

AMENDMENTS TO THE CALIFORNIA RULES OF COURT  
Adopted by the Judicial Council on March 15, 2019, effective on April 25, 2019

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24		

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

2  
3 **(a) Petition**

- 4  
5 (1) A petition and supporting memorandum must comply with this rule and,  
6 except as otherwise provided in this rule, with rules 2.100–2.117 relating to  
7 the form of papers.  
8  
9 (2) A memorandum supporting a petition must comply with rule 3.1113(b), (c),  
10 (f), (h), (i), and (l).  
11  
12 (3) The petition and supporting memorandum must support any reference to a  
13 matter in the supporting documents or declarations, or other supporting  
14 materials, by a citation to its index number or letter and page and, if  
15 applicable, the paragraph or line number.  
16

17 **(b) Supporting documents**

- 18  
19 (1) The record prepared for the automatic appeal, including any exhibits admitted  
20 in evidence, refused, or lodged, and all briefs, rulings, and other documents  
21 filed in the automatic appeal are deemed part of the supporting documents for  
22 the petition.  
23  
24 (2) The petition must be accompanied by a copy of any petition, excluding  
25 exhibits, pertaining to the same judgment and petitioner that was previously  
26 filed in any state court or any federal court, along with any order in a  
27 proceeding on such a petition that disposes of any claim or portion of a claim.  
28  
29 (3) If the petition asserts a claim that was the subject of a hearing, the petition  
30 must be accompanied by a certified transcript of that hearing.  
31  
32 (4) If any supporting documents have previously been filed in the same superior  
33 court in which the petition is filed and the petition so states and identifies the  
34 documents by case number, filing date and title of the document, copies of  
35 these documents need not be included in the supporting documents.  
36  
37 (5) Rule 8.486(c)(1) governs the form of any supporting documents  
38 accompanying the petition.  
39  
40 (6) If any supporting documents accompanying the petition or any subsequently  
41 filed paper are sealed, rules 2.550 and 2.551 govern. Notwithstanding rule  
42 8.45(a), if any supporting documents accompanying the petition or any  
43 subsequently filed papers are confidential records, rules 8.45(b), (c), and 8.47

1           govern, except that rules 2.550 and 2.551 govern the procedures for making a  
2           motion or application to seal such records.

3  
4           (7) When other laws establish specific requirements for particular types of sealed  
5           or confidential records that differ from the requirements in this subdivision,  
6           those specific requirements supersede the requirements in this subdivision.

7  
8           **(c) Filing and service**

9  
10           (1) If the petition is filed in paper form, an original and one copy must be filed,  
11           along with an original and one copy of the supporting documents.

12  
13           (2) A court that permits electronic filing must specify any requirements  
14           regarding electronically filed petitions as authorized under rules 2.250 et seq.

15  
16           (3) Petitioner must serve one copy of the petition and supporting documents on  
17           the district attorney, the Attorney General, and on any assisting entity or  
18           counsel.

19  
20           **(d) Noncomplying filings**

21  
22           The clerk must file an attorney's petition not complying with this rule if it  
23           otherwise complies with the rules of court, but the court may notify the attorney  
24           that it may strike the petition or impose a lesser sanction if the petition is not  
25           brought into compliance within a stated reasonable time of not less than five court  
26           days.

27  
28           **(e) Ruling on the petition**

29  
30           (1) The court must rule on the petition within 60 days after the petition is filed  
31           with the court or transferred to the court from another superior court.

32  
33           (2) For purposes of this subdivision, the court rules on a petition by:

34  
35           (A) Requesting an informal response to the petition;

36  
37           (B) Issuing an order to show cause; or

38  
39           (C) Denying the petition.

