



Judicial Council of California
Appellate Advisory Committee

courts.ca.gov/aac.htm
aac@jud.ca.gov

APPELLATE ADVISORY COMMITTEE

NOTICE AND AGENDA OF CLOSED MEETING

Closed to the public (Cal. Rules of Court, rule 10.75(c)(3) and (e)(1))

Date: October 27, 2025

Time: Noon

In accordance with California Rules of Court, rule 10.75(e)(1), public notice is hereby given that the Appellate Advisory Committee will hold a closed session on Monday, October 27, 2025 at noon. The meeting will be closed pursuant to California Rules of Court, rule 10.75(c)(3). Meeting materials will not be posted on the advisory body web page on the California Courts website. Materials are only posted for open meetings. (Cal. Rules of Court, rule 10.75(h).)

I. CLOSED SESSION (CAL. RULES OF COURT, RULE 10.75(C)(3))

Call to Order and Roll Call

Approval of Minutes

Approve minutes of the July 2, 2025 Appellate Advisory Committee meeting.

Item 1

Annual Agenda. Closed under Rule 10.75(c)(3) – Rule Committees.

Review the committee's annual agenda for 2025-2026.

Item 2

Post-Conviction Rules and Forms. Closed under rule 10.75(c)(3) – Rule Committees.

Consider draft revisions to *Petition for Writ of Habeas Corpus* (form HC-001) and draft amendments to rule 8.385.

Item 3

Updates on Subcommittees. Closed under rule 10.75(c)(3) – Rule Committees.

Discuss subcommittee updates.

II. ADJOURNMENT

Adjourn Closed Session

Posted on: October 22, 2025



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APPELLATE ADVISORY COMMITTEE

MINUTES OF CLOSED MEETING

July 2, 2025

Noon

Advisory Body Members Present: Hon. Allison M. Danner, Chair; Mr. David A. Andreasen; Hon. Jose S. Castillo; Hon. Syda K. Cogliati; Mr. Michael G. Colantuono; Hon. Thomas DeSantos; Hon. Aimee A. Feinberg; Mr. Jonathan D. Grossman; Ms. Karen M. Harkins; Ms. Lynelle K. Hee; Mr. Rex S. Heinke; Hon. Leondra R. Kruger; Ms. Galit Lipa; Mr. Jorge Navarrete; Ms. Beth Robbins; Mr. Benjamin G. Shatz; Ms. Robin H. Urbanski; Hon. Helen E. Williams

Advisory Body Members Absent: Hon. Jeremy M. Goldman, Vice-Chair; Hon. Carl H. Moor; Ms. Erin Rosenberg; Ms. Amy Smith-Fisher

Others Present: Mr. Jeremy Varon; Mr. James Barolo; Hon. Tracie Brown; Hon. Ioana Petrou

C L O S E D S E S S I O N

Call to Order and Roll Call

The chair called the meeting to order at noon, and roll was called.

Approval of Minutes

The advisory body reviewed and approved the minutes of the February 4, 2025 Appellate Advisory Committee meeting.

Item 1

Appellate Procedure: Remote Appearances at Oral Argument in the Appellate Division

Action: The committee approved the proposal and recommended that the Judicial Council amend the rules, effective January 1, 2026.

Item 2

Appellate Procedure: Extension of Time in Misdemeanor and Infraction Appeals

Action: The committee approved the proposal and recommended that the Judicial Council approve the form, effective January 1, 2026.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 12:25 p.m.

Approved by the advisory body on enter date.

Appellate Advisory Committee
Annual Agenda¹—2025–2026
Approved by Rules Committee: October 16, 2025

I. COMMITTEE INFORMATION

Chair:	Hon. Allison M. Danner, Associate Justice of the Court of Appeal, Sixth District
Lead Staff:	Jeremy T. Varon, Attorney, Legal Services
<p>Advisory Body’s Charge/Membership:</p> <p>Rule 10.40 of the California Rules of Court states the charge of the Appellate Advisory Committee (AAC), which is to make recommendations to the Judicial Council for improving the administration of justice in appellate proceedings and to make proposals on training for justices and appellate support staff to the Center for Judicial Education and Research Advisory Committee.</p> <p>Rule 10.40(c) sets forth the membership positions of the committee. The AAC currently has 22 members. The current committee roster is available on the committee’s webpage.</p>	
<p>Subgroups of the Advisory Body²:</p> <ol style="list-style-type: none">1. Appellate Division Subcommittee2. Legislation Subcommittee3. Rules Subcommittee4. Appellate Efficiency Ad Hoc Subcommittee	

¹ The Annual Agenda outlines the work an advisory body will focus on in the coming year or cycle and identifies areas of collaboration with other advisory bodies and Judicial Council staff resources.

² For the definition of “subcommittee” see Cal. Rules of Court, rule 10.30(c); for “working group,” see rule 10.70; for “workstream,” see rule 10.53(c); and for “education curriculum committee,” see rule 10.50(c)(6).

Advisory Body and Subgroup Meetings Planned for 2025–2026³

Full committee meetings:

- October 2025 (videoconference to review winter cycle proposals)
- February/March 2026 (videoconference to make final recommendations on winter cycle proposals and to review spring cycle proposals)
- July 2026 (videoconference to make final recommendations on spring cycle proposals)
- September 2026 (videoconference to make recommendations on annual agenda)

Subcommittee meetings: one or more teleconference or videoconference meetings of the Rules and Appellate Division subcommittees before each full committee meeting. Legislation Subcommittee to meet as needed to review relevant legislation. Appellate Efficiency Ad Hoc Subcommittee to meet as needed to work on rules and forms proposals.

☐ Check here if in-person meeting is approved by the internal committee oversight chair.

³ Refer to section IV. 2 (Meeting frequency) of the [Operating Standards for Judicial Council Advisory Bodies](#) for governance on in-person meetings.

Note: Because of the current budget and staffing constraints, advisory body chairs and staff must first consider meeting remotely. The chair of the Executive and Planning Committee is extending the suspension of advisory body in-person meetings for the 2025–2026 annual agenda cycle. If an in-person meeting is needed, the responsible Judicial Council office head must seek approval from their advisory body’s internal oversight committee chair. Please see the prioritization memo dated June 23, 2025, for additional details.

II. COMMITTEE PROJECTS

Priority Levels and Branch Goals Key:

Refer to the following key for populating your project priority levels and branch goals. For each Priority Level 1 proposal, the advisory body **must** provide a specific reason why it should be done this year and how it fits within the identified category. If an advisory committee is interested in pursuing any Priority Level 2 proposals, please include justification as to why the proposal should be approved at this time.

Priority Levels for Non-Rules/Forms	
1	Must be done
2	Should be done
Priority Levels for Rules/Forms Proposals	
1a (Legal Compliance)	Proposal urgently needed to conform to or accurately reflect the law.
1b (Council Directive)	Council has directed the committee to consider new or amended rules and forms.
1c (Urgent Remedial Action)	Change is urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public.
1d (Financial/ Legal Risk Mitigation)	Proposal is otherwise urgent and necessary, such as a proposal that would mitigate exposure to immediate or severe financial or legal risk.
2a (Useful Changes in Law)	Useful, but not necessary, to implement changes in law.
2b (Responsive to Concerns)	Responsive to identified concerns or problems.
2c (Helpful Advancing Branch Goals)	Helpful in otherwise advancing Judicial Council goals and objectives.

Judicial Branch Strategic Plan–Branch Goals	
I.	<u>Access, Fairness, Diversity, and Inclusion</u>
II.	<u>Independence and Accountability</u>
III.	<u>Modernization of Management and Administration</u>
IV.	<u>Quality of Justice and Service to the Public</u>
V.	<u>Education for Branchwide Professional Excellence</u>
VI.	<u>Branchwide Infrastructure for Service Excellence</u>
VII.	<u>Adequate, Stable, and Predictable Funding for a Fully Functioning Branch</u>

