

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

1 Title 4. Criminal Rules..... 4
2 Division 2. Pretrial 4
3 Chapter 1. Pretrial Proceedings..... 4
4 Rule 4.119. Additional requirements in pretrial proceedings in capital cases..... 4
5 Division 3. Trials 5
6 Rule 4.230. Additional requirements in capital cases..... 5
7 Division 6. Postconviction, Postrelease, and Writs 8
8 Chapter 3. Habeas Corpus..... 8
9 Article 1. General Provisions..... 8
10 Rule 4.545. Definitions 8
11 Article 2. Noncapital Habeas Corpus Proceedings in the Superior Court 8
12 Rule 4.550. Habeas corpus application..... 8
13 Article 3. Death Penalty–Related Habeas Corpus Proceedings in the Superior Court.. 9
14 Rule 4.560. Application of article..... 9
15 Rule 4.561. Superior court appointment of counsel in death penalty–related habeas
16 corpus proceedings..... 9
17 Rule 4.562. Recruitment and determination of qualifications of attorneys for
18 appointment in death penalty–related habeas corpus proceedings 11
19 Rule 4.571. Filing of petition in the superior court..... 15
20 Rule 4.572. Transfer of petitions 17
21 Rule 4.573. Proceedings after the petition is filed 17
22 Rule 4.574. Proceedings following an order to show cause 18
23 Rule 4.575. Decision on death penalty–related habeas corpus petition..... 20
24 Rule 4.576. Successive petitions..... 21
25 Rule 4.577. Transfer of files 21
26 Title 8. Appellate Rules 21
27 Division 1. Rules Relating to the Supreme Court and Courts of Appeal 21
28 Chapter 4. Habeas Corpus Appeals and Writs..... 21
29 Article 1. Habeas Corpus Proceedings Not Related to Judgment of Death..... 21
30 Rule 8.388. Appeal from order granting relief by writ of habeas corpus 22
31 Article 2. Appeals From Superior Court Decisions in Death Penalty–Related Habeas
32 Corpus Proceedings 22
33 Rule 8.390. Application 22

1	Rule 8.391. Qualifications and appointment of counsel by the Court of Appeal	22
2	Rule 8.392. Filing the appeal; certificate of appealability	23
3	Rule 8.393. Time to appeal	26
4	Rule 8.394. Stay of execution on appeal.....	26
5	Rule 8.395. Record on appeal	27
6	Rule 8.396. Briefs by parties and amici curiae	31
7	Rule 8.397. Claim of ineffective assistance of trial counsel not raised in the superior	
8	court	34
9	Rule 8.398. Finality.....	37
10	Chapter 8. [Reserved]	38
11	Former rule 8.495. Renumbered effective April 25, 2019.....	38
12	Former rule 8.496. Renumbered effective April 25, 2019.....	38
13	Former rule 8.498. Renumbered effective April 25, 2019.....	38
14	Former rule 8.499. Renumbered effective April 25, 2019.....	38
15	Division 2. Rules Relating to Death Penalty Appeals and Habeas Corpus Proceedings	
16	38
17	Former rule 8.600. Renumbered effective April 25, 2019.....	38
18	Chapter 1. General Provisions	38
19	Rule 8.601. Definitions	38
20	Chapter 2. Automatic Appeals From Judgments of Death	39
21	Article 1. General Provisions.....	39
22	Rule 8.603. In general	40
23	Rule 8.605. Qualifications of counsel in death penalty appeals	40
24	Article 2. Record on Appeal	44
25	Rule 8.608. General provisions.....	44
26	Rule 8.610. Contents and form of the record.....	45
27	Rule 8.611. Juror-identifying information	48
28	Rule 8.613. Preparing and certifying the record of preliminary proceedings.....	49
29	Rule 8.616. Preparing the trial record	52
30	Rule 8.619. Certifying the trial record for completeness.....	54
31	Rule 8.622. Certifying the trial record for accuracy	58
32	Former rule 8.625. Certifying the record in pre-1997 trials [Repealed]	61
33	Chapter 3. Death Penalty–Related Habeas Corpus Proceedings	61

1	Rule 8.652. Qualifications of counsel in death penalty–related habeas corpus	
2	proceedings	61
3	Division 3. Rules Relating to Miscellaneous Appeals and Writ Proceedings	66
4	Chapter 1. Review of California Environmental Quality Act Cases Under Public	
5	Resources Code Sections 21168.6.6, 21178–21189.3, and 21189.50–21189.57	66
6	Chapter 2. Appeals Under Code of Civil Procedure Section 1294.4 From an Order	
7	Dismissing or Denying a Petition to Compel Arbitration.....	66
8	Chapter 3. Miscellaneous Writs	66
9	Rule 8.720. Review of Workers’ Compensation Appeals Board cases * * *	66
10	Rule 8.724. Review of Public Utilities Commission cases * * *	66
11	Rule 8.728. Review of Agricultural Labor Relations Board and Public Employment	
12	Relations Board cases * * *	67
13	Rule 8.730. Filing, modification, and finality of decision; remittitur * * *	67
14	Division 4. Rules Relating to the Superior Court Appellate Division	67
15	Division 5. Rules Relating to Appeals and Writs in Small Claims Cases	67
16	Division 6. Transfer of Appellate Division Cases to the Court of Appeal	67
17	Division 7. Publication of Appellate Opinions	67
18		
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1
2 **Title 4. Criminal Rules**

3
4 **Division 2. Pretrial**

5
6 **Chapter 1. Pretrial Proceedings**

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

9
10 **(a) Application**

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

14
15 **(b) Checklist**

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

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

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

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

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

40
41 (C) A list of all motions made by that party during the pretrial proceedings,
42 including ex parte motions. *Capital Case Attorney List of Motions*

1 (form CR-603) must be used for this purpose. The list must indicate if a
2 motion is awaiting resolution.

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

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

13
14 **(d) Electronic recordings presented or offered into evidence**

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

19
20 *Rule 4.119 adopted effective April 25, 2019.*

21
22 **Advisory Committee Comment**

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

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

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

35
36
37
38 **Division 3. Trials**

39
40 **Rule 4.230. Additional requirements in capital cases**

41
42 **(a) Application**

1 This rule applies only in trials in cases in which the death penalty may be imposed.

2
3 **(b) Checklist**

4
5 Within 10 days of counsel’s first appearance in court, primary counsel for each
6 defendant and the prosecution must each acknowledge that they have reviewed
7 *Capital Case Attorney Trial Checklist* (form CR-605) by signing and submitting
8 this form to the court. Counsel is encouraged to keep a copy of this checklist.
9

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

11
12 During trial, counsel must call the court’s attention to any errors or omissions they
13 may find in the daily transcripts. The court must periodically ask counsel for lists of
14 any such errors or omissions and may hold hearings to verify them. Immaterial
15 typographical errors that cannot conceivably cause confusion are not required to be
16 brought to the court’s attention.
17

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

19
20 (1) Primary counsel for each defendant and the prosecution must each prepare
21 the lists identified in (A)–(D).
22

23 (A) A list of all appearances made by that party. *Capital Case Attorney List*
24 *of Appearances* (form CR-601) must be used for this purpose. The list
25 must include all appearances, including ex parte appearances, the date
26 of each appearance, the department in which it was made, the name of
27 counsel making the appearance, and a brief description of the nature of
28 the appearance. A separate list of Penal Code section 987.9
29 appearances must be maintained under seal for each defendant. In the
30 event of any substitution of attorney at any stage of the case, the
31 relieved attorney must provide the list of all appearances to substituting
32 counsel within five days of being relieved.
33

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

39 (C) A list of all motions made by that party, including ex parte motions.
40 *Capital Case Attorney List of Motions* (form CR-603) must be used for
41 this purpose.
42

1 (D) A list of all jury instructions submitted in writing by that party. *Capital*
2 *Case Attorney List of Jury Instructions* (form CR-604) must be used for
3 this purpose. The list must indicate whether the instruction was given,
4 given as modified, refused, or withdrawn.
5

6 (2) No later than 21 days after the imposition of a sentence of death, counsel
7 must submit the lists to the court and serve on all parties a copy of all the lists
8 except the list of Penal Code section 987.9 appearances. Unless otherwise
9 provided by local rule, the lists must be submitted to the court in electronic
10 form.
11

12 **(e) Electronic recordings presented or offered into evidence**
13

14 Counsel must comply with the requirements of rule 2.1040 regarding electronic
15 recordings presented or offered into evidence, including any such recordings that
16 are part of a digital or electronic presentation.
17

18 **(f) Copies of audio and visual aids**
19

20 Primary counsel must provide the clerk with copies of any audio or visual aids not
21 otherwise subject to the requirements of (e) that are used during jury selection or in
22 presentations to the jury, including digital or electronic presentations. If a visual aid
23 is oversized, a photograph of that visual aid must be provided in place of the
24 original. For digital or electronic presentations, counsel must supply both a copy of
25 the presentation in its native format and printouts showing the full text of each slide
26 or image. Photographs and printouts provided under this subdivision must be on 8-
27 1/2 by 11 inch paper.
28

29 *Rule 4.230 adopted effective April 25, 2019.*
30

31 **Advisory Committee Comment**
32

33 **Subdivision (b).** *Capital Case Attorney List of Appearances* (form CR-601), *Capital Case*
34 *Attorney List of Exhibits* (form CR-602), *Capital Case Attorney List of Motions* (form CR-603),
35 and *Capital Case Attorney List of Jury Instructions* (form CR-604) must be used to comply with
36 the requirements in this subdivision.
37

38 **Subdivision (d).** To facilitate preparation of complete and accurate lists, counsel are encouraged
39 to add items to the lists at the time appearances or motions are made, exhibits are offered, or jury
40 instructions are submitted.
41

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

2
3 **Chapter 3. Habeas Corpus**

4
5 **Article 1. General Provisions**

6
7 **Rule 4.545. Definitions**

8
9 In this chapter, the following definitions apply:

- 10
11 (1) A “petition for writ of habeas corpus” is the petitioner’s initial filing that
12 commences a proceeding.
13
14 (2) An “order to show cause” is an order directing the respondent to file a return. The
15 order to show cause is issued if the petitioner has made a prima facie showing that
16 he or she is entitled to relief; it does not grant the relief requested. An order to show
17 cause may also be referred to as “granting the writ.”
18
19 (3) The “return” is the respondent’s statement of reasons that the court should not grant
20 the relief requested by the petitioner.
21
22 (4) The “denial” is the petitioner’s pleading in response to the return. The denial may
23 be also referred to as the “traverse.”
24
25 (5) An “evidentiary hearing” is a hearing held by the trial court to resolve contested
26 factual issues.
27
28 (6) An “order on writ of habeas corpus” is the court’s order granting or denying the
29 relief sought by the petitioner.
30
31 (7) The definitions in rule 8.601 also apply to this chapter.
32

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

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

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

38
39 This article applies to habeas corpus proceedings in the superior court under Penal Code
40 section 1473 et seq. or any other provision of law authorizing relief from unlawful
41 confinement or unlawful conditions of confinement, except for death penalty–related
42 habeas corpus proceedings, which are governed by rule 4.560 et seq.
43

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

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

5
6 **Rule 4.560. Application of article**

7
8 This article governs procedures for death penalty–related habeas corpus proceedings in
9 the superior courts.

10
11 *Rule 4.560 adopted effective April 25, 2019.*

12
13 **Rule 4.561. Superior court appointment of counsel in death penalty–related habeas**
14 **corpus proceedings**

15
16 **(a) Purpose**

17
18 This rule, in conjunction with rule 4.562, establishes a mechanism for superior
19 courts to appoint qualified counsel to represent indigent persons in death penalty–
20 related habeas corpus proceedings. This rule governs the appointment of counsel by
21 superior courts only, including when the Supreme Court or a Court of Appeal has
22 transferred a habeas corpus petition without having appointed counsel for the
23 petitioner. It does not govern the appointment of counsel by the Supreme Court or a
24 Court of Appeal.

