



## Subject Text

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### Title

## **Criminal and Appellate Procedure: Superior Court Appointment of Counsel in Death Penalty-Related Habeas Corpus Proceedings (Action Required)**

### Summary

To provide procedures for superior courts to determine if an attorney meets the minimum qualifications for counsel in death penalty-related habeas corpus proceedings and to appoint such counsel for indigent persons subject to a judgment of death, the Proposition 66 Rules Working Group proposes amending one rule and adopting four new rules and two new forms. These proposed rules changes are intended to partially fulfill the Judicial Council's rule-making obligations under Proposition 66. A second report to the Judicial Council presents the working group's recommendations for amendments to related rules governing qualifications of counsel for appointment in death penalty appeals and habeas corpus proceedings.

### Recommendation

The Proposition 66 Rules Working Group recommends that the Judicial Council, effective April 25, 2019:

1. Amend chapter 3 of division 6 of title 4 of the California Rules of Court to divide the chapter into three new articles:
  - Article 1-General Provisions;
  - Article 2-Noncapital Habeas Corpus Proceedings in the Superior Court; and
  - Article 3-Death Penalty-Related Habeas Corpus Proceedings in the Superior Court;
2. Adopt rule 4.545 to provide definitions of terms for chapter 3 and to incorporate by reference the definitions in rule 8.601, which includes terms relevant to the appointment of counsel in death penalty-related habeas corpus proceedings;
3. Amend rule 4.550 to establish that article 2 governs noncapital habeas corpus proceedings in the superior courts;
4. Adopt rule 4.560 to establish that article 3 governs death penalty-related habeas corpus proceedings in the superior courts;
5. Adopt rule 4.561 to establish procedures by which superior courts appoint qualified counsel to represent indigent persons in death penalty-related habeas corpus proceedings, including by:
  - a. Establishing the principle that California courts, whenever possible, should appoint counsel first for those persons subject to the oldest judgments of death within the state;
  - b. Providing a mechanism by which the presiding judges of the superior courts will be notified when the judgments of death imposed in their respective courts are among the 25 oldest judgments of death in the state without habeas corpus counsel;
  - c. Providing a process for the appointment of one or more attorneys from (1) a statewide panel of qualified counsel, (2) an entity that employs qualified counsel, including the Habeas Corpus Resource Center, the local public defender's office or alternate public defender's office, or (3) if the superior court has adopted a local rule, an attorney that the superior court has determined to be qualified under that local rule;
  - d. Requiring the superior courts to use the *Order Appointing Counsel in Death Penalty-Related Habeas Corpus Proceeding* (form HC-101) when appointing counsel; and

- e. Requiring the designation of an assisting entity or counsel to provide assistance to appointed counsel, except in cases in which the Habeas Corpus Resource Center is appointed as counsel;
6. Adopt rule 4.562 to establish procedures for the recruitment of counsel and determination of whether counsel have met the minimum qualifications for appointment in death penalty-related habeas corpus proceedings by:
  - a. Requiring those superior courts in which a judgment of death has been entered against an indigent person for whom habeas corpus counsel has not been appointed to develop and implement a plan to identify and recruit qualified counsel who may apply to be available for appointment;
  - b. Providing for each Court of Appeal to establish a death penalty-related habeas corpus committee that will:
    - Assist superior courts in their efforts to recruit qualified attorneys;
    - Accept applications from interested attorneys;
    - Determine if applicants meet the minimum qualifications, as provided in the Rules of Court, to represent indigent persons in death penalty-related habeas corpus proceedings; and
    - Upon the request of a superior court, assist superior courts in matching one or more qualified attorneys from the statewide panel to a specific case;
  - c. Providing for the membership, appointment, and governance of the committees;
  - d. Providing for a statewide panel of counsel that includes applicants the committees have determined meet the minimum qualifications;
  - e. Authorizing superior courts to adopt a local rule establishing local procedures for determining whether attorneys meet the minimum qualifications under proposed rule 8.652(c) to represent indigent persons in death penalty-related habeas corpus proceedings and to appoint such attorneys in those proceedings;
7. Adopt new *Declaration of Counsel re Minimum Qualifications for Appointment in Death Penalty-Related Habeas Corpus Proceedings* (form HC-100) for mandatory use by attorneys who seek a determination that they meet the minimum qualifications and new *Order Appointing Counsel in Death Penalty-Related Habeas Corpus Proceeding* (form HC-101) for mandatory use by superior courts appointing counsel; and
8. Refer to the appropriate Judicial Council advisory body or bodies, for their consideration, commenters' suggestions for additional substantive changes to the rules that the working group was not able to consider at this time.