

# Judicial Council of California • Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688  
[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

---

## INVITATION TO COMMENT

**SPR11-30**

---

Title	Action Requested
Criminal Procedure: Petitions for Writs of Habeas Corpus	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend rules 4.552 and 8.385 of the California Rules of Court	January 1, 2012
Proposed by	Contact
Criminal Law Advisory Committee Hon. Steven Z. Perren, Chair	Arturo Castro arturo.castro@jud.ca.gov 415-865-7702

---

### Summary

Rules 4.552(c) and 8.385(c)(2) of the California Rules of Court require the transfer or denial, respectively, of petitions for writs of habeas corpus that challenge parole decisions that are not first filed or adjudicated in the superior court that rendered the underlying judgment. In response to recent case law that invalidated rule 8.385(c)(2), the proposed amendments would clarify that transfers or denials of such petitions are preferred but not required. In addition, the proposed amendments would clarify that a habeas petition should be heard and resolved in the superior court in which it is filed.

### Discussion

#### Rule 8.385

Rule 8.385(c)(2) requires courts of appeal to deny, without prejudice, habeas petitions that challenge the denial or suitability for parole if the petitions are not first adjudicated by the trial court that rendered the underlying judgment. The advisory committee comment to the rule explains that subdivision (c)(2) is “based on the California Supreme Court ruling 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 first to be adjudicated in the trial court that rendered the underlying judgment.”

Recent case law—*In re Kler* (2010) 188 Cal.App.4th 1399—invalidated rule 8.385(c)(2) for two reasons. First, by prohibiting courts of appeal from adjudicating certain petitions, the rule conflicts with article VI, section 10 of the California Constitution, which grants original

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

jurisdiction in habeas proceedings to *all* California courts. (*Kler, supra*, 188 Cal.App.4th at 1403.) Second, the rule “goes beyond the dictates in *Roberts*, which states that such petitions ‘should’ first be heard at the trial level.” (*Id.* at 1404.)

Consistent with the ruling in *Kler*, the proposal would amend subdivision (c)(2) to clarify that courts of appeal “should” deny petitions that challenge denial or suitability for parole if the issue was not first adjudicated by the trial court that rendered the underlying judgment. In addition, the proposal would amend the advisory committee comment to clarify that the Supreme Court ruling in *Roberts* only provides that the petitions *should* first be adjudicated in the trial court that rendered the underlying judgment.

#### **Rule 4.552**

Rule 4.552 governs superior court jurisdiction over habeas corpus proceedings. Subdivision (a) provides that a petition “must” be heard and resolved in the superior court in which it is filed. Subdivision (c) provides the following exception:

If the petition challenges the denial of parole or the petitioner’s suitability for parole and is filed in a superior court other than the court that rendered the underlying judgment, the court in which the petition is filed *must* transfer the petition to the superior court in which the underlying judgment was rendered. (Italics added.)

The advisory committee comment explains that subdivision (c) is based on the Supreme Court decision in *In re Roberts, supra*, 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.”

The Criminal Law Advisory Committee proposes amending subdivisions (a) and (c) because those provisions may be interpreted as inconsistent with the *Kler* and *Roberts* opinions. The proposal would amend subdivision (a) to clarify that petitions “should” be heard and resolved in the superior court in which they are filed. The proposed amendment to subdivision (a) will make that subdivision consistent with the Supreme Court ruling in *Roberts*, which provides that “a habeas corpus petition *should* be heard and resolved by the court in which the petition was filed.” (*Roberts, supra*, 36 Cal.4th at 585; italics added.)

The proposed amendments to subdivision (c) will make that subdivision consistent with the *Kler* and *Roberts* opinions by eliminating the restriction on which superior courts may adjudicate certain petitions. The proposal would delete subdivision (c) and add the following as subdivision (b)(2)(C):

If the petition challenges the denial of parole or the petitioner’s suitability for parole and is filed in a superior court other than the court that rendered the underlying judgment, the court in which the petition is filed *should* transfer the

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

petition to the superior court in which the underlying judgment was rendered.  
(Italics added.)

In addition, the proposal would amend the advisory committee comment to clarify that the Supreme Court ruling in *Roberts* provides that petitions challenging the denial or suitability for parole *should* be adjudicated in the court that rendered the underlying judgment.

Attachments

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

Rules 4.552 and 8.385 of the Cal. Rules of Court are amended, effective January 1, 2012, to read:

1 **Rule 4.552. Habeas corpus jurisdiction**

2  
3 **(a) Proper court to hear petition**

4  
5 Except as stated in (b) ~~and (c)~~, the petition ~~must~~ should be heard and resolved in the  
6 court in which it is filed.

7  
8 **(b) Transfer of petition—~~discretionary~~**

9  
10 (1) The superior court in which the petition is filed must determine, based on the  
11 allegations of the petition, whether the matter should be heard by it or in the  
12 superior court of another county.

