

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT SP18-22

Title

Criminal Procedure: Superior Court
Procedures for Death Penalty–Related Habeas
Corpus Proceedings

Proposed Rules, Forms, Standards, or Statutes

Adopt Cal. Rules of Court, rules 4.571, 4.572,
4.573, 4.574, 4.575, and 4.576

Proposed by

Proposition 66 Rules Working Group
Hon. Dennis M. Perluss, Chair

Action Requested

Review and submit comments by
Monday, November 19, 2018

Proposed Effective Date

April 25, 2019

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Executive Summary and Origin

The Proposition 66 Rules Working Group is proposing the adoption of six new rules of court relating to superior court procedures for death penalty–related habeas corpus proceedings. These proposed rules are intended to partially fulfill the Judicial Council’s rule-making obligations under Proposition 66 by establishing procedures for the superior courts’ new responsibility for this type of proceeding.

Background

Proposition 66

On November 8, 2016, the California electorate approved Proposition 66, the Death Penalty Reform and Savings Act of 2016. This act made a variety of changes to the statutes relating to review of death penalty (capital) cases in the California courts, many of which were focused on reducing the time spent on this review. Among other provisions, Proposition 66 effected several changes to the procedures for filing, hearing, and making decisions on death penalty–related habeas corpus petitions. Chief among them is that superior courts will be responsible for hearing and making decisions on these petitions, unless there is good cause for another court to hear the petition. ([Pen. Code, § 1509\(a\)](#).) In addition, the act calls for the Judicial Council to adopt, within 18 months of the act’s effective date, “initial rules and standards of administration designed to

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.

expedite the processing of capital appeals and state habeas corpus review.” ([Pen. Code, § 190.6\(d\).](#))

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

Existing procedures for death penalty–related habeas corpus proceedings

Until the enactment of Proposition 66, death penalty–related habeas corpus petitions were almost always filed in and heard by the Supreme Court. The procedures for filing, hearing, and making decisions on these petitions in the Supreme Court are found in chapter 4 (Habeas Corpus Appeals and Writs) of division 2 (Rules Relating to the Supreme Court and Courts of Appeal) of title 8 (Appellate Rules) of the California Rules of Court (Cal. Rules of Court, rules [8.380–8.388](#)). These are the same rules that apply to noncapital habeas petitions filed in the Supreme Court and Courts of Appeal. Additional procedures, specific to capital cases, are found in the [Supreme Court Policies Regarding Cases Arising from Judgments of Death](#) (Supreme Ct. Policies).

Changes in procedures required by Proposition 66

Chief among the changes effected by Proposition 66 is that superior courts will be hearing and making decisions on these petitions, unless there is good cause for another court to hear the petition:

A writ of habeas corpus pursuant to this section is the exclusive procedure for collateral attack on a judgment of death. A petition filed in any court other than the court which imposed the sentence should be promptly transferred to that court unless good cause is shown for the petition to be heard by another court. A petition filed in or transferred to the court which imposed the sentence shall be assigned to the original trial judge unless that judge is unavailable or there is other good cause to assign the case to a different judge.

([Pen. Code, § 1509\(a\).](#))

Proposition 66 also shortened the time frame for filing a petition for a death penalty–related writ of habeas corpus. Proposition 66 provides “[e]xcept as provided in subdivisions (d) and (g), the initial petition must be filed within one year of the order entered under Section 68662 of the

Government Code,” under which habeas corpus counsel is appointed.¹ ([Pen. Code, § 1509\(d\).](#)) This is considerably less time than has previously been allowed by the Supreme Court to file these petitions. Under the Supreme Court’s policies, “a petition for a writ of habeas corpus will be presumed to be filed without substantial delay if it is filed within 180 days after the final due date for the filing of appellant’s reply brief on the direct appeal or within 36 months after appointment of habeas corpus counsel, whichever is later.”² ([Supreme Ct. Policies](#), Policy 3, § 1-1.1.)

