

RESOLUTION 03-01-04

DIGEST

Habeas Corpus: Conform Rules of Court to Penal Code

Amends California Rule of Court 4.551 by limiting the persons designated to review writs and setting time limits.

**RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE**

History:

No similar resolutions found.

Reasons:

This resolution amends California Rule of Court 4.551 by limiting the persons designated to review writs and setting time limits. This resolution should be disapproved because it assumes that the present system for handling petitions for writ of habeas corpus leaves the matters without a judge who can be contacted by counsel and thereby allows both the writ and the person seeking relief to languish.

Penal Code section 1476 allows the court or judge to grant relief without delay. The proposed amendment assumes that these petitions are not currently being processed in a timely manner, but there is insufficient data to support this assumption. Moreover, the "may be entitled" language in subdivision (a)(6) would seemingly require that all petitions be reviewed immediately. Immediate review would unreasonably interfere with the orderly process of the court's calendar.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates of California Bar Associations recommends that the Judicial Council amend California Rules of Court, rule 4.551, to read as follows:

- 1 Rule 4.551
- 2 (a)
- 3 (1) Except as provided in subdivision (2), the petition must be on the form
- 4 approved by the Judicial Council, *Petition for Writ of Habeas Corpus* (form MC-275), and
- 5 must be served as required in Penal Code section 1475.
- 6 (2) For good cause, a court may also accept for filing a petition that does not
- 7 comply with subdivision (a)(1). A petition submitted by an attorney need not be on the
- 8 Judicial Council form. However, a petition that is not on the Judicial Council form must
- 9 comply with Penal Code section 1474 and must contain the pertinent information specified
- 10 in form MC-275, including the information required regarding other petitions, motions, or
- 11 applications filed in any court with respect to the conviction, commitment, or issue.
- 12 (3)(A) Upon filing, the clerk of the court must immediately deliver the petition to
- 13 the presiding judge or ~~his or her designee~~ to any judge who may be designated by the

14 presiding judge. The court must rule on a petition for writ of habeas corpus within 60 days
15 after the petition is filed.

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

18 (i) The petitioner's notice and request for ruling must include a declaration stating
19 the date the petition was filed and the date of the notice and request for ruling, and
20 indicating that the petitioner has not received a ruling on the petition. A copy of the
21 original petition must be attached to the notice and request for ruling.

22 (ii) If the presiding judge or his or her designee determines that the notice is
23 complete and the court has failed to rule, the presiding judge, or his or her designee, must
24 assign the petition to a judge and calendar the matter for a decision without appearances
25 within 30 days of the filing of the notice and request for ruling. If the judge assigned by
26 the presiding judge rules on the petition prior to the date the petition is calendared for
27 decision, the matter may be taken off calendar.

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

29 (A) Issuing the writ pursuant to Penal Code sections 1476 and 1477, and within the
30 meaning of subsection (c)(3) of these rules;

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

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

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

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

37 (6) In conformity with Penal Code section 1476, the court shall review and
38 consider forthwith a prayer for immediate or prompt release from custody of a person
39 detained. Where the person detained may be entitled to release more promptly than is
40 otherwise provided by this rule, the court shall rule on that prayer forthwith, or no later
41 than the date on which the petitioner claims entitlement to release, or admit the detainee to
42 bail, as provided in Penal Code section 1476, as appropriate, to prevent irreparable harm.
43 For the purposes of this subsection of the Rules, the court may issue either the writ of
44 habeas corpus, as provided in Penal Code section 1477, or an order to show cause, so as to
45 address timely the claim for release.

46 (b)

47 (1) Before passing on the petition, the court may request an informal response
48 from:

49 (A) The respondent or real party in interest; or

50 (B) The custodian of any record pertaining to the petitioner's case, directing the
51 custodian to produce the record or a certified copy to be filed with the clerk of the court.

52 (2) A copy of the request must be sent to the petitioner. The informal response, if
53 any, must be served upon the petitioner by the party of whom the request is made. The
54 informal response must be in writing and must be served and filed within 15 days. If any
55 informal response is filed, the court must notify the petitioner that he or she may reply to
56 the informal response within 15 days from the date of service of the response upon the
57 petitioner. If the informal response consists of records or copies of records, a copy of
58 every record and document furnished to the court must be furnished to the petitioner.

59 (3) After receiving an informal response, the court may not deny the petition until
60 the petitioner has filed a timely reply to the informal response or the 15-day period
61 provided for a reply under subdivision (b)(2) has expired.