40  
41           (3) If the court requests an informal response, it must issue an order to show  
42           cause or deny the petition within 30 days after the filing of the reply, or if

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

3  
4            *Rule 4.571 adopted effective April 25, 2019.*

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

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

13  
14           *Rule 4.572 adopted effective April 25, 2019.*

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

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

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

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

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

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

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

43

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

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

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

12  
13 *Rule 4.573 adopted effective April 25, 2019.*

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

16  
17 **(a) Return**

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

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

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

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

33  
34 **(b) Denial**

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

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

43

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

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

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

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

12  
13          **(d) Evidentiary hearing**

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

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

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

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

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

35  
36          **(e) Additional briefing**

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

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

42

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

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

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

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

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

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

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

25  
26 **Rule 4.576. Successive petitions**

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

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

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

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

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

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

9 **Rule 4.577. Transfer of files**

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

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

17  
18 **Chapter 4. Habeas Corpus Appeals and Writs**  
19

20 **Article 1. Habeas Corpus Proceedings Not Related to Judgment of Death**  
21

22 **Rule 8.388. Appeal from order granting relief by writ of habeas corpus**  
23

24 **(a) Application**  
25

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

32 *(Subd (a) amended effective April 25, 2019; previously amended effective January 1,*  
33 *2007.)*  
34

35 **(b) \* \* \***  
36  
37

38 *Rule 8.388 amended effective April 25, 2019; repealed and adopted as rule 39.2 effective January*  
39 *1, 2005; previously amended and renumbered as rule 8.388 effective January 1, 2007.*

40 **Article 2. Appeals From Superior Court Decisions in Death Penalty–Related**  
41 **Habeas Corpus Proceedings**  
42

1 **Rule 8.390. Application**

2  
3 **(a) Application**

4  
5 The rules in this article apply only to appeals under Penal Code section 1509.1  
6 from superior court decisions in death penalty–related habeas corpus proceedings.

7  
8 **(b) General application of rules for criminal appeals**

9  
10 Except as otherwise provided in this article, rules 8.300, 8.316, 8.332, 8.340–8.346,  
11 and 8.366–8.368 govern appeals subject to the rules in this article.

12  
13 *Rule 8.390 adopted effective April 25, 2019.*

14  
15 **Rule 8.391. Qualifications and appointment of counsel by the Court of Appeal**

16  
17 **(a) Qualifications**

18  
19 To be appointed by the Court of Appeal to represent an indigent petitioner not  
20 represented by the State Public Defender in an appeal under this article, an attorney  
21 must:

- 22  
23 (1) Meet the minimum qualifications established by rule 8.652 for attorneys to be  
24 appointed to represent a person in a death penalty–related habeas corpus  
25 proceeding, including being willing to cooperate with an assisting counsel or  
26 entity that the court may designate;  
27  
28 (2) Be familiar with appellate practices and procedures in the California courts,  
29 including those related to death penalty appeals; and  
30  
31 (3) Not have represented the petitioner in the habeas corpus proceedings that are  
32 the subject of the appeal unless the petitioner and counsel expressly request,  
33 in writing, continued representation.

34  
35 **(b) Designation of assisting entity or counsel**

36  
37 Either before or at the time it appoints counsel, the court must designate an  
38 assisting entity or counsel.

39  
40 *Rule 8.391 adopted effective April 25, 2019.*

41  
42 **Rule 8.392. Filing the appeal; certificate of appealability**

43

1 **(a) Notice of appeal**  
2

- 3 (1) To appeal from a superior court decision in a death penalty–related habeas  
4 corpus proceeding, the petitioner or the People must serve and file a notice of  
5 appeal in that superior court. To appeal a decision denying relief on a  
6 successive habeas corpus petition, the petitioner must also comply with (b).  
7
- 8 (2) If the petitioner appeals, petitioner’s counsel, or, in the absence of counsel,  
9 the petitioner, is responsible for signing the notice of appeal. If the People  
10 appeal, the attorney for the People must sign the notice.  
11

12 **(b) Appeal of decision denying relief on a successive habeas corpus petition**  
13

- 14 (1) The petitioner may appeal the decision of the superior court denying relief on  
15 a successive death penalty–related habeas corpus petition only if the superior  
16 court or the Court of Appeal grants a certificate of appealability under Penal  
17 Code section 1509.1(c).  
18
- 19 (2) The petitioner must identify in the notice of appeal that the appeal is from a  
20 superior court decision denying relief on a successive petition and indicate  
21 whether the superior court granted or denied a certificate of appealability.  
22
- 23 (3) If the superior court denied a certificate of appealability, the petitioner must  
24 attach to the notice of appeal a request to the Court of Appeal for a certificate  
25 of appealability. The request must identify the petitioner’s claim or claims for  
26 relief and explain how the requirements of Penal Code section 1509(d) have  
27 been met.  
28
- 29 (4) On receiving the request for a certificate of appealability, the Court of Appeal  
30 clerk must promptly file the request and send notice of the filing date to the  
31 parties.  
32
- 33 (5) The People need not file an answer to a request for a certificate of  
34 appealability unless the court requests an answer. The clerk must promptly  
35 send to the parties and the assisting entity or counsel copies of any order  
36 requesting an answer and immediately notify the parties by telephone or  
37 another expeditious method. Any answer must be served on the parties and  
38 the assisting entity or counsel and filed within five days after the order is  
39 filed unless the court orders otherwise.  
40
- 41 (6) The Court of Appeal must grant or deny the request for a certificate of  
42 appealability within 10 days of the filing of the request in that court. If the  
43 Court of Appeal grants a certificate of appealability, the certificate must

