



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 14–15, 2017

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Title	Agenda Item Type
Appellate Procedure: Verification of Writ Petitions	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972	January 1, 2018
Recommended by	Date of Report
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	July 17, 2017
	Contact
	Heather Anderson, 415-865-7691 <a href="mailto:heather.anderson@jud.ca.gov">heather.anderson@jud.ca.gov</a>

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### **Executive Summary**

To clarify that, under statute, all petitions for writs of mandate, certiorari, prohibition, and habeas corpus must be verified, the Appellate Advisory Committee recommends adding a provision indicating verification is required to all of the rules in title 8 of the California Rules of Court relating to such writ petitions that do not already include such a provision.

### **Recommendation**

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2018, amend California Rules of Court, rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972 to add provisions indicating that writ petitions must be verified.

The amended rules are attached at pages 5–7.

### **Previous Council Action**

The Judicial Council adopted rule 56, the predecessor to current rules 8.485 through 8.493, relating to writs of mandate, certiorari, and prohibition in the Supreme Court and Court of

Appeal, effective July 1, 1943, as part of a comprehensive set of new Rules on Appeal that included rules on original proceedings. As adopted, rule 56 required that petitions seeking these writs be verified. The council has amended and renumbered this rule several times since its adoption, but the provision regarding verification of these writ petitions has remained substantively unchanged.

The 1943 Rules on Appeal also included the predecessors to rules 8.495 and 8.496 relating to writ proceedings to review cases from the Workers' Compensation Appeals Board and the Public Utilities Commission, respectively. These rules did not include provisions addressing verification. Rule 8.495 has remained unchanged in this respect, but effective July 1, 1981, the Judicial Council amended the predecessor to rule 8.496 to include, among other things, a provision indicating that a petition seeking review of a Public Utilities Commission decision must be verified. The report to the council indicates that this amendment was intended to clarify the "somewhat obscure" statutory requirement that these petitions be verified.

The Judicial Council adopted rule 56.5, the predecessor to current rules 8.380 through 8.387 relating to habeas corpus proceedings, effective January 1, 1966. This rule generally required that such petitions be filed on a form approved by the Judicial Council. Although the rule did not refer to verification of the petition, the petition form approved by the Judicial Council has always indicated that verification is required.<sup>1</sup> Similarly, the Judicial Council approved petition forms for use in termination of parental rights cases, small claims cases, and misdemeanor, infraction, or limited civil cases—all of which include a verification, even though the verification requirement is not mentioned in the relevant rules.<sup>2</sup>

### **Rationale for Recommendation**

The statutes addressing petitions for writs of mandate, certiorari, prohibition, and habeas corpus all require that the petitions seeking these writs must be verified.<sup>3</sup> Some of the California Rules of Court that address these writ petitions also include provisions that specifically require verification, reflecting these statutory requirements. For example, as noted above, rule 8.486—the general rule relating to petitions for writs of mandate, certiorari, and prohibition in the Supreme Court and Court of Appeal—provides in subdivision (a)(4) that "[t]he petition must be verified."<sup>4</sup> However, there are some rules relating to writ petitions that do not specifically refer

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<sup>1</sup> The relevant Judicial Council form is *Petition for Writ of Habeas Corpus* (form MC-275).

<sup>2</sup> For rules 8.452 and 8.456, the relevant Judicial Council form is *Petition for Extraordinary Writ* (form JV-825). For rule 8.931, the relevant Judicial Council form is *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151). For rule 8.972, the relevant Judicial Council form is *Petition for Writ (Small Claims)* (form SC-300).

<sup>3</sup> See Code Civ. Proc., §§ 1069, 1086, 1103; Pen. Code, § 1474.

<sup>4</sup> For example, see rules 8.496 (relating to review of Public Utilities Commission cases), 8.498 (relating to review of Agricultural Labor Relations Board and Public Employment Relations Board cases), and 8.703 (relating to review of California Environmental Quality Act cases under Pub. Resources Code §§ 21168.6.6, 21178–21189.3, and 21189.50–21189.57).

to a verification requirement. For example, rule 8.495, relating to review of Workers' Compensation Appeals Board cases, does not specifically refer to verification of the petition.

