



## Subject Text

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### Title

### **Rules and Forms: Criminal and Appellate Procedure: Appeals from Superior Court Decisions in Death Penalty-Related Habeas Corpus Proceedings (Action Required)**

### Summary

The Proposition 66 Rules Working Group recommends amendments to an existing rule of court relating to appeals from decisions in habeas corpus proceedings and the adoption of several new rules of court and a form addressing appeals from superior court decisions on death penalty-related habeas corpus petitions. These proposed rules and the form are intended to partially fulfill the Judicial Council's rule-making obligations under Proposition 66 by establishing procedures for this new type of appeal. This proposal is submitted concurrently with a separate report to the Judicial Council containing the working group's proposal for rules governing procedures for death penalty-related habeas corpus proceedings in the superior courts.

### Recommendation

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

1. Adopt rule 8.390 to provide that the rules in article 2 apply only to appeals from superior court decisions in death penalty-related habeas corpus proceedings, and to specify what existing appellate rules also apply to these appeals;
2. Adopt rule 8.391 to establish qualifications of counsel eligible for appointment and to require the designation of an assisting counsel or entity;
3. Adopt rule 8.392 to establish procedures for filing these appeals, including for:
  - a. Signing, serving, and filing a notice of appeal;
  - b. Requesting, responding to, and granting or denying a certificate of appealability; and
  - c. Notification of the filing of a notice of appeal by a superior court clerk;
4. Adopt rule 8.393 to implement the 30-day time limit for filing a notice of appeal set forth in Penal Code section 1509.1(a);
5. Adopt rule 8.394 to provide that a petitioner may apply for a stay of execution pending appeal, and that a reviewing court may grant interim relief pending its ruling on the application;
6. Adopt rule 8.395 to specify, with respect to the record on appeal:
  - a. The contents and form, the number of copies required, and to whom they must be sent;
  - b. That the parties may stipulate to a partial transcript;
  - c. When preparation must begin and when it must be completed; and
  - d. Procedures for augmentation and correction and for judicial notice;
7. Adopt rule 8.396 to specify, for the briefs on appeal, their contents and form, length, time for filing, and to whom they must be sent;
8. Adopt rule 8.397 to establish procedures for raising and hearing claims of ineffective assistance of counsel under Penal Code section 1509.1(b), including that:
  - a. The claim must be raised in the first brief filed by petitioner;
  - b. The claim must be accompanied by a proffer;
  - c. An evidentiary hearing may be required;
  - d. The claim may be considered by the superior court, pursuant to a limited remand;

- e. The Court of Appeal may stay the remainder of the appeal pending the decision of the superior court on remand;
  - f. A new notice of appeal must be filed to challenge the superior court's decision on remand, and any resulting appeal may be consolidated with the pending appeal of the habeas corpus decision;
9. Adopt rule 8.398 to provide that rule 8.366 regarding finality also applies to these appeals, except that the Court of Appeal's denial of an application for a certificate of appealability is final in that court on filing;
10. Amend rule 8.388 to limit its application to non-capital habeas corpus appeals;
11. Adopt *Petitioner's Notice of Appeal-Death Penalty-Related Habeas Corpus Decision* (form HC-200) for mandatory use by petitioners; and
12. Refer to the Judicial Council's Rules and Projects Committee all proposals for additional substantive changes that the working group discussed or received from commenters, but that it was not able to address during its work, so that the Rules and Projects Committee may determine which advisory body, if any, should consider such proposals in the future.

**Speakers**

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