



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2011

Title	Agenda Item Type
Criminal Procedure: Petitions for Writs of Habeas Corpus	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend rules 4.552 and 8.385 of the California Rules of Court	January 1, 2012
Recommended by	Date of Report
Criminal Law Advisory Committee Hon. Steven Z. Perren, Chair	August 18, 2011
	Contact
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Executive Summary

The Criminal Law Advisory Committee recommends that the Judicial Council approve amendments to rules 4.552 and 8.385 of the California Rules of Court to clarify that certain transfers and denials of petitions for writs of habeas corpus are preferred but not required. The committee proposes the amendments in response to recent case law that invalidated rule 8.385(c)(2).

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2011:

1. Amend rule 4.552(a) of the California Rules of Court to clarify that a petition for writ of habeas corpus “should” be adjudicated in the superior court in which it is filed;

2. Amend rule 4.552(b)(2)(C) to clarify that the transfer of a petition for writ of habeas corpus that challenges a parole decision to the superior court that rendered the underlying judgment is preferred but not required;
3. Amend rule 8.385(c)(2) of the California Rules of Court to clarify that a court of appeal denial of a petition for writ of habeas corpus that challenges a parole decision because the petition was not first adjudicated by the trial court that rendered the underlying judgment is preferred but not required;
4. Amend the advisory committee comments to rules 4.552 and 8.385 to clarify that the rules are based in part on the California Supreme Court decision in *In re Roberts* (2005) 36 Cal.4th 575, which held that petitions for writs of habeas corpus that challenge parole decisions should first be adjudicated in the trial court that rendered the underlying judgment; and
5. Amend the advisory committee comment to rule 8.385 to summarize the holding and factual circumstances of *In re Kler* (2010) 188 Cal.App.4th 1399, which recently invalidated rule 8.385(c)(2).

The text of the proposed amendments is attached at pages 5–7.

Previous Council Action

The Judicial Council adopted rule 4.552 in 2002 and revised the rule to add subdivision (c) and the advisory committee comment regarding *Roberts* in 2006. Rule 8.385 was adopted in 2009. There is no other relevant previous Judicial Council action to report.

Rationale for Recommendation

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. The advisory committee comments state that the rules are 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 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), which requires a court of appeal to deny petitions for writs of habeas corpus that challenge parole decisions that are not first adjudicated in the superior court that rendered the underlying judgment. The rule was invalidated because it conflicts with the California Constitution, which grants original jurisdiction in habeas proceedings to *all* California courts, and exceeds the dictates of *Roberts*, which only states that such petitions “should” first be heard at the trial level. (*Roberts*, *supra*, 36 Cal.4th at 1404.)

The proposal is designed to amend the rule and advisory committee comment to conform to the rulings in *Kler* and *Roberts* by eliminating the improper restriction on jurisdiction and clarifying that courts of appeal “should” deny petitions that challenge parole decisions if not first adjudicated by the trial court that rendered the underlying judgment.

The proposal similarly amends rule 4.552 to clarify that (a) petitions for writs of habeas corpus “should” be adjudicated in the superior court in which they are filed, and (b) petitions that challenge parole decisions that are filed in a superior court other than the court that rendered the underlying judgment “should”—not “must”—be transferred to the superior court that rendered the underlying judgment. Although amendments to rule 4.552 are not expressly required by *Kler*, the proposal conforms the rule and advisory committee comment to the *Kler* and *Roberts* opinions by eliminating the improper restrictions on which superior courts must adjudicate certain petitions.

Comments, Alternatives Considered, and Policy Implications

The proposed revisions were circulated for public comment during the spring 2011 cycle. A total of nine comments were received. Of those, seven agreed with the proposal, one agreed with the proposal if modified, and one did not state a position. No commentators disagreed with the proposal. A chart with all comments received and committee responses is attached at pages 8–11.