25
26 **(b) Prioritization of oldest judgments**

27
28 In the interest of equity, both to the families of victims and to persons sentenced to
29 death, California courts, whenever possible, should appoint death penalty–related
30 habeas corpus counsel first for those persons subject to the oldest judgments of
31 death.

32
33 **(c) List of persons subject to a judgment of death**

34
35 The Habeas Corpus Resource Center must maintain a list of persons subject to a
36 judgment of death, organized by the date the judgment was entered by the
37 sentencing court. The list must indicate whether death penalty–related habeas
38 corpus counsel has been appointed for each person and, if so, the date of the
39 appointment. The list must also indicate for each person whether a petition is
40 pending in the Supreme Court.

41
42 **(d) Notice of oldest judgments without counsel**

- 1 (1) Within 30 days of the effective date of this rule, the Habeas Corpus Resource
2 Center must identify the persons on the list required by (c) with the 25 oldest
3 judgments of death for whom death penalty–related habeas corpus counsel
4 have not been appointed.
5
- 6 (2) The Habeas Corpus Resource Center must notify the presiding judges of the
7 superior courts in which these 25 judgments of death were entered that these
8 are the oldest cases in which habeas corpus counsel have not been appointed.
9 The Habeas Corpus Resource Center will send a copy of the notice to the
10 administrative presiding justice of the appellate district in which the superior
11 court is located.
12
- 13 (3) The presiding judge must identify the appropriate judge within the court to
14 make an appointment and notify the judge that the case is among the oldest
15 cases in which habeas corpus appointments are to be made.
16
- 17 (4) If qualified counsel is available for appointment to a case for which a petition
18 is pending in the Supreme Court, the judge must provide written notice to the
19 Supreme Court that counsel is available for appointment.
20
- 21 (5) On entry of an order appointing death penalty–related habeas corpus counsel,
22 the appointing court must promptly send a copy of the appointment order to
23 the Habeas Corpus Resource Center, which must update the list to reflect that
24 counsel was appointed, and to the clerk/executive officer of the Supreme
25 Court, the Attorney General, and the district attorney. The court must also
26 send notice to the Habeas Corpus Resource Center, clerk/executive officer of
27 the Supreme Court, Attorney General, and district attorney if, for any reason,
28 the court determines that it does not need to make an appointment.
29
- 30 (6) When a copy of an appointment order, or information indicating that an
31 appointment is for any reason not required, has been received by the Habeas
32 Corpus Resource Center for 20 judgments, the center will identify the next 20
33 oldest judgments of death in cases in which death penalty–related habeas
34 corpus counsel have not been appointed and send out a notice identifying
35 these 20 judgments, and the procedures required by paragraphs (3) through
36 (6) of this subdivision must be repeated.
37
- 38 (7) The presiding judge of a superior court may designate another judge within
39 the court to carry out his or her duties in this subdivision.
40

41 **(e) Appointment of counsel**
42

- 1 (1) After the court receives a notice under (d)(2) and has made the findings
2 required by Government Code section 68662, the appropriate judge must
3 appoint a qualified attorney or attorneys to represent the person in death
4 penalty–related habeas corpus proceedings.
5
- 6 (2) The superior court must appoint an attorney or attorneys from the statewide
7 panel of counsel compiled under rule 4.562(d)(4); an entity that employs
8 qualified attorneys, including the Habeas Corpus Resource Center, the local
9 public defender’s office, or alternate public defender’s office; or if the court
10 has adopted a local rule under 4.562(g), an attorney determined to be
11 qualified under that court’s local rules. The court must at this time also
12 designate an assisting entity or counsel, unless the appointed counsel is
13 employed by the Habeas Corpus Resource Center.
14
- 15 (3) When the court appoints counsel to represent a person in a death penalty–
16 related habeas corpus proceeding under this subdivision, the court must
17 complete and enter an *Order Appointing Counsel in Death Penalty–Related*
18 *Habeas Corpus Proceeding* (form HC-101).
19

20 *Rule 4.561 adopted effective April 25, 2019.*
21

22 **Rule 4.562. Recruitment and determination of qualifications of attorneys for**
23 **appointment in death penalty–related habeas corpus proceedings**
24

25 **(a) Purpose**
26

27 This rule provides for a panel of attorneys from which superior courts may appoint
28 counsel in death penalty–related habeas corpus proceedings.
29

30 **(b) Regional habeas corpus panel committees**
31

32 Each Court of Appeal must establish a death penalty–related habeas corpus panel
33 committee as provided in this rule.
34

35 **(c) Composition of regional habeas corpus panel committees**
36

37 (1) The administrative presiding justice of the Court of Appeal appoints the
38 members of each committee. Each committee must be composed of:
39

- 40 (A) One justice of the Court of Appeal to serve as the chair of the
41 committee;
42

- 1 (B) A total of three judges from among those nominated by the presiding
2 judges of the superior courts located within the appellate district; and
3
- 4 (C) A total of three attorneys from among those nominated by the entities
5 in the six categories below. At least two of those appointed must have
6 experience representing a petitioner in a death penalty–related habeas
7 corpus proceeding.
8
- 9 (i) An attorney nominated by the Habeas Corpus Resource Center;
10
- 11 (ii) An attorney nominated by the California Appellate Project–San
12 Francisco;
13
- 14 (iii) An attorney nominated by the appellate project with which the
15 Court of Appeal contracts;
16
- 17 (iv) An attorney nominated by any of the federal public defenders’
18 offices of the federal districts in which the participating courts are
19 located;
20
- 21 (v) An attorney nominated by any of the public defenders’ offices in
22 a county where the participating courts are located; and
23
- 24 (vi) An attorney nominated by any entity not listed in this
25 subparagraph, if the administrative presiding justice requests such
26 a nomination.
27
- 28 (2) Each committee may also include advisory members, as authorized by the
29 administrative presiding justice.
30
- 31 (3) The term of the chair and committee members is three years. Terms are
32 staggered so that an approximately equal number of each committee’s
33 members changes annually. The administrative presiding justice has the
34 discretion to remove or replace a chair or committee member for any reason.
35
- 36 (4) Except as otherwise provided in this rule, each committee is authorized to
37 establish the procedures under which it is governed.
38
- 39 **(d) Regional habeas corpus panel committee responsibilities**
40
- 41 The committee has the following responsibilities:
42

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(1) *Support superior court efforts to recruit applicants*

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

(2) *Accept applications*

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

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

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

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

(3) *Review qualifications*

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

(4) *Provide names of qualified counsel for statewide panel*

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

(B) Committees will provide to the Habeas Corpus Resource Center the names of attorneys who the committees determine meet the minimum qualifications. The Habeas Corpus Resource Center must consolidate the names into a single statewide panel, update the names on the panel

1 at least quarterly, and make the most current panel available to superior
2 courts on its website.

3
4 (C) Unless removed from the panel under (d)(6), an attorney included on
5 the panel may remain on the panel for up to six years without
6 submitting a renewed application.

7
8 (D) Inclusion on the statewide panel does not entitle an attorney to
9 appointment by a superior court, nor does it compel an attorney to
10 accept an appointment.

11
12 (5) *Match qualified attorneys to cases*

13
14 Each committee must assist a participating superior court in matching one or
15 more qualified attorneys from the statewide panel to a person for whom
16 counsel must be appointed under Government Code section 68662, if the
17 court requests such assistance.

18
19 (6) *Remove attorneys from panel*

20
21 Suspension or disbarment of an attorney will result in removal of the attorney
22 from the panel. Other disciplinary action, or a finding that counsel has
23 provided ineffective assistance of counsel, may result in a reevaluation of the
24 attorney's inclusion on the panel by the committee that initially determined
25 the attorney to have met minimum qualifications.

26
27 (e) **Consolidated habeas corpus panel committees**

28
29 The administrative presiding justices of two or more Courts of Appeal may elect,
30 following consultation with the presiding judges of the superior courts within their
31 respective appellate districts, to operate a single committee to collectively fulfill the
32 committee responsibilities for the superior courts in their appellate districts.

33
34 (f) **Recruitment of qualified attorneys**

35
36 The superior courts in which a judgment of death has been entered against an
37 indigent person for whom habeas corpus counsel has not been appointed must
38 develop and implement a plan to identify and recruit qualified counsel who may
39 apply to be appointed.

40
41 (g) **Local rule**

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

7
8 *Rule 4.562 adopted effective April 25, 2019.*

9
10 **Advisory Committee Comment**

11
12 **Subdivisions (d) and (f).** In addition to the responsibilities identified in subdivisions (d) and (f),
13 courts and regional committees are encouraged to support activities to expand the pool of
14 attorneys that are qualified to represent petitioners in death penalty–related habeas corpus
15 proceedings. Examples of such activities include providing mentoring and training programs and
16 encouraging the use of supervised counsel.

17
18
19 **Rule 4.571. Filing of petition in the superior court**

20
21 **(a) Petition**

- 22
23 (1) A petition and supporting memorandum must comply with this rule and,
24 except as otherwise provided in this rule, with rules 2.100–2.117 relating to
25 the form of papers.
26
27 (2) A memorandum supporting a petition must comply with rule 3.1113(b), (c),
28 (f), (h), (i), and (l).
29
30 (3) The petition and supporting memorandum must support any reference to a
31 matter in the supporting documents or declarations, or other supporting
32 materials, by a citation to its index number or letter and page and, if
33 applicable, the paragraph or line number.

34
35 **(b) Supporting documents**

- 36
37 (1) The record prepared for the automatic appeal, including any exhibits admitted
38 in evidence, refused, or lodged, and all briefs, rulings, and other documents
39 filed in the automatic appeal are deemed part of the supporting documents for
40 the petition.
41
42 (2) The petition must be accompanied by a copy of any petition, excluding
43 exhibits, pertaining to the same judgment and petitioner that was previously

1 filed in any state court or any federal court, along with any order in a
2 proceeding on such a petition that disposes of any claim or portion of a claim.

- 3
- 4 (3) If the petition asserts a claim that was the subject of a hearing, the petition
5 must be accompanied by a certified transcript of that hearing.
- 6
- 7 (4) If any supporting documents have previously been filed in the same superior
8 court in which the petition is filed and the petition so states and identifies the
9 documents by case number, filing date and title of the document, copies of
10 these documents need not be included in the supporting documents.
- 11
- 12 (5) Rule 8.486(c)(1) governs the form of any supporting documents
13 accompanying the petition.
- 14
- 15 (6) If any supporting documents accompanying the petition or any subsequently
16 filed paper are sealed, rules 2.550 and 2.551 govern. Notwithstanding rule
17 8.45(a), if any supporting documents accompanying the petition or any
18 subsequently filed papers are confidential records, rules 8.45(b), (c), and 8.47
19 govern, except that rules 2.550 and 2.551 govern the procedures for making a
20 motion or application to seal such records.
- 21
- 22 (7) When other laws establish specific requirements for particular types of sealed
23 or confidential records that differ from the requirements in this subdivision,
24 those specific requirements supersede the requirements in this subdivision.

25

26 **(c) Filing and service**

- 27
- 28 (1) If the petition is filed in paper form, an original and one copy must be filed,
29 along with an original and one copy of the supporting documents.
- 30
- 31 (2) A court that permits electronic filing must specify any requirements
32 regarding electronically filed petitions as authorized under rules 2.250 et seq.
- 33
- 34 (3) Petitioner must serve one copy of the petition and supporting documents on
35 the district attorney, the Attorney General, and on any assisting entity or
36 counsel.

