducted on the
27 record with a court reporter present. The court reporter must prepare
28 and certify a daily transcript of all proceedings.

29
30 (B) Any computer-readable transcript produced by court reporters under
31 this subdivision must conform to the requirements of Code of Civil
32 Procedure section 271.

33
34 (3) Rule 3.1306(c) governs judicial notice.

35
36 **(e) Additional briefing**

37
38 The court may order additional briefing during or following the evidentiary
39 hearing.

40
41 **(f) Submission of cause**

1 For purposes of article VI, section 19, of the California Constitution, a death
2 penalty–related habeas corpus proceeding is submitted for decision at the
3 conclusion of the evidentiary hearing, if one is held. If there is supplemental
4 briefing after the conclusion of the evidentiary hearing, the matter is submitted
5 when all supplemental briefing is filed with the court.

6
7 **(g) Extension of deadlines**

8
9 On motion of any party or on the court’s own motion, for good cause stated in the
10 order, the court may extend the time for a party to perform any act under this rule.
11 If a party requests extension of a deadline in this rule, the party must explain the
12 additional work required to meet the deadline.

13
14 *Rule 4.574 adopted effective April 25, 2019.*

15
16 **Rule 4.575. Decision on death penalty–related habeas corpus petition**

17
18 On decision of the initial petition, the court must prepare and file a statement of decision
19 specifying its order and explaining the factual and legal basis for its decision. The clerk
20 of the court must serve a copy of the decision on the petitioner, the district attorney, the
21 Attorney General, the clerk/executive officer of the Supreme Court, the clerk/executive
22 officer of the Court of Appeal, and on any assisting entity or counsel.

23
24 *Rule 4.575 adopted effective April 25, 2019.*

25
26 **Rule 4.576. Successive petitions**

27
28 **(a) Notice of intent to dismiss**

29
30 Before dismissing a successive petition under Penal Code section 1509(d), a
31 superior court must provide notice to the petitioner and an opportunity to respond.

32
33 **(b) Certificate of appealability**

34
35 The superior court must grant or deny a certificate of appealability concurrently
36 with the issuance of its decision denying relief on a successive death penalty–
37 related habeas corpus petition. Before issuing its decision, the superior court may
38 order the parties to submit arguments on whether a certificate of appealability
39 should be granted. If the superior court grants a certificate of appealability, the
40 certificate must identify the substantial claim or claims for relief shown by the
41 petitioner and the substantial claim that the requirements of Penal Code section
42 1509(d) have been met. The superior court clerk must send a copy of the certificate
43 to the petitioner, the Attorney General, the district attorney, the clerk/executive

1 officer of the Court of Appeal and the district appellate project for the appellate
2 district in which the superior court is located, the assisting counsel or entity, and
3 the clerk/executive officer of the Supreme Court. The superior court clerk must
4 send the certificate of appealability to the Court of Appeal when it sends the notice
5 of appeal under rule 8.392(c).
6

7 *Rule 4.576 adopted effective April 25, 2019.*
8

9 **Rule 4.577. Transfer of files**

10
11 Counsel for the petitioner must deliver all files counsel maintained related to the
12 proceeding to the attorney representing petitioner in any appeal taken from the
13 proceeding.
14

15 *Rule 4.577 adopted effective April 25, 2019.*
16

17
18 **Title 8. Appellate Rules**
19

20 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**
21

22 **Chapter 4. Habeas Corpus Appeals and Writs**
23

24 **Article 1. Habeas Corpus Proceedings Not Related to Judgment of Death**
25

26 **Rule 8.388. Appeal from order granting relief by writ of habeas corpus**
27

28 **(a) Application**
29

30 Except as otherwise provided in this rule, rules 8.304–8.368 and 8.508 govern
31 appeals under Penal Code section 1506 or 1507 from orders granting all or part of
32 the relief sought in a petition for writ of habeas corpus. This rule does not apply to
33 appeals under Penal Code section 1509.1 from superior court decisions in death
34 penalty–related habeas corpus proceedings.
35

36 *(Subd (a) amended effective April 25, 2019; previously amended effective January 1,*
37 *2007.)*
38

39 **(b) * * ***
40
41

42 *Rule 8.388 amended effective April 25, 2019; repealed and adopted as rule 39.2 effective January*
43 *1, 2005; previously amended and renumbered as rule 8.388 effective January 1, 2007.*

1
2 **Article 2. Appeals From Superior Court Decisions in Death Penalty–Related**
3 **Habeas Corpus Proceedings**
4

5 **Rule 8.390. Application**
6

7 **(a) Application**
8

9 The rules in this article apply only to appeals under Penal Code section 1509.1
10 from superior court decisions in death penalty–related habeas corpus proceedings.
11

12 **(b) General application of rules for criminal appeals**
13

14 Except as otherwise provided in this article, rules 8.300, 8.316, 8.332, 8.340–8.346,
15 and 8.366–8.368 govern appeals subject to the rules in this article.
16

17 *Rule 8.390 adopted effective April 25, 2019.*
18

19 **Rule 8.391. Qualifications and appointment of counsel by the Court of Appeal**
20

21 **(a) Qualifications**
22

23 To be appointed by the Court of Appeal to represent an indigent petitioner not
24 represented by the State Public Defender in an appeal under this article, an attorney
25 must:
26

- 27 (1) Meet the minimum qualifications established by rule 8.652 for attorneys to be
28 appointed to represent a person in a death penalty–related habeas corpus
29 proceeding, including being willing to cooperate with an assisting counsel or
30 entity that the court may designate;
31
32 (2) Be familiar with appellate practices and procedures in the California courts,
33 including those related to death penalty appeals; and
34
35 (3) Not have represented the petitioner in the habeas corpus proceedings that are
36 the subject of the appeal unless the petitioner and counsel expressly request,
37 in writing, continued representation.
38

39 **(b) Designation of assisting entity or counsel**
40

41 Either before or at the time it appoints counsel, the court must designate an
42 assisting entity or counsel.
43

1 *Rule 8.391 adopted effective April 25, 2019.*

2
3 **Rule 8.392. Filing the appeal; certificate of appealability**

4
5 **(a) Notice of appeal**

6
7 (1) To appeal from a superior court decision in a death penalty–related habeas
8 corpus proceeding, the petitioner or the People must serve and file a notice of
9 appeal in that superior court. To appeal a decision denying relief on a
10 successive habeas corpus petition, the petitioner must also comply with (b).

11
12 (2) If the petitioner appeals, petitioner’s counsel, or, in the absence of counsel,
13 the petitioner, is responsible for signing the notice of appeal. If the People
14 appeal, the attorney for the People must sign the notice.

15
16 **(b) Appeal of decision denying relief on a successive habeas corpus petition**

17
18 (1) The petitioner may appeal the decision of the superior court denying relief on
19 a successive death penalty–related habeas corpus petition only if the superior
20 court or the Court of Appeal grants a certificate of appealability under Penal
21 Code section 1509.1(c).

22
23 (2) The petitioner must identify in the notice of appeal that the appeal is from a
24 superior court decision denying relief on a successive petition and indicate
25 whether the superior court granted or denied a certificate of appealability.

26
27 (3) If the superior court denied a certificate of appealability, the petitioner must
28 attach to the notice of appeal a request to the Court of Appeal for a certificate
29 of appealability. The request must identify the petitioner’s claim or claims for
30 relief and explain how the requirements of Penal Code section 1509(d) have
31 been met.

32
33 (4) On receiving the request for a certificate of appealability, the Court of Appeal
34 clerk must promptly file the request and send notice of the filing date to the
35 parties.

36
37 (5) The People need not file an answer to a request for a certificate of
38 appealability unless the court requests an answer. The clerk must promptly
39 send to the parties and the assisting entity or counsel copies of any order
40 requesting an answer and immediately notify the parties by telephone or
41 another expeditious method. Any answer must be served on the parties and
42 the assisting entity or counsel and filed within five days after the order is
43 filed unless the court orders otherwise.

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(6) The Court of Appeal must grant or deny the request for a certificate of appealability within 10 days of the filing of the request in that court. If the Court of Appeal grants a certificate of appealability, the certificate must identify the substantial claim or claims for relief shown by the petitioner. The clerk must send a copy of the certificate or its order denying the request for a certificate to:

- (A) The attorney for the petitioner or, if unrepresented, to the petitioner;
- (B) The district appellate project and, if designated, any assisting entity or counsel other than the district appellate project;
- (C) The Attorney General;
- (D) The district attorney;
- (E) The superior court clerk; and
- (F) The clerk/executive officer of the Supreme Court.

(7) If both the superior court and the Court of Appeal deny a certificate of appealability, the clerk/executive officer of the Court of Appeal must mark the notice of appeal “Inoperative,” notify the petitioner, and send a copy of the marked notice of appeal to the superior court clerk, the clerk/executive officer of the Supreme Court, the district appellate project, and, if designated, any assisting entity or counsel other than the district appellate project.

(c) Notification of the appeal

(1) Except as provided in (2), when a notice of appeal is filed, the superior court clerk must promptly—and no later than five days after the notice of appeal is filed—send a notification of the filing to:

- (A) The attorney for the petitioner or, if unrepresented, to the petitioner;
- (B) The district appellate project and, if designated, any assisting entity or counsel other than the district appellate project;
- (C) The Attorney General;
- (D) The district attorney;

1 (E) The clerk/executive officer of the Court of Appeal;

2
3 (F) The clerk/executive officer of the Supreme Court;

4
5 (G) Each court reporter; and

6
7 (H) Any primary reporter or reporting supervisor.

8
9 (2) If the petitioner is appealing from a superior court decision denying relief on
10 a successive petition and the superior court did not issue a certificate of
11 appealability, the clerk must not send the notification of the filing of a notice
12 of appeal to the court reporter or reporters unless the clerk receives a copy of
13 a certificate of appealability issued by the Court of Appeal under (b)(6). The
14 clerk must send the notification no later than five days after the superior court
15 receives the copy of the certificate of appealability.

16
17 (3) The notification must show the date it was sent, the number and title of the
18 case, and the dates the notice of appeal was filed and any certificate of
19 appealability was issued. If the information is available, the notification must
20 also include:

21
22 (A) The name, address, telephone number, e-mail address, and California
23 State Bar number of each attorney of record in the case; and

24
25 (B) The name of the party each attorney represented in the superior court.

26
27 (4) The notification to the clerk/executive officer of the Court of Appeal must
28 also include a copy of the notice of appeal, any certificate of appealability or
29 denial of a certificate of appealability issued by the superior court, and the
30 sequential list of reporters made under rule 2.950.

31
32 (5) A copy of the notice of appeal is sufficient notification under (1) if the
33 required information is on the copy or is added by the superior court clerk.

34
35 (6) The sending of a notification under (1) is a sufficient performance of the
36 clerk's duty despite the discharge, disqualification, suspension, disbarment,
37 or death of the attorney.

38
39 (7) Failure to comply with any provision of this subdivision does not affect the
40 validity of the notice of appeal.

41
42 *Rule 8.392 adopted effective April 25, 2019.*

1 **Advisory Committee Comment**

2
3 **Subdivision (b).** This subdivision addresses issuance of a certificate of appealability by the Court
4 of Appeal. Rule 4.576(b) addresses issuance of a certificate of appealability by the superior court.

5
6
7 **Rule 8.393. Time to appeal**

8
9 A notice of appeal under this article must be filed within 30 days after the rendition of the
10 judgment or the making of the order being appealed.

11
12 *Rule 8.393 adopted effective April 25, 2019.*

13
14 **Rule 8.394. Stay of execution on appeal**

15
16 **(a) Application**

17
18 Pending appeal under this article, the petitioner may apply to the reviewing court
19 for a stay of execution of the death penalty. The application must be served on the
20 People.

21
22 **(b) Interim relief**

23
24 Pending its ruling on the application, the reviewing court may grant the relief
25 requested. The reviewing court must notify the superior court under rule 8.489 of
26 any stay that it grants. Notification must also be sent to the clerk/executive officer
27 of the Supreme Court.