1 identify the substantial claim or claims for relief shown by the petitioner. The  
2 clerk must send a copy of the certificate or its order denying the request for a  
3 certificate to:

4  
5 (A) The attorney for the petitioner or, if unrepresented, to the petitioner;

6  
7 (B) The district appellate project and, if designated, any assisting entity or  
8 counsel other than the district appellate project;

9  
10 (C) The Attorney General;

11  
12 (D) The district attorney;

13  
14 (E) The superior court clerk; and

15  
16 (F) The clerk/executive officer of the Supreme Court.

17  
18 (7) If both the superior court and the Court of Appeal deny a certificate of  
19 appealability, the clerk/executive officer of the Court of Appeal must mark  
20 the notice of appeal “Inoperative,” notify the petitioner, and send a copy of  
21 the marked notice of appeal to the superior court clerk, the clerk/executive  
22 officer of the Supreme Court, the district appellate project, and, if designated,  
23 any assisting entity or counsel other than the district appellate project.

24  
25 **(c) Notification of the appeal**

26  
27 (1) Except as provided in (2), when a notice of appeal is filed, the superior court  
28 clerk must promptly—and no later than five days after the notice of appeal is  
29 filed—send a notification of the filing to:

30  
31 (A) The attorney for the petitioner or, if unrepresented, to the petitioner;

32  
33 (B) The district appellate project and, if designated, any assisting entity or  
34 counsel other than the district appellate project;

35  
36 (C) The Attorney General;

37  
38 (D) The district attorney;

39  
40 (E) The clerk/executive officer of the Court of Appeal;

41  
42 (F) The clerk/executive officer of the Supreme Court;

43



1  
2  
3 **Rule 8.393. Time to appeal**  
4

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

7  
8 *Rule 8.393 adopted effective April 25, 2019.*  
9

10 **Rule 8.394. Stay of execution on appeal**  
11

12 **(a) Application**  
13

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

17  
18 **(b) Interim relief**  
19

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

25 *Rule 8.394 adopted effective April 25, 2019.*  
26

27 **Rule 8.395. Record on appeal**  
28

29 **(a) Contents**  
30

31 In an appeal under this article, the record must contain:  
32

33 (1) A clerk's transcript containing:  
34

35 (A) The petition;  
36

37 (B) Any informal response to the petition and any reply to the informal  
38 response;  
39

40 (C) Any order to show cause;  
41

42 (D) Any reply, return, answer, denial, or traverse;  
43

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

23  
24 (2) A reporter's transcript of any oral proceedings.  
25

26 **(b) Stipulation for partial transcript**  
27

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

32 **(c) Preparation of record**  
33

- 34 (1) The reporter and the clerk must begin preparing the record immediately after  
35 the superior court issues the decision on an initial petition under Penal Code  
36 section 1509.  
37  
38 (2) If either party appeals from a superior court decision on a successive petition  
39 under Penal Code section 1509.1(c):  
40  
41 (A) The clerk must begin preparing the clerk's transcript immediately after  
42 the filing of the notice of appeal or, if one is required, the superior  
43 court's issuance of a certificate of appealability or the clerk's receipt of

1 a copy of a certificate of appealability issued by the Court of Appeal  
2 under rule 8.391(b)(5), whichever is later. If a certificate of  
3 appealability is required to appeal the decision of the superior court, the  
4 clerk must not begin preparing the clerk's transcript until a certificate  
5 of appealability has issued.

6  
7 (B) The reporter must begin preparing the reporter's transcript immediately  
8 on being notified by the clerk under rule 8.392(c) that the notice of  
9 appeal has been filed.