Notable comments and committee responses

Two commentators suggested adding the word “normally” before the word “should” in rule 8.385(c)(2) to clarify that there are exceptions to the preference that courts of appeal deny petitions that challenge parole decisions if not first adjudicated by the trial court that rendered the underlying judgment. Similarly, another commentator suggested adding an advisory committee comment to describe the exception set forth in *Kler*, which authorized the court of appeal to adjudicate a petition not first filed in the trial court.

Although the committee considered but declined to add the word “normally” as unnecessary, the committee approved an advisory committee comment as suggested to describe the circumstances of *Kler* as an example of an exception to the preference that petitions be first adjudicated in the trial court.

Alternatives considered

The committee alternatively considered postponing or declining to recommend the proposal in light of the severe economic circumstances faced by courts. However, the committee decided to recommend the proposal because the amendments are required in light of recent case law. In addition, because the proposal would not impose any significant change in court practices, the committee believes that the proposal would not impose significant costs or burdens on courts.

Implementation Requirements, Costs, and Operational Impacts

No costs or operational impacts are expected.

Attachments

1. Text of rules 4.552 and 8.385 of the California Rules of Court, at pages 5–7
2. Chart of comments, at pages 8–11

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. The committee notes, however, that courts of
16 appeal have original jurisdiction in writ proceedings and may, under appropriate circumstances,
17 adjudicate a petition that challenges the denial or suitability of parole even if the petition was not
18 first adjudicated by the trial court that rendered the underlying judgment. (*In re Kler* (2010) 188
19 Cal.App.4th 1399.) A court of appeal may, for example, adjudicate a petition that follows the
20 court’s prior reversal of a denial of parole by the Board of Parole Hearings where the issues
21 presented by the petition directly flow from the court of appeal’s prior decision and the limited
22 hearing conducted. (*Id.* at 1404–05.)
23

24 **Subdivision (d).** Case law establishes the specificity of the factual allegations and support for
25 these allegations required in a petition for a writ of habeas corpus (see, e.g., *People v. Duvall*
26 (1995) 9 Cal.4th 464, 474–475, and *Ex parte Swain* (1949) 34 Cal.2d 300, 303–304). A court
27 evaluating whether a petition meeting these requirements makes a prima facie showing asks
28 whether, assuming the petition’s factual allegations are true, the petitioner would be entitled to
29 relief (*People v. Duvall*, supra).
30

31 Issuing an order to show cause is just one of the actions a court might take on a petition for a writ
32 of habeas corpus. Examples of other actions that a court might take include denying the petition
33 summarily, requesting an informal response from the respondent under (b), or denying the
34 petition without prejudice under (c) because it is filed in an inappropriate court.
35

SPR11-30**Criminal Procedure: Petitions for Writs of Habeas Corpus** (Amend rules 4.552 and 8.385 of the California Rules of Court)

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

	Commentator	Position	Comment	Advisory Committee Response
1.	Appellate Defenders, Inc., California Appellate Project—San Francisco, and First District Appellate Project Mr. Mat Zwerling Executive Director	NI	The use of the word “should” could lead some judges to read the rule as mandatory. Adding the word “normally” or “ordinarily” to the rule would make it more clear that there are exceptions: “A Court of Appeal <u>normally</u> should deny without prejudice a petition for writ of habeas corpus that challenges the denial of parole or the petitioner’s suitability for parole if the issue was not first adjudicated by the trial court that rendered the underlying judgment.”	The committee declines to add the word “normally” to rule 8.385 because the word “should” accurately reflects the rulings in <i>In re Roberts</i> (2005) 36 Cal.4th 575 and <i>In re Kler</i> (2010) 188 Cal.App.4th 1399. However, the committee will add the following advisory committee comment to provide an example of circumstances that warrant an exception: “The committee notes, however, that courts of appeal have original jurisdiction in writ proceedings and may, under appropriate circumstances, adjudicate a petition that challenges the denial or suitability of parole even if the petition was not first adjudicated by the trial court that rendered the underlying judgment. (<i>In re Kler</i> (2010) 188 Cal.App.4th 1399.) A court of appeal may, for example, adjudicate a petition that follows the court’s prior reversal of a denial of parole by the Board of Parole Hearings where the issues presented by the petition directly flow from the court of appeal’s prior decision and the limited hearing conducted. (Id. at 1404–05.)”
2.	Ms. Laura Hertlein Court Clerk II Superior Court of Amador County	A	I agree with the changes ...	No response required.
3.	Hon. Raymond J. Ikola, Associate Justice California Court of Appeal, Fourth Appellate District, Division Three Santa Ana	A	[I] agree with the proposed amendment to rule 8.385(c)(2) to reflect the holding of <i>In re Kler</i> and to clarify <i>Roberts</i> . I suggest, however, practitioners would find it useful to include a cite to <i>In re Kler</i> in the Advisory Committee comments, with a brief description of the type	The committee agrees and will add the advisory committee comment described above.