28
29 *Rule 8.394 adopted effective April 25, 2019.*

30
31 **Rule 8.395. Record on appeal**

32
33 **(a) Contents**

34
35 In an appeal under this article, the record must contain:

36
37 (1) A clerk’s transcript containing:

38
39 (A) The petition;

40
41 (B) Any informal response to the petition and any reply to the informal
42 response;

- 1 (C) Any order to show cause;
2
3 (D) Any reply, return, answer, denial, or traverse;
4
5 (E) All supporting documents under rule 4.571, including the record
6 prepared for the automatic appeal and all briefs, rulings, and other
7 documents filed in the automatic appeal;
8
9 (F) Any other documents and exhibits submitted to the court, including any
10 transcript of a sound or sound-and-video recording tendered to the
11 court under rule 2.1040 and any visual aids submitted to the court;
12
13 (G) Any written communication between the court and the parties,
14 including printouts of any e-mail messages and their attachments;
15
16 (H) All court minutes;
17
18 (I) Any statement of decision required by Penal Code section 1509(f) and
19 any other written decision of the court;
20
21 (J) The order appealed from;
22
23 (K) The notice of appeal; and
24
25 (L) Any certificate of appealability issued by the superior court or the
26 Court of Appeal.

27
28 (2) A reporter's transcript of any oral proceedings.
29

30 **(b) Stipulation for partial transcript**

31
32 If counsel for the petitioner and the People stipulate in writing before the record is
33 certified that any part of the record is not required for proper determination of the
34 appeal, that part need not be prepared or sent to the reviewing court.
35

36 **(c) Preparation of record**

37
38 (1) The reporter and the clerk must begin preparing the record immediately after
39 the superior court issues the decision on an initial petition under Penal Code
40 section 1509.

41
42 (2) If either party appeals from a superior court decision on a successive petition
43 under Penal Code section 1509.1(c):

1
2 (A) The clerk must begin preparing the clerk’s transcript immediately after
3 the filing of the notice of appeal or, if one is required, the superior
4 court’s issuance of a certificate of appealability or the clerk’s receipt of
5 a copy of a certificate of appealability issued by the Court of Appeal
6 under rule 8.391(b)(5), whichever is later. If a certificate of
7 appealability is required to appeal the decision of the superior court, the
8 clerk must not begin preparing the clerk’s transcript until a certificate
9 of appealability has issued.

10
11 (B) The reporter must begin preparing the reporter’s transcript immediately
12 on being notified by the clerk under rule 8.392(c) that the notice of
13 appeal has been filed.

14
15 **(d) Clerk’s transcript**

16
17 (1) Within 30 days after the clerk is required to begin preparing the transcript,
18 the clerk must complete preparation of an original and four copies of the
19 clerk’s transcript.

20
21 (2) On request, the clerk must prepare an extra copy for the district attorney or
22 the Attorney General, whichever is not counsel for the People on appeal.

23
24 (3) The clerk must certify as correct the original and all copies of the clerk’s
25 transcript.

26
27 **(e) Reporter’s transcript**

28
29 (1) The reporter must prepare an original and the same number of copies of the
30 reporter’s transcript as (d) requires of the clerk’s transcript, and must certify
31 each as correct.

32
33 (2) As soon as the transcripts are certified, but no later than 30 days after the
34 reporter is required to begin preparing the transcript, the reporter must deliver
35 the original and all copies to the superior court clerk.

36
37 (3) Any portion of the transcript transcribed during superior court habeas corpus
38 proceedings must not be retyped unless necessary to correct errors, but must
39 be repaginated and combined with any portion of the transcript not previously
40 transcribed. Any additional copies needed must not be retyped but, if the
41 transcript is in paper form, must be prepared by photocopying or an
42 equivalent process.

1 (4) In a multireporter case, the clerk must accept any completed portion of the
2 transcript from the primary reporter one week after the time prescribed by (2)
3 even if other portions are uncompleted. The clerk must promptly pay each
4 reporter who certifies that all portions of the transcript assigned to that
5 reporter are completed.

6
7 **(f) Extension of time**

8
9 (1) Except as provided in this rule, rules 8.60 and 8.63 govern requests for
10 extension of time to prepare the record.

11
12 (2) On request of the clerk or a reporter showing good cause, the superior court
13 may extend the time prescribed in (d) or (e) for preparing the clerk’s or
14 reporter’s transcript for no more than 30 days. If the superior court orders an
15 extension, the order must specify the reason justifying the extension. The
16 clerk must promptly send a copy of the order to the reviewing court.

17
18 (3) For any further extension, the clerk or reporter must file a request in the
19 reviewing court showing good cause.

20
21 (4) A request under (2) or (3) must be supported by:

22
23 (A) A declaration showing good cause. The court may presume good cause
24 if the clerk’s and reporter’s transcripts combined will likely exceed
25 10,000 pages, not including the supporting documents submitted with
26 the petition, any informal response, reply to the informal response,
27 return, answer, or traverse; and

28
29 (B) In the case of a reporter’s transcript, certification by the superior court
30 presiding judge or a court administrator designated by the presiding
31 judge that an extension is reasonable and necessary in light of the
32 workload of all reporters in the court.

33
34 **(g) Form of record**

35
36 (1) The reporter’s transcript must be in electronic form. The clerk is encouraged
37 to send the clerk’s transcript in electronic form if the court is able to do so.

38
39 (2) The clerk’s and reporter’s transcripts must comply with rules 8.45–8.47,
40 relating to sealed and confidential records, and rule 8.144.

41
42 **(h) Sending the transcripts**

1 (1) When the clerk’s and reporter’s transcripts are certified as correct, the clerk
2 must promptly send:

3
4 (A) The original transcripts to the reviewing court, noting the sending date
5 on each original; and

6
7 (B) One copy of each transcript to:

8
9 (i) Appellate counsel for the petitioner;

10
11 (ii) The assisting entity or counsel, if designated, or the district
12 appellate project;

13
14 (iii) The Attorney General or the district attorney, whichever is
15 counsel for the People on appeal;

16
17 (iv) The district attorney or Attorney General if requested under
18 (d)(2); and

19
20 (v) The Governor.

21
22 (2) If the petitioner is not represented by appellate counsel when the transcripts
23 are certified as correct, the clerk must send that copy of the transcripts to the
24 assisting entity or counsel, if designated, or the district appellate project.

25
26 **(i) Supervision of preparation of record**

27
28 The clerk/executive officer of the Court of Appeal, under the supervision of the
29 administrative presiding justice or the presiding justice, must take all appropriate
30 steps to ensure that superior court clerks and reporters promptly perform their
31 duties under this rule. This provision does not affect the responsibility of the
32 superior courts for the prompt preparation of appellate records.

33
34 **(j) Augmenting or correcting the record in the Court of Appeal**

35
36 Rule 8.340 governs augmenting or correcting the record in the Court of Appeal,
37 except that copies of augmented or corrected records must be sent to those listed in
38 (h).

39
40 **(k) Judicial notice**

41
42 Rule 8.252(a) governs judicial notice in the reviewing court.

43

1 *Rule 8.395 adopted effective April 25, 2019.*

2
3 **Rule 8.396. Briefs by parties and amici curiae**

4
5 **(a) Contents and form**

6
7 (1) Except as provided in this rule, briefs in appeals governed by the rules in this
8 article must comply as nearly as possible with rules 8.200 and 8.204.

9
10 (2) If, as permitted by Penal Code section 1509.1(b), the petitioner wishes to
11 raise a claim in the appeal of ineffective assistance of trial counsel that was
12 not raised in the superior court habeas corpus proceedings, that claim must be
13 raised in the first brief filed by the petitioner. A brief containing such a claim
14 must comply with the additional requirements in rule 8.397.

15
16 (3) If the petitioner is appealing from a decision of the superior court denying
17 relief on a successive death penalty–related habeas corpus petition, the
18 petitioner may only raise claims in the briefs that were identified in the
19 certificate of appealability that was issued and any additional claims added by
20 the Court of Appeal as provided in Penal Code section 1509.1(c).

21
22 **(b) Length**

23
24 (1) A brief produced on a computer must not exceed the following limits,
25 including footnotes, except that if the presiding justice permits the appellant
26 to file an opening brief that exceeds the limit set in (1)(A) or (3)(A), the
27 respondent’s brief may not exceed the same length:

28
29 (A) Appellant’s opening brief: 102,000 words.

30
31 (B) Respondent’s brief: 102,000 words.

32
33 (C) Reply brief: 47,600 words.

34
35 (2) A brief under (1) must include a certificate by appellate counsel stating the
36 number of words in the brief; counsel may rely on the word count of the
37 computer program used to prepare the brief.

38
39 (3) A typewritten brief must not exceed the following limits, except that if the
40 presiding justice permits the appellant to file an opening brief that exceeds
41 the limit set in (1)(A) or (3)(A), the respondent’s brief may not exceed the
42 same length:

1 (A) Appellant’s opening brief: 300 pages.

2
3 (B) Respondent’s brief: 300 pages.

4
5 (C) Reply brief: 140 pages.

6
7 (4) The tables required under rule 8.204(a)(1), the cover information required
8 under rule 8.204(b)(10), a certificate under (2), any signature block, and any
9 attachment permitted under rule 8.204(d) are excluded from the limits stated
10 in (1) and (3).

11
12 (5) A combined brief in an appeal governed by (e) must not exceed double the
13 limit stated in (1) or (3).

14
15 (6) On application, the presiding justice may permit a longer brief for good
16 cause.

17
18 **(c) Time to file**

19
20 (1) The appellant’s opening brief must be served and filed within 210 days after
21 either the record is filed or appellate counsel is appointed, whichever is later.

22
23 (2) The respondent’s brief must be served and filed within 120 days after the
24 appellant’s opening brief is filed.

25
26 (3) The appellant must serve and file a reply brief, if any, within 60 days after the
27 filing of respondent’s brief.

28
29 (4) If the clerk’s and reporter’s transcripts combined exceed 10,000 pages, the
30 time limits stated in (1) and (2) are extended by 15 days for each 1,000 pages
31 of combined transcript over 10,000 pages, up to 20,000 pages. The time
32 limits in (1) and (2) may be extended further by order of the presiding justice
33 under rule 8.60.

34
35 (5) The time to serve and file a brief may not be extended by stipulation, but only
36 by order of the presiding justice under rule 8.60.

37
38 (6) If a party fails to timely file an appellant’s opening brief or a respondent’s
39 brief, the clerk/executive officer of the Court of Appeal must promptly notify
40 the party in writing that the brief must be filed within 30 days after the notice
41 is sent, and that failure to comply may result in sanctions specified in the
42 notice.

1 **(d) Service**

- 2
- 3 (1) The petitioner’s appellate counsel must serve each brief for the petitioner on
4 the assisting entity or counsel, the Attorney General, and the district attorney,
5 and must deliver a copy of each to the petitioner unless the petitioner requests
6 otherwise.
- 7
- 8 (2) The proof of service must state that a copy of the petitioner’s brief was
9 delivered to the petitioner or will be delivered in person to the petitioner
10 within 30 days after the filing of the brief, or counsel must file a signed
11 statement that the petitioner requested in writing that no copy be delivered.
- 12
- 13 (3) The People must serve each of their briefs on the appellate counsel for the
14 petitioner, the assisting entity or counsel, and either the district attorney or
15 the Attorney General, whichever is not representing the People on appeal.
- 16
- 17 (4) A copy of each brief must be served on the superior court clerk for delivery
18 to the superior court judge who issued the order being appealed.

19

20 **(e) When the petitioner and the People appeal**

21

22 When both the petitioner and the People appeal, the petitioner must file the first
23 opening brief unless the reviewing court orders otherwise, and rule 8.216(b)
24 governs the contents of the briefs.

25

26 **(f) Amicus curiae briefs**

27

28 Amicus curiae briefs may be filed as provided in rule 8.200(c), except that an
29 application for permission of the presiding justice to file an amicus curiae brief
30 must be filed within 14 days after the last appellant’s reply brief is filed or could
31 have been filed under (c), whichever is earlier.

32

33 *Rule 8.396 adopted effective April 25, 2019.*

34

35 **Advisory Committee Comment**

36

37 **Subdivision (a)(3).** This subdivision is intended to implement the sentence in Penal Code section
38 1509.1(c) providing that “[t]he jurisdiction of the court of appeal is limited to the claims
39 identified in the certificate [of appealability] and any additional claims added by the court of
40 appeal within 60 days of the notice of appeal.”

41

42 **Subdivision (b)(4).** This subdivision specifies certain items that are not counted toward the
43 maximum brief length. Signature blocks referred to in this provision include not only the

1 signatures, but also the printed names, titles, and affiliations of any attorneys filing or joining in
2 the brief, which may accompany the signature.

