

AMENDMENTS TO THE CALIFORNIA RULES OF COURT  
 Adopted by the Judicial Council on November 30, 2018, effective on April 25, 2019

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32		
33		



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**

43

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.

- 1
- 2       (4) If qualified counsel is available for appointment to a case for which a petition  
3 is pending in the Supreme Court, the judge must provide written notice to the  
4 Supreme Court that counsel is available for appointment.
- 5
- 6       (5) On entry of an order appointing death penalty–related habeas corpus counsel,  
7 the appointing court must promptly send a copy of the appointment order to  
8 the Habeas Corpus Resource Center, which must update the list to reflect that  
9 counsel was appointed, and to the clerk/executive officer of the Supreme  
10 Court, the Attorney General, and the district attorney. The court must also  
11 send notice to the Habeas Corpus Resource Center, clerk/executive officer of  
12 the Supreme Court, Attorney General, and district attorney if, for any reason,  
13 the court determines that it does not need to make an appointment.
- 14
- 15       (6) When a copy of an appointment order, or information indicating that an  
16 appointment is for any reason not required, has been received by the Habeas  
17 Corpus Resource Center for 20 judgments, the center will identify the next 20  
18 oldest judgments of death in cases in which death penalty–related habeas  
19 corpus counsel have not been appointed and send out a notice identifying  
20 these 20 judgments, and the procedures required by paragraphs (3) through  
21 (6) of this subdivision must be repeated.
- 22
- 23       (7) The presiding judge of a superior court may designate another judge within  
24 the court to carry out his or her duties in this subdivision.

25

26       **(e) Appointment of counsel**

27

- 28       (1) After the court receives a notice under (d)(2) and has made the findings  
29 required by Government Code section 68662, the appropriate judge must  
30 appoint a qualified attorney or attorneys to represent the person in death  
31 penalty–related habeas corpus proceedings.
- 32
- 33       (2) The superior court must appoint an attorney or attorneys from the statewide  
34 panel of counsel compiled under rule 4.562(d)(4); an entity that employs  
35 qualified attorneys, including the Habeas Corpus Resource Center, the local  
36 public defender’s office, or alternate public defender’s office; or if the court  
37 has adopted a local rule under 4.562(g), an attorney determined to be  
38 qualified under that court’s local rules. The court must at this time also  
39 designate an assisting entity or counsel, unless the appointed counsel is  
40 employed by the Habeas Corpus Resource Center.
- 41
- 42       (3) When the court appoints counsel to represent a person in a death penalty–  
43 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;

42

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).

42

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 Chapter 8. Miscellaneous Writs [Reserved]

2  
3 **Former rule 8.495. Renumbered effective April 25, 2019.**

4 *Rule 8.495 renumbered as rule 8.720.*

5  
6 **Former rule 8.496. Renumbered effective April 25, 2019.**

7 *Rule 8.496 renumbered as rule 8.724.*

8  
9 **Former rule 8.498. Renumbered effective April 25, 2019.**

10 *Rule 8.498 renumbered as rule 8.728.*

11  
12 **Former rule 8.499. Renumbered effective April 25, 2019.**

13 *Rule 8.499 renumbered as rule 8.730.*

14  
15  
16 **Division 2. Rules Relating to Death Penalty Appeals and Habeas Corpus**  
17 **Proceedings**

18  
19 **Rule 8.600. In general**

20  
21 **~~(a) Automatic appeal to Supreme Court~~**

22  
23 If a judgment imposes a sentence of death, an appeal by the defendant is  
24 automatically taken to the Supreme Court.

25  
26 **~~(b) Copies of judgment~~**

27  
28 When a judgment of death is rendered, the superior court clerk must immediately  
29 send certified copies of the commitment to the Supreme Court, the Attorney  
30 General, the Governor, and the California Appellate Project in San Francisco.

31  
32 **~~(c) Extensions of time~~**

33  
34 When a rule in this part authorizes a trial court to grant an extension of a specified  
35 time period, the court must consider the relevant policies and factors stated in rule  
36 8.63.

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

39  
40 **~~(d) Supervising preparation of record~~**

41  
42 The clerk/executive officer of the Supreme Court, under the supervision of the  
43 Chief Justice, must take all appropriate steps to ensure that superior court clerks

1 and reporters promptly perform their duties under the rules in this part. This  
2 provision does not affect the superior courts' responsibility for the prompt  
3 preparation of appellate records in capital cases.