#	New or One-Time Projects													
1.	Racial Justice Act: Revise Rules and Forms (new project)						Priority: 1a							
Supported Strategic Plan Branch Goals:														
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<p>Project Summary: This is a joint project with the Criminal Law Advisory Committee. Develop rules recommendations as appropriate. AB 1071 (Stats. 2025, ch. 721) requires amendment to rule 8.385 to allow courts to request an informal response from the state and implement new “plausible allegation” and “prima facie showing” standards. Develop rules recommendations as appropriate. The committee will also consider forms recommendations as appropriate to clarify that habeas petitioners making claims related to the Racial Justice Act must explain those claims in the petition. This change was suggested by staff of appellate courts.</p> <p>Status/Timeline: Invitation to comment planned for Winter Cycle, with anticipated effective date of July 1, 2026</p> <p>Fiscal Impact/Staff Resources: Committee staff, Criminal Justice Services <input type="checkbox"/> Check this box if this project may result in an allocation or distribution of funds to the courts. <i>Advisory body staff will coordinate with Budget Services to ensure its review of relevant materials.</i></p> <p>Internal/External Stakeholders: Appellate courts, appellate litigants; all draft proposals will circulate for public comment.</p> <p>AC Collaboration: Criminal Law Advisory Committee</p>														
2.	CEQA Actions: Implementation of Streamlining Legislation (new project)						Priority: 1a							
Supported Strategic Plan Branch Goals:														
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#	New or One-Time Projects								
	<p>Project Summary: This is a joint project with the Civil and Small Claims Advisory Committee. SB 676 (Stats. 2025, ch. 550) changes procedures for CEQA actions relating to projects to repair, demolish, or replace property or facilities damaged or destroyed by wildfire. The bill requires the Judicial Council to adopt rules to implement a statutory requirement for courts to resolve these actions, including appeals, within a specific timeframe. Develop rule recommendations as appropriate.</p> <p>Status/Timeline: Invitation to comment planned for Spring Cycle, with anticipated effective date of January 1, 2027</p> <p>Fiscal Impact/Staff Resources: Committee staff, Legal Services</p> <p><input type="checkbox"/> Check this box if this project may result in an allocation or distribution of funds to the courts. <i>Advisory body staff will coordinate with Budget Services to ensure its review of relevant materials.</i></p> <p>Internal/External Stakeholders: Trial and appellate courts, trial and appellate litigants; all draft proposals will circulate for public comment.</p> <p>AC Collaboration: Civil and Small Claims Advisory Committee</p>								
3.	Appellate Caseflow Workgroup Recommendations Regarding Record Preparation	Priority: 1b							
	<p>Supported Strategic Plan Branch Goals:</p> <table><tr><td>I Access <input checked="" type="checkbox"/></td><td>II Independence <input type="checkbox"/></td><td>III Modernization <input checked="" type="checkbox"/></td><td>IV Quality <input checked="" type="checkbox"/></td><td>V Education <input type="checkbox"/></td><td>VI Infrastructure <input type="checkbox"/></td><td>VII Funding <input type="checkbox"/></td></tr></table>		I Access <input checked="" type="checkbox"/>	II Independence <input type="checkbox"/>	III Modernization <input checked="" type="checkbox"/>	IV Quality <input checked="" type="checkbox"/>	V Education <input type="checkbox"/>	VI Infrastructure <input type="checkbox"/>	VII Funding <input type="checkbox"/>
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	<p>Project Summary: Consider changes to rules and forms relating to preparation of the record on appeal. The project proposals were recommended by the Appellate Caseflow Workgroup and referred to the committee by the Executive and Planning Committee.</p> <ul style="list-style-type: none">Consider amending the applicable rules to streamline or reduce the number of tasks required by superior court clerks in preparing the record on appeal and revising related forms as necessary. The Appellate Caseflow Workgroup noted that the burden of compiling the clerk’s transcript can cause delays in the early stages of appeals. It thus encouraged the council to consider ways to reduce the tasks superior court clerks are required to perform in the record preparation process.Consider revising the record designation forms and, if necessary, amending the applicable rules to make the record designation process simpler, clearer, and more efficient. There are currently 10 forms (including one information sheet) that litigants use to designate/create the record in civil and criminal cases, with the precise forms to be used depending on the circumstances of the case.								

#	New or One-Time Projects													
	<ul style="list-style-type: none">Consider amending rules to allow and encourage parties to elect to proceed by appendix on appeal. The Appellate Caseflow Workgroup determined that the parties’ use of appendixes can expedite the record preparation process. <p>Status/Timeline: This proposal was previously included as project 2 on the committee’s approved annual agenda for 2024–2025 with a proposed completion date of January 1, 2027.</p> <p>Fiscal Impact/Staff Resources: Committee staff</p> <p><input type="checkbox"/> Check this box if this project may result in an allocation or distribution of funds to the courts. <i>Advisory body staff will coordinate with Budget Services to ensure its review of relevant materials.</i></p> <p>Internal/External Stakeholders: Trial and appellate courts, appellate litigants; all draft proposals will circulate for public comment.</p> <p>AC Collaboration: Court Executives Advisory Committee; Information Technology Advisory Committee</p>													
4.	Submission of Excerpts of Record on Appeal with Briefs						Priority: 1b							
	<p>Supported Strategic Plan Branch Goals:</p> <table><tr><td>I Access <input type="checkbox"/></td><td>II Independence <input type="checkbox"/></td><td>III Modernization <input checked="" type="checkbox"/></td><td>IV Quality <input checked="" type="checkbox"/></td><td>V Education <input type="checkbox"/></td><td>VI Infrastructure <input type="checkbox"/></td><td>VII Funding <input type="checkbox"/></td></tr></table> <p>Project Summary: Consider amending applicable rules to encourage or require appellants to submit, along with their briefs, excerpts of the record containing those parts of the record that are relevant and useful to the court in deciding the appeal. The proposal was recommended by the Appellate Caseflow Workgroup and referred to the committee by the Executive and Planning Committee. Submission of excerpts of record alongside a party’s brief may aid the judges’ or justices’ review of the party’s arguments on appeal by providing an easily accessible and clearly citable subset of the key parts of the record.</p> <p>Status/Timeline: This proposal was previously included as project 3 on the committee’s approved annual agenda for 2024–2025 with a proposed completion date of January 1, 2027.</p> <p>Fiscal Impact/Staff Resources: Committee staff</p> <p><input type="checkbox"/> Check this box if this project may result in an allocation or distribution of funds to the courts. <i>Advisory body staff will coordinate with Budget Services to ensure its review of relevant materials.</i></p>							I Access <input type="checkbox"/>	II Independence <input type="checkbox"/>	III Modernization <input checked="" type="checkbox"/>	IV Quality <input checked="" type="checkbox"/>	V Education <input type="checkbox"/>	VI Infrastructure <input type="checkbox"/>	VII Funding <input type="checkbox"/>
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#	New or One-Time Projects													
	<p>Internal/External Stakeholders: Appellate courts, appellate litigants; all draft proposals will circulate for public comment.</p> <p>AC Collaboration: n/a</p>													
5.	Amend Rules on Settled Statements (new project)						Priority: 1c							
Supported Strategic Plan Branch Goals:														
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<p>Project Summary: Consider amending rules on settled statements to clarify/simplify the process. This proposal originated with the Appellate Efficiency Ad Hoc Subcommittee's work on how to simplify/improve the record preparation process prompted by the suggestions of the Appellate Caseflow Workgroup (see project 4 above).</p> <p>Status/Timeline: Invitation to comment planned for Spring Cycle, with anticipated effective date of January 1, 2027</p> <p>Fiscal Impact/Staff Resources: Committee staff</p> <p><input type="checkbox"/> Check this box if this project may result in an allocation or distribution of funds to the courts. <i>Advisory body staff will coordinate with Budget Services to ensure its review of relevant materials.</i></p> <p>Internal/External Stakeholders: Trial and appellate courts, appellate litigants; all draft proposals will circulate for public comment.</p> <p>AC Collaboration: Court Executives Advisory Committee</p>														
6.	Clarify Rule 8.140						Priority: 2b							
Supported Strategic Plan Branch Goals:														
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#	New or One-Time Projects													
	<p>Project Summary: Consider what action, if any, such as education or rule amendment relating to rule 8.140, is necessary to clarify the circumstances under which a default notice must be sent. This change was suggested by the chair of a County Bar Association Appellate Law Section.</p> <p>Status/Timeline: This item was previously included as item 8 on the committee’s approved annual agenda for 2024–2025. After initial subcommittee analysis, the committee deferred the proposal for additional analysis. Invitation to comment planned for Spring Cycle, with anticipated effective date of January 1, 2027.</p> <p>Fiscal Impact/Staff Resources: Committee staff</p> <p><input type="checkbox"/> Check this box if this project may result in an allocation or distribution of funds to the courts. <i>Advisory body staff will coordinate with Budget Services to ensure its review of relevant materials.</i></p> <p>Internal/External Stakeholders: Trial and appellate courts, appellate litigants; any proposal will circulate for public comment.</p> <p>AC Collaboration: n/a</p>													
7.	Form for Court to Issue an Order on an Extension of Time Application in the Appellate Division (new project)						Priority: 2b							
	<p>Supported Strategic Plan Branch Goals:</p> <table><tr><td>I Access <input checked="" type="checkbox"/></td><td>II Independence <input type="checkbox"/></td><td>III Modernization <input type="checkbox"/></td><td>IV Quality <input checked="" type="checkbox"/></td><td>V Education <input type="checkbox"/></td><td>VI Infrastructure <input type="checkbox"/></td><td>VII Funding <input type="checkbox"/></td></tr></table>							I Access <input checked="" type="checkbox"/>	II Independence <input type="checkbox"/>	III Modernization <input type="checkbox"/>	IV Quality <input checked="" type="checkbox"/>	V Education <input type="checkbox"/>	VI Infrastructure <input type="checkbox"/>	VII Funding <input type="checkbox"/>
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	<p>Project Summary: Consider developing a new form for the appellate division to issue an order on an extension of time application. This proposal originated with a comment by a bar association.</p> <p>Status/Timeline: Invitation to comment planned for Spring Cycle, with anticipated effective date of January 1, 2027</p> <p>Fiscal Impact/Staff Resources: Committee staff</p> <p><input type="checkbox"/> Check this box if this project may result in an allocation or distribution of funds to the courts. <i>Advisory body staff will coordinate with Budget Services to ensure its review of relevant materials.</i></p> <p>Internal/External Stakeholders: Trial and appellate courts, appellate litigants; all draft proposals will circulate for public comment.</p>													