3
4
5 **Rule 8.397. Claim of ineffective assistance of trial counsel not raised in the superior**
6 **court**

7
8 **(a) Application**

9
10 This rule governs claims under Penal Code section 1509.1(b) of ineffective
11 assistance of trial counsel not raised in the superior court habeas corpus proceeding
12 giving rise to an appeal under this article.

13
14 **(b) Discussion of claim in briefs**

- 15
16 (1) A claim subject to this rule must be raised in the first brief filed by the
17 petitioner.
- 18
19 (2) All discussion of claims subject to this rule must be addressed in a separate
20 part of the brief under a heading identifying this part as addressing claims of
21 ineffective assistance of trial counsel that were not raised in a superior court
22 habeas corpus proceeding.
- 23
24 (3) Discussion of each claim within this part of the brief must be under a separate
25 subheading identifying the claim. Petitioner’s brief must include a summary
26 of the claim under the subheading, and each claim must be supported by
27 argument and, if possible, by citation of authority.
- 28
29 (4) This part of the brief may include references to matters:
- 30
31 (A) In the record on appeal prepared under rule 8.395. Any reference to a
32 matter in the record must be supported by a citation to the volume and
33 page number of the record where the matter appears.
- 34
35 (B) Of which the court has taken judicial notice.
- 36
37 (C) In a proffer required under (c). Any reference to a matter in a proffer
38 must be supported by a citation to its index number or letter and page.

39
40 **(c) Proffer**

- 41
42 (1) A brief raising a claim under Penal Code section 1509.1(b) of ineffective
43 assistance of trial counsel not raised in a superior court habeas corpus

1 proceeding must be accompanied by a proffer of any reasonably available
2 documentary evidence supporting the claim that is not in either the record on
3 appeal prepared under rule 8.395 or matters of which the court has taken
4 judicial notice. A brief responding to such a claim must be accompanied by a
5 proffer of any reasonably available documentary evidence the People are
6 relying on that is not in the petitioner’s proffer, the record on appeal prepared
7 under rule 8.395, or matters of which the court has taken judicial notice.
8

9 (A) If a brief raises a claim that was the subject of an evidentiary hearing,
10 the proffer must include a certified transcript of that hearing.

11
12 (B) Evidence may be in the form of affidavits or declarations under penalty
13 of perjury.

14
15 (2) The proffer must comply with the following formatting requirements:

16
17 (A) The pages must be consecutively numbered.

18
19 (B) It must begin with a table of contents listing each document by its title
20 and its index number or letter. If a document has attachments, the table
21 of contents must give the title of each attachment and a brief
22 description of its contents.

23
24 (C) If submitted in paper form:

25
26 (i) It must be bound together at the end of the brief or in separate
27 volumes not exceeding 300 pages each.

28
29 (ii) It must be index-tabbed by number or letter.

30
31 (3) The clerk must file any proffer not complying with (2), but the court may
32 notify the filer that it may strike the proffer and the portions of the brief
33 referring to the proffer if the documents are not brought into compliance
34 within a stated reasonable time of not less than five court days.

35
36 (4) If any documents in the proffer are sealed or confidential records, rules 8.45–
37 8.47 govern these documents.

38
39 **(d) Evidentiary hearing**

40
41 An evidentiary hearing is required if, after considering the briefs, the proffer, and
42 matters of which judicial notice may be taken, the court finds there is a reasonable
43 likelihood that the petitioner may be entitled to relief and the petitioner’s

1 entitlement to relief depends on the resolution of an issue of fact. The reviewing
2 court may take one of the following actions:

- 3
- 4 (1) Order a limited remand to the superior court to consider the claim under
5 Penal Code section 1509.1(b). The order for limited remand vests jurisdiction
6 over the claim in the superior court, which must proceed under rule
7 4.574(d)(2)–(3) and (e)–(g) and rule 4.575 for death penalty–related habeas
8 corpus proceedings in the superior court. The clerk/executive officer of the
9 Court of Appeal must send a copy of any such order to the clerk/executive
10 officer of the Supreme Court.
- 11
- 12 (2) Appoint a referee to conduct the hearing and make recommended findings of
13 fact.
- 14
- 15 (3) Conduct the hearing itself or designate a justice of the court to conduct the
16 hearing.

17

18 **(e) Procedures following limited remand**

- 19
- 20 (1) If the reviewing court orders a limited remand to the superior court to
21 consider a claim under Penal Code section 1509.1(b), it may stay the
22 proceedings on the remainder of the appeal pending the decision of the
23 superior court on remand. The clerk/executive officer of the Court of Appeal
24 must send a copy of any such stay to the clerk/executive officer of the
25 Supreme Court.
- 26
- 27 (2) If any party wishes to appeal from the superior court decision on remand, the
28 party must file a notice of appeal as provided in rule 8.392.
- 29
- 30 (3) If an appeal is filed from the superior court decision on remand, the
31 reviewing court may consolidate this appeal with any pending appeal under
32 Penal Code section 1509.1 from the superior court’s decisions in the same
33 habeas corpus proceeding. A copy of any consolidation order must be
34 promptly sent to the superior court clerk. The superior court clerk must then
35 augment the record on appeal to include all items listed in rule 8.395(a) from
36 the remanded proceedings.

37

38 *Rule 8.397 adopted effective April 25, 2019.*

39

40 **Advisory Committee Comment**

1 Penal Code section 1509.1(b) states when a claim of ineffective assistance of trial counsel not
2 raised in the superior court habeas corpus proceeding may be raised in an appeal under this
3 article.

4
5
6 **Rule 8.398. Finality**

7
8 **(a) General rule**

9
10 Except as otherwise provided in this rule, rule 8.366(b) governs the finality of a
11 Court of Appeal decision in a proceeding under this article.

12
13 **(b) Denial of certificate of appealability**

14
15 The Court of Appeal’s denial of an application for a certificate of appealability in a
16 proceeding under this article is final in that court on filing.

17
18 *Rule 8.398 adopted effective April 25, 2019.*

19
20
21 **Chapter 8. Miscellaneous Writs [Reserved]**

22
23 **Former rule 8.495. Renumbered effective April 25, 2019.**

24 *Rule 8.495 renumbered as rule 8.720.*

25
26 **Former rule 8.496. Renumbered effective April 25, 2019.**

27 *Rule 8.496 renumbered as rule 8.724.*

28
29 **Former rule 8.498. Renumbered effective April 25, 2019.**

30 *Rule 8.498 renumbered as rule 8.728.*

31
32 **Former rule 8.499. Renumbered effective April 25, 2019.**

33 *Rule 8.499 renumbered as rule 8.730.*

34
35
36 **Division 2. Rules Relating to Death Penalty Appeals and Habeas Corpus**
37 **Proceedings**

38
39 **Rule 8.600. In general**

40
41 **(a) Automatic appeal to Supreme Court**

1 If a judgment imposes a sentence of death, an appeal by the defendant is
2 automatically taken to the Supreme Court.

3
4 **(b) — Copies of judgment**

5
6 ~~When a judgment of death is rendered, the superior court clerk must immediately~~
7 ~~send certified copies of the commitment to the Supreme Court, the Attorney~~
8 ~~General, the Governor, and the California Appellate Project in San Francisco.~~

9
10 **(c) — Extensions of time**

11
12 ~~When a rule in this part authorizes a trial court to grant an extension of a specified~~
13 ~~time period, the court must consider the relevant policies and factors stated in rule~~
14 ~~8.63.~~

15
16 *(Subd (c) amended effective January 1, 2007.)*

17
18 **(d) — Supervising preparation of record**

19
20 ~~The clerk/executive officer of the Supreme Court, under the supervision of the~~
21 ~~Chief Justice, must take all appropriate steps to ensure that superior court clerks~~
22 ~~and reporters promptly perform their duties under the rules in this part. This~~
23 ~~provision does not affect the superior courts' responsibility for the prompt~~
24 ~~preparation of appellate records in capital cases.~~

25
26 *(Subd (d) amended effective January 1, 2018.)*

27
28 **(e) — Definitions**

29
30 For purposes of this part:

31
32 (1) ~~The delivery date of a transcript sent by mail is the mailing date plus five~~
33 ~~days; and~~

34
35 (2) ~~“Trial counsel” means both the defendant’s trial counsel and the prosecuting~~
36 ~~attorney.~~

37
38 *(Subd (e) amended effective January 1, 2007.)*

39
40 *Rule 8.600 amended effective January 1, 2018; repealed and adopted as rule 34 effective January*
41 *1, 2004; previously amended and renumbered effective January 1, 2007.*

1 **Former rule 8.600. Renumbered effective April 25, 2019.**

2 *Rule 8.600 renumbered as rule 8.603.*

3
4 **Chapter 1. General Provisions**

5
6 **Rule 8.601. Definitions**

7
8 For purposes of this division:

- 9
- 10 (1) “Appointed counsel” or “appointed attorney” means an attorney appointed to
11 represent a person in a death penalty appeal, death penalty–related habeas
12 corpus proceedings, or an appeal of a decision in death penalty–related
13 habeas corpus proceedings. Appointed counsel may be either lead counsel or
14 associate counsel.
- 15
- 16 (2) “Lead counsel” means an appointed attorney or an attorney in the Office of
17 the State Public Defender, the Habeas Corpus Resource Center, the
18 California Appellate Project–San Francisco, or a Court of Appeal district
19 appellate project who is responsible for the overall conduct of the case and
20 for supervising the work of associate and supervised counsel. If two or more
21 attorneys are appointed to represent a person jointly in a death penalty appeal,
22 in death penalty–related habeas corpus proceedings, or in both classes of
23 proceedings together, one such attorney will be designated as lead counsel.
- 24
- 25 (3) “Associate counsel” means an appointed attorney who does not have the
26 primary responsibility for the case but nevertheless has casewide
27 responsibility. Associate counsel must meet the same minimum qualifications
28 as lead counsel.
- 29
- 30 (4) “Supervised counsel” means an attorney who works under the immediate
31 supervision and direction of lead or associate counsel but is not appointed by
32 the court. Supervised counsel must be an active member of the State Bar of
33 California.
- 34
- 35 (5) “Assisting counsel or entity” means an attorney or entity designated by the
36 appointing court to provide appointed counsel with consultation and resource
37 assistance. An assisting counsel must be an experienced capital appellate
38 counsel or habeas corpus practitioner, as appropriate. An assisting counsel in
39 an automatic appeal must, at a minimum, meet the qualifications for
40 appointed appellate counsel, including the case experience requirements in
41 rule 8.605(c)(2). An assisting counsel in a habeas corpus proceeding must, at
42 a minimum, meet the qualifications for appointed habeas corpus counsel,
43 including the case experience requirements in rule 8.652(c)(2)(A). Entities

1 that may be designated include the Office of the State Public Defender, the
2 Habeas Corpus Resource Center, the California Appellate Project–San
3 Francisco, and a Court of Appeal district appellate project.

4
5 (6) “Trial counsel” means both the defendant’s trial counsel and the prosecuting
6 attorney.

7
8 (7) “Panel” means a panel of attorneys from which superior courts may appoint
9 counsel in death penalty–related habeas corpus proceedings.

10
11 (8) “Committee” means a death penalty–related habeas corpus panel committee
12 that accepts and reviews attorney applications to determine whether
13 applicants are qualified for inclusion on a panel.

14
15 *Rule 8.601 adopted effective April 25, 2019.*

16
17 **Advisory Committee Comment**

18
19 **Number (3).** The definition of “associate counsel” in (3) is intended to make it clear that,
20 although appointed lead counsel has overall and supervisory responsibility in a capital case,
21 appointed associate counsel also has casewide responsibility.

22
23 **Chapter ~~10.2.~~ Automatic Appeals From Judgments of Death**

24
25 **Article 1. General Provisions**

26
27 **Rule ~~8.603.8.600.~~ In general**

28
29 **(a) Automatic appeal to Supreme Court**

30
31 If a judgment imposes a sentence of death, an appeal by the defendant is
32 automatically taken to the Supreme Court.

33
34 **(b) Copies of judgment**

35
36 When a judgment of death is rendered, the superior court clerk must immediately
37 send certified copies of the commitment to the Supreme Court, the Attorney
38 General, the Governor, the Habeas Corpus Resource Center, and the California
39 Appellate Project ~~in~~ –San Francisco.

