The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.
habeas proceeding as the only mechanism for seeking relief from the such a decision. New Penal Code section 1509.1 adopted as part of the act does the following, among other things:

- Authorizes either party to appeal the decision of a superior court on an initial habeas corpus petition in a capital case;
- Sets the time for filing the notice of appeal in these cases;
- Limits the issues that can be considered by the Court of Appeal in such an appeal to:
  - Claims raised in the superior court; and
  - Claims of ineffective assistance of trial counsel that were not raised in the habeas corpus petition.
- Authorizes the People to appeal a decision granting relief on a successive habeas corpus petition;
- Provides that the petitioner may only appeal a denial of relief on a successive habeas corpus petition if either the superior court or the Court of Appeal issues a certificate of appealability;
- Limits the circumstances in which a certificate of appealability may be issued to when the petitioner has shown both:
  - A substantial claim of relief; and
  - A substantial claim of actual innocence or ineligibility for the death penalty;
- Sets the time for the courts to grant or deny a certificate of appealability;
- Limits the claims that can be considered by the Court of Appeal in appeals by petitioners in successive petition cases to those identified in the certificate of appealability or added by the Court of Appeal by a specified deadline.

The act did not take effect immediately upon approval by the electorate because its constitutionality was challenged in a petition filed in the California Supreme Court, Briggs v. Brown et al. (S238309). On October 25, 2017, the Supreme Court’s opinion in the Briggs case ((2017) 3 Cal.5th 808) became final, and the act took effect. Shortly thereafter, the Judicial Council formed the Proposition 66 Rules Working Group to assist the council in carrying out its rule-making responsibilities under the act. The council charged the working group with considering what new or amended court rules, judicial administration standards, and Judicial Council forms are needed to address the act’s provisions, including, among other things, those governing the procedures for appeals of the superior court’s rulings on capital habeas corpus petitions to the Court of Appeal.

**Preexisting law relating to appeals from superior court habeas corpus decisions**

Prior to the enactment of Proposition 66, Penal Code section 1506 authorized appeals by the People to the Court of Appeal of a superior court decision granting relief in a habeas corpus
proceeding. Section 1506 provided that in a capital case, the appeal must be made to the Supreme Court. No appeal was permitted when a habeas corpus petition was denied, but a petitioner could file another habeas corpus petition in a higher court. In *Briggs*, *supra*, 3 Cal.5th 808, the Supreme Court concluded that Proposition 66 implicitly repealed this provision in section 1506.

**Rule 8.388** addresses the procedures for People’s appeals of superior court decisions granting relief in non-capital habeas corpus proceedings under Penal Code section 1506. This rule generally provides that, with the exception of the contents of the record on appeal, the general rules relating to appeals in felony cases, rules 8.304–8.368, apply to these appeals of superior court habeas corpus decisions.

**The Proposal**

This proposal is intended to help fulfill the Judicial Council’s rule-making obligations under Proposition 66 by proposing rules and a form establishing procedures for appeals under new Penal Code section 1509.1 from superior court decisions on death penalty–related habeas corpus petitions. The proposed rules adopt the overall approach embodied in current rule 8.388, generally applying many of the rules applicable to felony appeals. However, the proposed rules also include many distinct provisions that reflect the unique requirements of Penal Code section 1509.1, including special requirements for appeals from decisions regarding successive habeas corpus petitions and appeals that include claims of ineffective assistance of trial counsel not raised in the superior court. While, as a general matter, the California Rules of Court typically do not repeat statutory provisions, in these proposed rules some statutory requirements are repeated to provide context for related rule provisions.

Within the proposed rules, there are drafters’ notes in blue text. These notes identify the source for some of the language in the proposed rules and provide other information relevant to the proposed rules. These notes are published with this proposal to help readers better understand the proposal and will not be included in any rules ultimately adopted by the Judicial Council.

**Qualifications of counsel appointed by the Court of Appeal**

Proposed new rule 8.391 would specify the qualifications of counsel appointed by the Court of Appeal to represent an indigent person not represented by the State Public Defender in an appeal under Penal Code section 1509.1. Because these appeals will involve considering issues raised and potentially not raised in a capital habeas corpus proceeding, the working group’s view is that it is important that such an attorney be fully conversant in capital habeas corpus representation. The working group is therefore proposing that an attorney must meet the minimum qualifications that the working group is proposing for attorneys appointed to represent a person in a death penalty–related habeas corpus proceeding (Please see proposed rule 8.652 as circulated for comment in [http://www.courts.ca.gov/documents/SP18-12.pdf](http://www.courts.ca.gov/documents/SP18-12.pdf)). The working group would particularly appreciate comments regarding whether these are the appropriate qualifications for appointed counsel in these appeals.
Notice of appeal
Penal Code section 1509.1 provides that an appeal from a superior court decision on an initial habeas corpus petition “shall be taken by filing a notice of appeal in the superior court within 30 days of the court’s decision granting or denying the habeas petition.” Similarly, this section provides that an appeal of a superior court decision on a successive habeas corpus petition “shall be taken by filing a notice of appeal in the superior court within 30 days of the court’s decision.” Proposed rule 8.393 implements these statutory provisions by providing that a notice of appeal must be filed within 30 days after the making of the order being appealed. This proposed rule would apply to appeals by both the petitioner and the People and, unlike under rule 8.308(b), the rule does not provide additional time for the filing of a cross-appeal because Penal Code section 1509.1 does not appear to permit such an extension of the time to appeal. The working group would appreciate comments on whether it would be helpful to include an advisory comment to this rule that highlights that all appeals must be filed within the 30-day time period.