In *New York Knickerbockers v. Workers Compensation Appeals Board* (2015) 240 Cal.App.4th 1229, 1237, the petitioner contended that it did not have to file a verified petition challenging the Workers' Compensation Appeals Board decision. The Court of Appeal in that case addressed whether the absence of a verification requirement in rule 8.495 implied an intent to override the statutory requirement for verifying the petition. The court concluded, given that the Judicial Council's authority to adopt rules is limited to rules that are not inconsistent with statute,

to the extent rule 8.495 does not require verification for petitions for writs of review addressing Appeals Board decisions, that rule would be inconsistent with Code of Civil Procedure section 1069 and Labor Code section 5954 and therefore not controlling.

To clarify the statutory requirement for verification of these writ petitions and eliminate any question about the intent of the applicable rules of court, the committee is recommending that any rule in title 8 pertaining to these writs that does not already reflect the verification requirement be amended to do so.

## **Comments, Alternatives Considered, and Policy Implications**

### **External comments**

This proposal was circulated for public comment from February 27 to April 28, 2017 as part of the regular spring 2017 invitation-to-comment cycle. Eight individuals or organizations submitted comments on this proposal. Five commentators agreed with the proposal, two did not indicate a position on the proposal but provided comments, and one did not agree with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 8–15.

The commentator who indicated that he did not agree with the proposal did not actually comment on the content of the proposed rule amendments. His comment focuses on concern about whether petitioners in habeas proceedings receive appropriate notice of court action on their petitions. Since the issue raised is outside the scope of the proposal, the committee will treat this as a new suggestion to be considered when the committee reviews proposals for the 2017–2018 committee annual agenda.

One of the commentators who did not state a position on the proposal indicated that the proposal would have no impact on court operations and that three months from Judicial Council approval of this proposal until its effective date would be sufficient time for implementation. These comments were similar to those from other commentators who indicated that they agreed with the proposal.

The second commentator who did not state a position on the proposal indicated some concern that there may be a conflict between Penal Code section 1474(3) and the proposed provision requiring verification by the attorney under subdivision (a)(1) of rule 8.384, if “party” in section 1474(3) is read to be limited to the defendant/petitioner. Section 1474(3), relating to petitions for writs of habeas corpus, states that “[t]he petition must be verified by the oath or affirmation of the party making the application.” At least one court has dismissed without prejudice a petition for habeas corpus verified by an attorney in which the critical allegations were made based on the attorney’s belief, concluding that such allegations were hearsay that could not support a prima facie case for relief (see *People v. McCarthy* (1986) 176 Cal.App.3d 593). However, in *In re Robbins* (1998) 18 Cal.4th 770, 783, footnote 5, the Supreme Court declined to dismiss a habeas petition simply because it was verified by an attorney, stating, “Because counsel may apply for habeas corpus relief on behalf of his or her client, it follows that when appointed counsel does so, verification by counsel satisfies the statute.” Based on this, the committee concluded that there is no conflict between section 1474(3) and the proposed rule amendments.

### **Alternatives**

The committee considered not recommending any changes to these rules, but concluded that it would be helpful if all the rules relating to writ petitions consistently alert petitioners to the verification requirement. The committee therefore concluded that it was appropriate to recommend these amendments for adoption.

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

No appreciable implementation requirements, costs, or operational impacts are anticipated. The two court representatives who provided input on the potential implementation requirements indicated in their comments that the impacts would be minimal.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

These proposed amendments support strategic Goal III, Modernization of Management and Administration (Goal III.B), and objective III.B.5 of the related operational plan to develop and implement effective trial and appellate case management practices.