In addition to reducing the time in which counsel have to prepare and file an initial death penalty–related habeas corpus petition, Proposition 66 requires the dismissal of successive petitions “unless the court finds, by the preponderance of all available evidence, whether or not admissible at trial, that the defendant is actually innocent of the crime of which he or she was convicted or is ineligible for the sentence.” ([Pen. Code, § 1509\(d\).](#))

Proposition 66 also imposed a deadline for resolving the petition that had not previously existed. Thus, under [Penal Code, section 1509\(d\)](#), a superior court is to resolve the petition within one year of the filing of the petition unless the court finds that delay is necessary to resolve a substantial claim of actual innocence, but in no instance longer than two years total. In *Briggs v. Brown*, *supra*, 3 Cal.5th, 848–860, the Supreme Court held that this deadline is “merely directive,” but may also “serve as benchmarks to guide courts, if meeting the limits is reasonably possible.” (*Id.* at p. 860.)

The current practice in the Supreme Court is that a death penalty–related habeas corpus petition may be denied without an explanation of the basis for the denial. Proposition 66 provides that “[o]n decision of an initial petition, the court shall issue a statement of decision explaining the factual and legal basis for its decision.” ([Pen. Code, § 1509\(f\).](#))

Superior court procedures in noncapital habeas corpus proceedings

Although superior courts have generally not been responsible for handling death penalty–related habeas corpus proceedings, they do preside over noncapital habeas corpus proceedings. The statutory authority for habeas corpus proceedings is found at [Penal Code sections 1473–1508](#). This statutory framework provides little in the way of deadlines. The Judicial Council, however, has adopted three rules of court and one form that govern noncapital habeas corpus proceedings.

¹ Under Penal Code section 1509(d), an “initial petition which is untimely . . . shall be dismissed unless the court finds by a preponderance of all the available evidence, whether or not admissible at trial, that the defendant is actually innocent of the crime of which he or she was convicted or is ineligible for the sentence.” Under Penal Code section 1509(g), where a judgment of death was imposed but no habeas corpus petition had been filed prior to the effective date of the proposition, a petition that would otherwise have been untimely under subdivision (c) may be filed within one year of the effective date of Proposition 66 or within the time allowed under prior law, whichever is earlier.

² A petition filed outside these time frames “may establish absence of substantial delay if it alleges with specificity facts showing the petition was filed within a reasonable time after petitioner or counsel (a) knew, or should have known, of facts supporting a claim and (b) became aware, or should have become aware, of the legal basis for the claim.” ([Supreme Ct. Policies](#), Policy 3, § 1-1.2.)

(Cal. Rules of Court, rules [4.550](#), [4.551](#), [4.552](#), and *Petition for Writ of Habeas Corpus (form MC-275)*.) These rules of court provide extensive deadlines and procedures for noncapital habeas corpus proceedings in the superior courts.

There are significant differences between death penalty–related and noncapital habeas corpus proceedings. Most noncapital habeas corpus petitions are drafted and filed without the assistance of an attorney. In contrast to the explicit statutory authority requiring appointment of counsel for the initial petition in a death penalty–related habeas corpus proceeding, in a noncapital proceeding a petitioner does not become entitled to counsel unless the court issues an order to show cause because the petitioner made a prima facie showing that he or she is entitled to relief. (Cal. Rules of Court, [rule 4.551\(c\)](#).) In addition, the scope and complexity of a death penalty–related habeas corpus proceeding is far greater than the scope and complexity of a noncapital habeas corpus proceeding. For example, most death penalty–related habeas corpus petitions raise claims of ineffective assistance of counsel, which can require review of the entire record on appeal—and the record is much larger in a capital case, often exceeding 10,000 pages. This means that the deadlines, page limits, and other aspects of the current rules for noncapital petitions are inadequate for the new superior court death penalty–related habeas corpus proceedings.

The Proposal

This proposal is intended to help fulfill the Judicial Council’s rule-making obligations under Proposition 66 by proposing rules and establishing procedures for death penalty–related habeas corpus proceedings in the superior courts under [Penal Code section 1509](#), and would take effect on April 25, 2019. The proposed rules are modeled in large part on the current rules in title 4 for noncapital habeas corpus proceedings in the superior courts (Cal. Rules of Court, rules [4.550](#), [4.551](#), and [4.552](#)), but borrow provisions from the rules in title 8 for habeas corpus proceedings in the Supreme Court and Courts of Appeal (Cal. Rules of Court, rules [8.384–8.387](#)), when those are more appropriate to death penalty–related proceedings. The proposed rules also include provisions that reflect the newly enacted requirements in [Penal Code section 1509](#), including provisions on transfers and subsequent petitions.