13  
14 (2) If the superior court in which the petition is filed determines that the matter  
15 may be more properly heard by the superior court of another county, it may  
16 nonetheless retain jurisdiction in the matter or, without first determining  
17 whether a prima facie case for relief exists, order the matter transferred to the  
18 other county. Transfer may be ordered in the following circumstances:

19  
20 (A) If the petition challenges the terms of a judgment, the matter may be  
21 transferred to the county in which judgment was rendered.

22  
23 (B) If the petition challenges the conditions of an inmate's confinement, it  
24 may be transferred to the county in which the petitioner is confined. A  
25 change in the institution of confinement that effects a change in the  
26 conditions of confinement may constitute good cause to deny the  
27 petition.

28  
29 (C) If the petition challenges the denial of parole or the petitioner's  
30 suitability for parole and is filed in a superior court other than the court  
31 that rendered the underlying judgment, the court in which the petition is  
32 filed should transfer the petition to the superior court in which the  
33 underlying judgment was rendered.

34  
35 (3) The transferring court must specify in the order of transfer the reason for the  
36 transfer.

37  
38 (4) If the receiving court determines that the reason for transfer is inapplicable,  
39 the receiving court must, within 30 days of receipt of the case, order the case  
40 returned to the transferring court. The transferring court must retain and  
41 resolve the matter as provided by these rules.  
42

1 ~~(e)~~ **Transfer of petition—mandatory**

2  
3 If the petition challenges the denial of parole or the petitioner’s suitability for  
4 parole and is filed in a superior court other than the court that rendered the  
5 underlying judgment, the court in which the petition is filed must transfer the  
6 petition to the superior court in which the underlying judgment was rendered. The  
7 court must transfer the case before determining whether the petition states a prima  
8 facie case for relief and specify in the order of transfer the reason for the transfer.  
9

10 ~~(d)~~ **(c) Single judge must decide petition**

11  
12 A petition for writ of habeas corpus filed in the superior court must be decided by a  
13 single judge; it must not be considered by the appellate division of the superior  
14 court.  
15

16 **Advisory Committee Comment**

17  
18 **Subdivision ~~(e)~~(b)(2)(C).** This subdivision is based on the California Supreme Court decision in  
19 *In re Roberts* (2005) 36 Cal.4th 575, which provides that petitions for writ of habeas corpus  
20 challenging denial or suitability for parole ~~are to~~ should first be adjudicated in the trial court that  
21 rendered the underlying judgment.  
22

23 \*\*\*  
24

25 **Rule 8.385. Proceedings after the petition is filed**

26  
27 **(a)\*\*\*(b)**

28  
29 **(c) Petition filed in an inappropriate court**

30  
31 (1) A Court of Appeal may deny without prejudice a petition for writ of habeas  
32 corpus that is based primarily on facts occurring outside the court’s appellate  
33 district, including petitions that question:

34  
35 (A) The validity of judgments or orders of trial courts located outside the  
36 district; or

37  
38 (B) The conditions of confinement or the conduct of correctional officials  
39 outside the district.  
40

41 (2) A Court of Appeal ~~must~~ should deny without prejudice a petition for writ of  
42 habeas corpus that challenges the denial of parole or the petitioner’s

1 suitability for parole if the issue was not first adjudicated by the trial court  
2 that rendered the underlying judgment.

- 3  
4 (3) If the court denies a petition solely under (1), the order must state the basis of  
5 the denial and must identify the appropriate court in which to file the petition.

6  
7 **(d)\*\*\*(f)**

8  
9 **Advisory Committee Comment**

10  
11 **Subdivision (c).** Except for subdivision (c)(2), rule 8.385(c) restates former section 6.5 of the  
12 Standards of Judicial Administration. Subdivision (c)(2) is based on the California Supreme  
13 Court decision in *In re Roberts* (2005) 36 Cal.4th 575, which provides that petitions for writ of  
14 habeas corpus challenging denial or suitability for parole ~~are~~ should first ~~to~~ be adjudicated in the  
15 trial court that rendered the underlying judgment.

16  
17 **Subdivision (d).** Case law establishes the specificity of the factual allegations and support for  
18 these allegations required in a petition for a writ of habeas corpus (see, e.g., *People v. Duvall*  
19 (1995) 9 Cal.4th 464, 474–475, and *Ex parte Swain* (1949) 34 Cal.2d 300, 303–304). A court  
20 evaluating whether a petition meeting these requirements makes a prima facie showing asks  
21 whether, assuming the petition’s factual allegations are true, the petitioner would be entitled to  
22 relief (*People v. Duvall*, supra).

23  
24 Issuing an order to show cause is just one of the actions a court might take on a petition for a writ  
25 of habeas corpus. Examples of other actions that a court might take include denying the petition  
26 summarily, requesting an informal response from the respondent under (b), or denying the  
27 petition without prejudice under (c) because it is filed in an inappropriate court.  
28

## Item SPR11-30 Response Form

**Title:** Criminal Procedure: Petitions for Writs of Habeas Corpus (amend Cal. Rules of Court, rules 4.552 and 8.385)

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

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**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: [www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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

<b>DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011</b>
---

*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.*