37

38 **(d) Noncomplying filings**

39

40 The clerk must file an attorney's petition not complying with this rule if it
41 otherwise complies with the rules of court, but the court may notify the attorney
42 that it may strike the petition or impose a lesser sanction if the petition is not

1 brought into compliance within a stated reasonable time of not less than five court
2 days.

3
4 **(e) Ruling on the petition**

5
6 (1) The court must rule on the petition within 60 days after the petition is filed
7 with the court or transferred to the court from another superior court.

8
9 (2) For purposes of this subdivision, the court rules on a petition by:

10
11 (A) Requesting an informal response to the petition;

12
13 (B) Issuing an order to show cause; or

14
15 (C) Denying the petition.

16
17 (3) If the court requests an informal response, it must issue an order to show
18 cause or deny the petition within 30 days after the filing of the reply, or if
19 none is filed, after the expiration of the time for filing the reply under rule
20 4.573(a)(3).

21
22 *Rule 4.571 adopted effective April 24, 2019.*

23
24 **Rule 4.572. Transfer of petitions**

25
26 Unless the court finds good cause for it to consider the petition, a petition subject to this
27 article that is filed in a superior court other than the court that imposed the sentence must
28 be transferred to the court that imposed the sentence within 21 days of filing. The court in
29 which the petition was filed must enter an order with the basis for its transfer or its
30 finding of good cause for retaining the petition.

31
32 *Rule 4.572 adopted effective April 25, 2019.*

33
34 **Rule 4.573. Proceedings after the petition is filed**

35
36 **(a) Informal response and reply**

37
38 (1) If the court requests an informal written response, it must serve a copy of the
39 request on the district attorney, the Attorney General, the petitioner and on
40 any assisting entity or counsel.

41
42 (2) The response must be served and filed within 45 days of the filing of the
43 request, or a later date if the court so orders. One copy of the informal

1 response and any supporting documents must be served on the petitioner and
2 on any assisting entity or counsel. If the response and supporting documents
3 are served in paper form, two copies must be served on the petitioner.
4

5 (3) If a response is filed, the court must notify the petitioner that a reply may be
6 served and filed within 30 days of the filing of the response, or a later date if
7 the court so orders. The court may not deny the petition until that time has
8 expired.
9

10 (4) If a reply is filed, the petitioner must serve one copy of the reply and any
11 supporting documents on the district attorney, the Attorney General, and on
12 any assisting entity or counsel.
13

14 (5) The formatting of the response, reply, and any supporting documents must
15 comply with the applicable requirements for petitions in rule 4.571(a) and
16 (b). The filing of the response, reply, and any supporting documents must
17 comply with the requirements for petitions in rule 4.571(c)(1) and (2).
18

19 (6) On motion of any party or on the court's own motion, for good cause stated
20 in the order, the court may extend the time for a party to perform any act
21 under this subdivision. If a party requests extension of a deadline in this
22 subdivision, the party must explain the additional work required to meet the
23 deadline.
24

25 **(b) Order to show cause**
26

27 If the petitioner has made the required prima facie showing that petitioner is
28 entitled to relief, the court must issue an order to show cause. An order to show
29 cause does not grant the relief sought in the petition.
30

31 *Rule 4.573 adopted effective April 24, 2019.*
32

33 **Rule 4.574. Proceedings following an order to show cause**
34

35 **(a) Return**
36

37 (1) Any return must be served and filed within 45 days after the court issues the
38 order to show cause, or a later date if the court so orders.
39

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

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- (3) A copy of the return and any supporting documents must be served on the petitioner and on any assisting entity or counsel. If the return is served in paper form, two copies must be served on the petitioner.
- (4) Any material allegation of the petition not controverted by the return is deemed admitted for purposes of the proceeding.

(b) Denial

- (1) Unless the court orders otherwise, within 30 days after the return is filed, or a later date if the court so orders, the petitioner may serve and file a denial.
- (2) The formatting of the denial and any supporting documents must comply with the applicable requirements for petitions in rule 4.571(a) and (b). The filing of the denial and any supporting documents must comply with the requirements for petitions in rule 4.571(c)(1) and (2).
- (3) A copy of the reply and any supporting documents must be served on the district attorney, the Attorney General, and on any assisting entity or counsel.
- (4) Any material allegation of the return not controverted in the denial is deemed admitted for purposes of the proceeding.

(c) Ruling on the petition

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

(d) Evidentiary hearing

- (1) An evidentiary hearing is required if, after considering the verified petition, the return, any denial, any affidavits or declarations under penalty of perjury, exhibits, 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.
- (2) The court must assign a court reporter who uses computer-aided transcription equipment to report all proceedings under this subdivision.

1 (A) All proceedings under this subdivision, whether in open court, in
2 conference in the courtroom, or in chambers, must be conducted on the
3 record with a court reporter present. The court reporter must prepare
4 and certify a daily transcript of all proceedings.
5

6 (B) Any computer-readable transcript produced by court reporters under
7 this subdivision must conform to the requirements of Code of Civil
8 Procedure section 271.
9

10 (3) Rule 3.1306(c) governs judicial notice.
11

12 **(e) Additional briefing**
13

14 The court may order additional briefing during or following the evidentiary
15 hearing.
16

17 **(f) Submission of cause**
18

19 For purposes of article VI, section 19, of the California Constitution, a death
20 penalty–related habeas corpus proceeding is submitted for decision at the
21 conclusion of the evidentiary hearing, if one is held. If there is supplemental
22 briefing after the conclusion of the evidentiary hearing, the matter is submitted
23 when all supplemental briefing is filed with the court.
24

25 **(g) Extension of deadlines**
26

27 On motion of any party or on the court’s own motion, for good cause stated in the
28 order, the court may extend the time for a party to perform any act under this rule.
29 If a party requests extension of a deadline in this rule, the party must explain the
30 additional work required to meet the deadline.
31

32 *Rule 4.574 adopted effective April 25, 2019.*
33

34 **Rule 4.575. Decision on death penalty–related habeas corpus petition**
35

36 On decision of the initial petition, the court must prepare and file a statement of decision
37 specifying its order and explaining the factual and legal basis for its decision. The clerk
38 of the court must serve a copy of the decision on the petitioner, the district attorney, the
39 Attorney General, the clerk/executive officer of the Supreme Court, the clerk/executive
40 officer of the Court of Appeal, and on any assisting entity or counsel.
41

42 *Rule 4.575 adopted effective April 25, 2019.*
43

1 **Rule 4.576. Successive petitions**

2
3 **(a) Notice of intent to dismiss**

4
5 Before dismissing a successive petition under Penal Code section 1509(d), a
6 superior court must provide notice to the petitioner and an opportunity to respond.

7
8 **(b) Certificate of appealability**

9
10 The superior court must grant or deny a certificate of appealability concurrently
11 with the issuance of its decision denying relief on a successive death penalty–
12 related habeas corpus petition. Before issuing its decision, the superior court may
13 order the parties to submit arguments on whether a certificate of appealability
14 should be granted. If the superior court grants a certificate of appealability, the
15 certificate must identify the substantial claim or claims for relief shown by the
16 petitioner and the substantial claim that the requirements of Penal Code section
17 1509(d) have been met. The superior court clerk must send a copy of the certificate
18 to the petitioner, the Attorney General, the district attorney, the clerk/executive
19 officer of the Court of Appeal and the district appellate project for the appellate
20 district in which the superior court is located, the assisting counsel or entity, and
21 the clerk/executive officer of the Supreme Court. The superior court clerk must
22 send the certificate of appealability to the Court of Appeal when it sends the notice
23 of appeal under rule 8.392(c).
24

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

26
27 **Rule 4.577. Transfer of files**

28
29 Counsel for the petitioner must deliver all files counsel maintained related to the
30 proceeding to the attorney representing petitioner in any appeal taken from the
31 proceeding.
32

33 *Rule 4.577 adopted effective April 25, 2019.*
34
35

36 **Title 8. Appellate Rules**

37
38 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**

39
40 **Chapter 4. Habeas Corpus Appeals and Writs**

41
42 **Article 1. Habeas Corpus Proceedings Not Related to Judgment of Death**
43

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

2
3 **(a) Application**

4
5 Except as otherwise provided in this rule, rules 8.304–8.368 and 8.508 govern
6 appeals under Penal Code section 1506 or 1507 from orders granting all or part of
7 the relief sought in a petition for writ of habeas corpus. This rule does not apply to
8 appeals under Penal Code section 1509.1 from superior court decisions in death
9 penalty–related habeas corpus proceedings.

10
11 *(Subd (a) amended effective April 25, 2019; previously amended effective January 1,*
12 *2007.)*

13
14 **(b) * * ***

15
16
17 *Rule 8.388 amended effective April 25, 2019; repealed and adopted as rule 39.2 effective January*
18 *1, 2005; previously amended and renumbered as rule 8.388 effective January 1, 2007.*

19
20 **Article 2. Appeals From Superior Court Decisions in Death Penalty–Related**
21 **Habeas Corpus Proceedings**

22
23 **Rule 8.390. Application**

24
25 **(a) Application**

26
27 The rules in this article apply only to appeals under Penal Code section 1509.1
28 from superior court decisions in death penalty–related habeas corpus proceedings.

29
30 **(b) General application of rules for criminal appeals**

31
32 Except as otherwise provided in this article, rules 8.300, 8.316, 8.332, 8.340–8.346,
33 and 8.366–8.368 govern appeals subject to the rules in this article.

34
35 *Rule 8.390 adopted effective April 25, 2019.*

36
37 **Rule 8.391. Qualifications and appointment of counsel by the Court of Appeal**

38
39 **(a) Qualifications**

40
41 To be appointed by the Court of Appeal to represent an indigent petitioner not
42 represented by the State Public Defender in an appeal under this article, an attorney
43 must:

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- (1) 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, including being willing to cooperate with an assisting counsel or entity that the court may designate;
- (2) Be familiar with appellate practices and procedures in the California courts, including those related to death penalty appeals; and
- (3) Not have represented the petitioner in the habeas corpus proceedings that are the subject of the appeal unless the petitioner and counsel expressly request, in writing, continued representation.

(b) Designation of assisting entity or counsel

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

Rule 8.391 adopted effective April 25, 2019.

Rule 8.392. Filing the appeal; certificate of appealability

(a) Notice of appeal

- (1) 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).
- (2) If the petitioner appeals, petitioner’s counsel, or, in the absence of counsel, the petitioner, is responsible for signing the notice of appeal. If the People appeal, the attorney for the People must sign the notice.

(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.

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

- (5) The People need 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 and the assisting entity or counsel copies of any order requesting an answer and immediately notify the parties by telephone or another expeditious method. Any answer must be served on the parties and the assisting entity or counsel and filed within five days after the order is filed unless the court orders otherwise.

- (6) The Court of Appeal must grant or deny the request for a certificate of appealability within 10 days of the filing of the request in that court. If the Court of Appeal grants a certificate of appealability, the certificate must identify the substantial claim or claims for relief shown by the petitioner. The clerk must send a copy of the certificate or its order denying the request for a certificate to:
 - (A) The attorney for the petitioner or, if unrepresented, to the petitioner;
 - (B) The district appellate project and, if designated, any assisting entity or counsel other than the district appellate project;
 - (C) The Attorney General;
 - (D) The district attorney;
 - (E) The superior court clerk; and
 - (F) The clerk/executive officer of the Supreme Court.

- (7) If both the superior court and the Court of Appeal deny a certificate of appealability, the clerk/executive officer of the Court of Appeal must mark the notice of appeal “Inoperative,” notify the petitioner, and send a copy of the marked notice of appeal to the superior court clerk, the clerk/executive

1 officer of the Supreme Court, the district appellate project, and, if designated,
2 any assisting entity or counsel other than the district appellate project.