4  
5 *(Subd (d) amended effective January 1, 2018.)*

6  
7 **(e) — Definitions**

8  
9 For purposes of this part:

10  
11 (1) — The delivery date of a transcript sent by mail is the mailing date plus five  
12 days; and

13  
14 (2) — “Trial counsel” means both the defendant’s trial counsel and the prosecuting  
15 attorney.

16  
17 *(Subd (e) amended effective January 1, 2007.)*

18  
19 *Rule 8.600 amended effective January 1, 2018; repealed and adopted as rule 34 effective January*  
20 *1, 2004; previously amended and renumbered effective January 1, 2007.*

21  
22 **Former rule 8.600. Renumbered effective April 25, 2019.**

23 *Rule 8.600 renumbered as rule 8.603.*

24  
25  
26 **Chapter 1. General Provisions**

27  
28 **Rule 8.601. Definitions**

29  
30 For purposes of this division:

31  
32 (1) “Appointed counsel” or “appointed attorney” means an attorney appointed to  
33 represent a person in a death penalty appeal, death penalty–related habeas  
34 corpus proceedings, or an appeal of a decision in death penalty–related  
35 habeas corpus proceedings. Appointed counsel may be either lead counsel or  
36 associate counsel.

37  
38 (2) “Lead counsel” means an appointed attorney or an attorney in the Office of  
39 the State Public Defender, the Habeas Corpus Resource Center, the  
40 California Appellate Project–San Francisco, or a Court of Appeal district  
41 appellate project who is responsible for the overall conduct of the case and  
42 for supervising the work of associate and supervised counsel. If two or more  
43 attorneys are appointed to represent a person jointly in a death penalty appeal,

1 in death penalty–related habeas corpus proceedings, or in both classes of  
2 proceedings together, one such attorney will be designated as lead counsel.

3  
4 (3) “Associate counsel” means an appointed attorney who does not have the  
5 primary responsibility for the case but nevertheless has casewide  
6 responsibility. Associate counsel must meet the same minimum qualifications  
7 as lead counsel.

8  
9 (4) “Supervised counsel” means an attorney who works under the immediate  
10 supervision and direction of lead or associate counsel but is not appointed by  
11 the court. Supervised counsel must be an active member of the State Bar of  
12 California.

13  
14 (5) “Assisting counsel or entity” means an attorney or entity designated by the  
15 appointing court to provide appointed counsel with consultation and resource  
16 assistance. An assisting counsel must be an experienced capital appellate  
17 counsel or habeas corpus practitioner, as appropriate. An assisting counsel in  
18 an automatic appeal must, at a minimum, meet the qualifications for  
19 appointed appellate counsel, including the case experience requirements in  
20 rule 8.605(c)(2). An assisting counsel in a habeas corpus proceeding must, at  
21 a minimum, meet the qualifications for appointed habeas corpus counsel,  
22 including the case experience requirements in rule 8.652(c)(2)(A). Entities  
23 that may be designated include the Office of the State Public Defender, the  
24 Habeas Corpus Resource Center, the California Appellate Project–San  
25 Francisco, and a Court of Appeal district appellate project.

26  
27 (6) “Trial counsel” means both the defendant’s trial counsel and the prosecuting  
28 attorney.

29  
30 (7) “Panel” means a panel of attorneys from which superior courts may appoint  
31 counsel in death penalty–related habeas corpus proceedings.

32  
33 (8) “Committee” means a death penalty–related habeas corpus panel committee  
34 that accepts and reviews attorney applications to determine whether  
35 applicants are qualified for inclusion on a panel.

36  
37 *Rule 8.601 adopted effective April 25, 2019.*

38  
39 **Advisory Committee Comment**

40  
41 **Number (3).** The definition of “associate counsel” in (3) is intended to make it clear that,  
42 although appointed lead counsel has overall and supervisory responsibility in a capital case,  
43 appointed associate counsel also has casewide responsibility.

1  
2 **Chapter ~~10.2.~~ Automatic Appeals From Judgments of Death**

3  
4 **Article 1. General Provisions**

5  
6 **Rule ~~8.603,8.600.~~ In general**

7  
8 **(a) Automatic appeal to Supreme Court**

9  
10 If a judgment imposes a sentence of death, an appeal by the defendant is  
11 automatically taken to the Supreme Court.