#	New or One-Time Projects													
	<i>AC Collaboration:</i> n/a													
8.	Electronic Exhibits in the Court of Appeal (new project)						Priority: 2b PLACEHOLDER							
Supported Strategic Plan Branch Goals:														
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<p>Project Summary: Consider what action, if any, such as education, rule adoption or rule amendment, is necessary to clarify requirements for use of an electronic exhibits platform and increase the efficiency of the transmission of exhibits in the Court of Appeal. This change was suggested by the Executive Officer of one of the Courts of Appeal. Clarification of the rules with respect to electronic exhibits was also suggested during the Appellate Efficiency Ad Hoc Subcommittee's work on how to simplify/improve the record preparation process prompted by the suggestions of the Appellate Caseflow Workgroup (see project 6 above).</p> <p>Status/Timeline: Pending finalization of electronic exhibit platform in the Court of Appeal. This priority 2 project is included on the annual agenda with a recommendation that work be deferred until finalization of electronic exhibit platform in the Court of Appeal.</p> <p>Fiscal Impact/Staff Resources: Committee staff <input type="checkbox"/> Check this box if this project may result in an allocation or distribution of funds to the courts. <i>Advisory body staff will coordinate with Budget Services to ensure its review of relevant materials.</i></p> <p>Internal/External Stakeholders: Appellate courts, appellate litigants; all draft proposals will circulate for public comment.</p> <p>AC Collaboration: Information Technology Advisory Committee</p>														
9.	Clarify Rule 8.104(a)(1)(A) (new project)						Priority: 2b							
Supported Strategic Plan Branch Goals:														
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#	New or One-Time Projects								
	<p>Project Summary: Consider what action, if any, such as education or rule amendment relating to rule 8.104(a)(1)(A), is necessary to clarify the language “showing the date either was served” to make it more consistent with the terminology of Code of Civil Procedure sections 1010.6 and 1013b, the conclusions in <i>Wing Inflatables, Inc v. Certain Underwriters at Lloyd’s</i> (2025) 112 Cal.App.5th 1108 [order denying motion], and the “single document” rule in <i>Alan v. American Honda Motor Co., Inc.</i> (2007) 40 Cal.4th 894, 904.</p> <p>Status/Timeline: Invitation to comment planned for Spring Cycle, with anticipated effective date of January 1, 2027</p> <p>Fiscal Impact/Staff Resources: Committee staff</p> <p><input type="checkbox"/> Check this box if this project may result in an allocation or distribution of funds to the courts. <i>Advisory body staff will coordinate with Budget Services to ensure its review of relevant materials.</i></p> <p>Internal/External Stakeholders: Appellate courts, appellate litigants; all draft proposals will circulate for public comment.</p> <p>AC Collaboration: n/a</p>								
10.	<p>Respondent’s Designation of Reporters’ Transcripts in Code of Civil Procedure section 1294.4 Appeals (one-time project)</p> <p>Supported Strategic Plan Branch Goals:</p> <table><tr><td>I Access <input checked="" type="checkbox"/></td><td>II Independence <input type="checkbox"/></td><td>III Modernization <input type="checkbox"/></td><td>IV Quality <input checked="" type="checkbox"/></td><td>V Education <input type="checkbox"/></td><td>VI Infrastructure <input type="checkbox"/></td><td>VII Funding <input type="checkbox"/></td></tr></table>	I Access <input checked="" type="checkbox"/>	II Independence <input type="checkbox"/>	III Modernization <input type="checkbox"/>	IV Quality <input checked="" type="checkbox"/>	V Education <input type="checkbox"/>	VI Infrastructure <input type="checkbox"/>	VII Funding <input type="checkbox"/>	<p>Priority: 2b</p>
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	<p>Project Summary: Appeals under Code of Civil Procedure section 1294.4 from an order dismissing or denying a petition to compel arbitration must be decided within 100 days. Under rule 8.713, appellants must file a record designation with the notice of appeal and any reporter’s transcript must be filed within 10 days. However, the rule does not provide for respondent to designate any additional reporter’s transcript. This project would consider amending the rule to provide for respondent’s designation and to establish the time for doing so. The project was recommended by a committee member to close a gap in the rule that is reported to have been problematic.</p> <p>Status/Timeline: This priority 2 project was previously included as project 9 on the committee’s approved annual agenda for 2024–2025 with a completion date of January 1, 2027, to allow the committee to consider this project alongside other record-related projects. It is included on this annual agenda because it relates to the record designation process, and including this project with the other record designation proposals in project 6 above would promote efficiency and reduce the burden of separate review and implementation of related proposals. Invitation to comment planned for Spring Cycle, with anticipated effective date of January 1, 2027.</p>								

#	New or One-Time Projects								
	<p>Fiscal Impact/Staff Resources: Committee staff</p> <p><input type="checkbox"/> Check this box if this project may result in an allocation or distribution of funds to the courts. <i>Advisory body staff will coordinate with Budget Services to ensure its review of relevant materials.</i></p> <p>Internal/External Stakeholders: Appellate courts, appellate litigants; all draft proposals will circulate for public comment.</p> <p>AC Collaboration: Civil and Small Claims Advisory Committee; Court Executives Advisory Committee; Information Technology Advisory Committee</p>								
11.	Amend the File Size Limit for Electronic Filings in the Court of Appeal (one-time project)	Priority: 2b							
	<p>Supported Strategic Plan Branch Goals:</p> <table><tr><td>I Access <input checked="" type="checkbox"/></td><td>II Independence <input type="checkbox"/></td><td>III Modernization <input checked="" type="checkbox"/></td><td>IV Quality <input checked="" type="checkbox"/></td><td>V Education <input type="checkbox"/></td><td>VI Infrastructure <input type="checkbox"/></td><td>VII Funding <input type="checkbox"/></td></tr></table>		I Access <input checked="" type="checkbox"/>	II Independence <input type="checkbox"/>	III Modernization <input checked="" type="checkbox"/>	IV Quality <input checked="" type="checkbox"/>	V Education <input type="checkbox"/>	VI Infrastructure <input type="checkbox"/>	VII Funding <input type="checkbox"/>
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	<p>Project Summary: Currently, rule 8.74(a)(5) limits the size of an electronic filing in the Court of Appeal to 25 megabytes. This limitation was included when the Courts of Appeal accepted such filings via email. It has been suggested that with full implementation of e-filing in the Courts of Appeal, this limitation is no longer necessary. This change was suggested by the Executive Officer of one of the Courts of Appeal.</p> <p>Status/Timeline: Pending vendor and funding approval for increased e-filing size limit. This item was previously included as item 7 on the committee’s approved annual agenda for 2024–2025, but the subcommittee deferred the proposal because funding for an increase in the file-size limit has not been finalized.</p> <p>Fiscal Impact/Staff Resources: Committee staff</p> <p><input type="checkbox"/> Check this box if this project may result in an allocation or distribution of funds to the courts. <i>Advisory body staff will coordinate with Budget Services to ensure its review of relevant materials.</i></p> <p>Internal/External Stakeholders: Appellate courts, appellate litigants; any proposal will circulate for public comment.</p> <p>AC Collaboration: Information Technology Advisory Committee</p>								

#	New or One-Time Projects	
12.	Publication and Posting of Appellate Division Opinions Certified for Publication Supported Strategic Plan Branch Goals: <div> <div>I Access <input type="checkbox"/></div> <div>II Independence <input type="checkbox"/></div> <div>III Modernization <input checked="" type="checkbox"/></div> <div>IV Quality <input checked="" type="checkbox"/></div> <div>V Education <input type="checkbox"/></div> <div>VI Infrastructure <input type="checkbox"/></div> <div>VII Funding <input type="checkbox"/></div> </div> <p>Project Summary: Currently, appellate division opinions certified for publication are posted on the California courts website after the time provided for the Court of Appeal to order transfer, and only if transfer is not ordered. The current procedures were developed in part based on provisions in the California Style Manual (CSM). The CSM is now under review. This project would consider possible changes to the rules for transfer and publication based on the subject matter expertise of the Supreme Court and the Reporter of Decisions. This is a priority 1 project because it will improve access to the development of the law in unlawful detainer, debt collection, and fee waiver cases, among others.</p> <p>Status/Timeline: Waiting for CSM revisions to be finalized by the Supreme Court. This item was previously approved by the Rules Committee as a placeholder. It is on hold pending action by the Supreme Court to revise the California Style Manual and consider changes to publication rules and procedures for posting opinions on the website.</p> <p>Fiscal Impact/Staff Resources: Committee staff <input type="checkbox"/> Check this box if this project may result in an allocation or distribution of funds to the courts. <i>Advisory body staff will coordinate with Budget Services to ensure its review of relevant materials.</i></p> <p>Internal/External Stakeholders: The Supreme Court, Reporter of Decisions, JC Information Technology; all draft rules proposals will circulate for public comment.</p> <p>AC Collaboration: n/a</p>	Priority: 1 PLACEHOLDER
13.	Clarify the Format Requirements that Apply to Both Paper and E-Filed Briefs (one-time project) Supported Strategic Plan Branch Goals: <div> <div>I Access <input type="checkbox"/></div> <div>II Independence <input type="checkbox"/></div> <div>III Modernization <input checked="" type="checkbox"/></div> <div>IV Quality <input checked="" type="checkbox"/></div> <div>V Education <input type="checkbox"/></div> <div>VI Infrastructure <input type="checkbox"/></div> <div>VII Funding <input type="checkbox"/></div> </div>	Priority: 2b DEFERRED