10  
11 **(d) Clerk's transcript**

12  
13 (1) Within 30 days after the clerk is required to begin preparing the transcript,  
14 the clerk must complete preparation of an original and four copies of the  
15 clerk's transcript.

16  
17 (2) On request, the clerk must prepare an extra copy for the district attorney or  
18 the Attorney General, whichever is not counsel for the People on appeal.

19  
20 (3) The clerk must certify as correct the original and all copies of the clerk's  
21 transcript.

22  
23 **(e) Reporter's transcript**

24  
25 (1) The reporter must prepare an original and the same number of copies of the  
26 reporter's transcript as (d) requires of the clerk's transcript, and must certify  
27 each as correct.

28  
29 (2) As soon as the transcripts are certified, but no later than 30 days after the  
30 reporter is required to begin preparing the transcript, the reporter must deliver  
31 the original and all copies to the superior court clerk.

32  
33 (3) Any portion of the transcript transcribed during superior court habeas corpus  
34 proceedings must not be retyped unless necessary to correct errors, but must  
35 be repaginated and combined with any portion of the transcript not previously  
36 transcribed. Any additional copies needed must not be retyped but, if the  
37 transcript is in paper form, must be prepared by photocopying or an  
38 equivalent process.

39  
40 (4) In a multireporter case, the clerk must accept any completed portion of the  
41 transcript from the primary reporter one week after the time prescribed by (2)  
42 even if other portions are uncompleted. The clerk must promptly pay each

1            reporter who certifies that all portions of the transcript assigned to that  
2            reporter are completed.

3  
4    **(f) Extension of time**

- 5  
6            (1) Except as provided in this rule, rules 8.60 and 8.63 govern requests for  
7            extension of time to prepare the record.  
8  
9            (2) On request of the clerk or a reporter showing good cause, the superior court  
10           may extend the time prescribed in (d) or (e) for preparing the clerk's or  
11           reporter's transcript for no more than 30 days. If the superior court orders an  
12           extension, the order must specify the reason justifying the extension. The  
13           clerk must promptly send a copy of the order to the reviewing court.  
14  
15           (3) For any further extension, the clerk or reporter must file a request in the  
16           reviewing court showing good cause.  
17  
18           (4) A request under (2) or (3) must be supported by:  
19  
20                (A) A declaration showing good cause. The court may presume good cause  
21                if the clerk's and reporter's transcripts combined will likely exceed  
22                10,000 pages, not including the supporting documents submitted with  
23                the petition, any informal response, reply to the informal response,  
24                return, answer, or traverse; and  
25  
26                (B) In the case of a reporter's transcript, certification by the superior court  
27                presiding judge or a court administrator designated by the presiding  
28                judge that an extension is reasonable and necessary in light of the  
29                workload of all reporters in the court.  
30

31    **(g) Form of record**

- 32  
33            (1) The reporter's transcript must be in electronic form. The clerk is encouraged  
34            to send the clerk's transcript in electronic form if the court is able to do so.  
35  
36            (2) The clerk's and reporter's transcripts must comply with rules 8.45–8.47,  
37            relating to sealed and confidential records, and rule 8.144.  
38

39    **(h) Sending the transcripts**

- 40  
41            (1) When the clerk's and reporter's transcripts are certified as correct, the clerk  
42            must promptly send:  
43

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

3  
4 (B) One copy of each transcript to:

5  
6 (i) Appellate counsel for the petitioner;

7  
8 (ii) The assisting entity or counsel, if designated, or the district  
9 appellate project;

10  
11 (iii) The Attorney General or the district attorney, whichever is  
12 counsel for the People on appeal;

13  
14 (iv) The district attorney or Attorney General if requested under  
15 (d)(2); and

16  
17 (v) The Governor.

18  
19 (2) If the petitioner is not represented by appellate counsel when the transcripts  
20 are certified as correct, the clerk must send that copy of the transcripts to the  
21 assisting entity or counsel, if designated, or the district appellate project.

22  
23 **(i) Supervision of preparation of record**

24  
25 The clerk/executive officer of the Court of Appeal, under the supervision of the  
26 administrative presiding justice or the presiding justice, must take all appropriate  
27 steps to ensure that superior court clerks and reporters promptly perform their  
28 duties under this rule. This provision does not affect the responsibility of the  
29 superior courts for the prompt preparation of appellate records.