12  
13 **(b) Copies of judgment**

14  
15 When a judgment of death is rendered, the superior court clerk must immediately  
16 send certified copies of the commitment to the Supreme Court, the Attorney  
17 General, the Governor, the Habeas Corpus Resource Center, and the California  
18 Appellate Project ~~in~~ San Francisco.

19  
20 *Rule 8.603 renumbered and amended effective April 25, 2019; repealed and adopted as rule 34*  
21 *effective January 1, 2004; previously amended and renumbered as rule 8.600 effective January 1,*  
22 *2007; previously amended effective January 1, 2018.*

23  
24  
25 **Rule 8.605. Qualifications of counsel in death penalty appeals ~~and habeas corpus~~**  
26 **~~proceedings~~**

27  
28 **(a) Purpose**

29  
30 This rule defines the minimum qualifications for attorneys appointed by the  
31 Supreme Court in death penalty appeals ~~and habeas corpus proceedings related to~~  
32 ~~sentences of death.~~ These minimum qualifications are designed to promote  
33 competent representation and to avoid unnecessary delay and expense by assisting  
34 the court in appointing qualified counsel. Nothing in this rule is intended to be used  
35 as a standard by which to measure whether the defendant received effective  
36 assistance of counsel. An attorney is not entitled to appointment simply because the  
37 attorney meets these minimum qualifications.

38  
39 *(Subd (a) amended effective April 25, 2019.)*

40  
41 **(b) General qualifications**

42

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

7  
8 *(Subd (b) amended effective April 25, 2019.)*  
9

10 **(e) Definitions**

11  
12 ~~As used in this rule:~~

- 13  
14 (1) ~~“Appointed counsel” or “appointed attorney” means an attorney appointed to~~  
15 ~~represent a person in a death penalty appeal or death penalty related habeas~~  
16 ~~corpus proceedings in the Supreme Court. Appointed counsel may be either~~  
17 ~~lead counsel or associate counsel.~~  
18  
19 (2) ~~“Lead counsel” means an appointed attorney or an attorney in the Office of~~  
20 ~~the State Public Defender, the Habeas Corpus Resource Center, or the~~  
21 ~~California Appellate Project in San Francisco who is responsible for the~~  
22 ~~overall conduct of the case and for supervising the work of associate and~~  
23 ~~supervised counsel. If two or more attorneys are appointed to represent a~~  
24 ~~defendant jointly in a death penalty appeal, in death penalty related habeas~~  
25 ~~corpus proceedings, or in both classes of proceedings together, one such~~  
26 ~~attorney will be designated as lead counsel.~~  
27  
28 (3) ~~“Associate counsel” means an appointed attorney who does not have the~~  
29 ~~primary responsibility for the case but nevertheless has casewide~~  
30 ~~responsibility to perform the duties for which that attorney was appointed,~~  
31 ~~whether they are appellate, habeas corpus, or appellate and habeas corpus~~  
32 ~~duties. Associate counsel must meet the same minimum qualifications as lead~~  
33 ~~counsel.~~  
34  
35 (4) ~~“Supervised counsel” means an attorney who works under the immediate~~  
36 ~~supervision and direction of lead or associate counsel but is not appointed by~~  
37 ~~the Supreme Court. Supervised counsel must be an active member of the~~  
38 ~~State Bar of California.~~  
39  
40 (5) ~~“Assisting counsel or entity” means an attorney or entity designated by the~~  
41 ~~Supreme Court to provide appointed counsel with consultation and resource~~  
42 ~~assistance. Entities that may be designated include the Office of the State~~

4 **(d)(c) Qualifications for appointed appellate counsel**  
5

6 Except as provided in (d), an attorney appointed as lead or associate counsel in a  
7 death penalty appeal must ~~have at least~~ satisfy the following minimum  
8 qualifications and experience:  
9

10 (1) California legal experience  
11

12 Active practice of law in California for at least four years.  
13

14 (2) Criminal appellate experience  
15

16 Either:  
17

18 (A) Service as counsel of record for a ~~defendant~~ either party in seven  
19 completed felony appeals, including as counsel of record for a  
20 defendant in at least four felony appeals, one of which was a murder  
21 case; or  
22