#	New or One-Time Projects													
	<p>Project Summary: Consider amending rule 8.204(b) to clarify the formatting requirements that apply to both paper and e-filed briefs. This project was suggested by a member of the committee.</p> <p>Status/Timeline: Deferred based on prioritization of committee resources. This priority 2 project to improve access and quality of justice and service to the public was previously included as project 11 on the committee’s approved annual agenda for 2024–2025 but action on the project was deferred. This project is included on the annual agenda with a recommendation that work be deferred until next year in recognition of budgetary pressure and to reduce burdens on the courts.</p> <p>Fiscal Impact/Staff Resources: Committee staff</p> <p><input type="checkbox"/> Check this box if this project may result in an allocation or distribution of funds to the courts. <i>Advisory body staff will coordinate with Budget Services to ensure its review of relevant materials.</i></p> <p>Internal/External Stakeholders: Trial and appellate courts, appellate litigants; any proposal will circulate for public comment.</p> <p>AC Collaboration: n/a</p>													
14.	Revise Form JV-822 (new project)						Priority: 2b DEFERRED							
	<p>Supported Strategic Plan Branch Goals:</p> <table><tr><td>I Access <input checked="" type="checkbox"/></td><td>II Independence <input type="checkbox"/></td><td>III Modernization <input checked="" type="checkbox"/></td><td>IV Quality <input checked="" type="checkbox"/></td><td>V Education <input type="checkbox"/></td><td>VI Infrastructure <input type="checkbox"/></td><td>VII Funding <input type="checkbox"/></td></tr></table> <p>Project Summary: Consider revising the <i>Notice of Intent to File Writ Petition and Request for Record to Review Order Designating or Denying Specific Placement of a Dependent Child After Termination of Parental Rights</i> (form JV-822) to more accurately reflect rule 8.456 of the California Rules of Court. This project was suggested by a Staff Attorney of a Superior Court.</p> <p>Status/Timeline: Deferred based on prioritization of committee resources. This priority 2 project is included on the annual agenda with a recommendation that work be deferred until next year in recognition of budgetary pressure and to reduce burdens on the courts.</p> <p>Fiscal Impact/Staff Resources: Committee staff, Center for Families, Children & the Courts</p> <p><input type="checkbox"/> Check this box if this project may result in an allocation or distribution of funds to the courts. <i>Advisory body staff will coordinate with Budget Services to ensure its review of relevant materials.</i></p>							I Access <input checked="" type="checkbox"/>	II Independence <input type="checkbox"/>	III Modernization <input checked="" type="checkbox"/>	IV Quality <input checked="" type="checkbox"/>	V Education <input type="checkbox"/>	VI Infrastructure <input type="checkbox"/>	VII Funding <input type="checkbox"/>
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#	New or One-Time Projects								
	<p>Internal/External Stakeholders: Trial and appellate courts, appellate litigants; all draft proposals will circulate for public comment.</p> <p>AC Collaboration: Family and Juvenile Law Advisory Committee</p>								
15.	Amend the Filing Fee Recipient in Rule 8.100 (new project)	Priority: 2b DEFERRED							
	<p>Supported Strategic Plan Branch Goals:</p> <table border="0"> <tr> <td>I Access <input checked="" type="checkbox"/></td> <td>II Independence <input type="checkbox"/></td> <td>III Modernization <input checked="" type="checkbox"/></td> <td>IV Quality <input checked="" type="checkbox"/></td> <td>V Education <input type="checkbox"/></td> <td>VI Infrastructure <input type="checkbox"/></td> <td>VII Funding <input type="checkbox"/></td> </tr> </table>		I Access <input checked="" type="checkbox"/>	II Independence <input type="checkbox"/>	III Modernization <input checked="" type="checkbox"/>	IV Quality <input checked="" type="checkbox"/>	V Education <input type="checkbox"/>	VI Infrastructure <input type="checkbox"/>	VII Funding <input type="checkbox"/>
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	<p>Project Summary: Consider amending rule 8.100 of the California Rules of Court to require the fee for filing a notice of appeal be paid to the Court of Appeal instead of the Superior Court. This change was suggested by the California Academy of Appellate Lawyers.</p> <p>Status/Timeline: Deferred based on prioritization of committee resources. This priority 2 project is included on the annual agenda with a recommendation that work be deferred until next year in recognition of budgetary pressure, to reduce burdens on the courts.</p> <p>Fiscal Impact/Staff Resources: Committee staff</p> <p><input type="checkbox"/> Check this box if this project may result in an allocation or distribution of funds to the courts. <i>Advisory body staff will coordinate with Budget Services to ensure its review of relevant materials.</i></p> <p>Internal/External Stakeholders: Appellate courts, appellate litigants; all draft proposals will circulate for public comment.</p> <p>AC Collaboration: Court Executives Advisory Committee</p>								

#	Ongoing Projects and Activities								
1.	Improve Rules and Forms	Priority: 1							
Supported Strategic Plan Branch Goals:									
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<p>Project Summary: Working through the Rules Subcommittee and the Appellate Division Subcommittee, review case law changes that impact appellate courts and appellate procedure and suggestions from committee members, judicial officers, court staff, the bar, and the public concerning appellate rules and forms and appellate administration. Make recommendations to the Judicial Council for necessary changes to appellate rules, standards, and forms (rule 10.21).</p> <p>Status/Timeline: Ongoing</p> <p>Fiscal Impact/Staff Resources: Committee staff; potentially others depending on the project. <input type="checkbox"/> Check this box if this project may result in an allocation or distribution of funds to the courts.</p> <p>Internal/External Stakeholders: Depends on the project; all draft proposals circulate for public comment.</p> <p>AC Collaboration: As appropriate, depending on the project.</p>									
2.	Review Pending Legislation	Priority: 1							
Supported Strategic Plan Branch Goals:									
<table border="0"> <tr> <td>I Access <input type="checkbox"/></td> <td>II Independence <input type="checkbox"/></td> <td>III Modernization <input checked="" type="checkbox"/></td> <td>IV Quality <input checked="" type="checkbox"/></td> <td>V Education <input type="checkbox"/></td> <td>VI Infrastructure <input type="checkbox"/></td> <td>VII Funding <input type="checkbox"/></td> </tr> </table>			I Access <input type="checkbox"/>	II Independence <input type="checkbox"/>	III Modernization <input checked="" type="checkbox"/>	IV Quality <input checked="" type="checkbox"/>	V Education <input type="checkbox"/>	VI Infrastructure <input type="checkbox"/>	VII Funding <input type="checkbox"/>
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<p>Project Summary: Working through the Legislative Subcommittee, review pending legislation affecting appellate procedure and court administration and make recommendations to the Legislation Committee as to whether the Judicial Council should support or oppose the legislation (rule 10.34).</p> <p>Status/Timeline: Ongoing</p> <p>Fiscal Impact/Staff Resources: Committee staff, Governmental Affairs <input type="checkbox"/> Check this box if this project may result in an allocation or distribution of funds to the courts.</p>									