Certificate of appealability
As noted above, Penal Code section 1509.1 provides that the petitioner may only appeal a denial of relief on a successive habeas corpus petition if either the superior court or the Court of Appeal issues a certificate of appealability. Subdivision (c) of this code section contains detailed requirements regarding these certificates, including that:

- The superior court must grant or deny a certificate of appealability concurrently with a decision denying relief on the petition.
- The Court of Appeal must grant or deny a request for a certificate of appealability within 10 days of an application for a certificate.
- If a certificate is issued, the substantial claim for relief must be indicated in the certificate; and
- The jurisdiction of the Court of Appeal is limited to the claims identified in the certificate and any additional claims added by the Court of Appeal within 60 days of the notice of appeal.

Proposed new rule 8.392(b) contains provisions designed to implement these requirements. Among other things, this provision requires that:

- The appellant’s notice of appeal from a superior court decision regarding a capital habeas corpus petition indicate:
  - If the appeal is from a superior court decision denying relief on a successive petition; and
  - Whether the superior court granted or denied a certificate of appealability.
- If the superior court denied a certificate of appealability, the petitioner must attach to the notice of appeal a request to the Court of Appeal for a certificate of appealability that
identifies the petitioner’s claim or claims for relief and explains how the requirements of Penal Code section 1509(d) have been met; and

- Any certificate of appealability issued by a court must identify the substantial claim for relief shown by the petitioner.

Proposed new Petitioner's Notice of Appeal - Death Penalty–Related Habeas Corpus Decision (form HC-200) is designed to help implement several of these requirements. This proposed form includes a notice that, if a certificate of appealability was not issued by the superior court, the appellant must submit a request to the Court of Appeal for a certificate. In addition, the second page of the form can be used to make such a request.

Record on appeal
Proposed new rule 8.395 addresses the record in these appeals.

Contents of the record
Subdivision (a) of proposed new rule 8.395 addresses the contents of the record on appeal. It is modeled in large part on rule 8.388(b), relating to the contents of the record in appeals by the People under Penal Code section 1506 from superior court decisions granting habeas corpus relief. The language from rule 8.388(b) has been modified to reflect the fact that, under Penal Code section 1509.1, appeals from superior court decisions on habeas corpus petitions in capital cases may be taken by either the People from orders granting relief or by the petitioner from orders denying relief, and that the denial being appealed may have occurred with or without issuance of an order to show cause. Thus, the proposal requires inclusion in the record of any order to show cause, return, denial, or traverse. In addition, the language from rule 8.388(b) has been modified to specifically require that the record include any informal response to the petition, any statement of decision required by Penal Code section 1509(f), the supporting documents accompanying the habeas corpus petition filed in the superior court, and any certificate of appealability required under Penal Code section 1509.1.

Stipulations for limited record
Subdivision (b) of proposed new rule 8.395 is modeled on rule 8.320(f), relating to stipulations for limited records in non-capital felony appeals. The working group would particularly appreciate comments about whether, as a practical matter, such stipulations are likely to be used or helpful in appeals under Penal Code section 1509.1, and thus whether to include this provision in the rule.

When record preparation begins
Subdivisions (c) and (d) of proposed new rule 8.395 are modeled on rule 8.336, relating to the preparation of the record in non-capital felony appeals. Similar to the way felony cases in which a certificate of probable cause is required are handled under rule 8.336, for appeals from a superior court decision denying relief on a successive habeas corpus petition when the superior court did not issue a certificate of appealability, the proposed rule would provide that preparation
of the transcripts would not begin unless and until the superior court clerk receives a copy of a certificate of appealability issued by the Court of Appeal. However, unlike under rule 8.336, the proposed rule would generally provide that in other appeals under Penal Code section 1509.1, the superior court would not begin preparing the record on appeal until after a notice of appeal has been filed. Under rule 8.336, in contrast, in felony cases where there is a trial on the merits, preparation of the record generally begins immediately after a verdict or finding of guilt of a felony is announced, the superior court does not wait for the filing of a notice of appeal. The working group considered that waiting until the notice of appeal is filed would provide time for the parties to consider whether to stipulate to a limited record on appeal. The working group would particularly appreciate comments on when record preparation should begin in these cases.

**When record preparation must be completed**
The timeframe for completion of the clerk’s and reporter’s transcripts in subdivisions (c) and (d) of proposed new rule 8.395 – within 20 days after the notice of appeal is filed – and the provision in subdivision (e) regarding extensions of this deadline are also modeled on rule 8.336. In addition, the draft of the proposed rule incorporates language from rule 8.616(d)(2), relating to preparation of the record for the automatic appeal in capital cases, presuming good cause for extension of time for the clerk and court reporters to prepare the initial trial record when the record is over 10,000 pages. The working group would particularly appreciate comments about whether this timeframe and the extension provision are appropriate in these appeals. The working group would also appreciate comments on whether extensions of the time for preparing the record should be automatically provided when the record is over 10,000 pages, similar to the automatic extensions for time for counsel to review the record in capital appeals under amendments to rules 8.619 and 8.622 approved by the Judicial Council in September 2018.

**Briefs**
Proposed rule 8.396 addresses briefs in these appeals. Among other things, the rule contains provisions addressing the limitations on the issues that can be raised under Penal Code section 1509.1 in appeals from decisions regarding successive petitions. The rule’s provisions regarding the timeframes for filing briefs and their length are modeled on those in rule 8.630(b) and (c), relating to briefs in capital appeals in the Supreme Court. The working group would particularly appreciate input about whether these timeframes and length limits are appropriate for these appeals, including appeals that raise a claim of ineffective assistance of trial counsel that was not raised in the habeas corpus petition.