23 (B) Service as:  
24

25 (i) Counsel of record for a defendant either party in five completed  
26 felony appeals, including as counsel of record for a defendant in  
27 at least three of these appeals; and  
28

29 (ii) as Supervised counsel for a defendant in two death penalty  
30 appeals in which the opening brief has been filed. Service as  
31 supervised counsel in a death penalty appeal will apply toward  
32 this qualification only if lead or associate counsel in that appeal  
33 attests that the supervised attorney performed substantial work on  
34 the case and recommends the attorney for appointment.  
35

36 (3) Knowledge  
37

38 Familiarity with Supreme Court practices and procedures, including those  
39 related to death penalty appeals.  
40

41 (4) Training  
42

1 (A) Within three years before appointment, completion of at least nine  
2 hours of Supreme Court–approved appellate criminal defense training,  
3 continuing education, or course of study, at least six hours of which  
4 involve death penalty appeals. Counsel who serves as an instructor in a  
5 course that satisfies the requirements of this rule may receive course  
6 participation credit for instruction, on request to and approval by the  
7 Supreme Court, in an amount to be determined by the Supreme Court.  
8

9 (B) If the Supreme Court has previously appointed counsel to represent a  
10 ~~defendant~~ person in a death penalty appeal or a related habeas corpus  
11 proceeding, and counsel has provided active representation within three  
12 years before the request for a new appointment, the court, after  
13 reviewing counsel’s previous work, may find that such representation  
14 constitutes compliance with some or all of this requirement.  
15

16 (5) Skills

17  
18 Proficiency in issue identification, research, analysis, writing, and advocacy,  
19 taking into consideration all of the following:  
20

21 (A) Two writing samples—ordinarily appellate briefs—written by the  
22 attorney and presenting an analysis of complex legal issues;  
23

24 (B) If the attorney has previously been appointed in a death penalty appeal  
25 or death penalty–related habeas corpus proceeding, the evaluation of  
26 the assisting counsel or entity in that proceeding;  
27

28 (C) Recommendations from two attorneys familiar with the attorney’s  
29 qualifications and performance; and  
30

31 (D) If the attorney is on a panel of attorneys eligible for appointments to  
32 represent indigents in the Court of Appeal, the evaluation of the  
33 administrator responsible for those appointments.  
34

35 *(Subd (c) amended and relettered effective April 25, 2019; adopted as subd (d) effective*  
36 *January 1, 2005; previously amended effective January 1, 2007.)*  
37

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

39  
40 ~~An attorney appointed as lead or associate counsel to represent a person in death~~  
41 ~~penalty related habeas corpus proceedings must have at least the following~~  
42 ~~qualifications and experience:~~  
43

- 1 (1) ~~Active practice of law in California for at least four years.~~
- 2
- 3 (2) ~~Either:~~
- 4
- 5 (A) ~~Service as counsel of record for a defendant in five completed felony~~
- 6 ~~appeals or writ proceedings, including one murder case, and service as~~
- 7 ~~counsel of record for a defendant in three jury trials or three habeas~~
- 8 ~~corpus proceedings involving serious felonies; or~~
- 9
- 10 (B) ~~Service as counsel of record for a defendant in five completed felony~~
- 11 ~~appeals or writ proceedings and service as supervised counsel in two~~
- 12 ~~death penalty related habeas corpus proceedings in which the petition~~
- 13 ~~has been filed. Service as supervised counsel in a death penalty related~~
- 14 ~~habeas corpus proceeding will apply toward this qualification only if~~
- 15 ~~lead or associate counsel in that proceeding attests that the attorney~~
- 16 ~~performed substantial work on the case and recommends the attorney~~
- 17 ~~for appointment.~~
- 18
- 19 (3) ~~Familiarity with the practices and procedures of the California Supreme~~
- 20 ~~Court and the federal courts in death penalty related habeas corpus~~
- 21 ~~proceedings.~~
- 22
- 23 (4) ~~Within three years before appointment, completion of at least nine hours of~~
- 24 ~~Supreme Court approved appellate criminal defense or habeas corpus~~
- 25 ~~defense training, continuing education, or course of study, at least six hours~~
- 26 ~~of which address death penalty habeas corpus proceedings. If the Supreme~~
- 27 ~~Court has previously appointed counsel to represent a defendant in a death~~
- 28 ~~penalty appeal or a related habeas corpus proceeding, and counsel has~~
- 29 ~~provided active representation within three years before the request for a new~~
- 30 ~~appointment, the court, after reviewing counsel's previous work, may find~~
- 31 ~~that such representation constitutes compliance with this requirement.~~
- 32
- 33 (5) ~~Proficiency in issue identification, research, analysis, writing, investigation,~~
- 34 ~~and advocacy, taking into consideration all of the following:~~
- 35
- 36 (A) ~~Three writing samples—ordinarily two appellate briefs and one habeas~~
- 37 ~~corpus petition—written by the attorney and presenting an analysis of~~
- 38 ~~complex legal issues;~~
- 39
- 40 (B) ~~If the attorney has previously been appointed in a death penalty appeal~~
- 41 ~~or death penalty related habeas corpus proceeding, the evaluation of~~
- 42 ~~the assisting counsel or entity in that proceeding;~~
- 43