40
41 *Rule 8.603 renumbered and amended effective April 25, 2019; repealed and adopted as rule 34*
42 *effective January 1, 2004; previously amended and renumbered as rule 8.600 effective January 1,*
43 *2007; previously amended effective January 1, 2018.*

1
2
3 **Rule 8.605. Qualifications of counsel in death penalty appeals and habeas corpus**
4 **proceedings**

5
6 **(a) Purpose**

7
8 This rule defines the minimum qualifications for attorneys appointed by the
9 Supreme Court in death penalty appeals and habeas corpus proceedings related to
10 ~~sentences of death.~~ These minimum qualifications are designed to promote
11 competent representation and to avoid unnecessary delay and expense by assisting
12 the court in appointing qualified counsel. Nothing in this rule is intended to be used
13 as a standard by which to measure whether the defendant received effective
14 assistance of counsel. An attorney is not entitled to appointment simply because the
15 attorney meets these minimum qualifications.

16
17 *(Subd (a) amended effective April 25, 2019.)*

18
19 **(b) General qualifications**

20
21 The Supreme Court may appoint an attorney only if it has determined, after
22 reviewing the attorney’s experience, writing samples, references, and evaluations
23 under (c) and (d) through (f), that the attorney has demonstrated the commitment,
24 knowledge, and skills necessary to competently represent the defendant. An
25 appointed attorney must be willing to cooperate with an assisting counsel or entity
26 that the court may designate.

27
28 *(Subd (b) amended effective April 25, 2019.)*

29
30 **(e) Definitions**

31
32 ~~As used in this rule:~~

33
34 ~~(1) “Appointed counsel” or “appointed attorney” means an attorney appointed to~~
35 ~~represent a person in a death penalty appeal or death penalty related habeas~~
36 ~~corpus proceedings in the Supreme Court. Appointed counsel may be either~~
37 ~~lead counsel or associate counsel.~~

38
39 ~~(2) “Lead counsel” means an appointed attorney or an attorney in the Office of~~
40 ~~the State Public Defender, the Habeas Corpus Resource Center, or the~~
41 ~~California Appellate Project in San Francisco who is responsible for the~~
42 ~~overall conduct of the case and for supervising the work of associate and~~
43 ~~supervised counsel. If two or more attorneys are appointed to represent a~~

1 defendant jointly in a death penalty appeal, in death penalty related habeas
2 corpus proceedings, or in both classes of proceedings together, one such
3 attorney will be designated as lead counsel.
4

5 (3) ~~“Associate counsel” means an appointed attorney who does not have the~~
6 ~~primary responsibility for the case but nevertheless has casewise~~
7 ~~responsibility to perform the duties for which that attorney was appointed,~~
8 ~~whether they are appellate, habeas corpus, or appellate and habeas corpus~~
9 ~~duties. Associate counsel must meet the same minimum qualifications as lead~~
10 ~~counsel.~~

11
12 (4) ~~“Supervised counsel” means an attorney who works under the immediate~~
13 ~~supervision and direction of lead or associate counsel but is not appointed by~~
14 ~~the Supreme Court. Supervised counsel must be an active member of the~~
15 ~~State Bar of California.~~

16
17 (5) ~~“Assisting counsel or entity” means an attorney or entity designated by the~~
18 ~~Supreme Court to provide appointed counsel with consultation and resource~~
19 ~~assistance. Entities that may be designated include the Office of the State~~
20 ~~Public Defender, the Habeas Corpus Resource Center, and the California~~
21 ~~Appellate Project in San Francisco.~~

22
23 **(d)(c) Qualifications for appointed appellate counsel**

24
25 Except as provided in (d), an attorney appointed as lead or associate counsel in a
26 death penalty appeal must have at least satisfy the following minimum
27 qualifications and experience:

28
29 (1) California legal experience

30
31 Active practice of law in California for at least four years.

32
33 (2) Criminal appellate experience

34
35 Either:

36
37 (A) Service as counsel of record for ~~a defendant~~ either party in seven
38 completed felony appeals, including as counsel of record for a
39 defendant in at least four felony appeals, one of which was a murder
40 case; or

41
42 (B) Service as:
43

1 (i) Counsel of record for a defendant either party in five completed
2 felony appeals, including as counsel of record for a defendant in
3 at least three of these appeals; and

4
5 (ii) as Supervised counsel for a defendant in two death penalty
6 appeals in which the opening brief has been filed. Service as
7 supervised counsel in a death penalty appeal will apply toward
8 this qualification only if lead or associate counsel in that appeal
9 attests that the supervised attorney performed substantial work on
10 the case and recommends the attorney for appointment.

11
12 (3) Knowledge

13
14 Familiarity with Supreme Court practices and procedures, including those
15 related to death penalty appeals.

16
17 (4) Training

18
19 (A) Within three years before appointment, completion of at least nine
20 hours of Supreme Court–approved appellate criminal defense training,
21 continuing education, or course of study, at least six hours of which
22 involve death penalty appeals. Counsel who serves as an instructor in a
23 course that satisfies the requirements of this rule may receive course
24 participation credit for instruction, on request to and approval by the
25 Supreme Court, in an amount to be determined by the Supreme Court.

26
27 (B) If the Supreme Court has previously appointed counsel to represent a
28 ~~defendant~~ person in a death penalty appeal or a related habeas corpus
29 proceeding, and counsel has provided active representation within three
30 years before the request for a new appointment, the court, after
31 reviewing counsel’s previous work, may find that such representation
32 constitutes compliance with some or all of this requirement.

33
34 (5) Skills

35
36 Proficiency in issue identification, research, analysis, writing, and advocacy,
37 taking into consideration all of the following:

38
39 (A) Two writing samples—ordinarily appellate briefs—written by the
40 attorney and presenting an analysis of complex legal issues;

- 1 (B) If the attorney has previously been appointed in a death penalty appeal
2 or death penalty–related habeas corpus proceeding, the evaluation of
3 the assisting counsel or entity in that proceeding;
4
5 (C) Recommendations from two attorneys familiar with the attorney’s
6 qualifications and performance; and
7
8 (D) If the attorney is on a panel of attorneys eligible for appointments to
9 represent indigents in the Court of Appeal, the evaluation of the
10 administrator responsible for those appointments.
11

12 *(Subd (c) amended and relettered effective April 25, 2019; adopted as subd (d) effective*
13 *January 1, 2005; previously amended effective January 1, 2007.)*
14

15 **(e) ~~Qualifications for appointed habeas corpus counsel~~**

16 ~~An attorney appointed as lead or associate counsel to represent a person in death~~
17 ~~penalty–related habeas corpus proceedings must have at least the following~~
18 ~~qualifications and experience:~~
19

- 20
21 ~~(1) Active practice of law in California for at least four years.~~
22
23 ~~(2) Either:~~
24
25 ~~(A) Service as counsel of record for a defendant in five completed felony~~
26 ~~appeals or writ proceedings, including one murder case, and service as~~
27 ~~counsel of record for a defendant in three jury trials or three habeas~~
28 ~~corpus proceedings involving serious felonies; or~~
29
30 ~~(B) Service as counsel of record for a defendant in five completed felony~~
31 ~~appeals or writ proceedings and service as supervised counsel in two~~
32 ~~death penalty–related habeas corpus proceedings in which the petition~~
33 ~~has been filed. Service as supervised counsel in a death penalty–related~~
34 ~~habeas corpus proceeding will apply toward this qualification only if~~
35 ~~lead or associate counsel in that proceeding attests that the attorney~~
36 ~~performed substantial work on the case and recommends the attorney~~
37 ~~for appointment.~~
38
39 ~~(3) Familiarity with the practices and procedures of the California Supreme~~
40 ~~Court and the federal courts in death penalty–related habeas corpus~~
41 ~~proceedings.~~
42

1 (4) ~~Within three years before appointment, completion of at least nine hours of~~
2 ~~Supreme Court approved appellate criminal defense or habeas corpus~~
3 ~~defense training, continuing education, or course of study, at least six hours~~
4 ~~of which address death penalty habeas corpus proceedings. If the Supreme~~
5 ~~Court has previously appointed counsel to represent a defendant in a death~~
6 ~~penalty appeal or a related habeas corpus proceeding, and counsel has~~
7 ~~provided active representation within three years before the request for a new~~
8 ~~appointment, the court, after reviewing counsel's previous work, may find~~
9 ~~that such representation constitutes compliance with this requirement.~~

10
11 (5) ~~Proficiency in issue identification, research, analysis, writing, investigation,~~
12 ~~and advocacy, taking into consideration all of the following:~~

13
14 (A) ~~Three writing samples—ordinarily two appellate briefs and one habeas~~
15 ~~corpus petition—written by the attorney and presenting an analysis of~~
16 ~~complex legal issues;~~

17
18 (B) ~~If the attorney has previously been appointed in a death penalty appeal~~
19 ~~or death penalty related habeas corpus proceeding, the evaluation of~~
20 ~~the assisting counsel or entity in that proceeding;~~

21
22 (C) ~~Recommendations from two attorneys familiar with the attorney's~~
23 ~~qualifications and performance; and~~

24
25 (D) ~~If the attorney is on a panel of attorneys eligible for appointments to~~
26 ~~represent indigent appellants in the Court of Appeal, the evaluation of~~
27 ~~the administrator responsible for those appointments.~~

28
29 **(f)(d) Alternative qualifications**

30
31 The Supreme Court may appoint an attorney who does not meet the California law
32 practice requirements of (d)(c)(1) and (2) or (e)(1) and or the criminal appellate
33 experience requirements of (c)(2) if the attorney has the qualifications described in
34 (d)(c)(3)–(5) or (e)(3)–(5) and:

35
36 (1) The court finds that the attorney has extensive experience in another
37 jurisdiction or a different type of practice (such as civil trials or appeals,
38 academic work, or work for a court or prosecutor) for at least four years,
39 providing the attorney with experience in complex cases substantially
40 equivalent to that of an attorney qualified under ~~(d)(c)~~ or ~~(e)~~.

41
42 (2) Ongoing consultation is available to the attorney from an assisting counsel or
43 entity designated by the court.

1
2 (3) Within two years before appointment, the attorney has completed at least 18
3 hours of Supreme Court–approved appellate criminal defense or habeas
4 corpus defense training, continuing education, or course of study, at least
5 nine hours of which involve death penalty appellate or habeas corpus
6 proceedings. The Supreme Court will determine in each case whether the
7 training, education, or course of study completed by a particular attorney
8 satisfies the requirements of this subdivision in light of the attorney’s
9 individual background and experience. If the Supreme Court has previously
10 appointed counsel to represent a ~~defendant~~ person in a death penalty appeal
11 or a related habeas corpus proceeding, and counsel has provided active
12 representation within three years before the request for a new appointment,
13 the court, after reviewing counsel’s previous work, may find that such
14 representation constitutes compliance with some or all of this requirement.
15

16 *(Subd (d) amended and relettered effective April 25, 2019; adopted as subd (f) effective*
17 *January 1, 2005.)*
18

19 ~~(g)~~ **Attorneys without trial experience**
20

21 ~~If an evidentiary hearing is ordered in a death penalty–related habeas corpus~~
22 ~~proceeding and an attorney appointed under either (e) or (f) to represent a~~
23 ~~defendant in that proceeding lacks experience in conducting trials or evidentiary~~
24 ~~hearings, the attorney must associate an attorney who has such experience.~~
25

26 ~~(h)~~(e) **Use of supervised counsel**
27

28 An attorney who does not meet the qualifications described in (c) or (d), ~~(e), or (f)~~
29 may assist lead or associate counsel, but must work under the immediate
30 supervision and direction of lead or associate counsel.
31

32 *(Subd (e) amended and relettered effective April 25, 2019; adopted as subd (h) effective*
33 *January 1, 2005.)*
34

35 ~~(f)~~(f) **Appellate and habeas corpus appointment**
36

37 (1) An attorney appointed to represent a ~~defendant~~ person in both a death penalty
38 appeal and death penalty–related habeas corpus proceedings must meet the
39 minimum qualifications of both ~~(d) and (e)~~ (c) or (d) and of (f) rule 8.652.
40

41 (2) Notwithstanding (1), two attorneys together may be eligible for appointment
42 to represent a ~~defendant~~ person jointly in both a death penalty appeal and
43 death penalty–related habeas corpus proceedings if the Supreme Court finds

1 that one attorney satisfies the minimum qualifications set forth in their
2 qualifications in the aggregate satisfy the provisions of both (d) and (e) (c) or
3 (d), and the other attorney satisfies the minimum qualifications set forth in of
4 (f) rule 8.652.