**Claims of ineffective assistance of trial counsel not raised in the superior court**
As noted above, Penal Code section 1509.1 provides that an appeal from a superior court decision on an initial capital habeas corpus petition may include a claim of ineffective assistance of trial counsel that was not raised in the habeas corpus petition. Proposed rule 8.397 would establish procedures for making and handling such claims. Among other things, this rule would require that such claims be placed in a separate part of the appellant’s brief and be clearly identified as addressing a claim of ineffective assistance of trial counsel that was not raised in the habeas corpus petition.
Because these are claims that were not raised in the superior court proceedings, there will be no record of superior court filings, hearings, or action relating to these claims. The proposed rule would therefore require the appellant making such a claim and the respondent to provide the court with a proffer containing relevant material not in the record on appeal or of which the court has taken judicial notice. The working group would particularly appreciate comments about the content and format of this proposed proffer.

The rule also addresses the circumstances in which the Court of Appeal must order an evidentiary hearing on such a claim. The language of this provision is modeled on language from rule 8.386(f) relating to proceedings if the return in a non-capital habeas corpus proceeding is ordered to be filed in the reviewing court. The rule provides several options for how such an evidentiary hearing may take place, including through a limited remand to the superior court, as provided in Penal Code section 1509.1. The rule also permits, but does not require, that the Court of Appeal stay the proceedings on other claims raised in the appeal if it orders such a limited remand.

**Alternatives Considered**
The committee considered a number of alternative approaches to specific issues while it was developing these proposed rules and form.

**Form for certificate of appealability**
The working group considered whether to propose not only an application for a certificate of appealability, but also a form that the Court of Appeal could use to issue such a certificate. Some working group members thought that certificates of appealability would have to be so individualized to the case that a form might not be useful. It was also noted that there is no Judicial Council form for the parallel certificate of probable cause required in some non-capital felony appeals. Other members thought that a form might be helpful to remind the court of the elements that need to be addressed in any such certificate. The working group would particularly appreciate comments about whether a form for the certificate of appealability itself should be proposed.

**Time for beginning preparation of the record on appeal**
The working group considered whether to provide that preparation of the record should generally begin immediately upon decision by the superior court in a capital habeas corpus proceeding. The working group ultimately decided to propose that it begin when a notice of appeal is filed, in order to provide the parties with time to consider whether to stipulate to a limited record on appeal.

**Access to habeas corpus counsel’s file**
The working group discussed the fact that counsel representing a person in an appeal under Penal Code section 1509.1 will need to review the file of counsel that represented the person in the habeas corpus proceeding in the superior court. The working group would appreciate comments
on whether the rules should require that habeas corpus consult transmit their file to appellate counsel when appellate counsel is appointed.

**Transfer of appeals**
The working group considered whether to propose a rule addressing possible transfer by the Supreme Court of an appeal of a superior court decision in habeas corpus proceeding in a capital case from one Court of Appeal district to another district. The working group ultimately concluded that rules on this topic were not necessary, as Article 6, section 12 of the California Constitution and Rule 10.1000 already address transfer by the Supreme Court from one Court of Appeal district to another.

**Fiscal and Operational Impacts**
The changes made by Proposition 66 to the procedures for review of death penalty cases, particularly making the superior courts generally responsible for hearing habeas corpus proceedings in these cases and providing for appeals by either party of superior court habeas corpus decisions, will likely have substantial costs, operational impacts, and implementation requirements for courts and justice system partners. These proposed rule changes and forms are likely to require some initial training for judicial officers and court staff.

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### Request for Specific Comments

In addition to comments on the proposal as a whole, the working group is particularly interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Are the minimum qualifications that the working group is proposing for attorneys appointed to represent a person in a death penalty–related habeas corpus proceeding in the superior court also the appropriate qualifications for counsel appointed to represent such person in appeals from superior court decisions in such proceedings under Penal Code section 1509.1?
- Should the Attorney General and/or district attorney receive notice if a request for a notice of appealability is denied by the Court of Appeal?
- Would be helpful to include an advisory comment to rule 8.393 highlighting that all appeals must be filed within the statutory 30-day time period?
- Are stipulations to a limited record on appeal likely to be used or helpful in these appeals and should the rules include a provision addressing such stipulations?
- When should preparation of the record begin for these appeals?
- Is 20 days from the filing of the notice of appeal an appropriate timeframe for completion of the clerk’s and reporter’s transcripts in these appeals?
- Is the proposed provision addressing extensions of time to complete the record appropriate in these appeals?
• Should the rules require that habeas corpus counsel transmit their file to appellate counsel when appellate counsel is appointed?

• Are the proposed timeframes for filing briefs in these appeals and the proposed limits on the length of the briefs in these appeals appropriate, including in appeals that raise a claim of ineffective assistance of trial counsel that was not raised in the habeas corpus petition?

• Are the proposed rule provisions relating to the content and format of a proffer in appeals that raise a claim of ineffective assistance of trial counsel that was not raised in the habeas corpus petition appropriate?

The advisory working group also seeks comments from courts on the following cost and implementation matters:

• Would the proposal provide cost savings? If so please quantify.

• What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.

• Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

• How well would this proposal work in courts of different sizes?

Attachments and Links


• Form HC-200, at pages 30-31

• Link A: Ballot description and arguments for and against Proposition 66 and text of proposition from November 2016 Official Voter Information Guide, beginning on pages 104 and 212, respectively, of linked document
Rule 8.388 of the California Rules of Court would be amended, and rules 8.390–8.398 would be adopted, effective April 25, 2019, to read:

Title 8. Appellate Rules

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

Chapter 4. Habeas Corpus Appeals and Writs

DRAFTERS’ NOTES ON ARTICLE HEADINGS AND RULE 8.388: The proposed addition of the Article 1 and Article 2 headings and the amendment to rule 8.388 are meant to clarify that current rules 8.380–8.388 do not apply to habeas corpus proceedings related to a judgment of death.