1            ~~(C)~~ Recommendations from two attorneys familiar with the attorney's  
2            qualifications and performance; and

3  
4            ~~(D)~~ If the attorney is on a panel of attorneys eligible for appointments to  
5            represent indigent appellants in the Court of Appeal, the evaluation of  
6            the administrator responsible for those appointments.

7  
8            **~~(f)~~(d) Alternative qualifications**

9  
10           The Supreme Court may appoint an attorney who does not meet the California law  
11           practice requirements of ~~(d)(c)(1) and (2) or (e)(1) and~~ or the criminal appellate  
12           experience requirements of (c)(2) if the attorney has the qualifications described in  
13           ~~(d)(c)(3)–(5) or (e)(3)–(5)~~ and:

- 14  
15           (1) The court finds that the attorney has extensive experience in another  
16           jurisdiction or a different type of practice (such as civil trials or appeals,  
17           academic work, or work for a court or prosecutor) for at least four years,  
18           providing the attorney with experience in complex cases substantially  
19           equivalent to that of an attorney qualified under ~~(d)(c) or (e)~~.
- 20  
21           (2) Ongoing consultation is available to the attorney from an assisting counsel or  
22           entity designated by the court.
- 23  
24           (3) Within two years before appointment, the attorney has completed at least 18  
25           hours of Supreme Court–approved appellate criminal defense or habeas  
26           corpus defense training, continuing education, or course of study, at least  
27           nine hours of which involve death penalty appellate or habeas corpus  
28           proceedings. The Supreme Court will determine in each case whether the  
29           training, education, or course of study completed by a particular attorney  
30           satisfies the requirements of this subdivision in light of the attorney's  
31           individual background and experience. If the Supreme Court has previously  
32           appointed counsel to represent a defendant person in a death penalty appeal  
33           or a related habeas corpus proceeding, and counsel has provided active  
34           representation within three years before the request for a new appointment,  
35           the court, after reviewing counsel's previous work, may find that such  
36           representation constitutes compliance with some or all of this requirement.

37  
38           *(Subd (d) amended and relettered effective April 25, 2019; adopted as subd (f) effective*  
39           *January 1, 2005.)*

40  
41           **~~(g)~~ Attorneys without trial experience**

42

1 If an evidentiary hearing is ordered in a death penalty related habeas corpus  
2 proceeding and an attorney appointed under either (e) or (f) to represent a  
3 defendant in that proceeding lacks experience in conducting trials or evidentiary  
4 hearings, the attorney must associate an attorney who has such experience.  
5

6 **~~(h)~~(e) Use of supervised counsel**

7  
8 An attorney who does not meet the qualifications described in (c) or (d), ~~(e), or (f)~~  
9 may assist lead or associate counsel, but must work under the immediate  
10 supervision and direction of lead or associate counsel.  
11

12 *(Subd (e) amended and relettered effective April 25, 2019; adopted as subd (h) effective*  
13 *January 1, 2005.)*  
14

15 **~~(i)~~(f) Appellate and habeas corpus appointment**

16  
17 (1) An attorney appointed to represent a ~~defendant~~ person in both a death penalty  
18 appeal and death penalty-related habeas corpus proceedings must meet the  
19 minimum qualifications of both ~~(d) and (e)~~ (c) or (d) and ~~of (f)~~ rule 8.652.  
20