5
6 *(Subd (f) amended and relettered effective April 25, 2019; adopted as subd (i) effective*
7 *January 1, 2005.)*

8
9 **~~(j)~~(g) Designated entities as appointed counsel**

10
11 (1) Notwithstanding any other provision of this rule, both the State Public
12 Defender is qualified to serve as appointed counsel in death penalty appeals,
13 the Habeas Corpus Resource Center is qualified to serve as appointed counsel
14 in death penalty related habeas corpus proceedings, and the California
15 Appellate Project in San Francisco is are qualified to serve as appointed
16 counsel in both classes of proceedings death penalty appeals.

17
18 (2) When serving as appointed counsel in a death penalty appeal, the State Public
19 Defender or the California Appellate Project in San Francisco must not
20 assign any attorney as lead counsel unless it finds the attorney qualified under
21 (~~(d)~~(c)(1)–(5) or the Supreme Court finds the attorney qualified under (~~(f)~~(d).

22
23 (~~3~~) When serving as appointed counsel in a death penalty related habeas corpus
24 proceeding, the Habeas Corpus Resource Center or the California Appellate
25 Project in San Francisco must not assign any attorney as lead counsel unless
26 it finds the attorney qualified under (e)(1)–(5) or the Supreme Court finds the
27 attorney qualified under (f).

28
29 *(Subd (g) amended and relettered effective April 25, 2019; adopted as subd (j) effective*
30 *January 1, 2005.)*

31
32 **~~(k)~~ Attorney appointed by federal court**

33
34 Notwithstanding any other provision of this rule, the Supreme Court may appoint
35 an attorney who is under appointment by a federal court in a death penalty related
36 habeas corpus proceeding for the purpose of exhausting state remedies in the
37 Supreme Court and for all subsequent state proceedings in that case, if the Supreme
38 Court finds that attorney has the commitment, proficiency, and knowledge
39 necessary to represent the defendant competently in state proceedings.

40
41 *Rule 8.605 amended effective April 25, 2019; repealed and adopted as rule 76.6 effective January*
42 *1, 2005; previously amended and renumbered effective January 1, 2007.*

1 **Advisory Committee Comment**

2
3 **Subdivision (c).** The definition of “associate counsel” in (c)(3) is intended to make it clear that
4 although appointed lead counsel has overall and supervisory responsibility in a capital case,
5 appointed associate counsel also has casewide responsibility to perform the duties for which he or
6 she was appointed, whether they are appellate duties, habeas corpus duties, or appellate *and*
7 habeas corpus duties.
8

9 **Article 2. Record on Appeal**

10
11 **Rule 8.608. General provisions**

12
13 **(a) Supervising preparation of record**

14
15 The clerk/executive officer of the Supreme Court, under the supervision of the
16 Chief Justice, must take all appropriate steps to ensure that superior court clerks
17 and reporters promptly perform their duties under the rules in this article. This
18 provision does not affect the superior courts’ responsibility for the prompt
19 preparation of appellate records in capital cases.
20

21 **(b) Extensions of time**

22
23 When a rule in this article authorizes a trial court to grant an extension of a
24 specified time period, the court must consider the relevant policies and factors
25 stated in rule 8.63.
26

27 **(c) Delivery date**

28
29 The delivery date of a transcript sent by mail is the mailing date plus five days.
30

31 *Rule 8.608 adopted effective April 25, 2019.*
32

33 **Rule 8.610. Contents and form of the record**

34
35 **(a) Contents of the record**

- 36
37 (1) The record must include a clerk’s transcript containing:
38
39 (A) The accusatory pleading and any amendment;
40
41 (B) Any demurrer or other plea;
42
43 (C) All court minutes;

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- (D) All instructions submitted in writing, ~~each one~~ the cover page required by rule 2.1055(b)(2) indicating the party requesting it each instruction, and any written jury instructions given by the court;
- (E) Any written communication, including printouts of any e-mail or text messages and their attachments, between the court and the parties, the jury, or any individual juror or prospective juror;
- (F) Any verdict;
- (G) Any written opinion of the court;
- (H) The judgment or order appealed from and any abstract of judgment or commitment;
- (I) Any motion for new trial, with supporting and opposing memoranda and attachments;
- (J) Any transcript of a sound or sound-and-video recording furnished to the jury or tendered to the court under rule 2.1040, including witness statements;
- (K) Any application for additional record and any order on the application;
- (L) Any written defense motion or any written motion by the People, with supporting and opposing memoranda and attachments;
- (M) If related to a motion under (L), any search warrant and return and the reporter's transcript of any preliminary examination or grand jury hearing;
- (N) Any document admitted in evidence to prove a prior juvenile adjudication, criminal conviction, or prison term;
- (O) The probation officer's report;
- (P) Any court-ordered diagnostic or psychological report required under Penal Code section 1369;
- (Q) Any copies of visual aids provided to the clerk under rule 4.230(f). If a visual aid is oversized, a photograph of that visual aid must be included

1 in place of the original. For digital or electronic presentations, printouts
2 showing the full text of each slide or image must be included;

3
4 (R) Each juror questionnaire, whether or not the juror was selected;

5
6 (S) The table correlating the jurors' names with their identifying numbers
7 required by rule 8.611;

8
9 (T) The register of actions;

10
11 (U) All documents filed under Penal Code section 987.2 or 987.9; and

12
13 ~~(P)(V)Any other document filed or lodged in the case, including each juror~~
14 ~~questionnaire, whether or not the juror was selected.~~

15
16 (2) The record must include a reporter's transcript containing:

17
18 (A) The oral proceedings on the entry of any plea other than a not guilty
19 plea;

20
21 (B) The oral proceedings on any motion in limine;

22
23 (C) The voir dire examination of jurors;

24
25 (D) Any opening statement;

26
27 (E) The oral proceedings at trial;

28
29 (F) All instructions given orally;

30
31 (G) Any oral communication between the court and the jury or any
32 individual juror;

33
34 (H) Any oral opinion of the court;

35
36 (I) The oral proceedings on any motion for new trial;

37
38 (J) The oral proceedings at sentencing, granting or denying of probation,
39 or other dispositional hearing;

40
41 (K) The oral proceedings on any motion under Penal Code section 1538.5
42 denied in whole or in part;

43

- 1 (L) The closing arguments;
2
3 (M) Any comment on the evidence by the court to the jury;
4
5 (N) The oral proceedings on motions in addition to those listed above; and
6
7 (O) Any other oral proceedings in the case, including any proceedings that
8 did not result in a verdict or sentence of death because the court ordered
9 a mistrial or a new trial.

10
11 (3) All exhibits admitted in evidence, refused, or lodged are deemed part of the
12 record, but, except as provided in rule 8.622, may be transmitted to the
13 reviewing court only as provided in rule 8.634.

14
15 (4) The superior court or the Supreme Court may order that the record include
16 additional material.

17
18 *(Subd (a) amended effective April 25, 2019; previously amended effective January 1,*
19 *2007.)*

20
21 **(b) Sealed and confidential records**

22
23 Rules 8.45–8.47 govern sealed and confidential records in appeals under this
24 chapter.

25
26 *(Subd (b) amended effective April 25, 2019; previously amended effective January 1, 2007,*
27 *and January 1, 2014.)*

28
29 **(c) Juror-identifying information**

30
31 Any document in the record containing juror-identifying information must be
32 edited in compliance with rule ~~8.332~~ 8.611. Unedited copies of all such documents
33 and a copy of the table required by the rule, under seal and bound together if filed
34 in paper form, must be included in the record sent to the Supreme Court.

35
36 *(Subd (c) amended effective April 25, 2019; previously amended effective January 1, 2007,*
37 *and January 1, 2016.)*

38
39 **(d) * * ***

40
41 *Rule 8.610 amended effective April 25, 2019; adopted as rule 34.1 effective January 1, 2004;*
42 *previously amended and renumbered as rule 8.610 effective January 1, 2007; previously*
43 *amended effective January 1, 2005, January 1, 2014, and January 1, 2016.*

1
2 **Advisory Committee Comment**
3

4 **Subdivision (a).** Subdivision (a) ~~restates~~ implements Penal Code section 190.7(a).
5

6 **Subdivision (b).** The clerk's and reporter's transcripts may contain records that are sealed or
7 confidential. Rules 8.45–8.47 address the handling of such records, including requirements for the
8 format, labeling, and transmission of and access to such records. Examples of confidential records
9 include Penal Code section 1203.03 diagnostic reports, records closed to inspection by court
10 order under *People v. Marsden* (1970) 2 Cal.3d 118 or *Pitchess v. Superior Court* (1974) 11
11 Cal.3d 531, in-camera proceedings on a confidential informant, and defense investigation and
12 expert funding requests (Pen. Code, §§ 987.2 and 987.9; *Puett v. Superior Court* (1979) 96
13 Cal.App.3d 936, 940, fn. 2; *Keenan v. Superior Court* (1982) 31 Cal.3d 424, 430).
14
15

16 **Rule 8.611. Juror-identifying information**
17

18 **(a) Application**
19

20 A clerk's transcript, a reporter's transcript, or any other document in the record that
21 contains juror-identifying information must comply with this rule.
22

23 **(b) Juror names, addresses, and telephone numbers**
24

25 (1) The name of each trial juror or alternate sworn to hear the case must be
26 replaced with an identifying number wherever it appears in any document.
27 The superior court clerk must prepare and keep under seal in the case file a
28 table correlating the jurors' names with their identifying numbers. The clerk
29 and the reporter must use the table in preparing all transcripts or other
30 documents.
31

32 (2) The addresses and telephone numbers of trial jurors and alternates sworn to
33 hear the case must be deleted from all documents.
34

35 **(c) Potential jurors**
36

37 Information identifying potential jurors called but not sworn as trial jurors or
38 alternates must not be sealed unless otherwise ordered under Code of Civil
39 Procedure section 237(a)(1).
40

41 *Rule 8.611 adopted effective April 25, 2019.*
42

43 **Advisory Committee Comment**

1
2 Rule 8.611 implements Code of Civil Procedure section 237.

3
4
5 **Rule 8.613. Preparing and certifying the record of preliminary proceedings**

6
7 **(a)–(c) * * ***

8
9 **(d) Notice to prepare transcript and lists**

10
11 Within five days after receiving notice under (b)(1) or notifying the judge under
12 (b)(2), the clerk must do the following:

13
14 (1) Notify each reporter who reported a preliminary proceeding to prepare a
15 transcript of the proceeding. If there is more than one reporter, the designated
16 judge may assign a reporter or another designee to perform the functions of
17 the primary reporter.

18
19 (2) Notify trial counsel to submit the lists of appearances, exhibits, and motions
20 required by rule 4.119.

21
22 *(Subd (d) amended effective April 25, 2019.)*

23
24 **(e) Reporter’s duties**

25
26 (1) The reporter must prepare an original and five copies of the reporter’s
27 transcript in electronic form and two additional copies in electronic form for
28 each codefendant against whom the death penalty is sought. The transcript
29 must include the preliminary examination or grand jury proceeding unless a
30 transcript of that examination or proceeding has already been filed in superior
31 court for inclusion in the clerk’s transcript.

32
33 (2) The reporter must certify the original and all copies of the reporter’s
34 transcript as correct.

35
36 (3) Within 20 days after receiving the notice to prepare the reporter’s transcript,
37 the reporter must deliver the original and all copies of the transcript to the
38 clerk.

39
40 *(Subd (e) amended effective April 25, 2019.)*

41
42 **(f) Review by counsel**

1 (1) Within five days after the reporter delivers the transcript, the clerk must
2 deliver the original transcript and the lists of appearances, exhibits, and
3 motions required by rule 4.119 to the designated judge and one copy of the
4 transcript and each list required by rule 4.119 that is not required to be sealed
5 to each trial counsel. If a different attorney represented the defendant or the
6 People in the preliminary proceedings, both attorneys must perform the tasks
7 required by (2).

8
9 (2) Each trial counsel must promptly:

10
11 (A) Review the reporter's transcript and the lists of appearances, exhibits,
12 and motions to identify any for errors or omissions in the transcript;

13
14 (B) Review the docket sheets and minute orders to determine whether all
15 preliminary proceedings have been transcribed; and

16
17 ~~(C) Consult with opposing counsel to determine whether any other~~
18 ~~proceedings or discussions should have been transcribed; and~~

19
20 ~~(D)~~(C) Review the court file to determine whether it is complete.