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

Proposed rule 4.571—Filing of the petition in the superior court

Proposed rule 4.571 governs the filing of a death penalty–related habeas corpus petition in the superior court. It is modeled after [rule 8.384](#), which governs habeas corpus petitions filed by attorneys in the appellate courts. Like rule 8.384, proposed rule 4.571:

- Defines the supporting documents that must accompany the petition;

- Requires the petition and supporting memorandum to support any reference to the documents with a specific citation;
- Prescribes the number of copies to be filed;
- Prescribes service requirements; and
- Requires the clerk of the court to file a noncomplying petition, but also allows the court to notify the attorney that it may strike the noncomplying petition or impose a lesser sanction if the petition is not brought into compliance within a stated reasonable time of not less than five days.

Proposed rule 4.571 also departs from rule 8.384 in that it incorporates by reference numerous superior court rules and practices, including [rules 2.100–2.117](#) and rule [3.1113](#), which relate to the formatting of documents filed with the court; rules [2.550](#) and [2.551](#), which relate to sealed and confidential documents; and [rule 2.250](#), which relates to electronic filing and service. Subdivision (e) is modeled after rule [4.551\(a\)\(3\)\(A\)](#) and (a)(4) and provides deadlines (extendable for good cause) for the court to act on a petition or informal response, and defines what it means to act upon a petition—provisions not provided in the appellate rules. The 60-day deadline for the court to rule on the petition is triggered either by the filing of the petition in the superior court or by the transfer of a petition to the superior court.

The proposed rules depart from the model of rule 8.384 in three respects regarding the contents of the supporting documents. First, the record prepared for the direct appeal, including any exhibits admitted in evidence, refused, or lodged, are deemed part of the supporting documents for the petition as this record should already be available to the superior court that is hearing the petition, which in most cases will be the court that imposed the sentence. Second, in addition to requiring inclusion in the supporting document of any petition pertaining to the same judgment and petitioner that was previously filed in any state court or any federal court, the proposed rule also requires inclusion of any order that disposes of any claim or portion of a claim raised by those petitions. Third, the proposed rule requires inclusion among the supporting documents a certified copy of the transcript of *any* hearing (not just an “evidentiary hearing”) if the petition asserts a claim that was the subject of that hearing.

Rule 4.572—Transfer of petitions

[Penal Code section 1509\(a\)](#) requires a petition filed in any court other than the court that imposed the sentence to be promptly transferred to that court unless good cause is shown for the petition to be heard by another court. Proposed rule 4.572 tracks the language of the statute but also specifies that a superior court has 21 days in which to transfer a death penalty–related habeas corpus proceeding to an appropriate court. The proposed rule also requires the court to issue an order with the basis for its decision.

Rule 4.573—Proceedings after the petition is filed

Proposed rule 4.573 is modeled after [rule 8.385](#), but, consistent with the broader scope and complexity of death penalty–related habeas corpus petitions, allows more time to prepare, file, and serve the relevant papers:

- The respondent’s informal response must be served and filed within 45 days of the superior court’s service of a request or as the court specifies; and
- The petitioner’s reply, if any, must be served and filed within 30 days or as the court specifies.

Proposed rule 4.573(a) also incorporates by reference the applicable superior court requirements for papers in proposed rule 4.571(a), (b), and (c)(1) and (2); prescribes service of the informal response on the assisting entity or counsel; and requires a request for extension of a filing deadline to explain the additional work required to file the informal response or reply.

Under proposed rule 4.573(b), the superior court must issue an order to show cause if the petitioner has made the required prima facie showing.

The proposed rule does not include subdivisions comparable to subdivision (a) (production of the record) and subdivisions (e) and (f) (returns to the superior court or reviewing court) from [rule 8.385](#), as those provisions would be unnecessary in a capital habeas corpus proceeding in the superior court.

Rule 4.574—Proceedings following an order to show cause

Proposed rule 4.564 is generally modeled after [rule 8.386](#), which governs proceedings when a return is ordered to be filed in the reviewing court, but consistent with the broader scope and complexity of death penalty–related habeas corpus petitions, and allows more time to prepare, file, and serve the relevant papers:

- The respondent’s return must be served and filed within 45 days after the court issues the order to show cause unless the court orders otherwise; and
- The petitioner’s denial (traverse), if any, must be filed and served within 30 days after the filing of the return unless the court orders otherwise.