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

Rule 8.380. Petition for writ of habeas corpus filed by petitioner not represented by an attorney * * *

Rule 8.384. Petition for writ of habeas corpus filed by an attorney for a party * * *

Rule 8.385. Proceedings after the petition is filed * * *

Rule 8.386. Proceedings if the return is ordered to be filed in the reviewing court * * *

Rule 8.387. Decision in habeas corpus proceedings * * *

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

(a) Application

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

(b) * * *
Article 2. Appeals from Superior Court Decisions in Death Penalty–Related Habeas Corpus Proceedings

DRAFTERS’ NOTES ON PROPOSED RULE 8.390: This proposed new rule is modeled on rule 8.388. As in 8.388, subdivision (b) would make some of the rules relating to general felony appeals applicable to appeals from superior court decisions in death penalty–related habeas corpus proceedings. However, this proposed rule would make fewer of those felony appeal rules applicable. Not made applicable are:

- Rule 8.304. Filing the appeal; certificate of probable cause
- Rule 8.308. Time to appeal
- Rule 8.312. Stay of execution and release on appeal
- Rule 8.320. Normal record; exhibits
- Rule 8.324. Application in superior court for addition to normal record
- Rule 8.360. Briefs by parties and amici curiae
- Rule 8.361. Certificate of interested entities or persons

What would be made applicable, either in whole or in part, and therefore that are only partially addressed or not addressed at all in the proposed new rules below, are:

- Rule 8.300. Appointment of appellate counsel by the Court of Appeal, with the exception that the qualifications for counsel are set by proposed rule 8.652, rather than by the Appellate Indigent Defense Oversight Advisory Committee.
- Rule 8.316. Abandoning the appeal
- Rule 8.332. Juror-identifying information
- Rule 8.336. Preparing, certifying, and sending the record (note that this topic is partially addressed in proposed rule 8.394 below)
- Rule 8.340. Augmenting or correcting the record in the Court of Appeal
- Rule 8.344. Agreed statement
- Rule 8.346. Settled statement
- Rule 8.366. Hearing and decision in the Court of Appeal
- Rule 8.368. Hearing and decision in the Supreme Court

Rule 8.390. Application

(a) Application

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

(b) General application of rules for criminal appeals
Except as otherwise provided in this article, rules 8.300, 8.316, 8.332–8.346, and 8.366–8.368 govern appeals subject to the rules in this article.

DRAFTERS' NOTES ON PROPOSED NEW RULE 8.391: This proposed rule would clarify that appointed counsel in appeals under this article must meet the same minimum qualifications as counsel appointed to represent a petitioner in a capital habeas corpus proceeding.

Rule 8.391. Qualifications of counsel appointed by the Court of Appeal

To be appointed by the Court of Appeal to represent an indigent person not represented by the State Public Defender in an appeal under this article, an attorney must meet the minimum qualifications established by rule 8.652 for attorneys to be appointed to represent a person in a death penalty–related habeas corpus proceeding.

DRAFTERS' NOTES ON PROPOSED NEW RULE 8.392: This proposed new rule addresses notices of appeal and certificates of appealability.

Subdivisions (a) and (c) of this proposed new rule are modeled on rule 8.304(a), relating to the notice of appeal and notice to court reporters of the filing of an appeal in non-capital felony appeals. Paragraph (c)(2) provides that if the superior court did not issue a certificate of appealability, the clerk must not send the notification of the filing of a notice of appeal to the court reporter or reporters unless and until the clerk receives a copy of a certificate of appealability issued by the Court of Appeal. As under rule 8.304, this is designed to prevent the court reporters from beginning preparation of the reporter’s transcript until it is clear that the appeal is moving forward.

Subdivision (b) is intended to implement the provisions of Penal Code section 1509.1(c) relating to certificates of appealability in petitioners’ appeals from a decision denying relief on a successive petition for a writ of habeas corpus. Paragraph (b)(1) of the proposed rule restates the following language from this statutory provision:

The petitioner may appeal the decision of the superior court denying relief on a successive petition only if the superior court or the court of appeal grants a certificate of appealability.

The provision in (b)(3) requiring that a petitioner’s request for the Court of Appeal to issue a certificate of appealability “must identify the petitioner’s claim or claims for relief and explain how the requirements of Penal Code section 1509(d) have
been met” is modeled in part on the requirement in Penal Code section 1237.5 that defendants seeking a certificate of probable cause to appeal from a felony judgment file a statement “executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds” for the appeal.

Paragraph (b)(4) providing that the People must not file an answer to a request for a certificate of appealability unless the court requests an answer is modeled on rule 8.268(b)(2), relating to answers to petitions for rehearing.

The proposed requirement in paragraph (b)(5) that any certificate of appealability issued by a court “must identify the substantial claim for relief shown by the petitioner” is based on the following two provisions in Penal Code section 1509.1(c):

> A certificate of appealability may issue under this subdivision only if the petitioner has shown both a substantial claim for relief, which shall be indicated in the certificate, . . .

> The jurisdiction of the court of appeal is limited to the claims identified in the certificate and any additional claims added by the court of appeal . . .

Both of these provisions indicate that the claims need to be in any certificate issued by a court.

Paragraph (b)(6) is modeled on rule 8.304(b)(3), relating to the handling of a notice of appeal in non-capital felony appeals when no certificate of probable cause is issued.

The timeframe for notification by the clerk of the filing of an appeal in paragraph (c)(1) is modeled on language from rule 8.616(a)(1), relating to clerk’s notices to court reporters to begin preparation of transcripts in capital cases.

