

|            |  |
|------------|--|
| Title      | <b>Criminal Law: Petitions for Writs of Habeas Corpus (amend Cal. Rules of Court, rule 4.551; and revise Judicial Council form MC-275)</b>   |
| Summary    | <p>The proposed amendment to rule 4.551 of the California Rules of Court and revision to the <i>Petition for Writ of Habeas Corpus</i> (form MC-275) involve minor deletions designed to eliminate potential confusion regarding service requirements for habeas corpus petitions.</p> <p>In addition, this proposal includes minor, non-substantive changes designed to conform the <i>Petition for Writ of Habeas Corpus</i> (form MC-275) to current style guidelines for Judicial Council forms, e.g., adding italics and aligning columns.</p>  |
| Source     | Criminal Law Advisory Committee<br>Justice Steven Z. Perren, Chair   |
| Staff      | Arturo Castro, 415-865-7702, arturo.castro@jud.ca.gov.   |
| Discussion | <p>There are two generally recognized procedures for reaching the merits of petitions for writs of habeas corpus: one is under Penal Code section 1473 et seq., and the other is a procedure adopted by the courts (see <i>In re Sterling Scott II</i> (1994) 27 Cal.App.4th 946) and reflected in rule 4.550 et seq.</p> <p>Under the rules of court, a court may summarily deny a petition for habeas corpus if the petition fails to state a prima facie case for relief, and, thus, before the petition is served on the prosecuting attorney. (See rules 4.551(c) and 4.550(b)(2).) In contrast, Penal Code section 1475 requires a copy of the writ petition to be served on the prosecuting attorney “at least 24 hours before the time at which said writ is made returnable . . . .”</p> <p>The proposed amendments to rule 4.551 and form MC-275 are designed to eliminate two potentially misleading references to the service requirements of Penal Code section 1475.</p> <p>First, rule 4.551 contains a reference to Penal Code section 1475 that could be read to suggest that a writ petition should not be accepted for filing until it has been served on the prosecuting attorney. Specifically, rule 4.551(a)(1) provides that “[e]xcept as provided in (2), the petition . . . must be served as required in Penal Code section 1475.” Rule 4.551(a)(2), in turn, states that “[f]or good cause, a court</p> |

may also accept for filing a petition that does not comply with (a)(1).”

Thus, by implication, rule 4.551 could be read to mean that a court will not accept a petition for filing unless the petition has been served on the prosecuting attorney as required by section 1475.

Similarly, the *Petition for Writ of Habeas Corpus* (form MC-275) includes the following instruction located on the face of the form: “In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.”

By referring to the service requirements of Penal Code section 1475 on the face of the form, along with other filing instructions, this advisement may be interpreted to require service of the petition on the prosecuting attorney *before* a court will accept a petition for filing.

Because confusion regarding the service requirements of writ petitions may lead to the inappropriate summary denial of writ petitions for improper service, this proposal recommends deleting the misleading references to Penal Code section 1475 from rule 4.551(a)(1) and the *Petition for Writ of Habeas Corpus* (form MC-275).

---

Attachments

1 **Rule 4.551. Habeas corpus proceedings**

2  
3 **(a) Petition; form and court ruling**

4  
5 (1) Except as provided in (2), the petition must be on the *Petition for Writ*  
6 *of Habeas Corpus* (form MC-275), ~~and must be served as required in~~  
7 ~~Penal Code section 1475.~~

8  
9 (2) For good cause, a court may also accept for filing a petition that does  
10 not comply with (a)(1). A petition submitted by an attorney need not be  
11 on the Judicial Council form. However, a petition that is not on the  
12 Judicial Council form must comply with Penal Code section 1474 and  
13 must contain the pertinent information specified in the *Petition for Writ*  
14 *of Habeas Corpus* (form MC-275), including the information required  
15 regarding other petitions, motions, or applications filed in any court  
16 with respect to the conviction, commitment, or issue.

17  
18 (3) (A) On filing, the clerk of the court must immediately deliver the  
19 petition to the presiding judge or his or her designee. The court  
20 must rule on a petition for writ of habeas corpus within 60 days  
21 after the petition is filed.

22  
23 (B) If the court fails to rule on the petition within 60 days of its filing,  
24 the petitioner may file a notice and request for ruling.

25  
26 (i) The petitioner's notice and request for ruling must include a  
27 declaration stating the date the petition was filed and the  
28 date of the notice and request for ruling, and indicating that  
29 the petitioner has not received a ruling on the petition. A  
30 copy of the original petition must be attached to the notice  
31 and request for ruling.

32  
33 (ii) If the presiding judge or his or her designee determines that  
34 the notice is complete and the court has failed to rule, the  
35 presiding judge or his or her designee must assign the  
36 petition to a judge and calendar the matter for a decision  
37 without appearances within 30 days of the filing of the  
38 notice and request for ruling. If the judge assigned by the  
39 presiding judge rules on the petition before the date the  
40 petition is calendared for decision, the matter may be taken  
41 off calendar.

42  
43 (4) For the purposes of (a)(3), the court rules on the petition by:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13

(A) Issuing an order to show cause under (c);

(B) Denying the petition for writ of habeas corpus; or

(C) Requesting an informal response to the petition for writ of habeas corpus under (b).

(5) The court must issue an order to show cause or deny the petition within 45 days after receipt of an informal response requested under (b).

**(b)-(h) \* \* \***

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

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

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

(Court)

**PETITION FOR WRIT OF HABEAS CORPUS**

|            |     |
|------------|-----|
|            |     |
| Petitioner | vs. |
|            |     |
| Respondent |     |

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

*(To be supplied by the Clerk of the Court)*

**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 and 4 copies of the petition and, if separately bound, 1 copy 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, 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 Dept. 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 SPR08-33 Response Form

**Title:** **Criminal Cases: Petitions for Writ of Habeas Corpus** (amend Cal. Rules of Court, rule 4.551; revise form MC-275)

- 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 written on this form, prepared in a letter format, or submitted online. 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.

**Internet:** [www.courtinfo.ca.gov/invitationstocomment](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., Friday, June 20, 2008**

*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.*