Proposed rule 4.574 also incorporates by reference the applicable superior court requirements for papers in proposed rule 4.571(a), (b), and (c)(1) and (2), and notes that material allegations not controverted by the return or the denial are deemed admitted for purposes of the proceeding.

Evidentiary hearing. Subdivision (c)(1) is modeled after the subdivisions of both the superior court and appellate rules that govern such hearings (Cal. Rules of Court, rules [4.551\(f\)](#) and [8.386\(f\)\(1\)](#)), and requires an evidentiary hearing if, after considering the papers submitted, the court finds there is a reasonable likelihood that the petitioner may be entitled to relief and the petitioner’s entitlement to relief depends on the resolution of an issue of fact. Subdivision (c)(2) is modeled after Penal Code section 190.9 and requires the reporting of proceedings. The court may order additional briefing during or following the evidentiary hearing under subdivision (d).

Submission of cause. Subdivision (e) is modeled after [Los Angeles County Superior Court local rule 8.33](#) and deems a death penalty–related habeas corpus proceeding submitted at the

conclusion of the evidentiary hearing, if one is held, for purposes of [article VI, section 19 of the California Constitution](#).

Rule 4.575—Decisions in death penalty–related habeas corpus proceedings

[Penal Code section 1509\(f\)](#), as amended by Proposition 66, requires that “[o]n decision of an initial petition, the court shall issue a statement of decision explaining the factual and legal basis for its decision.” Although, as a general matter, the California Rules of Court typically do not repeat statutory provisions, proposed rule 4.575 does so in this case to make the rules a more comprehensive description of the superior court’s duties and to provide context for prescribing the different entities on whom the clerk must serve the statement of decision. That list includes the Supreme Court clerk/executive officer and the assisting entity or counsel.

Rule 4.576—Successive petitions

[Penal Code section 1509\(d\)](#), as amended by Proposition 66, requires the dismissal of successive petitions “unless the court finds, by the preponderance of all available evidence, whether or not admissible at trial, that the defendant is actually innocent of the crime of which he or she was convicted or is ineligible for the sentence.” Proposed rule 4.576(a) requires a superior court that receives such a petition to provide notice to the petitioner and opportunity to respond before the court dismisses the petition. Proposed subdivision (b) provides the procedures by which the superior court must grant or deny a certificate of appealability when the court denies relief on a successive petition.

The superior court may order the parties to submit arguments on whether a certificate should be granted. If the superior court grants a certificate, the certificate must identify the substantial claim or claims shown by the petitioner. The clerk of the superior court must serve the certificate on the entities identified in the rule and must send the certificate to the Court of Appeal when it sends the notice of appeal.

Alternatives Considered

Transfer of petitions

The working group considered whether the proposed rules should address in greater detail the Supreme Court’s transfer of two distinct categories of death penalty–related habeas corpus petitions to or among the superior courts. The first group included those petitions currently pending in the Supreme Court, both those with and those without counsel.³ With respect to these petitions, the working group concluded that this was a matter best left to the judgment and policies of the Supreme Court, at least at this time.

The second category concerned petitions initially filed in the superior court that imposed the death sentence. There was a suggestion that the Supreme Court could consider transferring such petitions among the superior courts. The good cause for such transfers would be to balance out

³ The petitions without counsel, filed for the purpose of preserving petitioners’ rights in the federal courts, are typically referred to as “*Morgan* petitions” or “shell petitions.” (*In re Morgan* (2010) 50 Cal.4th 932, 941.)

the workload of these petitions. The working group elected not to propose such a rule as it considered such a procedure to be potentially inconsistent with [Penal Code section 1509\(d\)](#) and the intent of Proposition 66. [Penal Code section 1509\(d\)](#) requires that petitions be heard in the court that imposed the sentence unless there is good cause for another court to hear the petition.

Proposing a rule that allowed the Supreme Court to transfer petitions among superior courts to balance caseloads would be inconsistent with the intent of Proposition 66 to localize the resolution of death penalty–related habeas corpus petitions in the courts that imposed the sentence. The working group noted that to the extent there are issues related to workload, the Chief Justice has the discretion under [article VI, section 6\(e\)](#), to provide for the assignment of a superior court judge from one superior court to another, although it is outside the scope of the working group’s charge to recommend that the Chief Justice exercise or not exercise this authority in connection with death penalty–related habeas corpus petitions.