#	Ongoing Projects and Activities													
	<p>Internal/External Stakeholders: California Legislature</p> <p>AC Collaboration: TBD, depending on subject matter and scope of legislation. In the past, the committee has collaborated with the Civil and Small Claims Advisory Committee and the Criminal Law Advisory Committee</p>													
3.	Review Enacted Legislation						Priority: 1							
<p>Supported Strategic Plan Branch Goals:</p> <table border="0"> <tr> <td>I Access <input type="checkbox"/></td> <td>II Independence <input type="checkbox"/></td> <td>III Modernization <input checked="" type="checkbox"/></td> <td>IV Quality <input checked="" type="checkbox"/></td> <td>V Education <input type="checkbox"/></td> <td>VI Infrastructure <input type="checkbox"/></td> <td>VII Funding <input type="checkbox"/></td> </tr> </table>								I Access <input type="checkbox"/>	II Independence <input type="checkbox"/>	III Modernization <input checked="" type="checkbox"/>	IV Quality <input checked="" type="checkbox"/>	V Education <input type="checkbox"/>	VI Infrastructure <input type="checkbox"/>	VII Funding <input type="checkbox"/>
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<p>Project Summary: Review all enacted legislation referred to the committee by the Judicial Council's Governmental Affairs office that may have an impact on appellate procedure and court administration, and, where appropriate, propose to the Judicial Council rules and forms to implement the legislation or to bring rules and forms into conformity with it.</p> <p>Status/Timeline: Ongoing</p> <p>Fiscal Impact/Staff Resources: Committee staff, Governmental Affairs</p> <p><input type="checkbox"/> Check this box if this project may result in an allocation or distribution of funds to the courts.</p> <p>Internal/External Stakeholders: n/a</p> <p>AC Collaboration: As appropriate, depending on the legislation</p>														
4.	Provide Subject-Matter Expertise						Priority: 1							
<p>Supported Strategic Plan Branch Goals:</p> <table border="0"> <tr> <td>I Access <input checked="" type="checkbox"/></td> <td>II Independence <input type="checkbox"/></td> <td>III Modernization <input checked="" type="checkbox"/></td> <td>IV Quality <input checked="" type="checkbox"/></td> <td>V Education <input type="checkbox"/></td> <td>VI Infrastructure <input type="checkbox"/></td> <td>VII Funding <input type="checkbox"/></td> </tr> </table>								I Access <input checked="" type="checkbox"/>	II Independence <input type="checkbox"/>	III Modernization <input checked="" type="checkbox"/>	IV Quality <input checked="" type="checkbox"/>	V Education <input type="checkbox"/>	VI Infrastructure <input type="checkbox"/>	VII Funding <input type="checkbox"/>
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#	Ongoing Projects and Activities													
	<p>Project Summary: Serve as subject matter resource for the Judicial Council, its internal committees, other advisory bodies, and Judicial Council staff to support legal work, and to avoid duplication of efforts and contribute to the development of recommendations for council action. Such efforts may include providing appellate procedural expertise and review to working groups, advisory committees, and subcommittees as needed.</p> <p>Status/Timeline: Ongoing</p> <p>Fiscal Impact/Staff Resources: Governmental Affairs, Legal Services, Criminal Justice Services, and Center for Families, Children & the Courts</p> <p><input type="checkbox"/> Check this box if this project may result in an allocation or distribution of funds to the courts.</p> <p>Internal/External Stakeholders: N/A</p> <p>AC Collaboration: As appropriate, depending on the project for which advice or consultation was requested</p>													
5.	Rules and Forms: Miscellaneous Technical Changes						Priority: 2a							
<p>Supported Strategic Plan Branch Goals:</p> <table border="0"> <tr> <td>I Access <input type="checkbox"/></td> <td>II Independence <input type="checkbox"/></td> <td>III Modernization <input checked="" type="checkbox"/></td> <td>IV Quality <input checked="" type="checkbox"/></td> <td>V Education <input type="checkbox"/></td> <td>VI Infrastructure <input type="checkbox"/></td> <td>VII Funding <input type="checkbox"/></td> </tr> </table>								I Access <input type="checkbox"/>	II Independence <input type="checkbox"/>	III Modernization <input checked="" type="checkbox"/>	IV Quality <input checked="" type="checkbox"/>	V Education <input type="checkbox"/>	VI Infrastructure <input type="checkbox"/>	VII Funding <input type="checkbox"/>
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<p>Project Summary: Develop rule and form changes as necessary to correct technical errors meeting the criteria of rule 10.22(d)(2): “a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy”</p> <p>Status/Timeline: Ongoing</p> <p>Fiscal Impact/Staff Resources: Committee staff</p> <p><input type="checkbox"/> Check this box if this project may result in an allocation or distribution of funds to the courts.</p> <p>Internal/External Stakeholders: n/a</p> <p>AC Collaboration: n/a</p>														

III. LIST OF 2024–2025 PROJECT ACCOMPLISHMENTS

#	Project Highlights and Achievements
1.	<i>New Projects and Fees for Expedited CEQA Review.</i> The committee, jointly with the Civil and Small Claims Advisory Committee, recommended amending eight rules of the California Rules of Court governing the expedited resolution of actions and proceedings brought under the California Environmental Quality Act to implement legislation requiring inclusion of “environmental leadership media campus project” for streamlined review and specify the fees that applicants of this project type must pay to cover the costs of the trial and appellate courts in adjudicating challenges to those projects.
2.	<i>Remote Appearances at Oral Argument in the Appellate Division.</i> The committee recommended amending rules 8.885 and 8.929 of the California Rules of Court to reflect modern videoconferencing technology and facilitate remote participation by both parties and appellate division judges.
3.	<i>Extension of Time in Misdemeanor and Infraction Appeals.</i> The committee recommended approving a new form for requesting extensions of time to file a brief in misdemeanor and infraction appeals.
4.	<i>Appellate Caseflow Workgroup Recommendations Regarding Record Preparation.</i> The committee began work to develop recommendations for amending rules and revising forms relating to preparation of the record on appeal.
5.	<i>E-Filing File Size Limit.</i> The committee began work to develop recommendations for amending the rule regarding the file size limit for e-filing in the Court of Appeal to increase the maximum allowable file size.
6.	<i>Record Procurement Default Notice.</i> The committee began work to develop recommendations for amending the rule governing default notices for record procurement to clarify the requirements.



Judicial Council of California

455 Golden Gate Avenue · San Francisco, California 94102-3688

Telephone 415-865-4200 · Fax 415-865-4205

MEMORANDUM

Date

October 22, 2025

Action Requested

Please Review

To

Members of the Appellate Advisory
Committee

Deadline

October 27, 2025

From

Jeremy Varon, Attorney
Legal Services

Contact

Jeremy Varon
415-865-7424 phone
jeremy.varon@jud.ca.gov

Subject

Racial Justice Act rule and form changes

Introduction

Project 1 on the committee's 2025-2026 Annual Agenda is a joint project with the Criminal Law Advisory Committee (CLAC) that contemplates two appellate rule and form changes related to the Racial Justice Act (RJA). First, the Administrative Presiding Justices, along with managing attorneys and supervising writ attorneys, have raised an issue with how RJA claims are handled in the current version of *Petition for Writ of Habeas Corpus* (form HC-001). Second, the Legislature passed AB 1071 (Stats. 2025, ch. 721), which will revise Penal Code section 745, requiring amendments to rule 8.385. Because this is a joint project, CLAC is also considering the revisions to form HC-001, along with similar amendments to the criminal rules and forms.

CONFIDENTIAL: Attorney-Client Privilege, Attorney Work Product

DO NOT DISTRIBUTE: For use at a closed meeting; intended to support deliberative advisory body's decision-making on policy proposals

Form Changes Urgently Needed to Remedy a Problem

As of September 1, 2024, *Petition for Writ of Habeas Corpus* (form HC-001, attached) allows a petitioner to raise RJA-related claims for relief. AAC and CLAC previously considered creating a separate RJA habeas form but decided against it due to the overlap between information needed for a RJA claim and other habeas claims, and because a single form enables a petitioner to raise multiple claims in one petition rather than having to submit separate petitions when seeking to raise RJA claims and other claims for relief.

Request for separate RJA habeas petition form

The appellate court managing attorneys and supervising writ attorneys have requested the council adopt a separate RJA habeas petition (see attachment). After the rollout of the updated habeas petition form with RJA claims, the attorneys observed that petitioners who are not seeking RJA-related relief seem to be confused by the RJA-related items in form HC-001 and are checking RJA-related boxes even though they are not seeking RJA-related relief. Because courts must state the factual and legal basis for a finding that the petitioner has not established a prima facie showing of entitlement to relief in an RJA claim, courts are having to make more detailed denial orders because of this confusion. In support of the request, the attorneys also point to differences between non-RJA claims and RJA claims, such as the timing and showing required for appointment of counsel and discovery requests, and the applicability of certain habeas procedural bars. The attorneys note that there is precedent for separate habeas forms pertaining to particular statutes, such as mental health-related petitions under the LPS Act (form HC-002), and commitments to a mental treatment facility in connection with a criminal case (form HC-003).

The attorneys also note the following issues with the existing form:

- The current form does not easily allow for a petitioner to elaborate on RJA-related claims. There are checkboxes in item 18 to indicate the basis for the RJA claim but there is no space for the petitioner to explain what happened, and no direction to go back to item 6 (which requests information supporting the claims).
- The discovery checkbox does not make clear that it is based on specific RJA subsections and implies that the petitioner will receive discovery just by asking. The checkbox does not adequately reflect evolving discovery standards in RJA law.
- The form does not ask for information that might help the court make a determination about appointment of counsel.

Subcommittee and Workgroup Meetings

The CLAC workgroup met on September 29 and decided the best approach would be to divide the current form HC-001 into a cover sheet with two separate attachments—one for RJA claims and one for all other habeas claims. At the AAC Rules Subcommittee’s meeting on October 3, members preferred to create a separate form for RJA claims. In a joint meeting on October 17, the CLAC workgroup and the AAC Rules Subcommittee together decided to maintain a single form but to delineate more clearly the questions related to RJA claims and those pertaining to all other habeas claims by creating separate sections within the single form.

The subcommittee and workgroup were primarily concerned with balancing the interest in ensuring self-represented litigants have all necessary information in front of them with the interest in preventing self-represented litigants from checking the RJA claim box simply because there is a box on the form they are using. Members were worried that separate forms or cover sheet with attachments (which would in practice be separate forms) would result in self-represented litigants being aware of only one of the forms.

Members of the CLAC workgroup also expressed concern that separating the RJA habeas claims and other habeas claims into separate forms would result in forms for the same case being filed separately under different numbers, thus causing delays in the processing of those claims. Courts of appeal and larger superior courts, however, reported that this would not be an issue.

