

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT SPR17-03

Title Appellate Procedure: Verification of Writ Petitions	Action Requested Review and submit comments by Friday, April 28
Proposed Rules, Forms, Standards, or Statutes Amend Cal. Rules of Court, rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972	Proposed Effective Date January 1, 2018
Proposed by Appellate Advisory Committee Hon. Louis Mauro, Chair	Contact Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

Executive Summary and Origin

The Appellate Advisory Committee is proposing amendments to several rules relating to writ petitions to include provisions reflecting statutory requirements that these petitions be verified. This proposal is in response to a recent Court of Appeal opinion that noted the absence of such a provision in one of these rules.

Background

The statutes addressing petitions for writs of mandate, certiorari, prohibition, and habeas corpus all require that the petitions seeking these writs must be verified.¹ 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, 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.”² However, there are some rules relating to writ petitions that do not specifically refer 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.

¹ See Code Civ. Proc., §§ 1069, 1086, 1103; Pen. Code, § 1474.

² See also, for example, rule 8.496, relating to review of Public Utilities Commission cases, rule 8.498, relating to review of Agricultural Labor Relations Board and Public Employment Relations Board cases, and rule 8.703, relating to review of California Environmental Quality Act Cases under Public Resources Code sections 21168.6.6, 21178–21189.3, and 21189.50–21189.57.

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 These proposals are circulated for comment purposes only.

In *New York Knickerbockers v. Workers Compensation Appeals Board* (2015) 240 Cal.App.4th 1229, the Court of Appeal, Second Appellate District, discussed the absence of a provision addressing verification in rule 8.495.

The Proposal

To clarify that the requirement for verification is applicable to all petitions for writs of mandate, certiorari, prohibition, and habeas corpus, the committee proposes to add a provision regarding the verification requirement to all of the rules relating to such petitions in Title 8 that do not already include such a provision.

Alternatives Considered

The committee considered not recommending any changes to these rules, but concluded that it would be helpful for all the rules to consistently alert petitioners to the verification requirement.

Implementation Requirements, Costs, and Operational Impacts

No appreciable implementation requirements, costs, or operational impacts are anticipated.

Request for Specific Comments

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

- 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?

Attachments and Links

Proposed amendments to rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972

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

Title 8. Appellate Rules

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

Chapter 4. Habeas Corpus Appeals and Writs

Rule 8.380. Petition for writ of habeas corpus filed by petitioner not represented by an attorney

(a) Required Judicial Council form

A person who is not represented by an attorney and who petitions a reviewing court for 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 must file the petition on *Petition for Writ of Habeas Corpus* (form MC-275). For good cause the court may permit the filing of a petition that is not on that form, but the petition must be verified.

(b)–(c) * * *

Rule 8.384. Petition for writ of habeas corpus filed by an attorney for a party

(a) Form and content of petition and memorandum

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

(2)–(3) * * *

(b)–(d) * * *

1 Chapter 5. Juvenile Appeals and Writs

2
3 Article 3. Writs

4
5 Rule 8.452. Writ petition to review order setting hearing under Welfare and Institutions
6 Code section 366.26

7
8 (a) Petition

9
10 (1) * * *

11
12 (2) The petition must be verified.

13
14 ~~(2)~~(3) * * *

15
16 (b)-(i) * * *

17
18 Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28 to review
19 order designating or denying specific placement of a dependent child after
20 termination of parental rights

21
22 (a) Petition

23
24 (1) * * *

25
26 (2) The petition must be verified.

27
28 ~~(2)~~(3) * * *

29
30 (b)-(i) * * *

31
32 Chapter 8. Miscellaneous Writs

33
34 Rule 8.495. Review of Workers' Compensation Appeals Board cases

35
36 (a) Petition

37
38 (1)-(2) * * *

39
40 (3) The petition must be verified.

41
42 ~~(3)~~(4) * * *

1 (b)–(c) * * *

2
3
4 **Division 2. Rules Relating to the Superior Court Appellate Division**

5
6 **Chapter 6. Writ Proceedings**

7
8 **Rule 8.931. Petitions filed by persons not represented by an attorney**

9
10 **(a) Petitions**

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

17
18 (b)–(d) * * *

19
20 **Division 3. Rules Relating to Appeals and Writs in Small Claims Cases**

21
22 **Chapter 2. Writ Petitions**

23
24 **Rule 8.972. Petitions filed by persons not represented by an attorney**

25
26 **(a) Petitions**

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

32
33 (2)–(3) * * *

34
35 (b)–(d) * * *