21 (2) Notwithstanding (1), two attorneys together may be eligible for appointment  
22 to represent a ~~defendant~~ person jointly in both a death penalty appeal and  
23 death penalty-related habeas corpus proceedings if the Supreme Court finds  
24 that one attorney satisfies the minimum qualifications set forth in their  
25 qualifications in the aggregate satisfy the provisions of both (d) and (e) (c) or  
26 (d), and the other attorney satisfies the minimum qualifications set forth in of  
27 (f) rule 8.652.  
28

29 *(Subd (f) amended and relettered effective April 25, 2019; adopted as subd (i) effective*  
30 *January 1, 2005.)*  
31

32 **~~(j)~~(g) Designated entities as appointed counsel**

33  
34 (1) Notwithstanding any other provision of this rule, both the State Public  
35 Defender ~~is qualified to serve as appointed counsel in death penalty appeals,~~  
36 ~~the Habeas Corpus Resource Center is qualified to serve as appointed counsel~~  
37 ~~in death penalty related habeas corpus proceedings,~~ and the California  
38 Appellate Project ~~in~~ San Francisco ~~is~~ are qualified to serve as appointed  
39 counsel in ~~both classes of proceedings~~ death penalty appeals.  
40

41 (2) When serving as appointed counsel in a death penalty appeal, the State Public  
42 Defender or the California Appellate Project ~~in~~ San Francisco must not

1 assign any attorney as lead counsel unless it finds the attorney qualified under  
2 ~~(d)~~(c)(1)–(5) or the Supreme Court finds the attorney qualified under ~~(f)~~(d).

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

9  
10 *(Subd (g) amended and relettered effective April 25, 2019; adopted as subd (j) effective*  
11 *January 1, 2005.)*

12  
13 **~~(k)~~ Attorney appointed by federal court**

14  
15 Notwithstanding any other provision of this rule, the Supreme Court may appoint  
16 an attorney who is under appointment by a federal court in a death penalty related  
17 habeas corpus proceeding for the purpose of exhausting state remedies in the  
18 Supreme Court and for all subsequent state proceedings in that case, if the Supreme  
19 Court finds that attorney has the commitment, proficiency, and knowledge  
20 necessary to represent the defendant competently in state proceedings.

21  
22 *Rule 8.605 amended effective April 25, 2019; repealed and adopted as rule 76.6 effective January*  
23 *1, 2005; previously amended and renumbered effective January 1, 2007.*

24  
25 **Advisory Committee Comment**

26  
27 **Subdivision (c).** The definition of “associate counsel” in (c)(3) is intended to make it clear that  
28 although appointed lead counsel has overall and supervisory responsibility in a capital case,  
29 appointed associate counsel also has casewise responsibility to perform the duties for which he or  
30 she was appointed, whether they are appellate duties, habeas corpus duties, or appellate *and*  
31 habeas corpus duties.

32  
33  
34 **Chapter 3. Death Penalty–Related Habeas Corpus Proceedings**

35  
36 **Rule 8.652. Qualifications of counsel in death penalty–related habeas corpus**  
37 **proceedings**

38  
39 **(a) Purpose**

40  
41 This rule defines the minimum qualifications for attorneys to be appointed by a  
42 court to represent a person in a habeas corpus proceeding related to a sentence of  
43 death. These minimum qualifications are designed to promote competent

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

7  
8 **(b) General qualifications**

9  
10 An attorney may be included on a panel, appointed by the Supreme Court, or  
11 appointed by a court under a local rule as provided in rule 4.562, only if it is  
12 determined, after reviewing the attorney’s experience, training, writing samples,  
13 references, and evaluations, that the attorney meets the minimum qualifications in  
14 this rule and has demonstrated the commitment, knowledge, and skills necessary to  
15 competently represent a person in a habeas corpus proceeding related to a sentence  
16 of death. An appointed attorney must be willing to cooperate with an assisting  
17 counsel or entity that the appointing court designates.

18  
19 **(c) Qualifications for appointed habeas corpus counsel**

20  
21 An attorney included on a panel, appointed by the Supreme Court, or appointed by  
22 a court under a local rule as provided in rule 4.562, must satisfy the following  
23 minimum qualifications:

24  
25 (1) California legal experience

26  
27 Active practice of law in California for at least five years.

