

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

**SPR18-13**

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Title	Action Requested
Criminal Procedure: Petition for Writ of Habeas Corpus	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise form HC-001 <sup>1</sup>	January 1, 2019
Proposed by	Contact
Criminal Law Advisory Committee	Kimberly DaSilva, 415-865-4534
Hon. Tricia A. Bigelow, Chair	kimberly.dasilva@jud.ca.gov

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### Executive Summary and Origin

The Criminal Law Advisory Committee proposes revisions to the Judicial Council form used by non-capital petitioners to petition for a writ of habeas corpus. This proposal would update the instructions regarding filing in the Supreme Court and Court of Appeal to reflect amendments to the appellate rules; replace or add authority that is more recent or more on point for the propositions they support; add language relevant to successive petitions and repetitive claims in item 12 to include the court in which the petition is filed; and add citations as authority for the procedural bars of successiveness and repetitiveness. These changes are in response to a request from members of the California Supreme Court's Central Criminal Staff.

### Background

*Petition for Writ of Habeas Corpus* (form HC-001) is used by non-capital petitioners seeking release from, or modification of the conditions of, custody of a person confined in a state or local penal institution, hospital, narcotics treatment facility, or other institution to challenge an order of commitment, a criminal conviction, or conditions of confinement. With the exception of self-represented litigants, when filing in the Supreme Court and Court of Appeal, all parties are required to file documents electronically pursuant to California Rules of Court, rule 8.71,

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<sup>1</sup> This form is currently located within a "miscellaneous" form group and is numbered MC-275, with the "MC" signifying the miscellaneous category. However, before the proposed effective date of this proposal, it is anticipated that the form will be redesignated to a "habeas corpus" form group, signified by "HC." The number of this form would change to HC-001. The purpose of the proposed redesignation and renumbering is to establish a more user-friendly, subject-area connection to certain forms.

*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.*

adopted effective January 1, 2017. However, self-represented parties may file documents electronically if they chose to do so.

Pursuant to California Rules of Court, rule 8.380, an unrepresented person must use form HC-001 to petition a reviewing court for a writ of habeas corpus seeking release from, or modification of the conditions of, custody of a person confined in a state or local penal institution, hospital, narcotics treatment facility, or other institution. This form is used by unrepresented petitioners whose petitions frequently run up against the procedural bar of successiveness (which bars unjustified, successive petitions) and the procedural bar of repetitiveness (which bars petitions based on the same grounds set forth in a previously denied petition). (*In re Clark* (1993) 5 Cal.4th 750, 767–769; *In re Miller* (1941) 17 Cal.2d 734, 735.)

## **The Proposal**

This proposal would:

1. Update the instructions regarding filing in the Supreme Court and Court of Appeal to reflect amendments to the appellate rules;
2. Move the request in item 6(a) that the petitioner attach available documents supporting the claim to a new, stand-alone item 6(b) and re-letter the current item 6(b) as item 6(c);
3. Add a request as item 7(b) that the petitioner attach available documents supporting the claim, and re-letter the current item 7(b) as item 7(c);
4. Replace or add authority cited on the form that is more recent or more on point for the propositions they support by:
  - a. Adding a citation to *People v. Duvall* (1995) 9 Cal.4th 464, 474 to the request in the proposed item 6(b) that the petitioner attach available documents supporting the claim;
  - b. Adding to item 10 a citation to *In re Dixon* (1953) 41 Cal. 2d 756, 759 to support the request that the petitioner explain why claims that could have been made on appeal were not made;
  - c. Replacing the citation in item 11(a) to *In re Muszalski* (1975) 52 Cal.App.3d 500 with *In re Dexter* (1979) 25 Cal.3d 921, 925 as authority for administrative review;
  - d. Adding to item 11(b) a citation to *People v. Duvall* (1995) 9 Cal.4th 464, 474 to support the request that the petitioner “Attach documents that show you have exhausted your administrative remedies”;
  - e. Replacing the citation in item 15 to *In re Swain* (1949) 34 Cal.2d 300, 304 with *In re Robbins* (1998) 18 Cal.4th 770, 780. *In re Robbins* is more recent and also more clearly authoritative on the timeliness issue for which the item requests information; and
5. Clarify that the procedural bars against successive and repetitive petitions include those that are filed in the same court by:
  - a. Adding language in item 12 to include the court in which the petition is filed; and

- b. Adding citations in item 12 to *In re Clark* (1993) 5 Cal.4th 750, 767–769 and *In re Miller* (1941) 17 Cal.2d 734, 735 as authority for those procedural bars.

These revisions would benefit both petitioners and courts by providing more accurate and current authority for the information requested on the form and by more specifically requesting information relevant to successive petitions and repetitive claims.

### **Implementation Requirements, Costs, and Operational Impacts**

No significant implementation requirements, costs, or operational impacts are anticipated as a result of this proposal.

### **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Form HC-001, *Petition for Writ of Habeas Corpus*, at pages 4–9

Name: \_\_\_\_\_

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

CDC or ID Number: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Court)

**PETITION FOR WRIT OF HABEAS CORPUS**

No. \_\_\_\_\_

(To be supplied by the Clerk of the Court)

Petitioner	vs.	
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, file the original of the petition 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, 2016). 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. (See *In re Dixon* (1953) 41 Cal.2d 756, 759):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 Dexter* (1979) 25 Cal.3d 921, 925.) 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.* (See *People v. Duvall* (1995) 9 Cal.4th 464, 474.)

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, including this court? (See *In re Clark* (1993) 5 Cal.4th 750, 767-769 and *In re Miller* (1941) 17 Cal.2d 734, 735.)

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 Robbins* (1998) 18 Cal.4th 770, 780.)  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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)