

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Criminal Law Advisory Committee
Hon. Steven Z. Perren, Chair
Arturo Castro, Committee Counsel, 415-865-7702,
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DATE: July 31, 2009

SUBJECT: Criminal Law: Petitions for Writs of Habeas Corpus (revise Judicial Council form MC-275) (Action Required)

Issue Statement

The *Petition for Writ of Habeas Corpus* (form MC-275) contains an incomplete instruction regarding the number of copies required when a petition is filed in the Court of Appeal. Currently, the form provides only that the original and four copies of the petition and one copy of the supporting documents must be filed. The proposed revisions to the *Petition for Writ of Habeas Corpus* add information to the instructions on the first page of the form to specify certain filing requirements prescribed by the California Rules of Court.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2010, revise the *Petition for Writ of Habeas Corpus* (form MC-275) to:

1. Specify the number of copies that are required when a petition is filed in the Court of Appeal by a self-represented petitioner;
2. Clarify the number of supporting documents that must be filed in the Supreme Court; and
3. Advise attorneys that the number of copies of supporting documents that must be filed in the Court of Appeal may vary by local rule or court order in a specific case.

The text of the proposed revisions to the *Petition for Writ of Habeas Corpus* (form MC-275) is attached at page 4.

Rationale for Recommendation

The proposed revisions add information to the instructions to differentiate the number of copies that are required when a petition for writ of habeas corpus is filed in the Court of Appeal by an attorney or self-represented petitioner. The number of copies required differs for attorneys and self-represented petitioners. Attorneys must file an original and four copies of the petition and one set of any separately bound supporting documents. (Cal. Rules of Court, rules 8.44(b)(3) and (5); 8.384(c).) Self-represented petitioners, on the other hand, need only file the original and one set of any supporting documents. (Cal. Rules of Court, rules 8.44(b)(2); 8.380(c).)

In addition, this proposal adds information to the instructions to clarify that an original and two sets of any supporting documents must be filed in the Supreme Court (Cal. Rules of Court, rules 8.44(a)(3); 8.380(c)), and to advise attorneys that the number of copies of supporting documents required to be filed in the Court of Appeal may vary by local rule or court order in a specific case. (Cal. Rules of Court, rule 8.44(b)(5).)

Alternative Actions Considered

As explained in the next section, the committee considered but declined to add information to the instructions to clarify that the number of copies required when a petition is filed in the Supreme Court applies to both attorneys and self-represented petitioners.

Comments From Interested Parties

The proposed revisions were circulated as part of the spring 2009 comment cycle. A total of seven comments were received. Of those, six agreed with the proposal and one did not specify a position. A chart with all the comments received and the committee responses to each is attached at pages 10–11.

Only two substantive comments were received. One commentator suggested adding more information to the instructions to clarify that the number of copies required when a petition is filed in the Supreme Court applies to both attorneys and self-represented petitioners. The committee decided that additional information is unnecessary, however, because the proposed instruction accurately reflects the copy requirements prescribed by California Rules of Court, rule 8.44(a), which does not distinguish between attorneys and self-represented petitioners.

The only other substantive comment, which suggested adding an instruction regarding service of the petition, was declined as inaccurate and beyond the scope of the proposal.

Implementation Requirements and Costs

Expected costs would be limited to making revised forms available for use by petitioners and the courts and any associated judicial officer and court staff training.

Attachments

Name: _____

Address: _____

CDC or ID Number: _____

(Court)

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner

vs.

No. _____

(To be supplied by the Clerk of the Court)

Respondent

INSTRUCTIONS—READ CAREFULLY

- **If you are challenging an order of commitment or a criminal conviction 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 **and you are an attorney**, file the original and 4 copies of the petition and, if separately bound, 1 **set** of any supporting documents **(unless the court orders otherwise by local rule or in a specific case)**. **If you are filing this petition in the Court of Appeal and you are *not* represented by an attorney**, file the original 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 rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). 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 sentence
- Credits
- Jail or prison conditions
- Prison discipline
- Other (specify): _____

1. Your name: _____

2. Where are you incarcerated? _____

3. Why are you in custody? 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: _____

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

8. 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. 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:

9. 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. Issues raised: (1) _____

(2) _____

(3) _____

10. 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:

11. 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 Muszalski* (1975) 52 Cal.App.3d 500.) 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.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? Yes If yes, continue with number 13. No If no, skip to number 15.

13. a. (1) Name of court: _____

(2) Nature of proceeding (for example, "habeas corpus petition"): _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (*attach order or explain why unavailable*): _____

(5) Date of decision: _____

b. (1) Name of court: _____

(2) Nature of proceeding: _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (*attach order or explain why unavailable*): _____

(5) Date of decision: _____

c. *For additional prior petitions, applications, or motions, provide the same information on a separate page.*

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

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

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

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

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

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)

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All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Katherine Lynn Managing Attorney Court of Appeal, Second Appellate District	A	No specific comment.	No response required.
2.	Orange County Bar Association Michael G. Yoder President	A	No specific comment.	No response required.
3.	San Diego County Bar Association Matthew C. Mulford Chair, Appellate Court Committee	NI	We have no problem with the recommendation to add the proposed language. In light of the proposed language providing separate instructions delineating the number of copies for attorneys and pro se petitioners in the Court of Appeal, to avoid confusion, we suggest clarifying whether the subsequent instruction delineating the number of copies in the Supreme Court applies to both attorneys and pro se litigants or one or the other.	The proposed instruction accurately tracks the language of rule 8.44(a). Additional revisions are unnecessary.
4.	Michael D. Schwartz Special Assistant District Attorney Ventura County District Attorney's Office	A	I agree with the suggested changes. I also suggest advising the defendant that a copy of the petition must be served on the district attorney (Penal Code section 1475), and that a signed proof of service (e.g., forms APP-009 or POS-030) should be attached to the copy of the petition sent to the court. My experience with the Ventura County	Although the committee appreciates the comment, it exceeds the scope of the proposal. In addition, the service requirement in Penal Code section 1475 applies before the petition is heard on the merits but does not require service of the petition before filing.

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	Commentator	Position	Comment	Committee Response
			Superior Court is that many pro per petitions for writs of habeas corpus are rejected by the clerk because there is no proof of service on the district attorney. Frequently, the petitioner will send a copy of the petition to the district attorney, but this is ineffectual because the clerk has already sent the court's copy back to the petitioner so the petition is not pending in court. Petitioners often need to make several attempts to get the timing of the filing and service correct, or they give up without the petition being considered on the merits.	
5.	Superior Court of Los Angeles County	A	No specific comment.	No response required.
6.	Superior Court of Riverside County Carrie Snuggs Regional Operations Director	A	No specific comment.	No response required.
7.	Superior Court of San Diego County Michael M. Roddy Executive Officer	A	No specific comment.	No response required.