Rule 8.392. Filing the appeal; certificate of appealability

(a) Notice of appeal

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

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

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

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

(4) The People must not file an answer to a request for a certificate of appealability unless the court requests an answer. The clerk must promptly send to the parties copies of any order requesting an answer and immediately notify the parties by telephone or another expeditious method. Any answer must be served and filed within five days after the order is filed unless the court orders otherwise.

(5) If the Court of Appeal grants a certificate of appealability, the certificate must identify the substantial claim(s) for relief shown by the petitioner. The Court of Appeal clerk must send a copy of the certificate to the attorney for the petitioner or, if unrepresented, to the petitioner, and to the district appellate project, the Attorney General, the district attorney, the superior court clerk, and the Supreme Court clerk.

(6) If both the superior court and the Court of Appeal deny a certificate of appealability, the Court of Appeal clerk 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 Supreme Court clerk, and 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 the attorney for the petitioner, the Attorney General, the district attorney, the reviewing court clerk, the district appellate project, the Supreme Court clerk, each court reporter, and any primary reporter or reporting supervisor.
(2) If the petitioner is appealing from a superior court decision denying relief on a successive petition and the superior court did not issue a certificate of appealability, the clerk must not send the notification of the filing of a notice of appeal to the court reporter or reporters unless and until the clerk receives a copy of a certificate of appealability issued by the Court of Appeal under (b)(5).

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

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

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

(4) The notification to the reviewing court clerk must also include a copy of the notice of appeal, any certificate of appealability or denial of a certificate of appeallability issued by the superior court, and the sequential list of reporters made under rule 2.950.

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

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

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

Advisory Committee Comment

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

DRAFTERS' NOTES ON PROPOSED NEW RULE 8.393: This rule is modeled on rule 8.308, relating to notices of appeal in non-capital felony cases, but the time to appeal has been changed to correspond to the requirement in Penal Code section 1509.1(a) that, "An appeal shall be taken by filing a notice of
appeal in the superior court within 30 days of the court’s decision granting or denying the habeas petition.” In addition, unlike rule 8.308, it does not address cross-appeals because Penal Code section 1509.1(a) appears to set the timeframe for filing any appeal.

**Rule 8.393. Time to appeal**

A notice of appeal under this article must be filed within 30 days after the making of the order being appealed.

**DRAFTERS’ NOTES ON PROPOSED NEW RULE 8.394:** This proposed new rule is modeled, in part, on rule 8.312, relating to stays in non-capital felony appeals. However, this draft rule intentionally leaves out any discussion of the showing needed to grant a stay.

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

(a) **Application**

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

(b) **Interim relief**

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

**DRAFTERS’ NOTES ON PROPOSED NEW RULE 8.395:** This proposed new rule addresses the record on appeal.

Subdivision (a) of this proposed new rule is modeled on rule 8.388(b), relating to the content of the record in appeals by the People from superior court decisions granting habeas corpus relief. It has been modified to reflect the fact that, under Penal Code section 1509.1, appeals from superior court decisions on habeas corpus petitions in capital cases may be not only from orders granting relief, but also from orders denying relief either with or without issuance of an order to show cause. The proposed rule requires that the record include “any” order to show cause, return, and traverse. In addition, the language from rule 8.388(b) has been modified to specifically require that the record include:
Any informal response to the petition;
Any statement of decision required by Penal Code section 1509(f);
The supporting documents identified under proposed rule 4.571 (see accompanying invitation to comment on the proposed rules for trial court habeas corpus proceedings in capital cases); and
Any certificate of appealability issued by the superior court or the Court of Appeal (note that the superior court would receive a copy of a certificate of appealability issued by the Court of Appeal under proposed rule 8.392(b)(5) above).

Subdivision (b) is modeled on rule 8.320(f), relating to stipulations for limited records in non-capital felony appeals.

Subdivisions (c) and (d) are modeled on rule 8.336, relating to the preparation of the record in non-capital felony appeals, but establish different triggers for the preparation of the record. Under rule 8.336, in felony cases where there is a trial on the merits, preparation of the record generally begins immediately after a verdict or finding of guilt of a felony is announced; the trial court does not wait for the filing of a notice of appeal. In appeals after a plea of guilty or nolo contendere or after an admission of probation violation, rule 8.336 provides that record preparation does not begin until the court files a certificate of probable cause. In contrast, the proposed draft below would provide that preparation in most appeals from superior court decisions on capital habeas corpus petitions would begin upon the filing of a notice of appeal. For appeals from a superior court decision denying relief on a successive petition when the superior court did not issue a certificate of appealability, however, somewhat like felony cases in which a certificate of probable cause is required, the proposed rule would provide that preparation of the transcripts would not begin unless and until the trial court clerk receives a copy of a certificate of appealability issued by the Court of Appeal.

Subdivision (e) is modeled on rule 8.336(e), but the 60-day limit on the length of the extensions of time permitted has been eliminated. In addition, the draft of the proposed rule incorporates language from rule 8.616(d)(2), relating to preparation of the record for the automatic appeal in capital cases, presuming good cause for extension of time for the clerk and court reporters to prepare the initial trial record when the record is over 10,000 pages. Note that, under the amendments to rule 8.619 approved by the Judicial Council at its September 2018 meeting, which will take effect on April 25, 2019, the deadlines for counsel to review and the court to certify the record for the automatic appeal for completeness would automatically be extended by t days for each 1,000 pages of combined transcript over 10,000 pages and, under the proposed amendments to rule 8.622, the deadlines for counsel to review and the court to certify the record for the automatic appeal for accuracy would automatically be extended by
15 days for each 1,000 pages of combined transcript over 10,000 pages (see the report to the Judicial Council at: https://jcc.legistar.com/View.ashx?M=F&ID=6613532&GUID=4A5A5D1E-8061-4339-AD6A-461BC0F34938).

