

**Invitation to Comment**

<p>Title</p>	<p><b>Criminal Law: Petitions for Writs of Habeas Corpus (revise Judicial Council form MC-275)</b></p>
<p>Summary</p>	<p>The proposed revisions to the <i>Petition for Writ of Habeas Corpus</i> (form MC-275) add information to the instructions to (1) indicate the number of copies that are required when a petition is filed in the Court of Appeal by a self-represented defendant, (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 to be filed in the Court of Appeal may vary by local rule or court order in a specific case.</p>
<p>Source</p>	<p>Criminal Law Advisory Committee Hon. Steven Z. Perren, Chair</p>
<p>Staff</p>	<p>Arturo Castro, Attorney, Office of the General Counsel, 415-865-7702, arturo.castro@jud.ca.gov</p>
<p>Discussion</p>	<p>The <i>Petition for Writ of Habeas Corpus</i> (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 that the original and four copies of the petition and one copy of the supporting documents must be filed.</p> <p>The number of copies required, however, differs for attorneys and self-represented defendants. Attorneys must file an original and four copies of the petition and one set of any separately bound supporting documents. (Cal. Rules of Court, rule 8.384(c); 8.44(b)(3) and (5).) Self-represented defendants, on the other hand, need only file the original and one set of any supporting documents. (Cal. Rules of Court, rule 8.380(c); 8.44(b)(2).)</p> <p>The proposed revisions to the <i>Petition for Writ of Habeas Corpus</i> (form MC-275) add information to the instructions to differentiate the number of copies that are required when a petition is filed in the Court of Appeal by an attorney or self-represented defendant.</p>

In addition, this proposal adds information to the instructions to clarify the number of supporting documents that must be filed in the Supreme Court 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).)

The proposed form revisions are attached on pages 3–8.

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Attachment

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

6. GROUNDS FOR RELIEF

**Ground 1:** State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." (*If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.*)

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a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, *who* did exactly *what* to violate your rights at what time (*when*) or place (*where*). (*If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.*)

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b. Supporting cases, rules, or other authority (optional):

(*Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.*)

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7. Ground 2 or Ground \_\_\_\_\_ (if applicable):

Four horizontal lines for writing the grounds.

a. Supporting facts:

Multiple horizontal lines for providing supporting facts.

b. Supporting cases, rules, or other authority:

Multiple horizontal lines for providing supporting cases, rules, or other authority.

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)



## Item SPR09-22 Response Form

**Title:** Criminal Law: Petitions for Writs of Habeas Corpus (revise form MC-275)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

- Commenting on behalf of an organization

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

**Internet:** <http://www.courtinfo.ca.gov/invitationstocomment/>

**Email:** [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

**Mail:** Ms. Camilla Kieliger  
Judicial Council, 455 Golden Gate Avenue  
San Francisco, CA 94102

**Fax:** (415) 865-7664, Attn: Camilla Kieliger

**DEADLINE FOR COMMENT:** 5:00 p.m., Wednesday, June 17, 2009

*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.*