### **Attachments and Links**

1. Amended Cal. Rules of Court, rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972, at pages 5–7
2. Chart of comments, at pages 8–15

Rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972 of the California Rules of Court are amended, effective January 1, 2018, to read:

1 **Title 8. Appellate Rules**

2  
3 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**

4  
5 **Chapter 4. Habeas Corpus Appeals and Writs**

6  
7  
8 **Rule 8.380. Petition for writ of habeas corpus filed by petitioner not represented by an**  
9 **attorney**

10  
11 **(a) Required Judicial Council form**

12  
13 A person who is not represented by an attorney and who petitions a reviewing court for  
14 writ of habeas corpus seeking release from, or modification of the conditions of, custody of  
15 a person confined in a state or local penal institution, hospital, narcotics treatment facility,  
16 or other institution must file the petition on *Petition for Writ of Habeas Corpus* (form MC-  
17 275). For good cause the court may permit the filing of a petition that is not on that form,  
18 but the petition must be verified.

19  
20 **(b)–(c) \* \* \***

21  
22  
23 **Rule 8.384. Petition for writ of habeas corpus filed by an attorney for a party**

24  
25 **(a) Form and content of petition and memorandum**

26  
27 (1) A petition for habeas corpus filed by an attorney need not be filed on *Petition for*  
28 *Writ of Habeas Corpus* (form MC-275) but must contain the information requested  
29 in that form and must be verified. All petitions filed by attorneys, whether or not on  
30 form MC-275, must be either typewritten or produced on a computer, and must  
31 comply with this rule and rules 8.40(b)–(c) relating to document covers and  
32 8.204(a)(1)(A) relating to tables of contents and authorities. A petition that is not on  
33 form MC-275 must also comply with the remainder of rule 8.204(a) and 8.204(b).

34  
35 (2)–(3) \* \* \*

36  
37 **(b)–(d) \* \* \***

1  
2 **Chapter 5. Juvenile Appeals and Writs**  
3

4 **Article 3. Writs**  
5

6 **Rule 8.452. Writ petition to review order setting hearing under Welfare and Institutions**  
7 **Code section 366.26**  
8

9 **(a) Petition**

10  
11 (1) \* \* \*

12  
13 (2) The petition must be verified.

14  
15 ~~(2)~~ (3) \* \* \*

16  
17 **(b)–(i) \* \* \***  
18  
19

20 **Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28 to review**  
21 **order designating or denying specific placement of a dependent child after**  
22 **termination of parental rights**  
23

24 **(a) Petition**

25  
26 (1) \* \* \*

27  
28 (2) The petition must be verified.

29  
30 ~~(2)~~ (3) \* \* \*

31  
32 **(b)–(i) \* \* \***  
33  
34

35 **Chapter 8. Miscellaneous Writs**  
36

37 **Rule 8.495. Review of Workers' Compensation Appeals Board cases**  
38

39 **(a) Petition**

40  
41 (1)–(2) \* \* \*

42  
43 (3) The petition must be verified.

1  
2           (3) (4) \* \* \*

3  
4 (b)–(c) \* \* \*

5  
6  
7           **Division 2. Rules Relating to the Superior Court Appellate Division**

8  
9                           **Chapter 6. Writ Proceedings**

10  
11 **Rule 8.931. Petitions filed by persons not represented by an attorney**

12  
13 (a) **Petitions**

14  
15           A person who is not represented by an attorney and who petitions the appellate division for  
16           a writ under this chapter must file the petition on *Petition for Writ (Misdemeanor,*  
17           *Infraction, or Limited Civil Case)* (form APP-151). For good cause the court may permit  
18           an unrepresented party to file a petition that is not on form APP-151, but the petition must  
19           be verified.

20  
21 (b)–(d) \* \* \*

22  
23  
24           **Division 3. Rules Relating to Appeals and Writs in Small Claims Cases**

25  
26                           **Chapter 2. Writ Petitions**

27  
28 **Rule 8.972. Petitions filed by persons not represented by an attorney**

29  
30 (a) **Petitions**

31  
32           (1) A person who is not represented by an attorney and who requests a writ under this  
33           chapter must file the petition on a *Petition for Writ (Small Claims)* (form SC-300).  
34           For good cause the court may permit an unrepresented party to file a petition that is  
35           not on that form, but the petition must be verified.