The revisions include the following:

- Separating the petition into three subparts (A, B, and C). Part A is required for all petitioners and asks for information relevant to both RJA and non-RJA claims. Part B is for non-RJA claims, and part C is for RJA claims. A petitioner with only non-RJA claims would only fill out part B, whereas a petitioner with only RJA claims would fill out part C. Petitioners with both claims would fill out parts B and C. The subparts are explained in an instruction on page 1, in a sentence preceding each subpart, and on proposed part A, item 17.
 - Part A, item 17 includes two options, a sentence explaining the subparts or a chart. Which does the committee prefer?
- Part B is for claims that do not involve the RJA. It allows the petitioner to state briefly their claim for relief (current item #6 on HC-001), explain what administrative review was sought or not sought for a petition raising concerns about confinement (current item 10), and sign a declaration under penalty of perjury about the truth of the petition.

- Part C is for claims involving the RJA and allows a petitioner to explain the basis of their claim and provide the court with additional information relevant to appointment of counsel and discovery.
 - Current item 18a would be renumbered as part C, item 1 and revised to remove references to whether the petitioner is currently serving a sentence and whether the petition was filed after January 1, 2025 or 2026, and replaced with a checkbox indicating that judgment was for a felony conviction.
 - Current item 18b would be renumbered as part C, item 2 and would include an introductory sentence and space for the petitioner to explain the basis of the claim.
 - Re: appointment of counsel, a question would be added about whether the petitioner was represented by appointed counsel in trial and/or on appeal, to assist with an indigency determination.
 - The existing request for discovery would be replaced with plain language.
 - Adding new items 7, 8, and 9 on whether the petitioner previously attempted to pursue discovery, directing the petitioner to attach any relevant information obtained through discovery, and whether a previous discovery request was filed.

Rule Amendments Mandated by Legislation

Effective January 1, 2026, AB 1071 will amend Penal Code section 1473(e) to read:

Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745, if that section applies based on the date of judgment as provided in subdivision (j) of Section 745.

- (1) Any and all definitions and legal thresholds specified in Section 745 are controlling for purposes of claims alleging a violation of subdivision (a) of Section 745 contained within a habeas petition filed under this section.
- (2) A petitioner, or their counsel, may file a motion for relevant evidence under subdivision (d) of Section 745 upon the prosecution of a petition under this subdivision, or in preparation to file a petition.

- (3) A petition raising a claim of this nature for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition.
- (4) If the petitioner has a habeas corpus petition pending in state court, but it has not yet been decided, the petitioner may amend the existing petition with a claim that the petitioner's conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745.
- (5) The petition shall state if the petitioner requests appointment of counsel and the court shall appoint counsel if the petitioner cannot afford counsel and either the petition pleads a plausible allegation of a violation of subdivision (a) of Section 745 or the State Public Defender requests counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment.
- (6) The court shall review a petition raising a claim pursuant to Section 745 and shall determine if the petitioner has made a prima facie showing. A prima facie determination shall be based on the petitioner's showing and the record. The court may request an informal response from the state.
 - (A) If the petitioner makes a prima facie showing, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause. The defendant may appear remotely, and the court may conduct the hearing through the use of remote technology, unless counsel indicates that the defendant's presence in court is needed.
 - (B) If the court determines that the petitioner has not established a prima facie showing, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion.

Rule 8.365¹

Based on the above amendments to section 1473(e), the subcommittee recommends the following changes to rule 8.365.

¹ In this joint proposal, the Criminal Law Advisory Committee is proposing similar amendments to the criminal rules.

- In 8.365(d), order to show cause, add a new provision stating that when a petition raises a RJA claim, the court must issue an OSC if the petitioner has made a prima facie showing as defined under section 745(h), and state that the determination must be based on the petitioner’s showing and the record.
- Add an Advisory Committee Comment for 8.365(b) clarifying: “As in other cases, for a petition raising a claim under Penal Code section 745(a), the court may request an informal written response from the state.”
 - The bill adds “The court may request an informal response from the state,” but this is already permitted under the current rule because the state would be covered by “the respondent” and/or “the real party in interest.”
- Add an Advisory Committee Comment for 8.365(g), clarifying that the standard set out in section (2)(B) is consistent with *McIntosh v. Superior Court* (2025) 110 Cal.App.5th 33, as indicated in the Legislature’s intent as stated in AB 1071.

Discussion

1. Does the committee agree with the recommended revisions to form HC-001?
 - a. Which option in Part A, item 17 does the committee prefer—the sentence explanation or the chart?
2. Does the committee agree with the recommended revisions to rule 8.385 to incorporate AB 1071?

Attachment and Links

1. Current form HC-001, at pages 7–15
2. Proposed form HC-001, at pages 16–32
3. Proposed rule 8.385, at pages 33–36
4. [AB 1071](#)

Name: _____

Address: _____

CDCR or ID Number: _____

(Court)

PETITION FOR WRIT OF HABEAS CORPUS

No. _____

(To be supplied by the Clerk of the Court)

Petitioner	v.	Respondent
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INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction or sentence and are filing this petition in the superior court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the superior court, you should file it in the county in which you are confined.

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original of the petition and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rules 4.551 (as amended January 1, 2024) and 8.380 (as amended January 1, 2020) of the California Rules of Court. Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

- ☐ A conviction ☐ Parole ☐ A violation of the Racial Justice Act under Penal Code section 745(a)
- ☐ A sentence ☐ Credits
- ☐ Jail or prison conditions ☐ Prison discipline
- ☐ Other (specify): _____

1. Your name: _____

2. a. Where are you incarcerated? _____

b. If you are not incarcerated, are you on supervised release, such as probation, parole, mandatory supervision, or postrelease community supervision?

- ☐ Yes (specify): _____
- ☐ No

3. Why are you in custody or on supervised release? ☐ Criminal conviction ☐ Civil commitment

Answer items a through i to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

b. Penal or other code sections: _____

c. Name and location of sentencing or committing court:

d. Case number: _____

e. Date convicted or committed: _____

f. Date sentenced/Date of judgment: _____

g. Length of sentence: _____

h. When do you expect to be released? _____

i. Were you represented by counsel in the trial court? ☐ Yes ☐ No *If yes, state the attorney's name and address:*

4. What was the LAST plea you entered? (Check one):

☐ Not guilty ☐ Guilty ☐ Nolo contendere ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

☐ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

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[illegible]

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

[illegible][illegible]

7. Did you appeal from the conviction, sentence, or commitment? ☐ Yes ☐ No If yes, give the following information:
- a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"): _____
- b. Result: _____ c. Date of decision: _____
- d. Case number or citation of opinion, if known: _____
- e. All issues raised: (1) _____
(2) _____
(3) _____
- f. Were you represented by counsel on appeal? ☐ Yes ☐ No If yes, state the attorney's name and address, if known:

8. Did you seek review in the California Supreme Court? ☐ Yes ☐ No If yes, give the following information:
- a. Result: _____ b. Date of decision: _____
- c. Case number or citation of opinion, if known: _____
- d. All issues raised: (1) _____
(2) _____
(3) _____
9. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal (see *In re Dixon* (1953) 41 Cal.2d 756, 759):

10. Administrative review:
- a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Dexter* (1979) 25 Cal.3d 921, 925.) Explain what administrative review you sought or explain why you did not seek such review:

- b. Did you seek the highest level of administrative review available? ☐ Yes ☐ No
Attach documents that show you have exhausted your administrative remedies. (See People v. Duvall (1995) 9 Cal.4th 464, 474.)
11. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, sentence, commitment, or issue in any court, including this court? (See *In re Clark* (1993) 5 Cal.4th 750, 767–769 and *In re Miller* (1941) 17 Cal.2d 734, 735.)
☐ Yes If yes, continue with number 12. ☐ No If no, skip to number 14.

12. a. (1) Nature of proceeding (for example, "habeas corpus petition"): _____
- (2) Name of court: _____
- (3) Result (*attach order or explain why unavailable*): _____
- (4) Date of decision: _____
- (5) Case number or citation of opinion, if known: _____
- (6) All issues raised: (a) _____
- (b) _____
- (c) _____
- b. (1) Nature of proceeding: _____
- (2) Name of court: _____
- (3) Result (*attach order or explain why unavailable*): _____
- (4) Date of decision: _____
- (5) Case number or citation of opinion, if known: _____
- (6) All issues raised: (a) _____
- (b) _____
- (c) _____

13. If any of the courts listed in number 12 held a hearing, state name of court, date of hearing, nature of hearing, and result:

14. Explain any delay in discovering or presenting the claims for relief and in raising the claims in this petition. (See *In re Robbins* (1998) 18 Cal.4th 770, 780; Pen. Code, § 1473(e).)