Paragraph (f)(1) is modeled on language that will be added to rule 8.619(f)(2), relating to the preparation of the record for the automatic appeal in a death penalty case, effective April 25, 2019 (see the report to the Judicial Council at: https://jcc.legistar.com/View.ashx?M=F&ID=6613532&GUID=4A5A5D1E-8061-4339-AD6A-461BC0F34938). Paragraph (f)(2) is modeled on rule 8.336(f), relating to the form of the record in non-capital felony appeals.

Subdivision (g) is modeled on rule 8.336(g), relating to the sending of the record in non-capital felony appeals. However, the proposal specifies that a copy of the transcripts will be sent to the Governor. Note that in cases in which a death sentence is imposed, Penal Code section 1218 specifically requires that the Governor be sent “a complete transcript of all the testimony given at the trial including any arguments made by respective counsel and a copy of the clerk’s transcript.”

Paragraph (i) is modeled on rule 8.386(e), relating to judicial notice in habeas corpus proceedings in which the return is heard in the Court of Appeal. Under rule 8.252, which is cross-referenced, to obtain judicial notice by a reviewing court under Evidence Code section 459, a party must serve and file a motion in the reviewing court.

Rule 8.395. Record on appeal

(a) Contents

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

(1) The petition;

(2) Any informal response to the petition and any reply to the informal response;

(3) Any order to show cause;

(4) Any reply, return, answer, denial, or traverse;

(5) All supporting documents under rule 4.571 and any other documents and exhibits submitted to the court;
The reporter’s transcript of any oral proceedings;

All court minutes;

Any statement of decision required by Penal Code section 1509(f) or other written decision of the court;

The order appealed from;

The notice of appeal; and

Any certificate of appealability issued by the superior court or the Court of Appeal.

(b) Stipulation for partial transcript

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

(c) Preparation of clerk’s transcript

Except as provided in (2), the clerk must begin preparing the clerk’s transcript immediately after the notice of appeal is filed.

If the petitioner is appealing from a superior court decision denying relief on a successive petition and the superior court did not issue a certificate of appealability, the clerk must not begin preparing the clerk’s transcript unless and until the clerk receives a copy of a certificate of appealability issued by the Court of Appeal under rule 8.391(b)(5).

Within 20 days after the clerk is required to begin preparing the transcript under (1) or (2), the clerk must complete preparation of an original and three copies of the clerk’s transcript.

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

The clerk must certify as correct the original and all copies of the clerk’s transcript.
(d) **Preparation of reporter’s transcript**

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

2. The reporter must prepare an original and the same number of copies of the reporter’s transcript as (c) requires of the clerk’s transcript, and must certify each as correct.

3. The reporter must deliver the original and all copies to the superior court clerk as soon as they are certified, but no later than 20 days after notice of the filing of the notice of appeal is sent to the reporter.

(e) **Extension of time**

1. The superior court may not extend the time for preparing the record.

2. The reviewing court may order one or more extensions of time for preparing the record, including a reporter’s transcript, on receipt of:

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

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

(f) **Form of record**

1. 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.

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

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

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

(B) One copy of each transcript to appellate counsel for the petitioner and to the Attorney General or the district attorney, whichever is counsel for the People on appeal;

(C) One copy of each transcript to the district attorney or Attorney General if requested under (c)(4), and

(D) One copy of each transcript to the Governor.

(2) If the petitioner is not represented by appellate counsel when the transcripts are certified as correct, the clerk must send that petitioner’s counsel’s copy of the transcripts to the district appellate project.

(h) Augmenting or correcting the record in the Court of Appeal

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

(i) Judicial notice

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

DRAFTERS’ NOTES ON PROPOSED NEW RULE 8.396: This proposed new rule addresses briefs.

Paragraph (a)(1) in this proposed new rule is modeled on language that appears in both rule 8.360(a), relating to briefs in general felony appeals in the Court of Appeal, and rule 8.630(a), relating to briefs in capital appeals in the Supreme Court.

Paragraph (a)(2), in conjunction with proposed new rule 8.397 below, is designed to help implement the requirement in Penal Code section 1509.1(b) allowing
petitioners to raise ineffective assistance of counsel claims in the appeal that
were not raised in the habeas corpus proceeding in the trial court.

Paragraph (a)(3) and the accompanying advisory committee comment are
designed to alert rule users about the provision in Penal Code section 1509.1(c)
limiting the claims that can be heard by the Court of Appeal in appeals of the
denial of relief on a successive habeas corpus petition.

The brief length limits in subdivision (b) are modeled on those in rule 8.630 (b),
relating to briefs in capital appeals in the Supreme Court. The limits in rule
8.360(b), relating to briefs in general felony appeals in the Court of Appeal, are
considerably shorter - 25,500 words or 75 pages for all party briefs.

The timeframes for filing briefs is subdivision (c) are modeled on those in rule
8.630(c), relating to briefs in capital appeals in the Supreme Court. The time
limits in rule 8.360(c), relating to briefs for general non-capital felony appeals in
the Court of Appeal, are considerably shorter – 40 days after the record is filed in
the reviewing court for the filing of the appellant’s opening brief, 30 days after the
filing of the appellant’s opening brief for the respondent’s brief, and 20 days after
the filing of the respondent’s brief for the reply brief.