62 (c)

63 (1) The court must issue either the writ of habeas corpus or an order to show cause
64 if the petitioner has made a prima facie showing that he or she is entitled to relief. In
65 doing so, the court takes petitioner's factual allegations as true and makes a preliminary
66 assessment regarding whether the petitioner would be entitled to relief if his or her factual
67 allegations were proved. If so, the court must issue the writ or an order to show cause, as
68 appropriate.

69 (2) Upon issuing the writ or an order to show cause, the court must appoint counsel
70 for any unrepresented petitioner who desires but cannot afford counsel.

71 (3) Issuance of a writ or an ~~An~~ order to show cause is a determination that the
72 petitioner has made a showing that he or she may be entitled to relief. It does not finally
73 grant the relief sought in the petition.

74 (d) If an order to show cause is issued as provided in subdivision (c), or if the court
75 fails to rule on the petition in a timely manner as required in subdivision (a)(3), the
76 respondent may, within 30 days thereafter, file a return. Any material allegation of the
77 petition not controverted by the return is deemed admitted for purposes of the proceeding.
78 The return must comply with Penal Code section 1480 and must be served on the
79 petitioner.

80 (e) Within 30 days after service and filing of a return, the petitioner may file a
81 denial. Any material allegation of the return not denied is deemed admitted for purposes
82 of the proceeding. Any denial must comply with Penal Code section 1484 and must be
83 served on the respondent.

84 (f) Within 30 days after the filing of any denial or, if none is filed, after the
85 expiration of the time for filing a denial, the court must either grant or deny the relief
86 sought by the petition or order an evidentiary hearing. An evidentiary hearing is required
87 if, after considering the verified petition, the return, any denial, any affidavits or
88 declarations under penalty of perjury, and matters of which judicial notice may be taken,
89 the court finds there is a reasonable likelihood that the petitioner may be entitled to relief
90 and the petitioner's entitlement to relief depends on the resolution of an issue of fact. The
91 petitioner must be produced at the evidentiary hearing unless the court, for good cause,
92 directs otherwise.

93 (g) Any order denying a petition for writ of habeas corpus must contain a brief
94 statement of the reasons for the denial. An order only declaring the petition to be "denied"
95 is insufficient.

96 (h) On motion of any party or on the court's own motion, for good cause stated in
97 the order, the court may shorten or extend the time for doing any act under this rule. A
98 copy of the order must be mailed to each party.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

Existing Law: Penal Code section 1476 requires a judge to pass on a petition for writ of habeas corpus “without delay.” Section 1477 authorizes a judge to order a custodian to produce a prisoner in court to inquire into the cause for detention; i.e., an order “issuing” the writ. A judicial practice has developed of issuing an “alternative” writ of habeas corpus; i.e., an “order to show cause” which does not require production of the prisoner in court. Yet another practice has developed of issuing an order requiring the custodian to provide an “informal response” to the petition, even before the court determines whether an order to show cause is appropriate. California Rules of Court, rule 4.551, describes the procedure to be followed in the Superior Court regarding the issuance of an order to show cause or an order directing an informal response to the petition. The rule also sets out certain time constraints within which the court must dispose of a petition for habeas corpus.

This Resolution: Would make amendments to rule 4.551 to conform the rule to the Penal Code, so that a person in custody, where appropriate, may obtain relief “without delay,” as required by Penal Code section 1476.

The Problem: In those unusual cases where a person who is in custody makes a prima facie showing that he is entitled to immediate or prompt release from custody, such as where a person remains in custody after having fully served a court’s sentence, a judge should consider the person’s petition for writ of habeas corpus immediately or promptly, in order to prevent irreparable harm to the petitioner. Rule 4.551 provides certain maximum time limits for the processing of petitions: 60 days where no order to show cause has issued and 120 days where an order to show cause has issued. These delays, authorized by the rule, have been construed by clerks and by some courts as the full measure of a petitioner’s statutory and constitutional protection, rather than as maximum time limits. Moreover, some courts have delegated to research staff the task of making a preliminary review of a petition and of recommending a disposition to the court. Under this interpretation of the existing rule, and under this practice, a judge is not required to consider or make any ruling on a petition until the 30th day after the filing of the petition. (Cal. Rules of Court, rule 4.551(a)(3)) In the meantime, no judge needs to consider a petitioner’s prayer for immediate or prompt release. Similarly, no judge needs to be available to petitioner’s counsel to hear an application for release. The court’s power to shorten time for review of the petition is ineffectual to address the problem. (Cal. Rules of Court, rule 4.551(h).) During some or all of the initial 30-day period, no judge may be assigned; otherwise, no judge may be accessible to counsel, in order to hear an application for acceleration of the petition.

IMPACT STATEMENT

This resolution does not amend any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Stephen J. Perrello, Jr., P.O. Box 880738, San Diego, California, 92168, voice 858-277-5900, sjperrello@aol.com

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