21
22 (3) Within 21 days after the clerk delivers the transcript and lists under (1), trial
23 counsel must confer regarding any errors or omissions in the reporter's
24 transcript or court file identified by trial counsel during the review required
25 under (2) and determine whether any other proceedings or discussions should
26 have been transcribed.

27
28 *(Subd (f) amended effective April 25, 2019; previously amended effective January 1, 2007.)*

29
30 **(g) Declaration and request for corrections or additions**

31
32 (1) Within 30 days after the clerk delivers the reporter's transcript and lists, each
33 trial counsel must serve and file;

34
35 (A) A declaration stating that counsel or another person under counsel's
36 supervision has performed the tasks required by (f), including
37 conferring with opposing counsel; and

38
39 (B) ~~must serve and file~~ Either:

40
41 ~~(A)(i)~~ A request for corrections or additions to the reporter's transcript
42 or court file, Immaterial typographical errors that cannot

1 conceivably cause confusion are not required to be brought to the
2 court's attention; or

3
4 ~~(B)~~(ii) A statement that counsel does not request any corrections
5 or additions.

6
7 (C) The requirements of (B) may be satisfied by a joint statement or request
8 filed by counsel for all parties.

9
10 (2)–(4) * * *

11
12 *(Subd (g) amended effective April 25, 2019; previously amended effective January 1,*
13 *2007.)*

14
15 (h) * * *

16
17 (i) **Transcript delivered in electronic form**

18
19 (1)–(2) * * *

20
21 (3) A copy of a sealed or confidential transcript delivered in electronic form must
22 be ~~placed on a separated disk from any other transcripts and clearly~~ labeled as
23 confidential required by rule 8.45.

24
25 (4)–(5) * * *

26
27 *(Subd (i) amended effective April 25, 2019; previously amended effective January 1, 2007,*
28 *January 1, 2017, and January 1, 2018.)*

29
30 (j) **Delivery to the superior court**

31
32 Within five days after the reporter delivers the copies in electronic form, the clerk
33 must deliver to the responsible judge, for inclusion in the record:

34
35 (1) The certified original reporter's transcript of the preliminary proceedings and
36 the copies that have not been distributed to counsel, ~~including the copies in~~
37 ~~electronic form~~; and

38
39 (2) The complete court file of the preliminary proceedings or a certified copy of
40 that file.

41
42 *(Subd (j) amended effective April 25, 2019; previously amended effective January 1, 2007,*
43 *and January 1, 2018.)*

1
2 (k) * * *

3
4 (l) **Notice that the death penalty is no longer sought**

5
6 After the ~~presiding judge has ordered preparation of~~ clerk has notified the court
7 reporter to prepare the pretrial record, if the death penalty is no longer sought, the
8 clerk must promptly notify the reporter that this rule does not apply.

9
10 (Subd (l) amended effective April 25, 2019; previously amended effective January 1, 2007.)

11
12 Rule 8.613 amended effective April 25, 2019; adopted as rule 34.2 effective January 1, 2004;
13 previously amended and renumbered as rule 8.613 effective January 1, 2007; previously
14 amended effective January 1, 2017, and January 1, 2018.

15
16
17 **Advisory Committee Comment**

18
19 Rule 8.613 implements Penal Code section 190.9(a). Rules 8.613–8.622 govern the process of
20 preparing and certifying the record in any appeal from a judgment of death ~~imposed after a trial~~
21 ~~that began on or after January 1, 1997~~; specifically, rule 8.613 provides for the record of the
22 preliminary proceedings in such an appeal. ~~Rule 8.625 governs the process of certifying the~~
23 ~~record in any appeal from a judgment of death imposed after a trial that began before January 1,~~
24 ~~1997.~~

25
26 **Subdivision (f).** * * *

27
28 **Subdivision (i).** * * *

29
30 **Rule 8.616. Preparing the trial record**

31
32 (a) **Clerk’s duties**

33
34 (1) The clerk must promptly—and no later than five days after the judgment of
35 death is rendered:—

36
37 (A) Notify the reporter to prepare the reporter’s transcript; and

38
39 (B) Notify trial counsel to submit the lists of appearances, exhibits, and
40 motions required by rule 4.230.

41
42 (2) The clerk must prepare an original and eight copies of the clerk’s transcript
43 and two additional copies for each codefendant sentenced to death. The clerk

1 is encouraged to send the clerk’s transcript in electronic form if the court is
2 able to do so.

- 3
4 (3) The clerk must certify the original and all copies of the clerk’s transcript as
5 correct.

6
7 *(Subd (a) amended effective April 25, 2019.)*

8
9 **(b) Reporter’s duties**

- 10
11 (1) The reporter must prepare an original and five copies of the reporter’s
12 transcript in electronic form and two additional copies in electronic form for
13 each codefendant sentenced to death.

- 14
15 (2) Any portion of the transcript transcribed during trial must not be retyped
16 unless necessary to correct errors, but must be repaginated and combined
17 with any portion of the transcript not previously transcribed. Any additional
18 copies needed must not be retyped but, if the transcript is in paper form, must
19 be prepared by photocopying or an equivalent process.

- 20
21 (3) The reporter must certify the original and all copies of the reporter’s
22 transcript as correct and deliver them to the clerk.

23
24 *(Subd (b) amended effective April 25, 2019; previously amended effective January 1,*
25 *2016.)*

26
27 **(c) Sending the record to trial counsel**

28
29 Within 30 days after the judgment of death is rendered, the clerk must deliver one
30 copy of the clerk’s and reporter’s transcripts and one copy of each list of
31 appearances, exhibits, and motions required by rule 4.230 that is not required to be
32 sealed to each trial counsel; The clerk must retaining the original transcripts and
33 ~~the~~ any remaining copies. If counsel does not receive the transcripts within that
34 period, counsel must promptly notify the superior court.

35
36 *(Subd (c) amended effective April 25, 2019.)*

37
38 **(d) * * ***

39
40 *Rule 8.616 amended effective April 25, 2019; repealed and adopted as rule 35 effective January*
41 *1, 2004; previously renumbered as rule 8.606 effective January 1, 2007; previously amended*
42 *effective January 1, 2016.*

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Advisory Committee Comment

Rule 8.616 implements Penal Code section 190.8(b).

Rule 8.619. Certifying the trial record for completeness

~~(a)~~ **Review by counsel during trial**

~~During trial, counsel must call the court's attention to any errors or omissions they may find in the transcripts. The court must periodically ask counsel for lists of any such errors or omissions and may hold hearings to verify them.~~

~~(b)~~**(a) Review by counsel after trial**

(1) When the clerk delivers the clerk's and reporter's transcripts and the lists of appearances, exhibits, motions, and jury instructions required by rule 4.230 to trial counsel, each counsel must promptly:

~~(1)(A)~~ Review the docket sheets, ~~and~~ minute orders, and the lists of appearances, exhibits, motions, and jury instructions to determine whether the reporter's transcript is complete; and

~~(2)~~ ~~Consult with opposing counsel to determine whether any other proceedings or discussions should have been transcribed; and~~

~~(3)~~**(B)** Review the court file to determine whether the clerk's transcript is complete.

(2) Within 21 days after the clerk delivers the transcripts and lists under (1), trial counsel must confer regarding any errors or omissions in the reporter's transcript or clerk's transcript identified by trial counsel during the review required under (1).

(Subd (a) amended and relettered effective April 25, 2019; adopted as subd (b); previously amended effective January 1, 2007.)

~~(e)~~**(b) Declaration and request for additions or corrections**

(1) Within 30 days after the clerk delivers the transcripts, each trial counsel must serve and file:

1 (A) A declaration stating that counsel or another person under counsel's
2 supervision has performed the tasks required by ~~(b)~~(a), including
3 conferring with opposing counsel; and must serve and file
4

5 (B) Either:

6
7 ~~(A)~~(i) A request to include additional materials in the record or to
8 correct errors that have come to counsel's attention. Immaterial
9 typographical errors that cannot conceivably cause confusion are
10 not required to be brought to the court's attention; or
11

12 ~~(B)~~(ii) A statement that counsel does not request any additions or
13 corrections.
14

15 (2) The requirements of (1)(B) may be satisfied by a joint statement or request
16 filed by counsel for all parties.
17

18 (3) If the clerk's and reporter's transcripts combined exceed 10,000 pages, the
19 time limits stated in (a)(2) and (b)(1) are extended by three days for each
20 1,000 pages of combined transcript over 10,000 pages.
21

22 ~~(2)~~(4) A request for additions to the reporter's transcript must state the nature and
23 date of the proceedings and, if known, the identity of the reporter who
24 reported them.
25

26 ~~(3)~~(5) If any counsel fails to timely file a declaration under (1), the judge must not
27 certify the record and must set the matter for hearing, require a showing of
28 good cause why counsel has not complied, and fix a date for compliance.
29

30 *(Subd (b) amended and relettered effective April 25, 2019; adopted as subd (c); previously*
31 *amended effective January 1, 2007.)*
32

33 ~~(d)~~(c) **Completion of the record**

34
35 If any counsel files a request for additions or corrections:

36
37 (1) The clerk must promptly deliver the original transcripts to the judge who
38 presided at the trial.
39

40 (2) Within 15 days after the last request is filed, the judge must hold a hearing
41 and order any necessary additions or corrections. The order must require that
42 any additions or corrections be made within 10 days of its date.
43

- 1 (3) The clerk must promptly—and in any event within five days—notify the
2 reporter of an order under (2). If any portion of the proceedings cannot be
3 transcribed, the judge may order preparation of a settled statement under rule
4 8.346.
5
6 (4) The original transcripts must be augmented or corrected to reflect all
7 additions or corrections ordered. The clerk must promptly send copies of the
8 additional or corrected pages to trial counsel.
9
10 (5) Within five days after the augmented or corrected transcripts are filed, the
11 judge must set another hearing to determine whether the record has been
12 completed or corrected as ordered. The judge may order further proceedings
13 to complete or correct the record.
14
15 (6) When the judge is satisfied that all additions or corrections ordered have been
16 made and copies of all additional or corrected pages have been sent to trial
17 counsel, the judge must certify the record as complete and redeliver the
18 original transcripts to the clerk.
19
20 (7) The judge must certify the record as complete within ~~90~~ 30 days after the
21 judgment of death is rendered last request to include additional materials or
22 make corrections is filed or, if no such request is filed, after the last statement
23 that counsel does not request any additions or corrections is filed.
24

25 *(Subd (c) amended and relettered effective April 25, 2019; adopted as subd (d); previously*
26 *amended effective January 1, 2007.)*
27

28 **(e)(d) Transcript delivered in electronic form**
29

- 30 (1) When the record is certified as complete, the clerk must promptly notify the
31 reporter to prepare five copies of the transcript in electronic form and two
32 additional copies in electronic form for each codefendant sentenced to death.
33
34 (2) Each copy delivered in electronic form must comply with the applicable
35 requirements of rule 8.144 and any additional requirements prescribed by the
36 Supreme Court, and must be further labeled to show the date it was made.
37
38 (3) A copy of a sealed or confidential transcript delivered in electronic form must
39 be placed on a separated disk from any other transcripts and clearly labeled as
40 confidential—required by rule 8.45.
41
42 (4) The reporter is to be compensated for copies delivered in electronic form as
43 provided in Government Code section 69954(b).

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(5) Within 10 days after the clerk notifies the reporter under (1), the reporter must deliver the copies in electronic form to the clerk.

(Subd (d) amended and relettered effective April 25, 2019; adopted as subd (e); previously amended effective January 1, 2017, and January 1, 2018.)

(f)(e) Extension of time

- (1) The court may extend for good cause any of the periods specified in this rule.
- (2) An application to extend the ~~30-day~~ period to review the record under ~~(e)(a)~~ or the period to file a declaration under (b) must be served and filed within that the relevant period. ~~If the clerk’s and reporter’s transcripts combined exceed 10,000 pages, the court may grant an additional three days for each 1,000 pages over 10,000.~~
- (3) If the court orders an extension of time, the order must specify the justification for the extension. The clerk must promptly send a copy of the order to the Supreme Court.

(Subd (e) amended and relettered effective April 25, 2019; adopted as subd (f).)