36  
37           (2)–(3) \* \* \*

38  
39 (b)–(d) \* \* \*

## ITC SPR17-03

### Title of proposal (Appellate Procedure: Verification of Writ Petitions)

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	California Appellate Court Clerks' Association by Daniel P. Potter, President	A	The Clerks Association agrees with amending these rules as proposed. Adopting a standardized provision requiring all writ petitions to have a verification would bring consistency to the California Rules of Court and would require very little on the part of the Judicial Branch to implement.	The committee notes the commentator's support for the proposal; no response required.
2.	Court of Appeal Second Appellate District by Thomas Kallay, Managing Attorney	NI	There is some concern that there may be a conflict between Pen. Code section 1474(3) and the proposed provision requiring verification by the attorney under subdivision (a)(1) of rule 8.384, if "party" in 1474(3) is read to be limited to the defendant/petitioner.	The committee's understanding, based on discussion in <i>In re Robbins</i> (1998) 18 Cal.4th 770, is that an attorney may verify a petition for a writ of habeas corpus on behalf of his or her client.
3.	Albert DeLaIsla Principal Administrative Analyst IMPACT Team - Criminal Operations Orange County, CA	NI	No impact to operations. Will require communication to Judges and Legal Research. This would clarify that the requirement for verification is applicable to ALL petitions for writs of mandate, certiorari, prohibition, and habeas corpus. Per PC 1474 – The petition must be verified by the oath or affirmation of the party making the application.  <ul style="list-style-type: none"><li>• 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</li></ul>	The committee appreciates the commentator's input on these implementation questions; no response required.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>management systems?</p> <p><b>Response: None</b></p> <ul style="list-style-type: none"> <li>• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</li> </ul> <p><b>Response: Yes.</b></p>	
4.	Curt Harris San Diego, CA	N	<p>Concerning the notification procedure of the Sacramento County Superior Court (and possibly other state lower courts), no written notification of a decision reached in, specifically, a writ of habeas corpus is required to be sent by the Court to the petitioner. An oversight of that magnitude can cause a petition to be denied for, possibly, invalid reasons due to lack of timely appeal.</p> <p>As habeas corpus deals solely with confinement issues, its requirement that the petitioner and, in theory, any other involved party must exercise due diligence on his or her own part to determine what the Court has decided in that case, the instructions that said party must either follow the writ’s progress online or must physically enter the courthouse to access court records is impossible to comply with. Since habeas corpus deals with a confined person, a prisoner, and even when that person is not physically confined in any penal institute but released on probation or parole, and since that,</p>	<p>This comment raises issues that are beyond the scope of the amendments proposed in the invitation to comment. The committee will treat this as a suggestion for future consideration by the committee.</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>post-confinement punishment is still considered as actual confinement, habeas corpus is an appropriate avenue for redress.</p> <p>However, just as the prisoner who remains in custody, a parolee or probationer may still be unable to determine what progress the Court has made on his or her petition as that person may be unable to physically enter the Sacramento Superior Court, or, due to the type of conviction, may be barred from using the Internet entirely (a PC §290 registrant, for example); the failure of the Sacramento County Superior Court to afford a habeas corpus petitioner from the timely resolution of his or her writ due solely to the lack of any timely notification procedure not only impedes the prompt resolution of that specific matter, but does indeed thwart due process itself.</p> <p>Any untimely appeal to any state appellate court could be subject to misinterpretation due to confusion over the lower court's policies, and, if the appellate court has similar directives and policies, may further this injustice. Thus, any requirement by any California State court, be it Superior or Appellate, the requirement that a habeas corpus petitioner physically enter a courthouse, or access a court's website, or have unrestricted access to a telephone as the sole means of seeking information on a writ of habeas corpus handling, is inoperable. Any attempt by a state Appellate Court to modify</p>	