Superior court form for certificate of appealability

The working group considered whether to propose a form the superior courts could use to issue a certificate of appealability. Some working group members thought that certificates of appealability would have to be so individualized to the case that a form might not be useful.

It was also noted that there is no Judicial Council form for the parallel certificate of probable cause required in some noncapital felony appeals. Other members thought that a form might be helpful to remind the court of the need to prepare the certificate and the elements that must be addressed. The working group would particularly appreciate comments about whether a form for the certificate of appealability itself should be proposed.

Challenges to methods of execution

The working group considered whether to develop proposed rules relating to challenges to methods of executions. Proposition 66 includes several statutory provisions relating to such challenges. Specifically, Penal Code section 3604.1:

- Exempts certain execution-related standards from the Administrative Procedures Act (*id.*, subd. (a));
- Provides that only the sentencing court may hear a challenge to the method of execution brought by a person under judgment of death (*id.*, subd. (c)); and
- Directs that, if a court concludes that a challenged method of execution is invalid, the court is to order a valid method of execution (*ibid.*).

Currently, there are no rules of court that specifically address challenges to methods of execution. The working group considered a number of possible subjects for rule-making, including the timing of raising a challenge, the mechanism or format (e.g., in a habeas corpus petition or a civil complaint), and the appropriate venue. However, as the working group observed, this area of law is characterized by uncertainty, including on basic questions of when

and in what form a challenge may be raised.⁴ Thus, any proposed rule would risk being too broad or too narrow, and have the unintended consequence of permitting or foreclosing challenges beyond what is prescribed by law and was desired by the electorate in approving Proposition 66. Concluding there exists a real possibility that rule-making could get ahead of or otherwise inhibit the development of this area of the law by the courts and interested parties, the working group declined to propose rules at this time.

Department of Corrections and Rehabilitation’s duties to enable executions to proceed Proposition 66 directs that “the court which rendered the judgment of death shall order” the California Department of Corrections and Rehabilitation, if it has failed to perform any duty necessary to enable it to execute a judgment of death, to perform that duty. (Pen. Code, § 3604.1(c).) The working group considered whether to propose rules describing—in greater detail than is currently specified by the statute—procedures for requesting, granting, or denying such relief. Concluding that this area of law may be better developed by courts actually faced with the issue in practice, with the benefit of arguments by interested parties, rather than through rule-making, the working group declined to propose rules at this time.

Fiscal and Operational Impacts

The changes made by Proposition 66 to the procedures governing death penalty–related habeas corpus proceedings, particularly making the superior courts generally responsible for hearing and deciding such matters, will likely have substantial costs, operational impacts, and implementation requirements for courts and justice system partners. The proposed new rules are likely to require some initial training for judges and court staff, and they would impose new requirements on counsel involved in death penalty–related habeas corpus proceedings. However, these rules and forms are anticipated to facilitate the transition that Proposition 66 requires the superior courts to make.

⁴ See, e.g., *Nelson v. Campbell* (2004) 541 U.S. 637, 644 (declining to “reach here the difficult question of how to categorize method-of-execution claims generally”); *Cooper v. Rimmer* (9th Cir. 2004) 379 F.3d 1029, 1031 (declining to resolve “dispute whether . . . challenge to the California protocol may properly be brought as a § 1983 action, or should instead be recharacterized as an application to file a second or successive petition”); see also *In re Reno* (2012) 55 Cal.4th 428, 462, n. 17 (rejecting challenge to lethal injection raised in a habeas corpus petition as premature).

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Should the rules address Supreme Court transfer of petitions from one superior court to another and, if so, what should the rule provide?
- Should the rules address Supreme Court transfer of a petition pending before it to a superior court and, if so, what should the rule provide?
- Should the proposed rules address amendments to petitions?
- If the proposed rules were to address amendments:
 - How would amendments affect the deadlines provided in the rules?
 - Under what circumstances should amendments be permitted?
 - Should the rule address amendment of *Morgan* or shell petitions differently from other petitions?
- Should the proposed rules include a provision like that in rule 8.384(d) and proposed rule 4.571(d) that authorizes the court to notify the attorney that it may strike a noncomplying petition or impose a lesser sanction if the petition is not brought into compliance within a stated reasonable time of not less than five days?
- Should there be a Judicial Council form for the superior court to issue a certificate of appealability?
- Should the rule require the superior court to include in a certificate of appealability not only the substantial claim or claims for relief, which is required by Penal Code section 1509.1, but also include a finding of a substantial claim that the requirements of Penal Code section 1509(d) have been met?
- Are the deadlines included in the proposed rule for submitting papers adequate?