Paragraphs (c)(5) – (7) and subdivisions (d) – (f) are modeled on rule 8.360
(c)(4) – (6) and subdivisions (d) – (f), relating to briefs in general felony cases,
with a few small changes, including:

• Changing references from “defendant” to “petitioner;” and
• Changing the timeframe for filing a request to file an amicus brief to reflect the
  proposed briefing schedule in subdivision (c).

Rule 8.396.  Briefs by parties and amici curiae

(a)  Contents and form

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

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

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

(b) Length

(1) A brief produced on a computer must not exceed the following limits, including footnotes:

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

(B) Respondent’s brief: 102,000 words. If the presiding justice permits the appellant to file an opening brief that exceeds the limit set in (1)(A) or (3)(A), respondent’s brief may not exceed the length of appellant’s opening brief approved by the presiding justice.

(C) Reply brief: 47,600 words.

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

(3) A typewritten brief must not exceed the following limits:

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

(B) Respondent’s brief: 300 pages. If the presiding justice permits the appellant to file an opening brief that exceeds the limit set in (1)(A) or (3)(A), respondent’s brief may not exceed the length of appellant’s opening brief approved by the presiding justice.

(C) Reply brief: 140 pages.

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

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

(6) On application, the presiding justice may permit a longer brief for good cause.
(c) **Time to file**

1. The appellant’s opening brief must be served and filed within 210 days after the record is filed.

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

3. The appellant must serve and file a reply brief, if any, within 60 days after the respondent files its brief.

4. The time to serve and file a brief may not be extended by stipulation, but only by order of the presiding justice under rule 8.60.

5. If a party fails to timely file an appellant’s opening brief or a respondent’s brief, the reviewing court clerk must promptly notify the party in writing that the brief must be filed within 30 days after the notice is sent, and that failure to comply may result in sanctions specified in the notice.

(d) **Service**

1. The petitioner’s appellate counsel must serve each brief for the petitioner on the People and the district attorney, and must send a copy of each to the petitioner personally unless the petitioner requests otherwise.

2. The proof of service under (1) must state that a copy of the petitioner’s brief was sent to the petitioner, or counsel must file a signed statement that the petitioner requested in writing that no copy be sent.

3. The People must serve each of their briefs on the appellate counsel for the petitioner and on the district appellate project. If the district attorney is representing the People, one copy of the district attorney’s brief must be served on the Attorney General.

4. A copy of each brief must be served on the superior court clerk for delivery to the superior judge who issued the order being appealed.

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

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

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

**Advisory Committee Comment**

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

**Subdivision (b)(4).** This subdivision specifies certain items that are not counted toward the maximum brief length. Signature blocks referred to in this provision include not only the signatures, but also the printed names, titles, and affiliations of any attorneys filing or joining in the brief, which may accompany the signature.

DRAFTERS' NOTES ON PROPOSED NEW RULE 8.397: This proposed new rule establishes procedures for presenting and handling claims in appeals under Penal Code section 1509.1 of ineffective assistance of counsel that were not raised in the habeas corpus proceeding in the superior court.

Subdivision (b) would require ineffective assistance of counsel claims to be addressed in a separate portion of the briefs. This is to make this section easier to find for the court and because this portion of the brief will include citations to the proposed proffer authorized by subsection (c).

Paragraph (b)(3) is modeled in part on rule 8.204(a)(1)(B).

Paragraph (b)(4) is modeled in part on rule 8.204(a)(1)(C), but the sources that can be referred to have been broadened to include the proffer and items of which the court has taken judicial notice.

Subdivision (c) addresses the proffer of evidence not in the record and not subject to judicial notice. It would require a proffer from either side when evidence outside the record or matters subject to judicial notice are being relied on either to make or respond to a claim. Paragraphs (c)(1)(A), (2) and (3) are modeled in part on rule 8.384(b), which addresses the supporting documents to a petition for a writ of habeas corpus. The language in (c)(1)(B) is modeled in part
on language in rule 8.386(f), relating to proceedings if the return in a non-capital habeas corpus proceeding is ordered to be filed in the reviewing court, which refers to what the court may consider before ordering an evidentiary hearing.

Subdivision (d) addresses evidentiary hearings. The initial language in (d) regarding when the reviewing court must order an evidentiary hearing is modeled in part on language in rule 8.386(f), relating to proceedings if the return in a non-capital habeas corpus proceeding is ordered to be filed in the reviewing court. The language in (d)(1) regarding limited remand is intended to implement the provision in Penal Code section 1509.1 providing for limited remand. The language regarding vesting jurisdiction in the superior court is modeled on language from rule 8.385, which addresses what happens when the return in a habeas corpus proceeding in a reviewing court is ordered to be made in the superior court. The language in (d)(2) is modeled in part on language in rule 8.386(f). The language in (d)(3) is modeled in part on language in rule 8.252(c) regarding the reviewing court taking evidence.

Subdivision (e) addresses what happens with respect to the appeal when a limited remand is ordered. Paragraph (1) would permit, but not require, the reviewing court to stay the remainder of the appeal pending the decision on remand. Paragraph (2) would make clear that a new notice of appeal would need to be filed if a party wanted to challenge the superior court's decision on remand. Paragraph (3) would allow the reviewing court to consolidate such an appeal with the pending appeal of the habeas corpus decision.

8.397. Claim of ineffective assistance of trial counsel not raised in the superior court

(a) Application

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

(b) Discussion of claim in briefs

(1) A claim subject to this rule must be raised in the first brief filed by the petitioner.

(2) All discussion of claims subject to this rule must be addressed in a separate part of briefs under a heading identifying this part as addressing claims of ineffective assistance of trial counsel that were not raised in a superior court habeas corpus proceeding.
(3) Discussion of each claim within this part of the brief must be under a separate subheading identifying the claim. Petitioner’s brief must include a summary of the claim under the subheading, and each claim must be supported by argument and, if possible, by citation of authority.