(g)(f) Sending the certified record

- (1) When the record is certified as complete, the clerk must promptly send one copy of the clerk’s transcript and one copy of the reporter’s transcript:
 - (A) To each defendant’s appellate counsel and each defendant’s habeas corpus counsel: ~~one paper copy of the entire record and one copy of the reporter’s transcript in electronic form.~~ If either counsel has not been retained or appointed, the clerk must keep that counsel’s copies until counsel is retained or appointed.
 - (B) To the Attorney General, the Habeas Corpus Resource Center, and the California Appellate Project in San Francisco: ~~one paper copy of the clerk’s transcript and one copy of the reporter’s transcript in electronic form.~~
- (2) The reporter’s transcript must be in electronic form. The clerk is encouraged to send the clerk’s transcript in electronic form if the court is able to do so.

1 (Subd (f) amended and relettered effective April 25, 2019; adopted as subd (g); previously
2 amended effective January 1, 2018.)

3
4 **~~(h)~~(g) Notice of delivery**

5
6 When the clerk sends the record to the defendant’s appellate counsel, the clerk must
7 serve a notice of delivery on the clerk/executive officer of the Supreme Court.

8
9 (Subd (g) amended and relettered effective April 25, 2019; adopted as subd (h); previously
10 amended effective January 1, 2018.)

11
12 Rule 8.619 amended effective April 25, 2019; adopted as rule 35.1 effective January 1, 2004;
13 previously amended and renumbered as rule 8.619 effective January 1, 2007; previously
14 amended effective January 1, 2017, and January 1, 2018.

15
16 **Advisory Committee Comment**

17
18 Rule 8.619 implements Penal Code section 190.8(c)–(e).

19
20 Subdivision ~~(e)~~(d)(4) restates a provision of former rule 35(b), second paragraph, as it was in
21 effect on December 31, 2003.

22
23 **Rule 8.622. Certifying the trial record for accuracy**

24
25 **(a) Request for corrections or additions**

26
27 (1) Within 90 days after the clerk delivers the record to defendant’s appellate
28 counsel;

29
30 (A) Any party may serve and file a request for corrections or additions to
31 the record. Immaterial typographical errors that cannot conceivably
32 cause confusion are not required to be brought to the court’s attention.
33 Items that a party may request to be added to the clerk’s transcript
34 include a copy of any exhibit admitted in evidence, refused, or lodged
35 that is a document in paper or electronic format. The requesting party
36 must state the reason that the exhibit needs to be included in the clerk’s
37 transcript. Parties may file a joint request for corrections or additions.

38
39 (B) Appellate counsel must review all sealed records that they are entitled
40 to access under rule 8.45 and file an application to unseal any such
41 records that counsel determines no longer meet the criteria for sealing
42 specified in rule 2.550(d). Notwithstanding rule 8.46(e), this

1 application must be filed in the trial court and these records may be
2 unsealed on order of the trial court.

3
4 (2) A request for additions to the reporter’s transcript must state the nature and
5 date of the proceedings and, if known, the identity of the reporter who
6 reported them. A request for an exhibit to be included in the clerk’s transcript
7 must specify that exhibit by number or letter.

8
9 (3) Unless otherwise ordered by the court, within 10 days after a party serves and
10 files a request for corrections or additions to the record, defendant’s appellate
11 counsel and the trial counsel from the prosecutor’s office must confer
12 regarding the request and any application to unseal records served on the
13 prosecutor’s office.

14
15 (4) If the clerk’s and reporter’s transcripts combined exceed 10,000 pages, the
16 time limits stated in (1), (3), and (b)(4) are extended by 15 days for each
17 1,000 pages of combined transcript over 10,000 pages.

18
19 *(Subd (a) amended effective April 25, 2019.)*

20
21 **(b) Correction of the record**

22
23 (1) If any counsel files a request for corrections or additions, the procedures and
24 time limits of rule 8.619~~(d)~~(c)(1)–(5) must be followed.

25
26 (2) If any application to unseal a record is filed, the judge must grant or deny the
27 application before certifying the record as accurate.

28
29 ~~(2)~~(3) When the judge is satisfied that all corrections or additions ordered have been
30 made, the judge must certify the record as accurate and redeliver the record to
31 the clerk.

32
33 ~~(3)~~(4) The judge must certify the record as accurate within ~~120~~ 30 days after ~~it is~~
34 ~~delivered to appellate counsel~~ the last request to include additional materials
35 or make corrections is filed.

36
37 *(Subd (b) amended effective April 25, 2019; previously amended effective January 1,*
38 *2007.)*

39
40 **(c) ~~Computer-readable~~ Copies of the record**

41
42 (1) When the record is certified as accurate, the clerk must promptly notify the
43 reporter to prepare six copies of the reporter’s transcript in electronic form

1 and two additional copies in electronic form for each codefendant sentenced
2 to death.

- 3
4 (2) In preparing the copies, the procedures and time limits of rule 8.619(e)(d)(2)–
5 (5) must be followed.

6
7 *(Subd (c) amended effective April 25, 2019; previously amended effective January 1, 2007,*
8 *and January 1, 2018.)*

9
10 **(d) Extension of time**

- 11
12 (1) The court may extend for good cause any of the periods specified in this rule.
13
14 (2) An application to extend the 90-day period to request corrections or additions
15 under (a) must be served and filed within that period. ~~If the clerk's and~~
16 ~~reporter's transcripts combined exceed 10,000 pages, the court may grant an~~
17 ~~additional 15 days for each 1,000 pages over 10,000.~~
18
19 (3) If the court orders an extension of time, the order must specify the
20 justification for the extension. The clerk must promptly send a copy of the
21 order to the Supreme Court.
22
23 (4) If the court orders an extension of time, the court may conduct a status
24 conference or require the counsel who requested the extension to file a status
25 report on counsel's progress in reviewing the record.

26
27 *(Subd (d) amended effective April 25, 2019.)*

28
29 **(e) Sending the certified record**

30
31 When the record is certified as accurate, the clerk must promptly send:

- 32
33 (1) To the Supreme Court: the corrected original record, including the judge's
34 certificate of accuracy, ~~and a copy of~~ The reporter's transcript must be in
35 electronic form. The clerk is encouraged to send the clerk's transcript in
36 electronic form if the court is able to do so.
37
38 (2) To each defendant's appellate counsel, each defendant's habeas corpus
39 counsel, the Attorney General, the Habeas Corpus Resource Center, and the
40 California Appellate Project in San Francisco: a copy of the order certifying
41 the record and a copy of the reporter's transcript in electronic form.
42

1 (3) To the Governor: the copies of the transcripts required by Penal Code section
2 1218, with copies of any corrected or augmented pages inserted.

3
4 *(Subd (e) amended effective April 25, 2019; previously amended effective January 1,*
5 *2018.)*

6
7 *Rule 8.622 amended effective April 25, 2019; adopted as rule 35.2 effective January 1, 2004;*
8 *previously amended and renumbered as rule 8.622 effective January 1, 2007; previously*
9 *amended effective January 1, 2018.*

10
11 **Advisory Committee Comment**

12
13 Rule 8.622 implements Penal Code section 190.8(g).

14
15 **Former rule 8.625. Certifying the record in pre-1997 trials [Repealed]**

16
17 **~~(a) Application~~**

18
19 ~~This rule governs the process of certifying the record in any appeal from a~~
20 ~~judgment of death imposed after a trial that began before January 1, 1997.~~

21
22 **~~(b) Sending the transcripts to counsel for review~~**

23
24 ~~(1) When the clerk and the reporter certify that their respective transcripts are~~
25 ~~correct, the clerk must promptly send a copy of each transcript to each~~
26 ~~defendant's trial counsel, to the Attorney General, to the district attorney, to~~
27 ~~the California Appellate Project in San Francisco, and to the Habeas Corpus~~
28 ~~Resource Center, noting the sending date on the originals.~~

29
30 ~~(2) The copies of the reporter's transcript sent to the California Appellate Project~~
31 ~~and the Habeas Corpus Resource Center must be delivered in electronic form~~
32 ~~complying with the applicable requirements of rule 8.144 and any additional~~
33 ~~requirements prescribed by the Supreme Court, and must be further labeled to~~
34 ~~show the date it was made.~~

35
36 ~~(3) When the clerk is notified of the appointment or retention of each defendant's~~
37 ~~appellate counsel, the clerk must promptly send that counsel copies of the~~
38 ~~clerk's transcript and the reporter's transcript, noting the sending date on the~~
39 ~~originals. The clerk must notify the Supreme Court, the Attorney General,~~
40 ~~and each defendant's appellate counsel in writing of the date the transcripts~~
41 ~~were sent to appellate counsel.~~

1 **(e) — Correcting, augmenting, and certifying the record**

2
3 (1) ~~Within 90 days after the clerk delivers the transcripts to each defendant’s~~
4 ~~appellate counsel, any party may serve and file a request for correction or~~
5 ~~augmentation of the record. Any request for extension of time must be served~~
6 ~~and filed in the Supreme Court no later than five days before the 90-day~~
7 ~~period expires.~~

8
9 (2) ~~If no party files a timely request for correction or augmentation, the clerk~~
10 ~~must certify on the original transcripts that no party objected to the accuracy~~
11 ~~or completeness of the record within the time allowed by law.~~

12
13 (3) ~~Within 10 days after any party files a timely request for correction or~~
14 ~~augmentation, the clerk must deliver the request and the transcripts to the trial~~
15 ~~judge.~~

16
17 (4) ~~Within 60 days after receiving a request and transcripts under (3), the judge~~
18 ~~must order the reporter, clerk, or party to make any necessary corrections or~~
19 ~~do any act necessary to complete the record, fixing the time for performance.~~
20 ~~If any portion of the oral proceedings cannot be transcribed, the judge may~~
21 ~~order preparation of a settled statement under rule 8.346.~~

22
23 (5) ~~The clerk must promptly send a copy of any order under (4) to the parties and~~
24 ~~to the Supreme Court, but any request for extension of time to comply with~~
25 ~~the order must be addressed to the trial judge.~~

26
27 (6) ~~The original transcripts must be corrected or augmented to reflect all~~
28 ~~corrections or augmentations ordered. The clerk must promptly send copies~~
29 ~~of all corrected or augmented pages to the parties.~~

30
31 (7) ~~The judge must allow the parties a reasonable time to review the corrections~~
32 ~~or augmentations. If no party objects to the corrections or augmentations as~~
33 ~~prepared, the judge must certify that the record is complete and accurate. If~~
34 ~~any party objects, the judge must resolve the objections before certifying the~~
35 ~~record.~~

36
37 (8) ~~If the record is not certified within 90 days after the clerk sends the~~
38 ~~transcripts to appellate counsel under (b)(2), the judge must monitor~~
39 ~~preparation of the record to expedite certification and report the status of the~~
40 ~~record monthly to the Supreme Court.~~

41
42 **(d) — Sending the certified record**

1 When the clerk certifies that no party objected to the record or the judge certifies
2 that the record is complete and accurate, the clerk must promptly send:

3
4 (1) ~~— To the Supreme Court: the original record, including the original certification
5 by the trial judge.~~

6
7 (2) ~~— To each defendant’s appellate counsel, the Attorney General, and the
8 California Appellate Project in San Francisco: a copy of the order certifying
9 the record.~~

10
11 (3) ~~— To the Governor: the copies of the transcripts required by Penal Code section
12 1218, with copies of any corrected or augmented pages inserted.~~

13
14 **~~(e) — Subsequent trial court orders; omissions~~**

15
16 (1) ~~— If, after the record is certified, the trial court amends or recalls the judgment
17 or makes any other order in the case, including an order affecting the
18 sentence, the clerk must promptly certify and send a copy of the amended
19 abstract of judgment or other order — as an augmentation of the record — to
20 the persons and entities listed in (d).~~

21
22 (2) ~~— If, after the record is certified, the superior court clerk or the reporter learns
23 that the record omits a document or transcript that any rule or court order
24 requires to be included, the clerk must promptly copy and certify the
25 document or the reporter must promptly prepare and certify the transcript.
26 Without the need for further court order, the clerk must send the document or
27 transcript — as an augmentation of the record — to the persons and entities
28 listed in (d).~~

29
30 *Rule 8.625 repealed effective April 25, 2019; adopted as rule 35.3 effective January 1, 2004;*
31 *previously amended and renumbered as rule 8.625 effective January 1, 2007; previously*
32 *amended effective January 1, 2017, and January 1, 2018.*

33
34
35 **Chapter 3. Death Penalty–Related Habeas Corpus Proceedings**

36
37 **Rule 8.652. Qualifications of counsel in death penalty–related habeas corpus**
38 **proceedings**

39
40 **(a) Purpose**

41
42 This rule defines the minimum qualifications for attorneys to be appointed by a
43 court to represent a person in a habeas corpus proceeding related to a sentence of

1 death. These minimum qualifications are designed to promote competent
2 representation in habeas corpus proceedings related to sentences of death and to
3 avoid unnecessary delay and expense by assisting the courts in appointing qualified
4 counsel. Nothing in this rule is intended to be used as a standard by which to
5 measure whether a person received effective assistance of counsel. An attorney is
6 not entitled to appointment simply because the attorney meets these minimum
7 qualifications.

