

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

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

2
3 **Chapter 3. Habeas Corpus**

4
5 **Article 1. General Provisions**

6
7 **Rule 4.545. Definitions**

8
9 In this chapter, the following definitions apply:

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

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

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

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

38
39 **~~(a)~~ Application**

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

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

3
4 **~~(b) Definitions~~**

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

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

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

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

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

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

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

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

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

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

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

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

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

43

1 **(a) Purpose**

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

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

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

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

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

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

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

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

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

- 1
2 (4) If qualified counsel is available for appointment to a case for which a petition
3 is pending in the Supreme Court, the judge must provide written notice to the
4 Supreme Court that counsel is available for appointment.
5
6 (5) On entry of an order appointing death penalty–related habeas corpus counsel,
7 the appointing court must promptly send a copy of the appointment order to
8 the Habeas Corpus Resource Center, which must update the list to reflect that
9 counsel was appointed, and to the clerk/executive officer of the Supreme
10 Court, the Attorney General, and the district attorney. The court must also
11 send notice to the Habeas Corpus Resource Center, clerk/executive officer of
12 the Supreme Court, Attorney General, and district attorney if, for any reason,
13 the court determines that it does not need to make an appointment.
14
15 (6) When a copy of an appointment order, or information indicating that an
16 appointment is for any reason not required, has been received by the Habeas
17 Corpus Resource Center for 20 judgments, the center will identify the next 20
18 oldest judgments of death in cases in which death penalty–related habeas
19 corpus counsel have not been appointed and send out a notice identifying
20 these 20 judgments, and the procedures required by paragraphs (3) through
21 (6) of this subdivision must be repeated.
22
23 (7) The presiding judge of a superior court may designate another judge within
24 the court to carry out his or her duties in this subdivision.
25

26 **(e) Appointment of counsel**
27

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

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

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

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

8
9 **(a) Purpose**

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

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

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

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

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

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

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

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

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

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

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

42

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

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

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

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

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

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

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

24
25 The committee has the following responsibilities:

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

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

32
33 (2) Accept applications

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

38
39 (A) The application must be on a *Declaration of Counsel re Minimum*
40 *Qualifications for Appointment in Death Penalty–Related Habeas*
41 *Corpus Proceedings* (form HC-100).
42

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

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

9
10 (3) Review qualifications

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

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

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

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

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

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

38
39 (5) Match qualified attorneys to cases

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

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

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

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

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

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

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

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

25
26 **(g) Local rule**

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

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

36
37 **Advisory Committee Comment**

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

1 Chapter 8. Miscellaneous Writs [Reserved]

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

4 *Rule 8.495 renumbered as rule 8.720.*

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

7 *Rule 8.496 renumbered as rule 8.724.*

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

10 *Rule 8.498 renumbered as rule 8.728.*

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

13 *Rule 8.499 renumbered as rule 8.730.*

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

18
19 **Rule 8.600. In general**

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

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

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

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

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

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

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

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

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

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

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

6
7 **(e) — Definitions**

8
9 For purposes of this part:

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

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

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

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

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

23 *Rule 8.600 renumbered as rule 8.603.*

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

27
28 **Rule 8.601. Definitions**

29
30 For purposes of this division:

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

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

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

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

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

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

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

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

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

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

38
39 **Advisory Committee Comment**

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

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

3
4 **Article 1. General Provisions**

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

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

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

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

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

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

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

27
28 **(a) Purpose**

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

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

40
41 **(b) General qualifications**

42

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

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

10 **(e) Definitions**

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

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

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

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

10 (1) California legal experience
11

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

14 (2) Criminal appellate experience
15

16 Either:
17

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

23 (B) Service as:
24

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

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

36 (3) Knowledge
37

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

41 (4) Training
42

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

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

16 (5) Skills

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

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

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

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

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

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

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

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

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

- 1 ~~(C)~~ Recommendations from two attorneys familiar with the attorney's
2 qualifications and performance; and
3
4 ~~(D)~~ If the attorney is on a panel of attorneys eligible for appointments to
5 represent indigent appellants in the Court of Appeal, the evaluation of
6 the administrator responsible for those appointments.

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

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

- 14
15 (1) The court finds that the attorney has extensive experience in another
16 jurisdiction or a different type of practice (such as civil trials or appeals,
17 academic work, or work for a court or prosecutor) for at least four years,
18 providing the attorney with experience in complex cases substantially
19 equivalent to that of an attorney qualified under ~~(d)(c)~~ or ~~(e)~~.
20
21 (2) Ongoing consultation is available to the attorney from an assisting counsel or
22 entity designated by the court.
23
24 (3) Within two years before appointment, the attorney has completed at least 18
25 hours of Supreme Court–approved appellate criminal defense or habeas
26 corpus defense training, continuing education, or course of study, at least
27 nine hours of which involve death penalty appellate or habeas corpus
28 proceedings. The Supreme Court will determine in each case whether the
29 training, education, or course of study completed by a particular attorney
30 satisfies the requirements of this subdivision in light of the attorney's
31 individual background and experience. If the Supreme Court has previously
32 appointed counsel to represent a defendant person in a death penalty appeal
33 or a related habeas corpus proceeding, and counsel has provided active
34 representation within three years before the request for a new appointment,
35 the court, after reviewing counsel's previous work, may find that such
36 representation constitutes compliance with some or all of this requirement.
37

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

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

42

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24
25 **Advisory Committee Comment**

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

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

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

38
39 **(a) Purpose**

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

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

7
8 **(b) General qualifications**

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

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

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

24
25 (1) California legal experience

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

28
29 (2) Case experience

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

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

36
37 (B) Service as:

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

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

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

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

26
27 (3) Knowledge

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

31
32 (4) Training

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

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

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

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

11
12 (5) Skills

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

17 (A) The attorney must submit:

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

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

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

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

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

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

8
9 **(d) Alternative experience**

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

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

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

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

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

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

43

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

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

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

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

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

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

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

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

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

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

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

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

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

4

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

6