(4) This part of the brief may include references to matters in:

(A) The record on appeal prepared under rule 8.395. Any reference to a matter in the record must be supported by a citation to the volume and page number of the record where the matter appears.

(B) Matters of which the court has taken judicial notice.

(C) A proffer required under (c). Any reference to a matter in a proffer must be supported by a citation to its index number or letter and page.

(c) Proffer

(1) A brief raising a claim under Penal Code section 1509.1(b) of ineffective assistance of trial counsel not raised in a superior court habeas corpus proceeding must be accompanied by a proffer of any reasonably available documentary evidence supporting the claim that is not in either the record on appeal prepared under rule 8.395 or matters of which the court has taken judicial notice. A brief responding to such a claim must be accompanied by a proffer of any reasonably available documentary evidence the People are relying on that is not in the petitioner’s proffer, the record on appeal prepared under rule 8.395, or matters of which the court has taken judicial notice.

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

(B) Other evidence may be in the form of affidavits or declarations under penalty of perjury.

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

(A) The pages must be consecutively numbered.

(B) It must begin with a table of contents listing each document by its title and its index number or letter. If a document has attachments, the table of contents must give the title of each attachment and a brief description of its contents.
(C) If submitted in paper form:

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

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

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

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

(d) Evidentiary hearing

An evidentiary hearing is required if, after considering the briefs, the proffer, and matters of which judicial notice may be taken, the court finds there is a reasonable likelihood that the petitioner may be entitled to relief and the petitioner’s entitlement to relief depends on the resolution of an issue of fact. The reviewing court may take one of the following actions:

(1) Order a limited remand to the superior court to consider the claim under Penal Code section 1509.1(b). The order for limited remand vests jurisdiction over the claim in the superior court, which must proceed under the rules for habeas corpus proceedings in capital cases in the superior court. The Court of Appeal clerk must send a copy of any such order to the Supreme Court clerk.

(2) Appoint a referee to conduct the hearing and make recommended findings of fact.

(3) Conduct the hearing itself or designate a justice of the court to conduct the hearing.

(e) Procedures following limited remand

(1) If the reviewing court orders a limited remand to the superior court to consider a claim under Penal Code section 1509.1(b), it may stay the proceedings on the remainder of the appeal pending the decision of the superior court on remand. The Court of Appeal clerk must send a copy of any such stay to the Supreme Court clerk.
(2) If any party wishes to appeal from the superior court decision on remand, the party must file a notice of appeal as provided in rule 8.392.

(3) If an appeal is filed from the superior court decision on remand, the reviewing court may consolidate this appeal with any pending appeal under Penal Code section 1509.1 from the superior court’s decisions in the same habeas corpus proceeding. A copy of any consolidation order must be promptly sent to the superior court clerk. The superior court clerk must then augment the record on appeal to include all items listed in rule 8.395(a) from the remanded proceedings.

DRAFTERS’ NOTES ON PROPOSED NEW RULE 8.398: This proposed new rule is intended to clarify that denials of requests for certificates of appealability are final immediately.

8.398. Finality

(a) General rule

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

(b) Denial of certificate of appealability

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

- You must file this form in the SUPERIOR COURT WITHIN 30 DAYS after the court rendered the judgment or made the order you are appealing.

**IMPORTANT:** If you are appealing the decision of a superior court denying relief on a successive habeas corpus petition related to a sentence of death, and the superior court did not grant you a certificate of appealability, you must complete the Request for Certificate of Appealability on page 2 of this form.

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1. Petitioner appeals from a judgment rendered or an order made by the superior court in a death penalty–related habeas corpus proceeding.
   
   NAME of petitioner:
   
   DATE of the order or judgment:

2. [ ] This is an appeal from the decision of a superior court denying relief on a successive habeas corpus petition related to a sentence of death. *(If you check this box, you must check a or b)*
   
   a. [ ] The superior court granted a certificate of appealability.
   
   b. [ ] The superior court did not grant a certificate of appealability. *(You must complete the Request for Certificate of Appealability on page 2 of this form.)*

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Date:

(TYPE OR PRINT NAME)  (SIGNATURE OF PETITIONER OR ATTORNEY)
REQUEST FOR CERTIFICATE OF APPEALABILITY

Penal Code section 1509.1(c) provides that a certificate of appealability may be issued only if the petitioner has shown both "a substantial claim for relief" and "a substantial claim that the requirements of subdivision (d) of Section 1509 have been met."

Penal Code section 1509(d) provides, in full:

(d) An initial petition which is untimely under subdivision (c) or a successive petition whenever filed shall be dismissed unless the court finds, by the preponderance of all available evidence, whether or not admissible at trial, that the defendant is actually innocent of the crime of which he or she was convicted or is ineligible for the sentence. A stay of execution shall not be granted for the purpose of considering a successive or untimely petition unless the court finds that the petitioner has a substantial claim of actual innocence or ineligibility. "Ineligible for the sentence of death" means that circumstances exist placing that sentence outside the range of the sentencer's discretion. Claims of ineligibility include a claim that none of the special circumstances in subdivision (a) of Section 190.2 is true, a claim that the defendant was under the age of 18 at the time of the crime, or a claim that the defendant has an intellectual disability, as defined in Section 1376. A claim relating to the sentencing decision under Section 190.3 is not a claim of actual innocence or ineligibility for the purpose of this section.

1. I request that the Court of Appeal issue a certificate of appealability. My claims for relief are:

2. My claim that the requirements of Penal Code section 1509(d) have been met is:

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

Date:

(TYPE OR PRINT NAME) (SIGNATURE OF PETITIONER OR ATTORNEY)