28  
29 (2) Case experience

30  
31 The case experience identified in (A), (B), or (C).

32  
33 (A) Service as counsel of record for a petitioner in a death penalty–related  
34 habeas corpus proceeding in which the petition has been filed in the  
35 California Supreme Court, a Court of Appeal, or a superior court.

36  
37 (B) Service as:

38  
39 (i) Supervised counsel in two death penalty–related habeas corpus  
40 proceedings in which the petition has been filed. Service as  
41 supervised counsel in a death penalty–related habeas corpus  
42 proceeding will apply toward this qualification only if lead or  
43 associate counsel in that proceeding attests that the attorney

1 performed substantial work on the case and recommends the  
2 attorney for appointment; and

3  
4 (ii) Counsel of record for either party in a combination of at least five  
5 completed appeals, habeas corpus proceedings, or jury trials in  
6 felony cases, including as counsel of record for a petitioner in at  
7 least two habeas corpus proceedings, each involving a serious  
8 felony in which the petition has been filed. Service as counsel of  
9 record in an appeal where counsel did not file a brief, or in a  
10 habeas corpus proceeding where counsel did not file a petition,  
11 informal response, or a return, does not satisfy any part of this  
12 combined case experience. The combined case experience must  
13 be sufficient to demonstrate proficiency in investigation, issue  
14 identification, and writing.

15  
16 (C) Service as counsel of record for either party in a combination of at least  
17 eight completed appeals, habeas corpus proceedings, or jury trials in  
18 felony cases, including as counsel of record for a petitioner in at least  
19 two habeas corpus proceedings, each involving a serious felony in  
20 which the petition has been filed. Service as counsel of record in an  
21 appeal where counsel did not file a brief, or in a habeas corpus  
22 proceeding where counsel did not file a petition, informal response, or a  
23 return, does not satisfy any part of this combined case experience. The  
24 combined case experience must be sufficient to demonstrate  
25 proficiency in investigation, issue identification, and writing.

26  
27 (3) Knowledge

28  
29 Familiarity with the practices and procedures of the California courts and the  
30 federal courts in death penalty–related habeas corpus proceedings.

31  
32 (4) Training

33  
34 (A) Within three years before being included on a panel, appointed by the  
35 Supreme Court, or appointed by a court under a local rule as provided  
36 in rule 4.562, completion of at least 15 hours of appellate criminal  
37 defense or habeas corpus defense training approved for Minimum  
38 Continuing Legal Education credit by the State Bar of California, at  
39 least 10 hours of which address death penalty–related habeas corpus  
40 proceedings.

41  
42 (B) Counsel who serves as an instructor in a course that satisfies the  
43 requirements of this rule may receive course participation credit for

1 instruction, on request to and approval by the committee, the Supreme  
2 Court, or a court appointing counsel under a local rule as provided in  
3 rule 4.562, in an amount to be determined by the approving entity.  
4

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

11  
12 (5) Skills

13  
14 Demonstrated proficiency in issue identification, research, analysis, writing,  
15 investigation, and advocacy. To enable an assessment of the attorney’s skills:  
16

17 (A) The attorney must submit:

18  
19 (i) Three writing samples written by the attorney and presenting  
20 analyses of complex legal issues. If the attorney has previously  
21 served as lead counsel of record for a petitioner in a death  
22 penalty–related habeas corpus proceeding, these writing samples  
23 must include one or more habeas corpus petitions filed by the  
24 attorney in that capacity. If the attorney has previously served as  
25 associate or supervised counsel for a petitioner in a death  
26 penalty–related habeas corpus proceeding, these writing samples  
27 must include the portion of the habeas corpus petition prepared  
28 by the attorney in that capacity. If the attorney has not served as  
29 lead counsel of record for a petitioner in a death penalty–related  
30 habeas corpus proceeding, these writing samples must include  
31 two or more habeas corpus petitions filed by the attorney as  
32 counsel of record for a petitioner in a habeas corpus proceeding  
33 involving a serious felony; and

34  
35 (ii) Recommendations from two attorneys familiar with the  
36 attorney’s qualifications and performance.