30  
31 **(i) Augmenting or correcting the record in the Court of Appeal**

32  
33 Rule 8.340 governs augmenting or correcting the record in the Court of Appeal,  
34 except that copies of augmented or corrected records must be sent to those listed in  
35 (h).

36  
37 **(k) Judicial notice**

38  
39 Rule 8.252(a) governs judicial notice in the reviewing court.

40  
41 *Rule 8.395 adopted effective April 25, 2019.*

42

1 **Rule 8.396. Briefs by parties and amici curiae**

2  
3 **(a) Contents and form**

- 4  
5 (1) Except as provided in this rule, briefs in appeals governed by the rules in this  
6 article must comply as nearly as possible with rules 8.200 and 8.204.  
7  
8 (2) If, as permitted by Penal Code section 1509.1(b), the petitioner wishes to  
9 raise a claim in the appeal of ineffective assistance of trial counsel that was  
10 not raised in the superior court habeas corpus proceedings, that claim must be  
11 raised in the first brief filed by the petitioner. A brief containing such a claim  
12 must comply with the additional requirements in rule 8.397.  
13  
14 (3) If the petitioner is appealing from a decision of the superior court denying  
15 relief on a successive death penalty–related habeas corpus petition, the  
16 petitioner may only raise claims in the briefs that were identified in the  
17 certificate of appealability that was issued and any additional claims added by  
18 the Court of Appeal as provided in Penal Code section 1509.1(c).  
19

20 **(b) Length**

- 21  
22 (1) A brief produced on a computer must not exceed the following limits,  
23 including footnotes, except that if the presiding justice permits the appellant  
24 to file an opening brief that exceeds the limit set in (1)(A) or (3)(A), the  
25 respondent’s brief may not exceed the same length:  
26  
27 (A) Appellant’s opening brief: 102,000 words.  
28  
29 (B) Respondent’s brief: 102,000 words.  
30  
31 (C) Reply brief: 47,600 words.  
32  
33 (2) A brief under (1) must include a certificate by appellate counsel stating the  
34 number of words in the brief; counsel may rely on the word count of the  
35 computer program used to prepare the brief.  
36  
37 (3) A typewritten brief must not exceed the following limits, except that if the  
38 presiding justice permits the appellant to file an opening brief that exceeds  
39 the limit set in (1)(A) or (3)(A), the respondent’s brief may not exceed the  
40 same length:  
41  
42 (A) Appellant’s opening brief: 300 pages.  
43

1           (B) Respondent’s brief: 300 pages.

2  
3           (C) Reply brief: 140 pages.

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

9  
10          (5) A combined brief in an appeal governed by (e) must not exceed double the  
11 limit stated in (1) or (3).

12  
13          (6) On application, the presiding justice may permit a longer brief for good  
14 cause.

15  
16       **(c) Time to file**

17  
18          (1) The appellant’s opening brief must be served and filed within 210 days after  
19 either the record is filed or appellate counsel is appointed, whichever is later.

20  
21          (2) The respondent’s brief must be served and filed within 120 days after the  
22 appellant’s opening brief is filed.

23  
24          (3) The appellant must serve and file a reply brief, if any, within 60 days after the  
25 filing of respondent’s brief.

26  
27          (4) If the clerk’s and reporter’s transcripts combined exceed 10,000 pages, the  
28 time limits stated in (1) and (2) are extended by 15 days for each 1,000 pages  
29 of combined transcript over 10,000 pages, up to 20,000 pages. The time  
30 limits in (1) and (2) may be extended further by order of the presiding justice  
31 under rule 8.60.

32  
33          (5) The time to serve and file a brief may not be extended by stipulation, but only  
34 by order of the presiding justice under rule 8.60.

35  
36          (6) If a party fails to timely file an appellant’s opening brief or a respondent’s  
37 brief, the clerk/executive officer of the Court of Appeal must promptly notify  
38 the party in writing that the brief must be filed within 30 days after the notice  
39 is sent, and that failure to comply may result in sanctions specified in the  
40 notice.

41  
42       **(d) Service**

43

1           (1) The petitioner’s appellate counsel must serve each brief for the petitioner on  
2 the assisting entity or counsel, the Attorney General, and the district attorney,  
3 and must deliver a copy of each to the petitioner unless the petitioner requests  
4 otherwise.