15. Are you presently represented by counsel? ☐ Yes ☐ No If yes, state the attorney's name and address, if known:

16. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes ☐ No If yes, explain:

17. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

18. Answer the following questions if you are raising a claim of violation of the Racial Justice Act under Penal Code section 745(a):

a. Indicate which of the following apply to the case in which you are making a claim for violation of Penal Code section 745(a) *(check all that apply)*:

- (1) ☐ Judgment is not final (for example, because an appeal is pending),
- (2) ☐ You are currently serving a sentence in the state prison or county jail under Penal Code 1170(h) for the felony conviction in which you are raising a Racial Justice Act claim,
- (3) ☐ This petition is filed **on or after** January 1, 2025, and judgment became final for a felony conviction on or after January 1, 2015, or
- (4) ☐ This petition is filed **on or after** January 1, 2026, and judgment is for a felony conviction.

b. I request relief based on the following *(choose all that apply)*:

- (1) ☐ The judge, an attorney, a law enforcement officer, an expert, or a juror in the case exhibited bias or animus toward me because of my race, ethnicity, or national origin.
- (2) ☐ During in-court trial proceedings, the judge, an attorney, a law enforcement officer, an expert, or a juror used racially discriminatory language about my race, ethnicity, or national origin. (Racially discriminatory language does not include relaying language used by someone else that is relevant to the case, or giving a racially neutral and unbiased physical description of the suspect.)
- (3) ☐ I was charged with or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who have engaged in similar conduct and are similarly situated, **and** the prosecution more frequently sought or obtained convictions for more serious offenses against people who share my race, ethnicity, or national origin in the county where the convictions were sought or obtained.
- (4) ☐ I received a longer or more severe sentence compared to similarly situated individuals convicted of the same offense **and**:
 - (a) ☐ longer or more severe sentences were more frequently imposed for the same offense on defendants who share my race, ethnicity, or national origin than on others in that county; **and/or**
 - (b) ☐ longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins in that county.

c. Is your claim based on a statement or conduct by a judge? ☐ Yes ☐ No

If yes, please state the judge's name:

d. Do you want appointed counsel? ☐ Yes ☐ No

If yes, can you afford to hire counsel? ☐ Yes ☐ No

e. Do you request permission to amend a pending petition for writ of habeas corpus with this claim? ☐ Yes ☐ No

(1) If yes, in what court is your petition pending? _____

(2) If yes, what is the case number of your pending petition? _____

f. Do you request disclosure of evidence relevant to a potential violation of Penal Code section 745(a)? ☐ Yes ☐ No

(1) ☐ The type of records or information sought is described as follows:

(2) ☐ The reason the records or information are needed is as follows:

g. Are you raising this claim for the first time? ☐ Yes ☐ No

If no, are you raising it again because of new evidence that could not have been previously known to you?

(1) ☐ Yes (*explain*):

(2) ☐ No (*explain*):

If you need additional space to answer any question on this petition, add an extra page and indicate that your answer is "continued on additional page."

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: _____



(SIGNATURE OF PETITIONER)

Name: _____
 Address: _____

CDCR or ID Number: _____

(Court)

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner _____
 v. _____
 Respondent _____

No. _____
 (To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction or sentence and are filing this petition in the superior court, you should file it in the county that made the order.
 - If you are challenging the conditions of your confinement and are filing this petition in the superior court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
 - Answer all questions in Part A. Additionally, if you only have a claim about a Racial Justice Act violation, also fill out Part C. For all other claims, fill out Part B. If you have a Racial Justice Act claim and other claims, fill out Parts B and C.
 - This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
 - Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
 - If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
 - If you are filing this petition in the Court of Appeal, file the original of the petition and one set of any supporting documents.
 - If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
 - Notify the Clerk of the Court in writing if you change your address after filing your petition.
 - An attorney filing this petition on behalf of a petitioner, based on a claim under Penal Code section 745(a)(1) or (2) that involves conduct by a law enforcement officer, must serve a copy of this petition on the law enforcement agency that employs the officer.

Approved by the Judicial Council of California for use under rules 4.551 (as amended January 1, 2024) and 8.380 (as amended January 1, 2020) of the California Rules of Court. Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

Part A (must be filled out by all petitioners)

This petition concerns (check all that apply):

- ☐ A conviction ☐ Parole ☐ A conviction or sentence involving a violation of the Racial Justice Act under Penal Code section 745(a) **(Part C must be completed if this box is checked)**
- ☐ A sentence ☐ Credits
- ☐ Jail or prison conditions ☐ Prison discipline
- ☐ Other (specify): _____

1. Your name: _____

2. a. Where are you incarcerated? _____

b. If you are not incarcerated, are you on supervised release, such as probation, parole, mandatory supervision, or postrelease community supervision?

- ☐ Yes (specify): _____
- ☐ No

3. Why are you in custody or on supervised release? ☐ Criminal conviction ☐ Civil commitment

4. Answer items a through i to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

b. Penal or other code sections: _____

c. Name and location of sentencing or committing court:

d. Case number: _____

e. Date convicted or committed: _____

f. Date sentenced/Date of judgment: _____

g. Length of sentence: _____

h. When do you expect to be released? _____

i. Were you represented by counsel in the trial court? ☐ Yes ☐ No If yes, state the attorney's name and address:

5. What was the LAST plea you entered? (Check one):

- ☐ Not guilty ☐ Guilty ☐ Nolo contendere ☐ Other: _____

6. If you pleaded not guilty, what kind of trial did you have?

- ☐ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial



7. Did you appeal from the conviction, sentence, or commitment? ☐ Yes ☐ No If yes, give the following information:
- a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"): _____
- b. Result: _____ c. Date of decision: _____
- d. Case number or citation of opinion, if known: _____
- e. All issues raised: (1) _____
(2) _____
(3) _____
- f. Were you represented by counsel on appeal? ☐ Yes ☐ No If yes, state the attorney's name and address, if known:

8. Did you seek review in the California Supreme Court? ☐ Yes ☐ No If yes, give the following information:
- a. Result: _____ b. Date of decision: _____
- c. Case number or citation of opinion, if known: _____
- d. All issues raised: (1) _____
(2) _____
(3) _____
9. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal (see *In re Dixon* (1953) 41 Cal.2d 756, 759):

10. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, sentence, commitment, or issue in any court, including this court? (See *In re Clark* (1993) 5 Cal.4th 750, 767–769 and *In re Miller* (1941) 17 Cal.2d 734, 735.)
☐ Yes If yes, continue with number 11. ☐ No If no, skip to number 13.
11. a. (1) Nature of proceeding (for example, "habeas corpus petition"): _____
(2) Name of court: _____
(3) Result (*attach order or explain why unavailable*): _____
(4) Date of decision: _____
(5) Case number or citation of opinion, if known: _____
(6) All issues raised: (a) _____
(b) _____
(c) _____

- b. (1) Nature of proceeding: _____
- (2) Name of court: _____
- (3) Result (*attach order or explain why unavailable*): _____
- (4) Date of decision: _____
- (5) Case number or citation of opinion, if known: _____
- (6) All issues raised: (a) _____
- (b) _____
- (c) _____

12. If any of the courts listed in number 10 held a hearing, state name of court, date of hearing, nature of hearing, and result:

13. Explain any delay in discovering or presenting the claims for relief and in raising the claims in this petition. (See *In re Robbins* (1998) 18 Cal.4th 770, 780; Pen. Code, § 1473(e).)

14. Are you presently represented by counsel? ☐ Yes ☐ No If yes, state the attorney's name and address, if known:

15. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes ☐ No If yes, explain:

16. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

17. If you have a claim about a violation of the Racial Justice Act, you must fill out Part C. For all other claims, you must fill out Part B. Fill out both Parts B and C if you have Racial Justice Act and other claims.

Does your claim involve the Racial Justice Act?	You must fill out and file:
No	Part A and B only
Yes, I only have a claim involving the Racial Justice Act	Part A and C only
Yes. I also have other claims not involving the Racial Justice Act.	Parts A, B, and C



1. **Claim 1:** State briefly your claim for relief. For example, "The trial court imposed an illegal enhancement." (*If you have additional claims for relief, use a separate page for each claim. State claim 2 on page 6. For additional claims, make copies of page 6 and number the additional claims in order.*)

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, *who* did exactly *what* to violate your rights at what time (*when*) or place (*where*).

b. Supporting documents:

Attach declarations, relevant records, transcripts, or other documents supporting your claim. (See *People v. Duvall* (1995) 9 Cal.4th 464, 474.)

c. Supporting cases, rules, or other authority (*optional*):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

[illegible][illegible][illegible]

3. Administrative review:

- a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Dexter* (1979) 25 Cal.3d 921, 925.) Explain what administrative review you sought or explain why you did not seek such review:

- b. Did you seek the highest level of administrative review available? ☐ Yes ☐ No

Attach documents that show you have exhausted your administrative remedies. (See People v. Duvall (1995) 9 Cal.4th 464, 474.)

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: _____



(SIGNATURE OF PETITIONER)

If you do not have a Racial Justice Act claim, file Part A and Part B only.

PART C – only fill out Part C for claims involving a violation of the Racial Justice Act under Penal Code section 745(a).

1. Indicate which of the following apply to the case in which you are making a claim for violation of the Racial Justice Act (*check all that apply*):

- a. ☐ Judgment is not final (for example, because an appeal is pending).
- b. ☐ Judgment is for a felony conviction.

2. For each box checked below, I allege the following in support of my plausible claim of a violation of the Racial Justice Act. (Be specific; this may include statistical or other evidence in support of a claim comparing your charge or sentence with the charges or sentences of defendants of other races, ethnicities, or national origins.) If you need more space, add an attachment.