3
4 **(c) Notification of the appeal**

5
6 (1) Except as provided in (2), when a notice of appeal is filed, the superior court
7 clerk must promptly—and no later than five days after the notice of appeal is
8 filed—send a notification of the filing to:

9
10 (A) The attorney for the petitioner or, if unrepresented, to the petitioner;

11
12 (B) The district appellate project and, if designated, any assisting entity or
13 counsel other than the district appellate project;

14
15 (C) The Attorney General;

16
17 (D) The district attorney;

18
19 (E) The clerk/executive officer of the Court of Appeal;

20
21 (F) The clerk/executive officer of the Supreme Court;

22
23 (G) Each court reporter; and

24
25 (H) Any primary reporter or reporting supervisor.

26
27 (2) If the petitioner is appealing from a superior court decision denying relief on
28 a successive petition and the superior court did not issue a certificate of
29 appealability, the clerk must not send the notification of the filing of a notice
30 of appeal to the court reporter or reporters unless the clerk receives a copy of
31 a certificate of appealability issued by the Court of Appeal under (b)(6). The
32 clerk must send the notification no later than five days after the superior court
33 receives the copy of the certificate of appealability.

34
35 (3) The notification must show the date it was sent, the number and title of the
36 case, and the dates the notice of appeal was filed and any certificate of
37 appealability was issued. If the information is available, the notification must
38 also include:

39
40 (A) The name, address, telephone number, e-mail address, and California
41 State Bar number of each attorney of record in the case; and

42
43 (B) The name of the party each attorney represented in the superior court.

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- (4) The notification to the clerk/executive officer of the Court of Appeal must also include a copy of the notice of appeal, any certificate of appealability or denial of a certificate of appealability 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.

Rule 8.392 adopted effective April 25, 2019.

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.

Rule 8.393. Time to appeal

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

Rule 8.393 adopted effective April 25, 2019.

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

1 any stay that it grants. Notification must also be sent to the clerk/executive officer
2 of the Supreme Court.

3
4 *Rule 8.394 adopted effective April 25, 2019.*

5
6 **Rule 8.395. Record on appeal**

7
8 **(a) Contents**

9
10 In an appeal under this article, the record must contain:

- 11
12 (1) A clerk's transcript containing:
- 13
14 (A) The petition;
 - 15
16 (B) Any informal response to the petition and any reply to the informal
17 response;
 - 18
19 (C) Any order to show cause;
 - 20
21 (D) Any reply, return, answer, denial, or traverse;
 - 22
23 (E) All supporting documents under rule 4.571, including the record
24 prepared for the automatic appeal and all briefs, rulings, and other
25 documents filed in the automatic appeal;
 - 26
27 (F) Any other documents and exhibits submitted to the court, including any
28 transcript of a sound or sound-and-video recording tendered to the
29 court under rule 2.1040 and any visual aids submitted to the court;
 - 30
31 (G) Any written communication between the court and the parties,
32 including printouts of any e-mail messages and their attachments;
 - 33
34 (H) All court minutes;
 - 35
36 (I) Any statement of decision required by Penal Code section 1509(f) and
37 any other written decision of the court;
 - 38
39 (J) The order appealed from;
 - 40
41 (K) The notice of appeal; and
 - 42

1 (L) Any certificate of appealability issued by the superior court or the
2 Court of Appeal.

3
4 (2) A reporter's transcript of any oral proceedings.
5

6 **(b) Stipulation for partial transcript**
7

8 If counsel for the petitioner and the People stipulate in writing before the record is
9 certified that any part of the record is not required for proper determination of the
10 appeal, that part need not be prepared or sent to the reviewing court.
11

12 **(c) Preparation of record**
13

14 (1) The reporter and the clerk must begin preparing the record immediately after
15 the superior court issues the decision on an initial petition under Penal Code
16 section 1509.
17

18 (2) If either party appeals from a superior court decision on a successive petition
19 under Penal Code section 1509.1(c):
20

21 (A) The clerk must begin preparing the clerk's transcript immediately after
22 the filing of the notice of appeal or, if one is required, the superior
23 court's issuance of a certificate of appealability or the clerk's receipt of
24 a copy of a certificate of appealability issued by the Court of Appeal
25 under rule 8.391(b)(5), whichever is later. If a certificate of
26 appealability is required to appeal the decision of the superior court, the
27 clerk must not begin preparing the clerk's transcript until a certificate
28 of appealability has issued.
29

30 (B) The reporter must begin preparing the reporter's transcript immediately
31 on being notified by the clerk under rule 8.392(c) that the notice of
32 appeal has been filed.
33

34 **(d) Clerk's transcript**
35

36 (1) Within 30 days after the clerk is required to begin preparing the transcript,
37 the clerk must complete preparation of an original and four copies of the
38 clerk's transcript.
39

40 (2) On request, the clerk must prepare an extra copy for the district attorney or
41 the Attorney General, whichever is not counsel for the People on appeal.
42

1 (3) The clerk must certify as correct the original and all copies of the clerk's
2 transcript.

3

4 **(e) Reporter's transcript**

5

6 (1) The reporter must prepare an original and the same number of copies of the
7 reporter's transcript as (d) requires of the clerk's transcript, and must certify
8 each as correct.

9

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

13

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

20

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

26

27 **(f) Extension of time**

28

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

31

32 (2) On request of the clerk or a reporter showing good cause, the superior court
33 may extend the time prescribed in (d) or (e) for preparing the clerk's or
34 reporter's transcript for no more than 30 days. If the superior court orders an
35 extension, the order must specify the reason justifying the extension. The
36 clerk must promptly send a copy of the order to the reviewing court.

37

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

40

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

42

- 1 (A) A declaration showing good cause. The court may presume good cause
2 if the clerk’s and reporter’s transcripts combined will likely exceed
3 10,000 pages, not including the supporting documents submitted with
4 the petition, any informal response, reply to the informal response,
5 return, answer, or traverse; and
6
7 (B) In the case of a reporter’s transcript, certification by the superior court
8 presiding judge or a court administrator designated by the presiding
9 judge that an extension is reasonable and necessary in light of the
10 workload of all reporters in the court.

11
12 **(g) Form of record**

- 13
14 (1) The reporter’s transcript must be in electronic form. The clerk is encouraged
15 to send the clerk’s transcript in electronic form if the court is able to do so.
16
17 (2) The clerk’s and reporter’s transcripts must comply with rules 8.45–8.47,
18 relating to sealed and confidential records, and rule 8.144.

19
20 **(h) Sending the transcripts**

- 21
22 (1) When the clerk’s and reporter’s transcripts are certified as correct, the clerk
23 must promptly send:
24
25 (A) The original transcripts to the reviewing court, noting the sending date
26 on each original; and
27
28 (B) One copy of each transcript to:
29
30 (i) Appellate counsel for the petitioner;
31
32 (ii) The assisting entity or counsel, if designated, or the district
33 appellate project;
34
35 (iii) The Attorney General or the district attorney, whichever is
36 counsel for the People on appeal;
37
38 (iv) The district attorney or Attorney General if requested under
39 (d)(2); and
40
41 (v) The Governor.
42

1 (2) If the petitioner is not represented by appellate counsel when the transcripts
2 are certified as correct, the clerk must send that copy of the transcripts to the
3 assisting entity or counsel, if designated, or the district appellate project.
4

5 **(i) Supervision of preparation of record**
6

7 The clerk/executive officer of the Court of Appeal, under the supervision of the
8 administrative presiding justice or the presiding justice, must take all appropriate
9 steps to ensure that superior court clerks and reporters promptly perform their
10 duties under this rule. This provision does not affect the responsibility of the
11 superior courts for the prompt preparation of appellate records.
12

13 **(j) Augmenting or correcting the record in the Court of Appeal**
14

15 Rule 8.340 governs augmenting or correcting the record in the Court of Appeal,
16 except that copies of augmented or corrected records must be sent to those listed in
17 (h).
18

19 **(k) Judicial notice**
20

21 Rule 8.252(a) governs judicial notice in the reviewing court.
22

23 *Rule 8.395 adopted effective April 25, 2019.*
24

25 **Rule 8.396. Briefs by parties and amici curiae**
26

27 **(a) Contents and form**
28

29 (1) Except as provided in this rule, briefs in appeals governed by the rules in this
30 article must comply as nearly as possible with rules 8.200 and 8.204.
31

32 (2) If, as permitted by Penal Code section 1509.1(b), the petitioner wishes to
33 raise a claim in the appeal of ineffective assistance of trial counsel that was
34 not raised in the superior court habeas corpus proceedings, that claim must be
35 raised in the first brief filed by the petitioner. A brief containing such a claim
36 must comply with the additional requirements in rule 8.397.
37

38 (3) If the petitioner is appealing from a decision of the superior court denying
39 relief on a successive death penalty–related habeas corpus petition, the
40 petitioner may only raise claims in the briefs that were identified in the
41 certificate of appealability that was issued and any additional claims added by
42 the Court of Appeal as provided in Penal Code section 1509.1(c).
43

1 **(b) Length**

2
3 (1) A brief produced on a computer must not exceed the following limits,
4 including footnotes, except that if the presiding justice permits the appellant
5 to file an opening brief that exceeds the limit set in (1)(A) or (3)(A), the
6 respondent's brief may not exceed the same length:

7
8 (A) Appellant's opening brief: 102,000 words.

9
10 (B) Respondent's brief: 102,000 words.

11
12 (C) Reply brief: 47,600 words.

13
14 (2) A brief under (1) must include a certificate by appellate counsel stating the
15 number of words in the brief; counsel may rely on the word count of the
16 computer program used to prepare the brief.

17
18 (3) A typewritten brief must not exceed the following limits, except that if the
19 presiding justice permits the appellant to file an opening brief that exceeds
20 the limit set in (1)(A) or (3)(A), the respondent's brief may not exceed the
21 same length:

22
23 (A) Appellant's opening brief: 300 pages.

24
25 (B) Respondent's brief: 300 pages.

26
27 (C) Reply brief: 140 pages.

28
29 (4) The tables required under rule 8.204(a)(1), the cover information required
30 under rule 8.204(b)(10), a certificate under (2), any signature block, and any
31 attachment permitted under rule 8.204(d) are excluded from the limits stated
32 in (1) and (3).

33
34 (5) A combined brief in an appeal governed by (e) must not exceed double the
35 limit stated in (1) or (3).

36
37 (6) On application, the presiding justice may permit a longer brief for good
38 cause.

39
40 **(c) Time to file**

41
42 (1) The appellant's opening brief must be served and filed within 210 days after
43 either the record is filed or appellate counsel is appointed, whichever is later.

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- (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 filing of respondent’s brief.
- (4) If the clerk’s and reporter’s transcripts combined exceed 10,000 pages, the time limits stated in (1) and (2) are extended by 15 days for each 1,000 pages of combined transcript over 10,000 pages, up to 20,000 pages. The time limits in (1) and (2) may be extended further by order of the presiding justice under rule 8.60.
- (5) 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.
- (6) If a party fails to timely file an appellant’s opening brief or a respondent’s brief, the clerk/executive officer of the Court of Appeal 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 assisting entity or counsel, the Attorney General, and the district attorney, and must deliver a copy of each to the petitioner unless the petitioner requests otherwise.
- (2) The proof of service must state that a copy of the petitioner’s brief was delivered to the petitioner or will be delivered in person to the petitioner within 30 days after the filing of the brief, or counsel must file a signed statement that the petitioner requested in writing that no copy be delivered.
- (3) The People must serve each of their briefs on the appellate counsel for the petitioner, the assisting entity or counsel, and either the district attorney or the Attorney General, whichever is not representing the People on appeal.
- (4) A copy of each brief must be served on the superior court clerk for delivery to the superior court judge who issued the order being appealed.

(e) When the petitioner and the People appeal

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

4
5 **(f) Amicus curiae briefs**

6
7 Amicus curiae briefs may be filed as provided in rule 8.200(c), except that an
8 application for permission of the presiding justice to file an amicus curiae brief
9 must be filed within 14 days after the last appellant’s reply brief is filed or could
10 have been filed under (c), whichever is earlier.