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			of situation the <i>Kler</i> court concluded would justify a filing initially in a higher court (e.g., the issues presented flow directly from that court’s earlier ruling).	
4.	Orange County Bar Association Mr. John Hueston President	A	No additional comments provided.	No response required.
5.	San Diego County Bar Association Ms. Cecilia O. Miller Chair, Appellate Court Committee	AM	<p>Our committee supports the proposed change to rule 8.385 and suggests only one minor clarification. Specifically, our committee recommends that the word “normally” be inserted before the word “should” in the proposed change to rule 8.385(c)(2). The proposed change would then read:</p> <p style="padding-left: 40px;">A Court of Appeal <u>normally should</u> deny without prejudice a petition for writ of habeas corpus that challenges the denial of parole or the petitioner’s suitability for parole if the issue was not first adjudicated by the trial court that rendered the underlying judgment.</p> <p>Inclusion of the word “normally” reminds the practitioner that the preference for filing in the superior court may not apply when extraordinary circumstances render the Court of Appeal the best court to consider such a petition. This reminder brings the language of the rule more in line with the decision <i>In re Kler</i> (2010) 188 Cal.App.4th 1399, 1404.</p>	Please see the committee response to comment 1 above.

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6.	Superior Court of Monterey County Ms. Le Mans Nichols Research Attorney	A	No additional comments provided.	No response required.
7.	Superior Court of of Orange County Ms. Erin Rigby Criminal Division Managers	A	We agree with the changes proposed. Replacing the word “must” with the word “should” would help reduce confusion as to whose jurisdiction the writ would be ruled upon. The proposed changes also give the court in which the writ was filed the option of making a ruling or after review transferring the writ to the court which made the underlying judgment on the case.	No response required.
8.	Superior Court of Sacramento County Mr. Robert Turner Finance Division	A	<p>The Criminal Law Advisory Committee proposes amending subdivisions (a) and (c) because those provisions may be interpreted as inconsistent with the <i>Kler</i> and <i>Roberts</i> 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 <i>Roberts</i>, which provides that “a habeas corpus petition <i>should</i> be heard and resolved by the court in which the petition was filed.” (<i>Roberts, supra</i>, 36 Cal.4th at 585; italics added.)</p> <p>The proposed amendments to subdivision (c) will make that subdivision consistent with the <i>Kler</i> and <i>Roberts</i> opinions by eliminating the restriction on which superior courts may adjudicate certain petitions. The proposal would delete subdivision (c) and add the following as</p>	No response required.

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			<p>subdivision (b)(2)(C):</p> <p>“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 <i>should</i> transfer the petition to the superior court in which the underlying judgment was rendered.” (Italics added.)</p> <p>In addition, the proposal would amend the advisory committee comment to clarify that the Supreme Court ruling in <i>Roberts</i> provides that petitions challenging the denial or suitability for parole <i>should</i> be adjudicated in the court that rendered the underlying judgment.</p>	
9.	Superior Court of San Diego County Mr. Michael M. Roddy Court Executive Officer	A	No additional comments.	No response required.