8
9 **(b) General qualifications**

10
11 An attorney may be included on a panel, appointed by the Supreme Court, or
12 appointed by a court under a local rule as provided in rule 4.562, only if it is
13 determined, after reviewing the attorney’s experience, training, writing samples,
14 references, and evaluations, that the attorney meets the minimum qualifications in
15 this rule and has demonstrated the commitment, knowledge, and skills necessary to
16 competently represent a person in a habeas corpus proceeding related to a sentence
17 of death. An appointed attorney must be willing to cooperate with an assisting
18 counsel or entity that the appointing court designates.

19
20 **(c) Qualifications for appointed habeas corpus counsel**

21
22 An attorney included on a panel, appointed by the Supreme Court, or appointed by
23 a court under a local rule as provided in rule 4.562, must satisfy the following
24 minimum qualifications:

25
26 **(1) California legal experience**

27
28 Active practice of law in California for at least five years.

29
30 **(2) Case experience**

31
32 The case experience identified in (A), (B), or (C).

33
34 **(A) Service as counsel of record for a petitioner in a death penalty–related**
35 **habeas corpus proceeding in which the petition has been filed in the**
36 **California Supreme Court, a Court of Appeal, or a superior court.**

37
38 **(B) Service as:**

39
40 **(i) Supervised counsel in two death penalty–related habeas corpus**
41 **proceedings in which the petition has been filed. Service as**
42 **supervised counsel in a death penalty–related habeas corpus**
43 **proceeding will apply toward this qualification only if lead or**

1 associate counsel in that proceeding attests that the attorney
2 performed substantial work on the case and recommends the
3 attorney for appointment; and
4

5 (ii) Counsel of record for either party in a combination of at least five
6 completed appeals, habeas corpus proceedings, or jury trials in
7 felony cases, including as counsel of record for a petitioner in at
8 least two habeas corpus proceedings, each involving a serious
9 felony in which the petition has been filed. Service as counsel of
10 record in an appeal where counsel did not file a brief, or in a
11 habeas corpus proceeding where counsel did not file a petition,
12 informal response, or a return, does not satisfy any part of this
13 combined case experience. The combined case experience must
14 be sufficient to demonstrate proficiency in investigation, issue
15 identification, and writing.
16

17 (C) Service as counsel of record for either party in a combination of at least
18 eight completed appeals, habeas corpus proceedings, or jury trials in
19 felony cases, including as counsel of record for a petitioner in at least
20 two habeas corpus proceedings, each involving a serious felony in
21 which the petition has been filed. Service as counsel of record in an
22 appeal where counsel did not file a brief, or in a habeas corpus
23 proceeding where counsel did not file a petition, informal response, or a
24 return, does not satisfy any part of this combined case experience. The
25 combined case experience must be sufficient to demonstrate
26 proficiency in investigation, issue identification, and writing.
27

28 (3) Knowledge
29

30 Familiarity with the practices and procedures of the California courts and the
31 federal courts in death penalty–related habeas corpus proceedings.
32

33 (4) Training
34

35 (A) Within three years before being included on a panel, appointed by the
36 Supreme Court, or appointed by a court under a local rule as provided
37 in rule 4.562, completion of at least 15 hours of appellate criminal
38 defense or habeas corpus defense training approved for Minimum
39 Continuing Legal Education credit by the State Bar of California, at
40 least 10 hours of which address death penalty–related habeas corpus
41 proceedings.
42

1 (B) Counsel who serves as an instructor in a course that satisfies the
2 requirements of this rule may receive course participation credit for
3 instruction, on request to and approval by the committee, the Supreme
4 Court, or a court appointing counsel under a local rule as provided in
5 rule 4.562, in an amount to be determined by the approving entity.

6
7 (C) If the attorney has previously represented a petitioner in a death
8 penalty–related habeas corpus proceeding, the committee, the Supreme
9 Court, or the court appointing counsel under a local rule as provided in
10 rule 4.562, after reviewing counsel’s previous work, may find that such
11 representation constitutes compliance with some or all of this
12 requirement.

13
14 (5) Skills

15
16 Demonstrated proficiency in issue identification, research, analysis, writing,
17 investigation, and advocacy. To enable an assessment of the attorney’s skills:

18
19 (A) The attorney must submit:

20
21 (i) Three writing samples written by the attorney and presenting
22 analyses of complex legal issues. If the attorney has previously
23 served as lead counsel of record for a petitioner in a death
24 penalty–related habeas corpus proceeding, these writing samples
25 must include one or more habeas corpus petitions filed by the
26 attorney in that capacity. If the attorney has previously served as
27 associate or supervised counsel for a petitioner in a death
28 penalty–related habeas corpus proceeding, these writing samples
29 must include the portion of the habeas corpus petition prepared
30 by the attorney in that capacity. If the attorney has not served as
31 lead counsel of record for a petitioner in a death penalty–related
32 habeas corpus proceeding, these writing samples must include
33 two or more habeas corpus petitions filed by the attorney as
34 counsel of record for a petitioner in a habeas corpus proceeding
35 involving a serious felony; and

36
37 (ii) Recommendations from two attorneys familiar with the
38 attorney’s qualifications and performance.

39
40 (B) The committee, the Supreme Court, or the court appointing counsel
41 under a local rule as provided in rule 4.562, must obtain and review:
42

1 (i) If the attorney has previously been appointed in a death penalty
2 appeal or death penalty–related habeas corpus proceeding, the
3 evaluation of the assisting counsel or entity in those proceedings;
4 and

5
6 (ii) If the attorney is on a panel of attorneys eligible for appointments
7 to represent indigent appellants in the Court of Appeal, the
8 evaluation of the administrator responsible for those
9 appointments.

10
11 **(d) Alternative experience**

12
13 An attorney who does not meet the experience requirements of (c)(1) and (2) may
14 be included on a panel or appointed by the Supreme Court if the attorney meets the
15 qualifications described in (c)(3) and (5), excluding the writing samples described
16 in (c)(5)(A)(i), and:

17
18 (1) The committee or the Supreme Court finds that the attorney has:

19
20 (A) Extensive experience as an attorney at the Habeas Corpus Resource
21 Center or the California Appellate Project–San Francisco, or in another
22 jurisdiction or a different type of practice (such as civil trials or
23 appeals, academic work, or work for a court or as a prosecutor), for at
24 least five years, providing the attorney with experience in complex
25 cases substantially equivalent to that of an attorney qualified under
26 (c)(1) and (2); and

27
28 (B) Demonstrated proficiency in issue identification, research, analysis,
29 writing, investigation, and advocacy. To enable an assessment of the
30 attorney’s skills, the attorney must submit three writing samples written
31 by the attorney and presenting analyses of complex legal issues,
32 including habeas corpus petitions filed by the attorney, if any.

33
34 (2) Ongoing consultation is available to the attorney from an assisting counsel or
35 entity designated by the court.

36
37 (3) Within two years before being included on a panel or appointed by the
38 Supreme Court, the attorney has completed at least 18 hours of appellate
39 criminal defense or habeas corpus defense training approved for Minimum
40 Continuing Legal Education credit by the State Bar of California, at least 10
41 hours of which involve death penalty–related habeas corpus proceedings. The
42 committee or the Supreme Court will determine whether the training

1 completed by an attorney satisfies the requirements of this subdivision in
2 light of the attorney’s individual background and experience.

3
4 **(e) Attorneys without trial experience**

5
6 If an evidentiary hearing is ordered in a death penalty–related habeas corpus
7 proceeding and an attorney appointed under (c) or (d) to represent a person in that
8 proceeding lacks experience in conducting trials or evidentiary hearings, the
9 attorney must associate with an attorney who has such experience.

10
11 **(f) Use of supervised counsel**

12
13 An attorney who does not meet the qualifications described in (c) or (d) may assist
14 lead or associate counsel, but must work under the immediate supervision and
15 direction of lead or associate counsel.

16
17 **(g) Appellate and habeas corpus appointment**

- 18
19 (1) An attorney appointed to represent a person in both a death penalty appeal
20 and death penalty–related habeas corpus proceedings must meet the
21 minimum qualifications of both (c) or (d) and rule 8.605.
22
23 (2) Notwithstanding (1), two attorneys together may be eligible for appointment
24 to represent a person jointly in both a death penalty appeal and death penalty–
25 related habeas corpus proceedings if it is determined that one attorney
26 satisfies the minimum qualifications stated in (c) or (d) and the other attorney
27 satisfies the minimum qualifications stated in rule 8.605.

28
29 **(h) Entities as appointed counsel**

- 30
31 (1) Notwithstanding any other provision of this rule, the Habeas Corpus
32 Resource Center and the California Appellate Project–San Francisco are
33 qualified to serve as appointed counsel in death penalty–related habeas
34 corpus proceedings.
35
36 (2) When serving as appointed counsel in a death penalty–related habeas corpus
37 proceeding, the Habeas Corpus Resource Center or the California Appellate
38 Project–San Francisco must not assign any attorney as lead counsel unless it
39 finds the attorney is qualified under (c) or (d).

40
41 **(i) Attorney appointed by federal court**

1 Notwithstanding any other provision of this rule, a court may appoint an attorney
2 who is under appointment by a federal court in a death penalty–related habeas
3 corpus proceeding for the purpose of exhausting state remedies in the California
4 courts if the court finds that the attorney has the commitment, proficiency, and
5 knowledge necessary to represent the person competently in state proceedings.
6 Counsel under appointment by a federal court is not required to also be appointed
7 by a state court in order to appear in a state court proceeding.

8
9 *Rule 8.652 adopted effective April 25, 2019.*

10
11 **Division 3. Rules Relating to Miscellaneous Appeals and Writ Proceedings**

12
13 **Chapter ~~111~~. Review of California Environmental Quality Act Cases Under Public**
14 **Resources Code Sections 21168.6.6, 21178–21189.3, and 21189.50–21189.57**

15
16 **Chapter ~~122~~. Appeals Under Code of Civil Procedure Section 1294.4 ~~f~~From an**
17 **Order Dismissing or Denying a Petition to Compel Arbitration**

18
19 **Chapter 3. Miscellaneous Writs**

20
21 **Rule ~~8.720~~~~8.495~~. Review of Workers’ Compensation Appeals Board cases * * ***

22
23 *Rule 8.720 renumbered effective April 25, 2019; repealed and adopted as rule 57 effective*
24 *January 1, 2005; previously amended effective July 1, 2006, January 1, 2016, and January 1,*
25 *2018; previously amended and renumbered as rule 8.494 effective January 1, 2007; previously*
26 *renumbered as rule 8.495 effective January 1, 2009.*

27
28 **Rule ~~8.724~~~~8.496~~. Review of Public Utilities Commission cases * * ***

29
30 *Rule 8.724 renumbered effective April 25, 2019; repealed and adopted as rule 58 effective*
31 *January 1, 2005; previously amended effective July 1, 2006, and January 2016; previously*
32 *amended and renumbered as rule 8.496 effective January 1, 2007.*

33
34 **Rule ~~8.728~~~~8.498~~. Review of Agricultural Labor Relations Board and Public**
35 **Employment Relations Board cases * * ***

36
37 *Rule 8.728 renumbered effective April 25, 2019; repealed and adopted as rule 59 effective*
38 *January 1, 2005; previously amended effective July 1, 2006, and January 1, 2016; previously*
39 *amended and renumbered as rule 8.498 effective January 1, 2007.*

40
41 **Rule ~~8.730~~~~8.499~~. Filing, modification, and finality of decision; remittitur * * ***

1 *Rule 8.730 renumbered effective April 25, 2019; adopted effective January 1, 2008; previously*
2 *amended effective January 1, 2011, and July 1, 2012.*

3
4 **Division 24. Rules Relating to the Superior Court Appellate Division**

5
6 **Division 35. Rules Relating to Appeals and Writs in Small Claims Cases**

7
8 **Division 46. Transfer of Appellate Division Cases to the Court of Appeal**

9
10 **Division 57. Publication of Appellate Opinions**
11