11
12 *Rule 8.396 adopted effective April 25, 2019.*

13
14 **Advisory Committee Comment**

15
16 **Subdivision (a)(3).** This subdivision is intended to implement the sentence in Penal Code section
17 1509.1(c) providing that “[t]he jurisdiction of the court of appeal is limited to the claims
18 identified in the certificate [of appealability] and any additional claims added by the court of
19 appeal within 60 days of the notice of appeal.”

20
21 **Subdivision (b)(4).** This subdivision specifies certain items that are not counted toward the
22 maximum brief length. Signature blocks referred to in this provision include not only the
23 signatures, but also the printed names, titles, and affiliations of any attorneys filing or joining in
24 the brief, which may accompany the signature.

25
26
27 **Rule 8.397. Claim of ineffective assistance of trial counsel not raised in the superior**
28 **court**

29
30 **(a) Application**

31
32 This rule governs claims under Penal Code section 1509.1(b) of ineffective
33 assistance of trial counsel not raised in the superior court habeas corpus proceeding
34 giving rise to an appeal under this article.

35
36 **(b) Discussion of claim in briefs**

- 37
38 (1) A claim subject to this rule must be raised in the first brief filed by the
39 petitioner.
40
41 (2) All discussion of claims subject to this rule must be addressed in a separate
42 part of the brief under a heading identifying this part as addressing claims of

1 ineffective assistance of trial counsel that were not raised in a superior court
2 habeas corpus proceeding.

3
4 (3) Discussion of each claim within this part of the brief must be under a separate
5 subheading identifying the claim. Petitioner's brief must include a summary
6 of the claim under the subheading, and each claim must be supported by
7 argument and, if possible, by citation of authority.

8
9 (4) This part of the brief may include references to matters:

10
11 (A) In the record on appeal prepared under rule 8.395. Any reference to a
12 matter in the record must be supported by a citation to the volume and
13 page number of the record where the matter appears.

14
15 (B) Of which the court has taken judicial notice.

16
17 (C) In a proffer required under (c). Any reference to a matter in a proffer
18 must be supported by a citation to its index number or letter and page.

19
20 **(c) Proffer**

21
22 (1) A brief raising a claim under Penal Code section 1509.1(b) of ineffective
23 assistance of trial counsel not raised in a superior court habeas corpus
24 proceeding must be accompanied by a proffer of any reasonably available
25 documentary evidence supporting the claim that is not in either the record on
26 appeal prepared under rule 8.395 or matters of which the court has taken
27 judicial notice. A brief responding to such a claim must be accompanied by a
28 proffer of any reasonably available documentary evidence the People are
29 relying on that is not in the petitioner's proffer, the record on appeal prepared
30 under rule 8.395, or matters of which the court has taken judicial notice.

31
32 (A) If a brief raises a claim that was the subject of an evidentiary hearing,
33 the proffer must include a certified transcript of that hearing.

34
35 (B) Evidence may be in the form of affidavits or declarations under penalty
36 of perjury.

37
38 (2) The proffer must comply with the following formatting requirements:

39
40 (A) The pages must be consecutively numbered.

41
42 (B) It must begin with a table of contents listing each document by its title
43 and its index number or letter. If a document has attachments, the table

1 of contents must give the title of each attachment and a brief
2 description of its contents.

3
4 (C) If submitted in paper form:

5
6 (i) It must be bound together at the end of the brief or in separate
7 volumes not exceeding 300 pages each.

8
9 (ii) It must be index-tabbed by number or letter.

10
11 (3) The clerk must file any proffer not complying with (2), but the court may
12 notify the filer that it may strike the proffer and the portions of the brief
13 referring to the proffer if the documents are not brought into compliance
14 within a stated reasonable time of not less than five court days.

15
16 (4) If any documents in the proffer are sealed or confidential records, rules 8.45–
17 8.47 govern these documents.

18
19 **(d) Evidentiary hearing**

20
21 An evidentiary hearing is required if, after considering the briefs, the proffer, and
22 matters of which judicial notice may be taken, the court finds there is a reasonable
23 likelihood that the petitioner may be entitled to relief and the petitioner’s
24 entitlement to relief depends on the resolution of an issue of fact. The reviewing
25 court may take one of the following actions:

26
27 (1) Order a limited remand to the superior court to consider the claim under
28 Penal Code section 1509.1(b). The order for limited remand vests jurisdiction
29 over the claim in the superior court, which must proceed under rule
30 4.574(d)(2)–(3) and (e)–(g) and rule 4.575 for death penalty–related habeas
31 corpus proceedings in the superior court. The clerk/executive officer of the
32 Court of Appeal must send a copy of any such order to the clerk/executive
33 officer of the Supreme Court.

34
35 (2) Appoint a referee to conduct the hearing and make recommended findings of
36 fact.

37
38 (3) Conduct the hearing itself or designate a justice of the court to conduct the
39 hearing.

40
41 **(e) Procedures following limited remand**

- 1 (1) If the reviewing court orders a limited remand to the superior court to
2 consider a claim under Penal Code section 1509.1(b), it may stay the
3 proceedings on the remainder of the appeal pending the decision of the
4 superior court on remand. The clerk/executive officer of the Court of Appeal
5 must send a copy of any such stay to the clerk/executive officer of the
6 Supreme Court.
7
- 8 (2) If any party wishes to appeal from the superior court decision on remand, the
9 party must file a notice of appeal as provided in rule 8.392.
10
- 11 (3) If an appeal is filed from the superior court decision on remand, the
12 reviewing court may consolidate this appeal with any pending appeal under
13 Penal Code section 1509.1 from the superior court's decisions in the same
14 habeas corpus proceeding. A copy of any consolidation order must be
15 promptly sent to the superior court clerk. The superior court clerk must then
16 augment the record on appeal to include all items listed in rule 8.395(a) from
17 the remanded proceedings.
18

19 *Rule 8.397 adopted effective April 25, 2019.*
20

21 **Advisory Committee Comment** 22

23 Penal Code section 1509.1(b) states when a claim of ineffective assistance of trial counsel not
24 raised in the superior court habeas corpus proceeding may be raised in an appeal under this
25 article.
26

27 **Rule 8.398. Finality** 28

29 **(a) General rule** 30

31
32 Except as otherwise provided in this rule, rule 8.366(b) governs the finality of a
33 Court of Appeal decision in a proceeding under this article.
34

35 **(b) Denial of certificate of appealability** 36

37 The Court of Appeal's denial of an application for a certificate of appealability in a
38 proceeding under this article is final in that court on filing.
39

40 *Rule 8.398 adopted effective April 25, 2019.*
41
42

1 **Chapter 8. [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 **Division 2. Rules Relating to Death Penalty Appeals and Habeas Corpus**
16 **Proceedings**

17
18 **Former rule 8.600. Renumbered effective April 25, 2019.**

19 *Rule 8.600 renumbered as rule 8.603.*

20
21 **Chapter 1. General Provisions**

22
23 **Rule 8.601. Definitions**

24
25 For purposes of this division:

26
27 (1) “Appointed counsel” or “appointed attorney” means an attorney appointed to
28 represent a person in a death penalty appeal, death penalty–related habeas
29 corpus proceedings, or an appeal of a decision in death penalty–related
30 habeas corpus proceedings. Appointed counsel may be either lead counsel or
31 associate counsel.

32
33 (2) “Lead counsel” means an appointed attorney or an attorney in the Office of
34 the State Public Defender, the Habeas Corpus Resource Center, the
35 California Appellate Project–San Francisco, or a Court of Appeal district
36 appellate project who is responsible for the overall conduct of the case and
37 for supervising the work of associate and supervised counsel. If two or more
38 attorneys are appointed to represent a person jointly in a death penalty appeal,
39 in death penalty–related habeas corpus proceedings, or in both classes of
40 proceedings together, one such attorney will be designated as lead counsel.

41
42 (3) “Associate counsel” means an appointed attorney who does not have the
43 primary responsibility for the case but nevertheless has casewide

1 responsibility. Associate counsel must meet the same minimum qualifications
2 as lead counsel.

3
4 (4) “Supervised counsel” means an attorney who works under the immediate
5 supervision and direction of lead or associate counsel but is not appointed by
6 the court. Supervised counsel must be an active member of the State Bar of
7 California.

8
9 (5) “Assisting counsel or entity” means an attorney or entity designated by the
10 appointing court to provide appointed counsel with consultation and resource
11 assistance. An assisting counsel must be an experienced capital appellate
12 counsel or habeas corpus practitioner, as appropriate. An assisting counsel in
13 an automatic appeal must, at a minimum, meet the qualifications for
14 appointed appellate counsel, including the case experience requirements in
15 rule 8.605(c)(2). An assisting counsel in a habeas corpus proceeding must, at
16 a minimum, meet the qualifications for appointed habeas corpus counsel,
17 including the case experience requirements in rule 8.652(c)(2)(A). Entities
18 that may be designated include the Office of the State Public Defender, the
19 Habeas Corpus Resource Center, the California Appellate Project–San
20 Francisco, and a Court of Appeal district appellate project.

21
22 (6) “Trial counsel” means both the defendant’s trial counsel and the prosecuting
23 attorney.

24
25 (7) “Panel” means a panel of attorneys from which superior courts may appoint
26 counsel in death penalty–related habeas corpus proceedings.

27
28 (8) “Committee” means a death penalty–related habeas corpus panel committee
29 that accepts and reviews attorney applications to determine whether
30 applicants are qualified for inclusion on a panel.

31
32 *Rule 8.601 adopted effective April 25, 2019.*

33
34 **Advisory Committee Comment**

35
36 **Number (3).** The definition of “associate counsel” in (3) is intended to make it clear that,
37 although appointed lead counsel has overall and supervisory responsibility in a capital case,
38 appointed associate counsel also has casewide responsibility.

39
40 **Chapter 2. Automatic Appeals From Judgments of Death**

41
42 **Article 1. General Provisions**

1 **Rule 8.603. In general**

2
3 **(a) Automatic appeal to Supreme Court**

4
5 If a judgment imposes a sentence of death, an appeal by the defendant is
6 automatically taken to the Supreme Court.

7
8 **(b) Copies of judgment**

9
10 When a judgment of death is rendered, the superior court clerk must immediately
11 send certified copies of the commitment to the Supreme Court, the Attorney
12 General, the Governor, the Habeas Corpus Resource Center, and the California
13 Appellate Project–San Francisco.

14
15 *Rule 8.603 adopted effective April 25, 2019.*

16
17 **Rule 8.605. Qualifications of counsel in death penalty appeals**

18
19 **(a) Purpose**

20
21 This rule defines the minimum qualifications for attorneys appointed by the
22 Supreme Court in death penalty appeals. These minimum qualifications are
23 designed to promote competent representation and to avoid unnecessary delay and
24 expense by assisting the court in appointing qualified counsel. Nothing in this rule
25 is intended to be used as a standard by which to measure whether the defendant
26 received effective assistance of counsel. An attorney is not entitled to appointment
27 simply because the attorney meets these minimum qualifications.

28
29 *(Subd (a) amended effective April 25, 2019.)*

30
31 **(b) General qualifications**

32
33 The Supreme Court may appoint an attorney only if it has determined, after
34 reviewing the attorney’s experience, writing samples, references, and evaluations
35 under (c) and (d), that the attorney has demonstrated the commitment, knowledge,
36 and skills necessary to competently represent the defendant. An appointed attorney
37 must be willing to cooperate with an assisting counsel or entity that the court may
38 designate.

