

SUMMARY OF REQUIREMENTS

(rev 1/2014)

NON-CAPITAL HABEAS CORPUS PROCEEDINGS IN APPELLATE COURT

See *ADI Criminal Appellate Practice Manual*, § 8.84 et seq., for step-by-step guidance in preparing a petition for writ of habeas corpus in the Court of Appeal.

If the appellate court issues an order to show cause **returnable before the superior court**, do not use this chart for proceedings after the OSC. **Rule 4.550 et seq.**, rather than the rules cited in this chart, will apply.

<p>Due dates</p> <p style="text-align: right; font-size: small;">Rules 8.385(b), 8.386(b)(1), (d)(1)</p>	<ul style="list-style-type: none"> <input type="checkbox"/> petition: deadline not specified by statute or rule; time must be reasonable <input type="checkbox"/> informal response (if ordered by court): within 15 days of order, unless court specifies otherwise <input type="checkbox"/> reply to informal response: within 15 days after informal response filed, unless court specifies otherwise <input type="checkbox"/> return (if in appellate court): no more than 30 days after order to show cause issued, unless court orders otherwise <input type="checkbox"/> traverse (if in appellate court): no more than 30 days after return filed, unless court orders otherwise
<p>Format</p> <p style="text-align: right; font-size: small;">Rules 8.204(a) & (b), 8.384(a)(1) & (2), (b)(3), 8.386(c)(1) & (2), (d)(2), 8.486(c)(1)</p>	<ul style="list-style-type: none"> <input type="checkbox"/> petition: if filed by attorney, may be on Judicial Council form MC-275; if by pro per petitioner, must be on the form unless court orders otherwise <input type="checkbox"/> petition not on form MC-275 (filed by attorney), return, traverse, accompanying memorandum: same format as appellate brief <input type="checkbox"/> supporting documents: bound together with petition or in separate volumes not exceeding 300 pages; index-tabbed by number or letter; paginated consecutively; table of contents with title of each document and brief description
<p>Cover</p> <p style="text-align: right; font-size: small;">Rules 8.40(b) & (c), 8.204(b)(10), 8.384(a)(1), 8.386(c)(1), (d)(2); Pen. Code, § 1474</p>	<ul style="list-style-type: none"> <input type="checkbox"/> cover required for petition filed by attorney (including one on form MC-275), return, and traverse <input type="checkbox"/> same content as brief cover in appellate court; petition should identify custodian <input type="checkbox"/> cover color for petition, return, traverse: red
<p>Contents and accompanying documents</p> <p style="text-align: right; font-size: small;">Rules 8.384(a) & (b), 8.386(c) & (d), 8.486; Pen. Code, § 1474</p>	<ul style="list-style-type: none"> <input type="checkbox"/> petition: must contain information required by Judicial Council form MC-275, even if not filed on that form; must state sufficient facts to create prima facie case for relief (<i>People v. Romero</i> (1994) 8 Cal.4th 728) <input type="checkbox"/> petition: must be accompanied by copy of any other petition relating to the judgment (without exhibits) previously filed in any court, unless the petition was filed in the same Court of Appeal or in the Supreme Court and so states and identifies documents by name and number; must be accompanied by certified transcript of any previous evidentiary hearing <input type="checkbox"/> return: see requirements set out in <i>People v. Duvall</i> (1995) 9 Cal.4th 464; any material allegation of petition not controverted by return is deemed admitted <input type="checkbox"/> traverse: any material allegation of return not denied in traverse is deemed admitted; traverse may reassert allegations of petition or ask petition be deemed a traverse (<i>People v. Duvall</i> (1995) 9 Cal.4th 464) <input type="checkbox"/> any supporting documents that are sealed by court order or made confidential by law must comply with rules 8.45-8.47 <input type="checkbox"/> all filings: if accompanied by supporting documents, must support any reference to them by citation to applicable index tab and page and comply with rule 8.486(c)(1)

<p>Length</p> <p>Rules 8.204(c), 8.384(a)(2), 8.386(c)(1), (d)(2)</p>	<ul style="list-style-type: none"> <input type="checkbox"/> petition itself: no limit specified by rule or statute (but see limit on accompanying memorandum, below) <input type="checkbox"/> return, traverse, any memorandum accompanying petition: governed by rule 8.204(c) – no more than 14,000 words or 50 pages if typewritten <input type="checkbox"/> cover information, tables, signature block, certificate of word count, and any permitted attachments are excluded from the word count limit
<p>Service and filing</p> <p>Rules 8.44, 8.380(c), 8.384(c), 8.386(b)(2), (d)(4)</p>	<ul style="list-style-type: none"> <input type="checkbox"/> filing copies of pro per petition: <ul style="list-style-type: none"> • in Supreme Court: unless the court orders otherwise, original plus 10, or original plus 8 and 1 electronic copy, with proof of service • in Court of Appeal: one, with proof of service <input type="checkbox"/> filing copies of petition filed by attorney, informal response, reply to informal response, return, traverse, and any accompanying memorandum: <ul style="list-style-type: none"> • in Supreme Court: unless the court orders otherwise, original plus 10, or original plus 8 and 1 electronic copy, with proof of service • in Court of Appeal: original plus 4, with proof of service <input type="checkbox"/> filing copies of supporting documents: <ul style="list-style-type: none"> • in Supreme Court: original plus 2, with proof of service • in Court of Appeal: 1, with proof of service <input type="checkbox"/> service: those who reasonably may be affected or have an interest in petition – e.g., AG, DA in county of conviction, custodian of the petitioner, the superior court or Court of Appeal (unless filed there), trial and/or appellate counsel, ADI, etc. – as dictated by nature of filing and issues; Pen. Code, § 1475 requires service on DA of county "wherein such person is held in custody or restraint"