I request relief based on the following (*choose all that apply*):

- a. ☐ The judge, an attorney, a law enforcement officer, an expert, or a juror in the case exhibited bias or animus toward me because of my race, ethnicity, or national origin (*explain*):

- b. ☐ During in-court trial proceedings, the judge, an attorney, a law enforcement officer, an expert, or a juror used discriminatory language about my race, ethnicity, or national origin (*explain*):

- c. ☐ I was charged with or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who have engaged in similar conduct and are similarly situated, **and** the prosecution more frequently sought or obtained convictions for more serious offenses against people who share my race, ethnicity, or national origin in the county where the convictions were sought or obtained (*explain*):

- d. ☐ I received a longer or more severe sentence compared to similarly situated individuals convicted of the same offense **and**:

- (1) ☐ longer or more severe sentences were more frequently imposed for the same offense on defendants who share my race, ethnicity, or national origin than on others in that county (*explain below*); *and/or*
- (2) ☐ longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins in that county (*explain*):

3. Is your claim based on a statement or conduct by a judge? ☐ Yes ☐ No

If yes, please state the judge's name:

4. a. Do you want appointed counsel? ☐ Yes ☐ No

b. If yes, can you afford to hire counsel? ☐ Yes ☐ No

c. Were you represented by appointed counsel in this case (at the trial court and/or on appeal)? ☐ Yes ☐ No

5. a. Do you request permission to amend a pending petition for writ of habeas corpus with this claim? ☐ Yes ☐ No

b. If yes, in what court is your petition pending? _____

c. If yes, what is the case number of your pending petition? _____



6. Do you request discovery relevant to a potential violation of the Racial Justice Act? ☐ Yes ☐ No

a. ☐ Describe, as specifically as you can, the type of records or information you seek:

b. ☐ List the reasons you need the records or information:

7. Have you previously attempted to pursue discovery of evidence in support of your claims?

a. ☐ Yes (*explain*):

b. ☐ No

8. Please attach any relevant information obtained through discovery that supports your claim.

9. Before filing this petition, did you file a discovery request in another court? What was the result? Please attach any relevant information or the order.

10. Are you raising this claim for the first time? ☐ Yes ☐ No

If no, are you raising it again because of new evidence that could not have been previously known to you?

a. ☐ Yes (*explain*):

b. ☐ No (*explain*):

If you need additional space to answer any question on this petition, add an extra page and indicate that your answer is "continued on additional page."

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: _____



(SIGNATURE OF PETITIONER)

Rules 8.385 and 8.386 of the California Rules of Court would be amended, effective July 1, 2026, to read:

Title 8. Appellate Rules

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

Chapter 4. Habeas Corpus Appeals and Writs

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

Rule 8.385. Proceedings after the petition is filed

(a) Production of record

Before ruling on the petition, the court may order the custodian of any relevant record to produce the record or a certified copy to be filed with the court. Sealed and confidential records are governed by rules 8.45–8.47.

(b) Informal response

- (1) Before ruling on the petition, the court may request an informal written response from the respondent, the real party in interest, or an interested person. The court must send a copy of any request to the petitioner.
- (2) The response must be served and filed within 15 days or as the court specifies. If the petitioner is not represented by counsel in the habeas corpus proceeding, one copy of the informal response and any supporting documents must be served on the petitioner. If the petitioner is represented by counsel in the habeas corpus proceeding, the response must be served on the petitioner's counsel. If the response is served in paper form, two copies must be served on the petitioner's counsel. If the petitioner is represented by court-appointed counsel other than the State Public Defender's Office or Habeas Corpus Resource Center, one copy must also be served on the applicable appellate project.
- (3) If a response is filed, the court must notify the petitioner that a reply may be served and filed within 15 days or as the court specifies. The court may not deny the petition until that time has expired.

1 (c) **Petition filed in an inappropriate court**

- 2
- 3 (1) A Court of Appeal may deny without prejudice a petition for writ of habeas
- 4 corpus that is based primarily on facts occurring outside the court's appellate
- 5 district, including petitions that question:
- 6
- 7 (A) The validity of judgments or orders of trial courts located outside the
- 8 district; or
- 9
- 10 (B) The conditions of confinement or the conduct of correctional officials
- 11 outside the district.
- 12
- 13 (2) A Court of Appeal should deny without prejudice a petition for writ of habeas
- 14 corpus that challenges the denial of parole or the petitioner's suitability for
- 15 parole if the issue was not first adjudicated by the trial court that rendered the
- 16 underlying judgment.
- 17
- 18 (3) If the court denies a petition solely under (1), the order must state the basis of
- 19 the denial and must identify the appropriate court in which to file the petition.
- 20

21 (d) **Order to show cause**

- 22
- 23 (1) Except as provided in (2), if the petitioner has made the required prima facie
- 24 showing that he or she is entitled to relief, the court must issue an order to
- 25 show cause. In doing so, the court takes petitioner's factual allegations as
- 26 true and makes a preliminary assessment regarding whether the petitioner
- 27 would be entitled to relief if the petitioner's factual allegations were proved.
- 28 If so, the court must issue an order to show cause.
- 29
- 30 (2) When a petition raises a claim under section 745(a), the court must issue an
- 31 order to show cause if the petitioner has made a prima facie showing, which
- 32 means that the defendant produced facts that, if true, establish that
- 33 there is a substantial likelihood that a violation of section 745(a)
- 34 occurred. A prima facie determination must be based on the petitioner's
- 35 showing and the record.
- 36
- 37 (3) An order to show cause does not grant the relief sought in the petition.
- 38

1 **(e) Return to the superior court**

2
3 The reviewing court may order the respondent to file a return in the superior court.
4 The order vests jurisdiction over the cause in the superior court, which must
5 proceed under rule 4.551.
6

7 **(f) Return to the reviewing court**

8
9 If the return is ordered to be filed in the Supreme Court or the Court of Appeal, rule
10 8.386 applies.
11

12 **(g) Appointment of counsel**

13
14 (1) **Except as provided in (2),** if the return is ordered to be filed in the Supreme
15 Court or the Court of Appeal, the court in which the return is ordered filed
16 must appoint counsel for any unrepresented petitioner who desires but cannot
17 afford counsel.
18

19 (2) When a petition raises a claim under Penal Code section 745(a) and requests
20 appointment of counsel, the court must appoint counsel if the petitioner
21 cannot afford counsel and either:
22

23 (A) the State Public Defender requests that counsel be appointed; or
24

25 (B) the petition alleges facts that would establish a violation of section
26 745(a). This inquiry is limited to the facial sufficiency of the
27 allegations of the petition alone.
28

29 **Advisory Committee Comment**

30
31 **Subdivision (a).** Examples of confidential records include Penal Code section 1203.03 diagnostic
32 reports, records closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118
33 or *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, in-camera proceedings on a confidential
34 informant, and defense expert funding requests (Pen. Code, § 987.9; *Keenan v. Superior Court*
35 (1982) 31 Cal.3d 424, 430).
36

37 **Subdivision (b).** As in other cases, for a petition raising a claim under Penal Code section 745(a),
38 the court may request an informal written response from the state.
39

40 **Subdivision (c).** Except for subdivision (c)(2), rule 8.385(c) restates former section 6.5 of the
41 Standards of Judicial Administration. Subdivision (c)(2) is based on the California Supreme
42 Court decision in *In re Roberts* (2005) 36 Cal.4th 575, which provides that petitions for writ of
43 habeas corpus challenging denial or suitability for parole should first be adjudicated in the trial

1 court that rendered the underlying judgment. The committee notes, however, that courts of appeal
2 have original jurisdiction in writ proceedings and may, under appropriate circumstances,
3 adjudicate a petition that challenges the denial or suitability of parole even if the petition was not
4 first adjudicated by the trial court that rendered the underlying judgment. (*In re Kler* (2010) 188
5 Cal.App.4th 1399.) A court of appeal may, for example, adjudicate a petition that follows the
6 court's prior reversal of a denial of parole by the Board of Parole Hearings where the issues
7 presented by the petition directly flow from the court of appeal's prior decision and the limited
8 hearing conducted. (*Id.* at 1404–05.)

9
10 **Subdivision (d).** Case law establishes the specificity of the factual allegations and support for
11 these allegations required in a petition for a writ of habeas corpus (see, e.g., *People v. Duvall*
12 (1995) 9 Cal.4th 464, 474–475, and *Ex parte Swain* (1949) 34 Cal.2d 300, 303–304). A court
13 evaluating whether a petition meeting these requirements makes a prima facie showing asks
14 whether, assuming the petition's factual allegations are true, the petitioner would be entitled to
15 relief (*People v. Duvall*, supra).

16
17 Issuing an order to show cause is just one of the actions a court might take on a petition for a writ
18 of habeas corpus. Examples of other actions that a court might take include denying the petition
19 summarily, requesting an informal response from the respondent under (b), or denying the
20 petition without prejudice under (c) because it is filed in an inappropriate court.

21
22 **Subdivision (g).** The standard set out in section (2)(B) is consistent with *McIntosh v.*
23 *Superior Court* (2025) 110 Cal.App.5th 33, as indicated in the Legislature's intent as
24 stated in AB 1071 (Stats. 2025, ch. x).