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

41
42 **(c) Qualifications for appointed appellate counsel**

1 Except as provided in (d), an attorney appointed as lead or associate counsel in a
2 death penalty appeal must satisfy the following minimum qualifications and
3 experience:
4

5 (1) *California legal experience*

6
7 Active practice of law in California for at least four years.
8

9 (2) *Criminal appellate experience*

10
11 Either:

12
13 (A) Service as counsel of record for either party in seven completed felony
14 appeals, including as counsel of record for a defendant in at least four
15 felony appeals, one of which was a murder case; or

16
17 (B) Service as:

- 18
19 (i) Counsel of record for either party in five completed felony
20 appeals, including as counsel of record for a defendant in at least
21 three of these appeals; and
22
23 (ii) Supervised counsel for a defendant in two death penalty appeals
24 in which the opening brief has been filed. Service as supervised
25 counsel in a death penalty appeal will apply toward this
26 qualification only if lead or associate counsel in that appeal
27 attests that the supervised attorney performed substantial work on
28 the case and recommends the attorney for appointment.
29

30 (3) *Knowledge*

31
32 Familiarity with Supreme Court practices and procedures, including those
33 related to death penalty appeals.
34

35 (4) *Training*

36
37 (A) Within three years before appointment, completion of at least nine
38 hours of Supreme Court–approved appellate criminal defense training,
39 continuing education, or course of study, at least six hours of which
40 involve death penalty appeals. Counsel who serves as an instructor in a
41 course that satisfies the requirements of this rule may receive course
42 participation credit for instruction, on request to and approval by the
43 Supreme Court, in an amount to be determined by the Supreme Court.

1
2 (B) If the Supreme Court has previously appointed counsel to represent a
3 person in a death penalty appeal or a related habeas corpus proceeding,
4 and counsel has provided active representation within three years
5 before the request for a new appointment, the court, after reviewing
6 counsel's previous work, may find that such representation constitutes
7 compliance with some or all of this requirement.
8

9 (5) *Skills*

10
11 Proficiency in issue identification, research, analysis, writing, and advocacy,
12 taking into consideration all of the following:
13

14 (A) Two writing samples—ordinarily appellate briefs—written by the
15 attorney and presenting an analysis of complex legal issues;
16

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

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

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

28 *(Subd (c) amended and relettered effective April 25, 2019; adopted as subd (d) effective*
29 *January 1, 2005; previously amended effective January 1, 2007.)*
30

31 **(d) Alternative qualifications**
32

33 The Supreme Court may appoint an attorney who does not meet the California law
34 practice requirement of (c)(1) or the criminal appellate experience requirements of
35 (c)(2) if the attorney has the qualifications described in (c)(3)–(5) and:
36

37 (1) The court finds that the attorney has extensive experience in another
38 jurisdiction or a different type of practice (such as civil trials or appeals,
39 academic work, or work for a court or prosecutor) for at least four years,
40 providing the attorney with experience in complex cases substantially
41 equivalent to that of an attorney qualified under (c).
42

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

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

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

20
21 **(e) Use of supervised counsel**

22
23 An attorney who does not meet the qualifications described in (c) or (d) may assist
24 lead or associate counsel, but must work under the immediate supervision and
25 direction of lead or associate counsel.

26
27 *(Subd (e) amended and relettered effective April 25, 2019; adopted as subd (h) effective*
28 *January 1, 2005.)*

29
30 **(f) Appellate and habeas corpus appointment**

31
32 (1) An attorney appointed to represent a person in both a death penalty appeal
33 and death penalty–related habeas corpus proceedings must meet the
34 minimum qualifications of both (c) or (d) and rule 8.652.

35
36 (2) Notwithstanding (1), two attorneys together may be eligible for appointment
37 to represent a person jointly in both a death penalty appeal and death penalty–
38 related habeas corpus proceedings if the Supreme Court finds that one
39 attorney satisfies the minimum qualifications set forth in (c) or (d), and the
40 other attorney satisfies the minimum qualifications set forth in rule 8.652.

41
42 *(Subd (f) amended and relettered effective April 25, 2019; adopted as subd (i) effective*
43 *January 1, 2005.)*

1
2 **(g) Designated entities as appointed counsel**

3
4 (1) Notwithstanding any other provision of this rule, both the State Public
5 Defender and the California Appellate Project–San Francisco are qualified to
6 serve as appointed counsel in death penalty appeals.

7
8 (2) When serving as appointed counsel in a death penalty appeal, the State Public
9 Defender or the California Appellate Project–San Francisco must not assign
10 any attorney as lead counsel unless it finds the attorney qualified under
11 (c)(1)–(5) or the Supreme Court finds the attorney qualified under (d).

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

15
16 *Rule 8.605 amended effective April 25, 2019; repealed and adopted as rule 76.6 effective January*
17 *1, 2005; previously amended and renumbered effective January 1, 2007.*

18
19
20 **Article 2. Record on Appeal**

21
22 **Rule 8.608. General provisions**

23
24 **(a) Supervising preparation of record**

25
26 The clerk/executive officer of the Supreme Court, under the supervision of the
27 Chief Justice, must take all appropriate steps to ensure that superior court clerks
28 and reporters promptly perform their duties under the rules in this article. This
29 provision does not affect the superior courts' responsibility for the prompt
30 preparation of appellate records in capital cases.

31
32 **(b) Extensions of time**

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

37
38 **(c) Delivery date**

39
40 The delivery date of a transcript sent by mail is the mailing date plus five days.

41
42 *Rule 8.608 adopted effective April 25, 2019.*

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

2
3 **(a) Contents of the record**

- 4
5 (1) The record must include a clerk’s transcript containing:
- 6 (A) The accusatory pleading and any amendment;
 - 7 (B) Any demurrer or other plea;
 - 8 (C) All court minutes;
 - 9 (D) All instructions submitted in writing, the cover page required by rule
10 2.1055(b)(2) indicating the party requesting each instruction, and any
11 written jury instructions given by the court;
 - 12 (E) Any written communication, including printouts of any e-mail or text
13 messages and their attachments, between the court and the parties, the
14 jury, or any individual juror or prospective juror;
 - 15 (F) Any verdict;
 - 16 (G) Any written opinion of the court;
 - 17 (H) The judgment or order appealed from and any abstract of judgment or
18 commitment;
 - 19 (I) Any motion for new trial, with supporting and opposing memoranda
20 and attachments;
 - 21 (J) Any transcript of a sound or sound-and-video recording furnished to
22 the jury or tendered to the court under rule 2.1040, including witness
23 statements;
 - 24 (K) Any application for additional record and any order on the application;
 - 25 (L) Any written defense motion or any written motion by the People, with
26 supporting and opposing memoranda and attachments;
 - 27 (M) If related to a motion under (L), any search warrant and return and the
28 reporter’s transcript of any preliminary examination or grand jury
29 hearing;
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- 1 (N) Any document admitted in evidence to prove a prior juvenile
2 adjudication, criminal conviction, or prison term;
3
4 (O) The probation officer's report;
5
6 (P) Any court-ordered diagnostic or psychological report required under
7 Penal Code section 1369;
8
9 (Q) Any copies of visual aids provided to the clerk under rule 4.230(f). If a
10 visual aid is oversized, a photograph of that visual aid must be included
11 in place of the original. For digital or electronic presentations, printouts
12 showing the full text of each slide or image must be included;
13
14 (R) Each juror questionnaire, whether or not the juror was selected;
15
16 (S) The table correlating the jurors' names with their identifying numbers
17 required by rule 8.611;
18
19 (T) The register of actions;
20
21 (U) All documents filed under Penal Code section 987.2 or 987.9; and
22
23 (V) Any other document filed or lodged in the case.
24
25 (2) The record must include a reporter's transcript containing:
26
27 (A) The oral proceedings on the entry of any plea other than a not guilty
28 plea;
29
30 (B) The oral proceedings on any motion in limine;
31
32 (C) The voir dire examination of jurors;
33
34 (D) Any opening statement;
35
36 (E) The oral proceedings at trial;
37
38 (F) All instructions given orally;
39
40 (G) Any oral communication between the court and the jury or any
41 individual juror;
42
43 (H) Any oral opinion of the court;

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- (I) The oral proceedings on any motion for new trial;
- (J) The oral proceedings at sentencing, granting or denying of probation, or other dispositional hearing;
- (K) The oral proceedings on any motion under Penal Code section 1538.5 denied in whole or in part;
- (L) The closing arguments;
- (M) Any comment on the evidence by the court to the jury;
- (N) The oral proceedings on motions in addition to those listed above; and
- (O) Any other oral proceedings in the case, including any proceedings that did not result in a verdict or sentence of death because the court ordered a mistrial or a new trial.

- (3) All exhibits admitted in evidence, refused, or lodged are deemed part of the record, but, except as provided in rule 8.622, may be transmitted to the reviewing court only as provided in rule 8.634.
- (4) The superior court or the Supreme Court may order that the record include additional material.

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

(b) Sealed and confidential records

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

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

(c) Juror-identifying information

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

1
2 (Subd (c) amended effective April 25, 2019; previously amended effective January 1, 2007,
3 and January 1, 2016.)
4

5 (d) * * *

6
7 Rule 8.610 amended effective April 25, 2019; adopted as rule 34.1 effective January 1, 2004;
8 previously amended and renumbered as rule 8.610 effective January 1, 2007; previously
9 amended effective January 1, 2005, January 1, 2014, and January 1, 2016.
10

11 **Advisory Committee Comment**
12

13 **Subdivision (a).** Subdivision (a) implements Penal Code section 190.7(a).
14

15 **Subdivision (b).** The clerk’s and reporter’s transcripts may contain records that are sealed or
16 confidential. Rules 8.45–8.47 address the handling of such records, including requirements for the
17 format, labeling, and transmission of and access to such records. Examples of confidential records
18 include Penal Code section 1203.03 diagnostic reports, records closed to inspection by court
19 order under *People v. Marsden* (1970) 2 Cal.3d 118 or *Pitchess v. Superior Court* (1974) 11
20 Cal.3d 531, in-camera proceedings on a confidential informant, and defense investigation and
21 expert funding requests (Pen. Code, §§ 987.2 and 987.9; *Puett v. Superior Court* (1979) 96
22 Cal.App.3d 936, 940, fn. 2; *Keenan v. Superior Court* (1982) 31 Cal.3d 424, 430).
23
24

25 **Rule 8.611. Juror-identifying information**
26

27 (a) **Application**
28

29 A clerk’s transcript, a reporter’s transcript, or any other document in the record that
30 contains juror-identifying information must comply with this rule.
31

32 (b) **Juror names, addresses, and telephone numbers**
33

34 (1) The name of each trial juror or alternate sworn to hear the case must be
35 replaced with an identifying number wherever it appears in any document.
36 The superior court clerk must prepare and keep under seal in the case file a
37 table correlating the jurors’ names with their identifying numbers. The clerk
38 and the reporter must use the table in preparing all transcripts or other
39 documents.
40

41 (2) The addresses and telephone numbers of trial jurors and alternates sworn to
42 hear the case must be deleted from all documents.
43

1 **(c) Potential jurors**

2
3 Information identifying potential jurors called but not sworn as trial jurors or
4 alternates must not be sealed unless otherwise ordered under Code of Civil
5 Procedure section 237(a)(1).

6
7 *Rule 8.611 adopted effective April 25, 2019.*

8
9 **Advisory Committee Comment**

10
11 Rule 8.611 implements Code of Civil Procedure section 237.

12
13
14 **Rule 8.613. Preparing and certifying the record of preliminary proceedings**

15
16 **(a)–(c) * * ***

17
18 **(d) Notice to prepare transcript and lists**

19
20 Within five days after receiving notice under (b)(1) or notifying the judge under
21 (b)(2), the clerk must do the following:

- 22
23 (1) Notify each reporter who reported a preliminary proceeding to prepare a
24 transcript of the proceeding. If there is more than one reporter, the designated
25 judge may assign a reporter or another designee to perform the functions of
26 the primary reporter.
27
28 (2) Notify trial counsel to submit the lists of appearances, exhibits, and motions
29 required by rule 4.119.