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>any of the procedures it used to handle writs without first attending to a lower court's notification procedures, is simply folly. The State must first offer unhindered and unimpeded access to its courts for those who file the actual petitions in them. Without that, there can be no improvement to any judicial procedure(s) and any of the state's courts.</p> <p>And, the method that the Court uses to inform the petitioner of its outcome must be unambiguous. At the moment the Sacramento Superior Court, at least, does not meet that standard. The following emails illustrate that fairly well. If a court officer did attempt to mail the results of a specific petition out via traditional postal service, in this instance it did not reach the intended recipient.</p> <p>It would appear that some attention needs be directed at the policies governing how a state court notifies writ petitioners of a writ's outcome.</p> <p>Email excerpts, Sacramento County Superior Court website:</p> <p>Sacramento Superior Court case #16HC00347</p> <p>On Tuesday, February 14, 2017, Chiamparino, Contessa &lt;<a href="mailto:ChiampC@saccourt.ca.gov">ChiampC@saccourt.ca.gov</a>&gt; wrote: We do not send outcomes for writs via mail or email. It is the responsibility of the petitioner to</p>	

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	Commentator	Position	Comment	Committee Response
			<p>check the website for the outcome. The information on the website is obtained from the same system that electronically reports the outcome to the Department of Justice, and is very reliable.</p> <p>You will not be able to print documents from criminal cases from the website. In order to receive copies of documents from criminal cases you would need to either request to review the file in person at the criminal records front counter located at the address listed below (there are pay per use copy machines available in the lobby where you can copy the documents), or you can mail your request, along with a check addressed to the Sacramento Superior Court. If the documents need to be certified, that will cost \$25. Copies are .50 per page.</p> <p>Tess Chiamparino Operations Manager, Criminal Division Sacramento Superior Court 720 9<sup>th</sup> Street Sacramento, CA 95814 Visit us on the web at <a href="http://www.saccourt.ca.gov">www.saccourt.ca.gov</a></p> <p>On Friday, February 10, 2017, McKee, Leslie &lt;<a href="mailto:MckeeL@saccourt.ca.gov">MckeeL@saccourt.ca.gov</a>&lt;<a href="mailto:MckeeL@saccourt.ca.gov">mailto:MckeeL@saccourt.ca.gov</a>&gt; wrote: Good Morning,</p> <p>This matter was not on the record so there is no</p>	

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>transcript to prepare. I'm not familiar with the process of writs so I can't even direct you to the right person.</p> <p>My apologies for not being more helpful.</p> <p>Leslie A. McKee, CSR 12810 Court Reporter, Dept. 13 Sacramento Superior Court x916 874 7263</p> <p>Good morning, Mr. Harris, Ms. McKee forwarded your request to me. I am the clerk for Judge Arguelles. This matter was “not on the record” meaning there was no live court proceeding and therefore no transcript to be prepared. Judge Arguelles made an order based on the filings and that order was mailed to you on October 26, 2016. Apparently, you did not receive this order so I have attached a copy. Thank you, Suzanne.</p> <p>Suzanne M. Slort Courtroom Clerk, Department 13 Sacramento Superior Court (916) 874-7786</p>	
5.	Orange County Bar Association by: Michael L. Baroni, President	A	No Comment	The committee notes the commentator’s support for the proposal; no response required.
6.	Superior Court Los Angeles	A	What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures	The committee notes the commentator’s support for the proposal and appreciates the commentator’s input on these implementation questions; no response required.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>(please describe), changing docket codes in case management systems, or modifying case management systems.</p> <p>Minimal staff training would be required.</p> <p>Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>Yes, the three month effective date is sufficient for implementation.</p>	
7.	Superior Court of Orange County, Appellate Division by Michael Porter	A	Looks good.	The committee notes the commentator’s support for the proposal; no response required.
8.	Superior Court of San Diego County by Michael Roddy, Executive Officer	A	<p>The advisory committee seeks comments from <i>courts</i> on the following cost and implementation matters:</p> <ul style="list-style-type: none"> <li>• 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. <b>Minimal implementation – if writ petition is not properly verified, the clerk would have to issue a deficiency notice and the petition could only be considered if the</b></li> </ul>	The committee notes the commentator’s support for the proposal and appreciates the commentator’s input on these implementation questions; no response required.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>defect was cured.</p> <ul style="list-style-type: none"><li>• Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <b>Yes.</b></li></ul>	