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

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would one month from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rules 4.571–4.576, at pages 12–18
2. Link A: [Ballot description and arguments for and against Proposition 66 and text of proposition from November 2016 Official Voter Information Guide](#), beginning on pages 104 and 212, respectively, of the linked document

Rules 4.571, 4.572, 4.573, 4.574, 4.575, and 4.576 of the California Rules of Court would be adopted, effective April 25, 2019, to read:

1 **Title 4. Criminal Rules**

2
3 **Division 6. Postconviction, Postrelease, and Writs**

4
5 **Chapter 3. Habeas Corpus**

6
7 **Article 3. Death Penalty–Related Habeas Corpus Proceedings in the Superior Court**

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9 * * *

10
11 Drafters' Note: Proposed rule 4.571 is modeled after [rule 8.384](#), but instead of
12 incorporating by reference appellate rules and practices, it refers to, where
13 possible, superior court rules and practices, including [rules 2.100–2.117](#) and
14 [3.1113](#), which relate to the formatting of documents filed with the court, rules
15 [2.550](#) and [2.551](#), which relate to sealed and confidential documents, and [rule](#)
16 [2.250](#), which relates to electronic filing and service. When there is no comparable
17 rule in the trial court rules, the rule refers to an appellate rule ([rule 8.486](#), which
18 relates to the documents supporting the petition).

19
20 Subdivision (e) is modeled after rule [4.551](#)(a)(3)(A) and (a)(4) and provides
21 deadlines (extendable for good cause) for the court to act on a petition.

22
23 **Rule 4.571. Filing of petition in the superior court**

24
25 **(a) Petition**

- 26
27 (1) A petition and supporting memorandum must comply with this rule and,
28 except as otherwise provided in this rule, with rules 2.100–2.117 relating to
29 the form of papers.
- 30
31 (2) A memorandum supporting a petition must comply with rule 3.1113(b), (c),
32 (f), (h), (i), and (l).
- 33
34 (3) The petition and supporting memorandum must support any reference to a
35 matter in the supporting documents or declarations, or other supporting
36 materials, by a citation to its index number or letter and page and, if
37 applicable, the paragraph or line number.
- 38

1 **(b) Supporting documents**

- 2
- 3 (1) The record prepared for the automatic appeal, including any exhibits
- 4 admitted in evidence, refused, or lodged, are deemed part of the supporting
- 5 documents for the petition.
- 6
- 7 (2) The petition must be accompanied by a copy of any petition, excluding
- 8 exhibits, pertaining to the same judgment and petitioner that was previously
- 9 filed in any state court or any federal court, along with any order in a
- 10 proceeding on such a petition that disposes of any claim or portion of a claim.
- 11
- 12 (3) If the petition asserts a claim that was the subject of a hearing, the petition
- 13 must be accompanied by a certified transcript of that hearing.
- 14
- 15 (4) If any supporting documents have previously been filed in the same superior
- 16 court in which the petition is filed and the petition so states and identifies the
- 17 documents by case number, copies of these documents need not be included
- 18 in the supporting documents.
- 19
- 20 (5) Rule 8.486(c)(1) and (2) govern the form of any supporting documents
- 21 accompanying the petition.
- 22
- 23 (6) If any supporting documents accompanying the petition or any subsequently
- 24 filed paper are sealed or confidential records, rules 2.550 and 2.551 govern.
- 25

26 **(c) Filing and service**

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

37 **(d) Noncomplying filings**

38

39 The clerk must file a petition not complying with this rule if it otherwise complies

40 with the rules of court, but the court may notify the attorney that it may strike the

41 petition or impose a lesser sanction if the petition is not brought into compliance

42 within a stated reasonable time of not less than five days.

43

1 **(e) Ruling on the petition**

2
3 (1) The court must rule on the petition within 60 days after the petition is filed
4 with the court or transferred to the court from another superior court.

5
6 (2) For purposes of this subdivision, the court rules on a petition by:

7
8 (A) Issuing an order to show cause;

9
10 (B) Denying the petition; or

11
12 (C) Requesting an informal response to the petition.

13
14 (3) The court must issue an order to show cause or deny the petition within 60
15 days of receipt of the informal response.

