



## JUDICIAL COUNCIL OF CALIFORNIA

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# R E P O R T T O T H E J U D I C I A L C O U N C I L

For business meeting on: September 21, 2018

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Title

Criminal Procedure: Petition for Writ of Habeas Corpus

Agenda Item Type

Action Required

Effective Date

January 1, 2019

Rules, Forms, Standards, or Statutes Affected

Revise form HC-001

Date of Report

August 8, 2018

Recommended by

Criminal Law Advisory Committee  
Hon. Tricia Ann Bigelow, Chair

Contact

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### Executive Summary

The Criminal Law Advisory Committee recommends revising the Judicial Council form used by noncapital petitioners to petition for a writ of habeas corpus to update the form's instructions on 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 to include the court in which the petition is filed; and add citations as authority for the procedural bars of successiveness and repetitiveness.

### Recommendation

The Criminal Law Advisory committee recommends that the council, effective January 1, 2019, revise form HC-001 to:

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, standalone item 6(b) and reletter 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 reletter the current item 7(b) as item 7(c);
4. Replace or add citations to authorities on the form with citations to authorities that are more recent or more on point for the propositions they support; and
5. Clarify that the procedural bars against successive and repetitive petitions include petitions that are filed in the same court.

### **Relevant Previous Council Action**

The Judicial Council most recently updated the *Petition for Writ of Habeas Corpus*, (form HC-001) effective January 1, 2017 to add language reflecting different requirements as to the number of copies to be filed if a petition is filed electronically. This form was previously Judicial Council form MC-275. On May 24, 2018, the Judicial Council approved a technical revision to change the number and category of this form to HC-001.

### **Analysis/Rationale**

*Petition for Writ of Habeas Corpus* (form HC-001) is used by noncapital 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. Under 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. These recommended revisions would update form HC-001 in several respects, and provide improved guidance to petitioners and courts.

Recently, the Courts of Appeal have moved to mandatory electronic filing of most papers, including petitions for writs of habeas corpus. The revisions recommended by the committee include updating the instructions on the first page of HC-001 to reflect this change in procedure.

Petitions from unrepresented petitioners 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). The revisions recommended by the committee include clarifying that these procedural bars apply to petitions that are filed in the same court and adding citations to authorities relating to these bars (*In re Clark* (1993) 5 Cal.4th 750, 767–769; *In re Miller* (1941) 17 Cal.2d 734, 735).

HC-001 currently includes citations to authority relevant to some of the statements and questions on the form. There are newer authorities, or in some cases other authorities, relevant to these

statements and questions. The revisions recommended by the committee include updating these citations. Specifically, the revisions would:

- Add 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;
- Add 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;
- Replace 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 requirements relating to administrative review;
- Add 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”; and
- Replace 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.

### **Policy implications**

There are no policy implications to the revisions that the committee is recommending to this form.

### **Comments**

A total of two comments were received: one from the Superior Court of San Diego County and one from the Orange County Bar Association. Both commenters agreed with the proposal in its entirety, offering neither alternatives nor additional suggestions.

### **Alternatives considered**

The committee considered not revising form HC-001, given fiscal constraints on courts, but determined that 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.

### **Fiscal and Operational Impacts**

Expected costs include training, possible case management system updates, and the production of new forms. No other implementation requirements or operational impacts are expected.

### **Attachments and Links**

1. Form HC-001, at pages 4–9
2. Chart of comments, at page 10

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 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, 2018). 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

[illegible]

a. Supporting facts:

[illegible]

b. Supporting documents:

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

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This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

[illegible][illegible]

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)

**SPR18-13****Criminal Procedure: Petition for Writ of Habeas Corpus**

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Orange County Bar Association By Nikki P. Miliband President	A	No specific comment.	No response necessary.
2.	Superior Court of California San Diego By Michael M. Roddy Executive Officer	A	No specific comment.	No response necessary.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated