

**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
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SUBJECT: Criminal Procedure: Rules Governing Jurisdiction in Habeas Corpus
Petitions in Trial and Appellate Courts (amend Cal. Rules of Court, rules 60
and 4.552) (Action Required)

Issue Statement

The California Supreme Court, in *In re Roberts* (2005) 36 Cal.4th 575, recently clarified the appropriate court to hear a petition for writ of habeas corpus challenging the denial of parole. The rules of court governing habeas corpus jurisdiction in both the trial and appellate courts need to be amended to reflect this ruling.

Recommendation

The Criminal Law Advisory Committee, in consultation with the Appellate Advisory Committee, recommends that the Judicial Council, effective January 1, 2006, amend rules 60 and 4.552 of the California Rules of Court to clarify the appropriate court to hear a petition for writ of habeas corpus challenging the denial of parole or suitability for parole.

The text of the amended rules is attached at pages 4–5.

Rationale for Recommendation

The Supreme Court decision in *In re Roberts* resolved a split in the Courts of Appeal on whether a petition for writ of habeas corpus challenging the denial of parole should be filed in the trial court in the county of confinement or the trial court in the county that rendered the judgment. The Supreme Court clarified in *In re Roberts* that the proper venue for a habeas corpus petition challenging a denial of parole or a determination of unsuitability for parole lies in the county and corresponding appellate district in which judgment was rendered. (*Roberts, supra*, 36 Cal.4th at pp. 593–594.)

Habeas corpus jurisdiction is governed by the California Constitution, case law, and rules of court. The California Constitution provides that the Supreme Court, Courts of Appeal, and the superior courts all have original jurisdiction in a habeas corpus proceeding. (Cal. Const., art. VI, § 10.) In *Griggs v. Superior Court* (1976) 16 Cal.3d 341, the California Supreme Court held that a habeas corpus petition could be filed in any superior court and, “unless there is a substantial reason for transferring a petition[,] it should be resolved in the court where filed.” (*Id.* at p. 347.)

Rule 4.552 sets forth when it is appropriate to transfer a petition for writ of habeas corpus that is filed in the superior court. Under rule 4.552, in most circumstances a petition for writ of habeas corpus should be retained by the superior court in which it is filed. The petition may be transferred to another superior court, however, if: (1) it challenges the terms of the judgment and is not filed in the jurisdiction in which judgment was rendered; or (2) it challenges conditions of confinement and is not filed in the jurisdiction in which the petitioner is confined. (Rule 4.552(b)(2)(A) and (B).)

While this rule addressed most circumstances, appellate courts came to differing conclusions on which superior court should properly hear a petition for writ of habeas corpus challenging a denial of parole. In *In re Roberts* (2005) 36 Cal.4th 575, the California Supreme Court resolved the dispute and found that “a petitioner who seeks to challenge by means of habeas corpus the denial of parole (or his or her suitability for parole) should file the petition in the superior court located in the county in which the conviction and sentence arose, and that the petition should be adjudicated in that venue.” (*Id.* at p. 593.) The court, exercising its inherent authority to establish rules of judicial procedure, directed that “a habeas corpus petition challenging a decision of the parole board should be filed in the superior court, which should entertain in the first instance the petition.” (*Ibid.*)

To comply with *In re Roberts*, rule 4.552 would be amended to require petitions challenging a denial of parole to be transferred to the court in which the underlying judgment was rendered.

Similarly, rule 60, which addresses petitions for writ of habeas corpus in the appellate courts, would be amended to reflect the directive in *In re Roberts*. In discussing petitions filed in the Courts of Appeal, the Supreme Court found that “a habeas corpus petition challenging a decision of the parole board should be filed in the superior court, which should entertain in the first instance the petition.” (*Roberts, supra*, 36 Cal.4th at p. 593.) Therefore, rule 60 would be amended to provide that a Court of Appeal must deny a petition challenging denial of parole unless it was first ruled upon by the trial court.

Alternative Actions Considered

None considered.

Comments From Interested Parties

The proposal was not circulated for comment. Rule 6.22(d)(2) provides that a proposal may be considered by the Judicial Council without circulation for public comment where it presents “a minor substantive change that is unlikely to create controversy.” This proposal is substantive, but is unlikely to create controversy because the California Supreme Court has ruled on and clarified the jurisdictional issue. The California Supreme Court’s ruling is controlling.

Implementation Requirements and Costs

Implementation would impose unknown costs on the courts of conviction, but courts in which prisons are located would be equally relieved of the financial burden of hearing those petitions.

Attachments

Rules 60 and 4.552 of the California Rules of Court would be amended, effective January 1, 2006, to read:

1 **Rule 60. Petition for writ of habeas corpus**

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3 (a)–(c) ***

4
5 (d) **Petition ~~unrelated to appellate district~~ filed in inappropriate court**

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7 (1) ***

8
9 (2) A Court of Appeal must deny without prejudice a petition for writ of habeas
10 corpus that challenges the denial of parole or the petitioner’s suitability for
11 parole if the issue was not first adjudicated by the trial court that rendered the
12 underlying judgment.

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14 (2) (3) If the court denies a petition solely under (1) this subdivision, the order
15 must state the basis of the denial and must identify the appropriate court in
16 which to file the petition.

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18 **Advisory Committee Comment (2005)**

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20 Revised rule 60(a)–(b) restates former rule 56.5.

21
22 **Subdivision (d).** Except for subdivision (d)(2), revised rule 60(d) restates section 6.5 of the
23 Standards of Judicial Administration. New subdivision (d)(2) is based on the California Supreme Court
24 decision in *In re Roberts* (2005) 36 Cal.4th 575, which provides that petitions for writ of habeas corpus
25 challenging denial or suitability for parole are first to be adjudicated in the trial court that rendered the
26 underlying judgment.

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28
29 **Rule 4.552 Habeas corpus jurisdiction**

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31 (a) **[Proper court to hear petition]** Except as set forth in ~~subdivision (b)(2)~~ and (c), the
32 petition must be heard and resolved in the court in which it is filed.

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34 (b) **[Transfer of petition—discretionary]**

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36 (1)–(4) ***

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38 (c) **[Transfer of petition—mandatory]** If the petition challenges the denial of parole or
39 the petitioner’s suitability for parole and is filed in a superior court other than the
40 court that rendered the underlying judgment, the court in which the petition is filed
41 must transfer the petition to the superior court in which the underlying judgment was
42 rendered. The court must transfer the case before determining whether the petition
43 states a prima facie case for relief and specify in the order of transfer the reason for
44 the transfer.

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(d) [Single judge must decide petition] A petition for writ of habeas corpus filed in the superior court must be decided by a single judge; it must not be considered by the appellate division of the superior court.

Advisory Committee Comment (2005)

Subdivision (c) is based on the California Supreme Court decision in *In re Roberts* (2005) 36 Cal.4th 575, which provides that petitions for writ of habeas corpus challenging denial or suitability for parole are to be adjudicated in the court that rendered the underlying judgment.