16
17 (4) On motion of any party or on the court's own motion, for good cause stated
18 in the order, the court may shorten or extend the time for doing any act under
19 this subdivision.

20
21 Drafters' Note: Proposed rule 4.572 tracks the language of Penal Code section
22 1509(a), but gives a superior court 21 days in which to transfer a habeas corpus
23 proceeding to an appropriate court. The proposed rule requires the court to issue
24 an order with the basis for its decision.

25
26 **Rule 4.572. Transfer of petitions**

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

33
34 Drafter's Note: Proposed rule 4.573 is modeled after rule 8.385. The proposed
35 rule does not include subdivisions comparable to subdivision (a) (production of
36 the record), and subdivisions (e) and (f) (returns to the superior court or
37 reviewing court) from rule 8.385, as those would be unnecessary in a death
38 penalty-related habeas corpus proceeding in the superior court.

39

1 **Rule 4.573. Proceedings after the petition is filed**

2
3 **(a) Informal response and reply**

- 4
5 (1) Before ruling on the petition, the court may request an informal written
6 response from the respondent. The court must send a copy of any request to
7 the petitioner.
8
9 (2) The response must be served and filed within 45 days or as the court
10 specifies. If the response is filed in paper form, the original and one copy of
11 the response and any supporting documents must be filed with the court. One
12 copy of the informal response and any supporting documents must be served
13 on the petitioner’s counsel. If the response and supporting documents are
14 served in paper form, two copies must be served on the petitioner’s counsel.
15 One copy must also be served on the assisting entity or counsel.
16
17 (3) A court that permits electronic filing will specify any requirements regarding
18 electronically filed papers as authorized under rules 2.250 et seq.
19
20 (4) If a response is filed, the court must notify the petitioner that a reply may be
21 served and filed within 30 days or as the court specifies. The court may not
22 deny the petition until that time has expired.
23
24 (5) The formatting of the response, reply, and any supporting documents must
25 comply with the applicable requirements for petitions in rule 4.571(a) and
26 (b). The filing of the response, reply, and any supporting documents must
27 comply with the requirements for petitions in rule 4.571(c)(1) and (2). A
28 court that permits electronic filing will specify any requirements regarding
29 electronically filed petitions as authorized under rules 2.250 et seq.
30
31 (6) If a request for an extension of a filing deadline under this subdivision is
32 requested, counsel for the party requesting the deadline must explain the
33 additional work required to file the informal response or reply.

34
35 **(b) Order to show cause**

36
37 If the petitioner has made the required prima facie showing that he or she is entitled
38 to relief, the court must issue an order to show cause. An order to show cause does
39 not grant the relief sought in the petition.
40

41 Drafters’ Notes: Proposed rule 4.564 is generally modeled after [rule 8.386](#), which
42 governs proceedings if a return is ordered to be filed in the reviewing court, but
43 incorporates aspects of trial court procedures.

1 Subdivision (c)(1), which governs the evidentiary hearing, is modeled after rules
2 4.551(f) and 8.386(f)(1).

3
4 Subdivision (c)(2) is modeled after Penal Code section 190.9 and addresses the
5 reporting of proceedings.

6
7 Subdivision (e) is modeled after Los Angeles County Superior Court Local Rule
8 8.33.

9
10 **Rule 4.574. Proceedings following an order to show cause**

11
12 **(a) Return**

13
14 (1) Unless the court orders otherwise, any return must be served and filed within
15 45 days after the court issues the order to show cause.

16
17 (2) The formatting of the return and any supporting documents must comply
18 with the applicable requirements for petitions in rule 4.571(a) and (b). The
19 filing of the return and any supporting documents must comply with the
20 requirements for petitions in rule 4.571(c)(1) and (2). A court that permits
21 electronic filing will specify any requirements regarding electronically filed
22 papers as authorized under rules 2.250 et seq.

23
24 (3) The return and any supporting documents must be served on the petitioner's
25 counsel. If the return is served in paper form, two copies must be served on
26 the petitioner's counsel. One copy must also be served on the assisting entity
27 or counsel.

28
29 (4) Any material allegation of the petition not controverted by the return is
30 deemed admitted for purposes of the proceeding.

31
32 **(b) Denial**

33
34 (1) Unless the court orders otherwise, within 30 days after the respondent files a
35 return, the petitioner may serve and file a denial.