5  
6           (2) The proof of service must state that a copy of the petitioner’s brief was  
7 delivered to the petitioner or will be delivered in person to the petitioner  
8 within 30 days after the filing of the brief, or counsel must file a signed  
9 statement that the petitioner requested in writing that no copy be delivered.

10  
11           (3) The People must serve each of their briefs on the appellate counsel for the  
12 petitioner, the assisting entity or counsel, and either the district attorney or  
13 the Attorney General, whichever is not representing the People on appeal.

14  
15           (4) A copy of each brief must be served on the superior court clerk for delivery  
16 to the superior court judge who issued the order being appealed.

17  
18 **(e) When the petitioner and the People appeal**

19  
20 When both the petitioner and the People appeal, the petitioner must file the first  
21 opening brief unless the reviewing court orders otherwise, and rule 8.216(b)  
22 governs the contents of the briefs.

23  
24 **(f) Amicus curiae briefs**

25  
26 Amicus curiae briefs may be filed as provided in rule 8.200(c), except that an  
27 application for permission of the presiding justice to file an amicus curiae brief  
28 must be filed within 14 days after the last appellant’s reply brief is filed or could  
29 have been filed under (c), whichever is earlier.

30  
31 *Rule 8.396 adopted effective April 25, 2019.*

32  
33 **Advisory Committee Comment**

34  
35 **Subdivision (a)(3).** This subdivision is intended to implement the sentence in Penal Code section  
36 1509.1(c) providing that “[t]he jurisdiction of the court of appeal is limited to the claims  
37 identified in the certificate [of appealability] and any additional claims added by the court of  
38 appeal within 60 days of the notice of appeal.”

39  
40 **Subdivision (b)(4).** This subdivision specifies certain items that are not counted toward the  
41 maximum brief length. Signature blocks referred to in this provision include not only the  
42 signatures, but also the printed names, titles, and affiliations of any attorneys filing or joining in  
43 the brief, which may accompany the signature.

1  
2  
3 **Rule 8.397. Claim of ineffective assistance of trial counsel not raised in the superior**  
4 **court**

5  
6 **(a) Application**

7  
8 This rule governs claims under Penal Code section 1509.1(b) of ineffective  
9 assistance of trial counsel not raised in the superior court habeas corpus proceeding  
10 giving rise to an appeal under this article.

11  
12 **(b) Discussion of claim in briefs**

- 13  
14 (1) A claim subject to this rule must be raised in the first brief filed by the  
15 petitioner.
- 16  
17 (2) All discussion of claims subject to this rule must be addressed in a separate  
18 part of the brief under a heading identifying this part as addressing claims of  
19 ineffective assistance of trial counsel that were not raised in a superior court  
20 habeas corpus proceeding.
- 21  
22 (3) Discussion of each claim within this part of the brief must be under a separate  
23 subheading identifying the claim. Petitioner's brief must include a summary  
24 of the claim under the subheading, and each claim must be supported by  
25 argument and, if possible, by citation of authority.
- 26  
27 (4) This part of the brief may include references to matters:
- 28  
29 (A) In the record on appeal prepared under rule 8.395. Any reference to a  
30 matter in the record must be supported by a citation to the volume and  
31 page number of the record where the matter appears.
- 32  
33 (B) Of which the court has taken judicial notice.
- 34  
35 (C) In a proffer required under (c). Any reference to a matter in a proffer  
36 must be supported by a citation to its index number or letter and page.

37  
38 **(c) Proffer**

- 39  
40 (1) A brief raising a claim under Penal Code section 1509.1(b) of ineffective  
41 assistance of trial counsel not raised in a superior court habeas corpus  
42 proceeding must be accompanied by a proffer of any reasonably available  
43 documentary evidence supporting the claim that is not in either the record on

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

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

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

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

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

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

22 (C) If submitted in paper form:  
23

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

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

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

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

37 **(d) Evidentiary hearing**  
38

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

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

**(e) Procedures following limited remand**

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

*Rule 8.397 adopted effective April 25, 2019.*

**Advisory Committee Comment**

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

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**Rule 8.398. Finality**

**(a) General rule**

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

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

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

*Rule 8.398 adopted effective April 25, 2019.*