30
31 *(Subd (d) amended effective April 25, 2019.)*

32
33 **(e) Reporter’s duties**

- 34
35 (1) The reporter must prepare an original and five copies of the reporter’s
36 transcript in electronic form and two additional copies in electronic form for
37 each codefendant against whom the death penalty is sought. The transcript
38 must include the preliminary examination or grand jury proceeding unless a
39 transcript of that examination or proceeding has already been filed in superior
40 court for inclusion in the clerk’s transcript.
41
42 (2) The reporter must certify the original and all copies of the reporter’s
43 transcript as correct.

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

(Subd (e) amended effective April 25, 2019.)

(f) Review by counsel

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

(2) Each trial counsel must promptly:

- (A) Review the reporter’s transcript and the lists of appearances, exhibits, and motions to identify any errors or omissions in the transcript;
- (B) Review the docket sheets and minute orders to determine whether all preliminary proceedings have been transcribed; and
- (C) Review the court file to determine whether it is complete.

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

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

(g) Declaration and request for corrections or additions

(1) Within 30 days after the clerk delivers the reporter’s transcript and lists, each trial counsel must serve and file:

- (A) A declaration stating that counsel or another person under counsel’s supervision has performed the tasks required by (f), including conferring with opposing counsel; and

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(B) Either:

- (i) A request for corrections or additions to the reporter’s transcript or court file. Immaterial typographical errors that cannot conceivably cause confusion are not required to be brought to the court’s attention; or
- (ii) A statement that counsel does not request any corrections or additions.

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

(2)–(4) * * *

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

(h) * * *

(i) Transcript delivered in electronic form

(1)–(2) * * *

(3) A copy of a sealed or confidential transcript delivered in electronic form must be separated from any other transcripts and labeled as required by rule 8.45.

(4)–(5) * * *

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

(j) Delivery to the superior court

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

- (1) The certified original reporter’s transcript of the preliminary proceedings and the copies that have not been distributed to counsel; and
- (2) The complete court file of the preliminary proceedings or a certified copy of that file.

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

(k) * * *

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

After the clerk has notified the court reporter to prepare the pretrial record, if the death penalty is no longer sought, the clerk must promptly notify the reporter that this rule does not apply.

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

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

Advisory Committee Comment

Rule 8.613 implements Penal Code section 190.9(a). Rules 8.613–8.622 govern the process of preparing and certifying the record in any appeal from a judgment of death; specifically, rule 8.613 provides for the record of the preliminary proceedings in such an appeal.

Subdivision (f). * * *

Subdivision (i). * * *

Rule 8.616. Preparing the trial record

(a) Clerk’s duties

- (1) The clerk must promptly—and no later than five days after the judgment of death is rendered:
 - (A) Notify the reporter to prepare the reporter’s transcript; and
 - (B) Notify trial counsel to submit the lists of appearances, exhibits, and motions required by rule 4.230.

1 (2) The clerk must prepare an original and eight copies of the clerk’s transcript
2 and two additional copies for each codefendant sentenced to death. The clerk
3 is encouraged to send the clerk’s transcript in electronic form if the court is
4 able to do so.

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

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

10
11 **(b) Reporter’s duties**

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

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

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

25
26 *(Subd (b) amended effective April 25, 2019; previously amended effective January 1,*
27 *2016.)*

28
29 **(c) Sending the record to trial counsel**

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

37
38 *(Subd (c) amended effective April 25, 2019.)*

39
40 **(d) * * ***

1 *Rule 8.616 amended effective April 25, 2019; repealed and adopted as rule 35 effective January*
2 *1, 2004; previously renumbered as rule 8.606 effective January 1, 2007; previously amended*
3 *effective January 1, 2016.*

4
5 **Advisory Committee Comment**
6

7 Rule 8.616 implements Penal Code section 190.8(b).
8

9 **Rule 8.619. Certifying the trial record for completeness**
10

11 **(a) Review by counsel after trial**
12

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

16
17 (A) Review the docket sheets, minute orders, and the lists of appearances,
18 exhibits, motions, and jury instructions to determine whether the
19 reporter’s transcript is complete; and
20

21 (B) Review the court file to determine whether the clerk’s transcript is
22 complete.
23

24 (2) Within 21 days after the clerk delivers the transcripts and lists under (1), trial
25 counsel must confer regarding any errors or omissions in the reporter’s
26 transcript or clerk’s transcript identified by trial counsel during the review
27 required under (1).
28

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

32 **(b) Declaration and request for additions or corrections**
33

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

36
37 (A) A declaration stating that counsel or another person under counsel’s
38 supervision has performed the tasks required by (a), including
39 conferring with opposing counsel; and
40

41 (B) Either:
42

- 1 (i) A request to include additional materials in the record or to
2 correct errors that have come to counsel’s attention. Immaterial
3 typographical errors that cannot conceivably cause confusion are
4 not required to be brought to the court’s attention; or
5
6 (ii) A statement that counsel does not request any additions or
7 corrections.
8

9 (2) The requirements of (1)(B) may be satisfied by a joint statement or request
10 filed by counsel for all parties.
11

12 (3) If the clerk’s and reporter’s transcripts combined exceed 10,000 pages, the
13 time limits stated in (a)(2) and (b)(1) are extended by three days for each
14 1,000 pages of combined transcript over 10,000 pages.
15

16 (4) A request for additions to the reporter’s transcript must state the nature and
17 date of the proceedings and, if known, the identity of the reporter who
18 reported them.
19

20 (5) If any counsel fails to timely file a declaration under (1), the judge must not
21 certify the record and must set the matter for hearing, require a showing of
22 good cause why counsel has not complied, and fix a date for compliance.
23

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

27 **(c) Completion of the record**
28

29 If any counsel files a request for additions or corrections:
30

31 (1) The clerk must promptly deliver the original transcripts to the judge who
32 presided at the trial.
33

34 (2) Within 15 days after the last request is filed, the judge must hold a hearing
35 and order any necessary additions or corrections. The order must require that
36 any additions or corrections be made within 10 days of its date.
37

38 (3) The clerk must promptly—and in any event within five days—notify the
39 reporter of an order under (2). If any portion of the proceedings cannot be
40 transcribed, the judge may order preparation of a settled statement under rule
41 8.346.
42

- 1 (4) The original transcripts must be augmented or corrected to reflect all
2 additions or corrections ordered. The clerk must promptly send copies of the
3 additional or corrected pages to trial counsel.
4
- 5 (5) Within five days after the augmented or corrected transcripts are filed, the
6 judge must set another hearing to determine whether the record has been
7 completed or corrected as ordered. The judge may order further proceedings
8 to complete or correct the record.
9
- 10 (6) When the judge is satisfied that all additions or corrections ordered have been
11 made and copies of all additional or corrected pages have been sent to trial
12 counsel, the judge must certify the record as complete and redeliver the
13 original transcripts to the clerk.
14
- 15 (7) The judge must certify the record as complete within 30 days after the last
16 request to include additional materials or make corrections is filed or, if no
17 such request is filed, after the last statement that counsel does not request any
18 additions or corrections is filed.
19

20 *(Subd (c) amended and relettered effective April 25, 2019; adopted as subd (d); previously*
21 *amended effective January 1, 2007.)*
22

23 **(d) Transcript delivered in electronic form**
24

- 25 (1) When the record is certified as complete, the clerk must promptly notify the
26 reporter to prepare five copies of the transcript in electronic form and two
27 additional copies in electronic form for each codefendant sentenced to death.
28
- 29 (2) Each copy delivered in electronic form must comply with the applicable
30 requirements of rule 8.144 and any additional requirements prescribed by the
31 Supreme Court, and must be further labeled to show the date it was made.
32
- 33 (3) A copy of a sealed or confidential transcript delivered in electronic form must
34 be separated from any other transcripts and labeled as required by rule 8.45.
35
- 36 (4) The reporter is to be compensated for copies delivered in electronic form as
37 provided in Government Code section 69954(b).
38
- 39 (5) Within 10 days after the clerk notifies the reporter under (1), the reporter
40 must deliver the copies in electronic form to the clerk.
41

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

1
2 **(e) Extension of time**

- 3
4 (1) The court may extend for good cause any of the periods specified in this rule.
5
6 (2) An application to extend the period to review the record under (a) or the
7 period to file a declaration under (b) must be served and filed within the
8 relevant period.
9
10 (3) If the court orders an extension of time, the order must specify the
11 justification for the extension. The clerk must promptly send a copy of the
12 order to the Supreme Court.
13

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

15
16 **(f) Sending the certified record**

- 17
18 (1) When the record is certified as complete, the clerk must promptly send one
19 copy of the clerk's transcript and one copy of the reporter's transcript:
20
21 (A) To each defendant's appellate counsel and each defendant's habeas
22 corpus counsel. If either counsel has not been retained or appointed, the
23 clerk must keep that counsel's copies until counsel is retained or
24 appointed.
25
26 (B) To the Attorney General, the Habeas Corpus Resource Center, and the
27 California Appellate Project in San Francisco.
28
29 (2) The reporter's transcript must be in electronic form. The clerk is encouraged
30 to send the clerk's transcript in electronic form if the court is able to do so.
31

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

34
35 **(g) Notice of delivery**

36
37 When the clerk sends the record to the defendant's appellate counsel, the clerk must
38 serve a notice of delivery on the clerk/executive officer of the Supreme Court.
39

40 *(Subd (g) amended and relettered effective April 25, 2019; adopted as subd (h); previously*
41 *amended effective January 1, 2018.)*
42

1 *Rule 8.619 amended effective April 25, 2019; adopted as rule 35.1 effective January 1, 2004;*
2 *previously amended and renumbered as rule 8.619 effective January 1, 2007; previously*
3 *amended effective January 1, 2017, and January 1, 2018.*

4
5 **Advisory Committee Comment**

6
7 Rule 8.619 implements Penal Code section 190.8(c)–(e).

8
9 Subdivision (d)(4) restates a provision of former rule 35(b), second paragraph, as it was in effect
10 on December 31, 2003.

11
12 **Rule 8.622. Certifying the trial record for accuracy**

13
14 **(a) Request for corrections or additions**

15
16 (1) Within 90 days after the clerk delivers the record to defendant’s appellate
17 counsel:

18
19 (A) Any party may serve and file a request for corrections or additions to
20 the record. Immaterial typographical errors that cannot conceivably
21 cause confusion are not required to be brought to the court’s attention.
22 Items that a party may request to be added to the clerk’s transcript
23 include a copy of any exhibit admitted in evidence, refused, or lodged
24 that is a document in paper or electronic format. The requesting party
25 must state the reason that the exhibit needs to be included in the clerk’s
26 transcript. Parties may file a joint request for corrections or additions.

27
28 (B) Appellate counsel must review all sealed records that they are entitled
29 to access under rule 8.45 and file an application to unseal any such
30 records that counsel determines no longer meet the criteria for sealing
31 specified in rule 2.550(d). Notwithstanding rule 8.46(e), this
32 application must be filed in the trial court and these records may be
33 unsealed on order of the trial court.

34
35 (2) A request for additions to the reporter’s transcript must state the nature and
36 date of the proceedings and, if known, the identity of the reporter who
37 reported them. A request for an exhibit to be included in the clerk’s transcript
38 must specify that exhibit by number or letter.

39
40 (3) Unless otherwise ordered by the court, within 10 days after a party serves and
41 files a request for corrections or additions to the record, defendant’s appellate
42 counsel and the trial counsel from the prosecutor’s office must confer

1 regarding the request and any application to unseal records served on the
2 prosecutor's office.