36
37 (2) The formatting of the denial and any supporting documents must comply
38 with the applicable requirements for petitions in rule 4.571(a) and (b). The
39 filing of the denial and any supporting documents must comply with the
40 requirements for petitions in rule 4.571(c)(1) and (2). A court that permits
41 electronic filing will specify any requirements regarding electronically filed
42 papers as authorized under rules 2.250 et seq.

1 (3) Any material allegation of the return not denied in the denial is deemed
2 admitted for purposes of the proceeding.

3
4 **(c) Evidentiary hearing**

5
6 (1) An evidentiary hearing is required if, after considering the verified petition,
7 the return, any denial, any affidavits or declarations under penalty of perjury,
8 and matters of which judicial notice may be taken, the court finds there is a
9 reasonable likelihood that the petitioner may be entitled to relief and the
10 petitioner’s entitlement to relief depends on the resolution of an issue of fact.

11
12 (2) The court must assign a court reporter who uses computer-aided transcription
13 equipment to report all proceedings under this subdivision.

14
15 (A) All proceedings under this subdivision, whether in open court, in
16 conference in the courtroom, or in chambers, must be conducted on the
17 record with a court reporter present. The court reporter must prepare
18 and certify a daily transcript of all proceedings.

19
20 (B) Any computer-readable transcript produced by court reporters under
21 this subdivision must conform to the requirements of section 271 of the
22 Code of Civil Procedure.

23
24 (3) Rule 3.1306(c) governs judicial notice.

25
26 **(d) Additional briefing**

27
28 The court may order additional briefing during or following the evidentiary
29 hearing.

30
31 **(e) Submission of cause**

32
33 For purposes of article VI, section 19 of the California Constitution, a death
34 penalty–related habeas corpus proceeding is submitted for decision at the
35 conclusion of the evidentiary hearing, if one is held. If there is supplemental
36 briefing after the conclusion of the evidentiary hearing, the matter is submitted
37 when all supplemental briefing is filed with the court.
38

1 [Drafters' Note: Proposed rule 4.575 restates a portion of Penal Code section](#)
2 [1509\(f\).](#)

3
4 **Rule 4.575. Decision in death penalty–related habeas corpus proceedings**

5
6 On decision on the petition, the court must prepare and file a statement of decision
7 specifying its order and explaining the factual and legal basis for its decision. The clerk
8 of the court must serve a copy of the decision on the petitioner, respondent, the
9 clerk/executive officer of the Supreme Court, and the assisting entity or counsel.

10
11 [Drafters' Note: Proposed rule 4.576 is based on the subgroup's premise that a](#)
12 [successive petition should not be dismissed without the court providing notice to](#)
13 [the petitioner and providing an opportunity for petitioner to respond. The thinking](#)
14 [is that unlike an initial petition, for which statute requires the appointment of](#)
15 [counsel, a successive petition may be filed pro se. The opportunity to respond](#)
16 [may allow a petitioner to cure what might otherwise have appeared to have been](#)
17 [a defect in the petition warranting dismissal. Use of the word "respond" is](#)
18 [intended to avoid the necessity of the court conducting a hearing or briefing by](#)
19 [the parties.](#)

20
21 **Rule 4.576. Successive petitions**

22
23 **(a) Notice of intent to dismiss**

24
25 Before dismissing a successive petition under Penal Code section 1509(d), a
26 superior court must provide notice to the petitioner and an opportunity to respond.

27
28 **(b) Certificate of appealability**

29
30 The superior court must grant or deny a certificate of appealability concurrently
31 with the issuance of its decision denying relief on a successive death penalty–
32 related habeas corpus petition. Before issuing its decision, the superior court may
33 order the parties to submit arguments on whether a certificate of appealability
34 should be granted. If the superior court grants a certificate of appealability, the
35 certificate must identify the substantial claim or claims for relief shown by the
36 petitioner. The superior court clerk must send a copy of the certificate to the
37 attorney for the petitioner or, if unrepresented, to the petitioner, the Attorney
38 General, the district attorney, the clerk/executive officer of the Court of Appeal and
39 the district appellate project for the appellate district in which the superior court is
40 located, and the clerk/executive officer of the Supreme Court. The superior court
41 clerk must send the certificate of appealability to the Court of Appeal when it sends
42 the notice of appeal under 8.392(c).