37  
38 (B) The committee, the Supreme Court, or the court appointing counsel  
39 under a local rule as provided in rule 4.562, must obtain and review:  
40

41 (i) If the attorney has previously been appointed in a death penalty  
42 appeal or death penalty–related habeas corpus proceeding, the

1 evaluation of the assisting counsel or entity in those proceedings;  
2 and

3  
4 (ii) If the attorney is on a panel of attorneys eligible for appointments  
5 to represent indigent appellants in the Court of Appeal, the  
6 evaluation of the administrator responsible for those  
7 appointments.

8  
9 **(d) Alternative experience**

10  
11 An attorney who does not meet the experience requirements of (c)(1) and (2) may  
12 be included on a panel or appointed by the Supreme Court if the attorney meets the  
13 qualifications described in (c)(3) and (5), excluding the writing samples described  
14 in (c)(5)(A)(i), and:

15  
16 (1) The committee or the Supreme Court finds that the attorney has:

17  
18 (A) Extensive experience as an attorney at the Habeas Corpus Resource  
19 Center or the California Appellate Project–San Francisco, or in another  
20 jurisdiction or a different type of practice (such as civil trials or  
21 appeals, academic work, or work for a court or as a prosecutor), for at  
22 least five years, providing the attorney with experience in complex  
23 cases substantially equivalent to that of an attorney qualified under  
24 (c)(1) and (2); and

25  
26 (B) Demonstrated proficiency in issue identification, research, analysis,  
27 writing, investigation, and advocacy. To enable an assessment of the  
28 attorney’s skills, the attorney must submit three writing samples written  
29 by the attorney and presenting analyses of complex legal issues,  
30 including habeas corpus petitions filed by the attorney, if any.

31  
32 (2) Ongoing consultation is available to the attorney from an assisting counsel or  
33 entity designated by the court.

34  
35 (3) Within two years before being included on a panel or appointed by the  
36 Supreme Court, the attorney has completed at least 18 hours of appellate  
37 criminal defense or habeas corpus defense training approved for Minimum  
38 Continuing Legal Education credit by the State Bar of California, at least 10  
39 hours of which involve death penalty–related habeas corpus proceedings. The  
40 committee or the Supreme Court will determine whether the training  
41 completed by an attorney satisfies the requirements of this subdivision in  
42 light of the attorney’s individual background and experience.

43

1 **(e) Attorneys without trial experience**

2  
3 If an evidentiary hearing is ordered in a death penalty–related habeas corpus  
4 proceeding and an attorney appointed under (c) or (d) to represent a person in that  
5 proceeding lacks experience in conducting trials or evidentiary hearings, the  
6 attorney must associate with an attorney who has such experience.

7  
8 **(f) Use of supervised counsel**

9  
10 An attorney who does not meet the qualifications described in (c) or (d) may assist  
11 lead or associate counsel, but must work under the immediate supervision and  
12 direction of lead or associate counsel.

13  
14 **(g) Appellate and habeas corpus appointment**

15  
16 (1) An attorney appointed to represent a person in both a death penalty appeal  
17 and death penalty–related habeas corpus proceedings must meet the  
18 minimum qualifications of both (c) or (d) and rule 8.605.

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

25  
26 **(h) Entities as appointed counsel**

27  
28 (1) Notwithstanding any other provision of this rule, the Habeas Corpus  
29 Resource Center and the California Appellate Project–San Francisco are  
30 qualified to serve as appointed counsel in death penalty–related habeas  
31 corpus proceedings.

32  
33 (2) When serving as appointed counsel in a death penalty–related habeas corpus  
34 proceeding, the Habeas Corpus Resource Center or the California Appellate  
35 Project–San Francisco must not assign any attorney as lead counsel unless it  
36 finds the attorney is qualified under (c) or (d).

37  
38 **(i) Attorney appointed by federal court**

39  
40 Notwithstanding any other provision of this rule, a court may appoint an attorney  
41 who is under appointment by a federal court in a death penalty–related habeas  
42 corpus proceeding for the purpose of exhausting state remedies in the California  
43 courts if the court finds that the attorney has the commitment, proficiency, and

1 knowledge necessary to represent the person competently in state proceedings.  
2 Counsel under appointment by a federal court is not required to also be appointed  
3 by a state court in order to appear in a state court proceeding.

4

5 *Rule 8.652 adopted effective April 25, 2019.*

6