- 3
4 (4) If the clerk's and reporter's transcripts combined exceed 10,000 pages, the
5 time limits stated in (1), (3), and (b)(4) are extended by 15 days for each
6 1,000 pages of combined transcript over 10,000 pages.

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

9
10 **(b) Correction of the record**

- 11
12 (1) If any counsel files a request for corrections or additions, the procedures and
13 time limits of rule 8.619(c)(1)–(5) must be followed.
14
15 (2) If any application to unseal a record is filed, the judge must grant or deny the
16 application before certifying the record as accurate.
17
18 (3) When the judge is satisfied that all corrections or additions ordered have been
19 made, the judge must certify the record as accurate and redeliver the record to
20 the clerk.
21
22 (4) The judge must certify the record as accurate within 30 days after the last
23 request to include additional materials or make corrections is filed.

24
25 *(Subd (b) amended effective April 25, 2019; previously amended effective January 1,*
26 *2007.)*

27
28 **(c) Copies of the record**

- 29
30 (1) When the record is certified as accurate, the clerk must promptly notify the
31 reporter to prepare six copies of the reporter's transcript in electronic form
32 and two additional copies in electronic form for each codefendant sentenced
33 to death.
34
35 (2) In preparing the copies, the procedures and time limits of rule 8.619(d)(2)–(5)
36 must be followed.

37
38 *(Subd (c) amended effective April 25, 2019; previously amended effective January 1, 2007,*
39 *and January 1, 2018.)*

40
41 **(d) Extension of time**

- 42
43 (1) The court may extend for good cause any of the periods specified in this rule.

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(2) An application to extend the period to request corrections or additions under (a) must be served and filed within that period.

(3) If the court orders an extension of time, the order must specify the justification for the extension. The clerk must promptly send a copy of the order to the Supreme Court.

(4) If the court orders an extension of time, the court may conduct a status conference or require the counsel who requested the extension to file a status report on counsel’s progress in reviewing the record.

(Subd (d) amended effective April 25, 2019.)

(e) Sending the certified record

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

(1) To the Supreme Court: the corrected original record, including the judge’s certificate of accuracy. 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) To each defendant’s appellate counsel, each defendant’s habeas corpus counsel, the Attorney General, the Habeas Corpus Resource Center, and the California Appellate Project in San Francisco: a copy of the order certifying the record and a copy of the reporter’s transcript in electronic form.

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

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

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

Advisory Committee Comment

Rule 8.622 implements Penal Code section 190.8(g).

1 **Former rule 8.625. Certifying the record in pre-1997 trials [Repealed]**
2 *Rule 8.625 repealed effective April 25, 2019; adopted as rule 35.3 effective January 1, 2004;*
3 *previously amended and renumbered as rule 8.625 effective January 1, 2007; previously*
4 *amended effective January 1, 2017, and January 1, 2018.*

5
6
7 **Chapter 3. Death Penalty–Related Habeas Corpus Proceedings**
8

9 **Rule 8.652. Qualifications of counsel in death penalty–related habeas corpus**
10 **proceedings**

11
12 **(a) Purpose**
13

14 This rule defines the minimum qualifications for attorneys to be appointed by a
15 court to represent a person in a habeas corpus proceeding related to a sentence of
16 death. These minimum qualifications are designed to promote competent
17 representation in habeas corpus proceedings related to sentences of death and to
18 avoid unnecessary delay and expense by assisting the courts in appointing qualified
19 counsel. Nothing in this rule is intended to be used as a standard by which to
20 measure whether a person received effective assistance of counsel. An attorney is
21 not entitled to appointment simply because the attorney meets these minimum
22 qualifications.
23

24 **(b) General qualifications**
25

26 An attorney may be included on a panel, appointed by the Supreme Court, or
27 appointed by a court under a local rule as provided in rule 4.562, only if it is
28 determined, after reviewing the attorney’s experience, training, writing samples,
29 references, and evaluations, that the attorney meets the minimum qualifications in
30 this rule and has demonstrated the commitment, knowledge, and skills necessary to
31 competently represent a person in a habeas corpus proceeding related to a sentence
32 of death. An appointed attorney must be willing to cooperate with an assisting
33 counsel or entity that the appointing court designates.
34

35 **(c) Qualifications for appointed habeas corpus counsel**
36

37 An attorney included on a panel, appointed by the Supreme Court, or appointed by
38 a court under a local rule as provided in rule 4.562, must satisfy the following
39 minimum qualifications:
40

41 (1) *California legal experience*
42

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

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(2) *Case experience*

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

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

(B) Service as:

(i) Supervised counsel in two death penalty–related habeas corpus proceedings in which the petition has been filed. Service as supervised counsel in a death penalty–related habeas corpus proceeding will apply toward this qualification only if lead or associate counsel in that proceeding attests that the attorney performed substantial work on the case and recommends the attorney for appointment; and

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

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

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(3) *Knowledge*

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

(4) *Training*

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

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

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

(5) *Skills*

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

(A) The attorney must submit:

(i) Three writing samples written by the attorney and presenting analyses of complex legal issues. If the attorney has previously served as lead counsel of record for a petitioner in a death penalty–related habeas corpus proceeding, these writing samples must include one or more habeas corpus petitions filed by the attorney in that capacity. If the attorney has previously served as associate or supervised counsel for a petitioner in a death penalty–related habeas corpus proceeding, these writing samples

1 must include the portion of the habeas corpus petition prepared
2 by the attorney in that capacity. If the attorney has not served as
3 lead counsel of record for a petitioner in a death penalty–related
4 habeas corpus proceeding, these writing samples must include
5 two or more habeas corpus petitions filed by the attorney as
6 counsel of record for a petitioner in a habeas corpus proceeding
7 involving a serious felony; and
8

9 (ii) Recommendations from two attorneys familiar with the
10 attorney’s qualifications and performance.
11

12 (B) The committee, the Supreme Court, or the court appointing counsel
13 under a local rule as provided in rule 4.562, must obtain and review:
14

15 (i) If the attorney has previously been appointed in a death penalty
16 appeal or death penalty–related habeas corpus proceeding, the
17 evaluation of the assisting counsel or entity in those proceedings;
18 and
19

20 (ii) If the attorney is on a panel of attorneys eligible for appointments
21 to represent indigent appellants in the Court of Appeal, the
22 evaluation of the administrator responsible for those
23 appointments.
24

25 **(d) Alternative experience**
26

27 An attorney who does not meet the experience requirements of (c)(1) and (2) may
28 be included on a panel or appointed by the Supreme Court if the attorney meets the
29 qualifications described in (c)(3) and (5), excluding the writing samples described
30 in (c)(5)(A)(i), and:
31

32 (1) The committee or the Supreme Court finds that the attorney has:
33

34 (A) Extensive experience as an attorney at the Habeas Corpus Resource
35 Center or the California Appellate Project–San Francisco, or in another
36 jurisdiction or a different type of practice (such as civil trials or
37 appeals, academic work, or work for a court or as a prosecutor), for at
38 least five years, providing the attorney with experience in complex
39 cases substantially equivalent to that of an attorney qualified under
40 (c)(1) and (2); and
41

42 (B) Demonstrated proficiency in issue identification, research, analysis,
43 writing, investigation, and advocacy. To enable an assessment of the

1 attorney's skills, the attorney must submit three writing samples written
2 by the attorney and presenting analyses of complex legal issues,
3 including habeas corpus petitions filed by the attorney, if any.
4

5 (2) Ongoing consultation is available to the attorney from an assisting counsel or
6 entity designated by the court.
7

8 (3) Within two years before being included on a panel or appointed by the
9 Supreme Court, the attorney has completed at least 18 hours of appellate
10 criminal defense or habeas corpus defense training approved for Minimum
11 Continuing Legal Education credit by the State Bar of California, at least 10
12 hours of which involve death penalty-related habeas corpus proceedings. The
13 committee or the Supreme Court will determine whether the training
14 completed by an attorney satisfies the requirements of this subdivision in
15 light of the attorney's individual background and experience.
16

17 **(e) Attorneys without trial experience**
18

19 If an evidentiary hearing is ordered in a death penalty-related habeas corpus
20 proceeding and an attorney appointed under (c) or (d) to represent a person in that
21 proceeding lacks experience in conducting trials or evidentiary hearings, the
22 attorney must associate with an attorney who has such experience.
23

24 **(f) Use of supervised counsel**
25

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

30 **(g) Appellate and habeas corpus appointment**
31

32 (1) An attorney appointed to represent a person in both a death penalty appeal
33 and death penalty-related habeas corpus proceedings must meet the
34 minimum qualifications of both (c) or (d) and rule 8.605.
35

36 (2) Notwithstanding (1), two attorneys together may be eligible for appointment
37 to represent a person jointly in both a death penalty appeal and death penalty-
38 related habeas corpus proceedings if it is determined that one attorney
39 satisfies the minimum qualifications stated in (c) or (d) and the other attorney
40 satisfies the minimum qualifications stated in rule 8.605.
41

42 **(h) Entities as appointed counsel**
43

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

5
6 (2) When serving as appointed counsel in a death penalty–related habeas corpus
7 proceeding, the Habeas Corpus Resource Center or the California Appellate
8 Project–San Francisco must not assign any attorney as lead counsel unless it
9 finds the attorney is qualified under (c) or (d).

10
11 (i) **Attorney appointed by federal court**

12
13 Notwithstanding any other provision of this rule, a court may appoint an attorney
14 who is under appointment by a federal court in a death penalty–related habeas
15 corpus proceeding for the purpose of exhausting state remedies in the California
16 courts if the court finds that the attorney has the commitment, proficiency, and
17 knowledge necessary to represent the person competently in state proceedings.
18 Counsel under appointment by a federal court is not required to also be appointed
19 by a state court in order to appear in a state court proceeding.

20
21 *Rule 8.652 adopted effective April 25, 2019.*

22
23 **Division 3. Rules Relating to Miscellaneous Appeals and Writ Proceedings**

24
25 **Chapter 1. Review of California Environmental Quality Act Cases Under Public**
26 **Resources Code Sections 21168.6.6, 21178–21189.3, and 21189.50–21189.57**

27
28 **Chapter 2. Appeals Under Code of Civil Procedure Section 1294.4 From an Order**
29 **Dismissing or Denying a Petition to Compel Arbitration**

30
31 **Chapter 3. Miscellaneous Writs**

32
33 **Rule 8.720. Review of Workers’ Compensation Appeals Board cases * * ***

34
35 *Rule 8.720 renumbered effective April 25, 2019; repealed and adopted as rule 57 effective*
36 *January 1, 2005; previously amended effective July 1, 2006, January 1, 2016, and January 1,*
37 *2018; previously amended and renumbered as rule 8.494 effective January 1, 2007; previously*
38 *renumbered as rule 8.495 effective January 1, 2009.*

39
40 **Rule 8.724. Review of Public Utilities Commission cases * * ***

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

4
5 **Rule 8.728. Review of Agricultural Labor Relations Board and Public Employment**
6 **Relations Board cases * * ***

7
8 *Rule 8.728 renumbered effective April 25, 2019; repealed and adopted as rule 59 effective*
9 *January 1, 2005; previously amended effective July 1, 2006, and January 1, 2016; previously*
10 *amended and renumbered as rule 8.498 effective January 1, 2007.*

11
12 **Rule 8.730. Filing, modification, and finality of decision; remittitur * * ***

13
14 *Rule 8.730 renumbered effective April 25, 2019; adopted effective January 1, 2008; previously*
15 *amended effective January 1, 2011, and July 1, 2012.*

16
17 **Division 4. Rules Relating to the Superior Court Appellate Division**

18
19 **Division 5. Rules Relating to Appeals and Writs in Small Claims Cases**

20
21 **Division 6. Transfer of Appellate Division Cases to the Court of Appeal**

22
23 **Division 7. Publication of Appellate Opinions**
24