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STATE HABEAS CORPUS PROCEDURE:

A MANUAL FOR CALIFORNIA PRISONERS

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Your Responsibility When Using this Information:

When we wrote this material we did our best to give you useful and accurate information because we know that prisoners often have difficulty obtaining legal information and we cannot provide specific advice to all the prisoners who request it. However, be aware that the laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this material every time the law changes. If you want legal advice backed by a guarantee, try to hire a lawyer to address your specific problem. If you use this pamphlet, it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the materials you need should be available in your institution law library.

STATE HABEAS CORPUS PROCEDURE:
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INTRODUCTION: THE USES OF STATE HABEAS ACTIONS

Traditionally, habeas corpus actions were used to review the lawfulness of a person's imprisonment.[1] When a prisoner filed a "petition" for a writ of habeas corpus, a judge would issue a "writ", which is an order requiring the jail or prison officials to bring the prisoner before the court and give reasons to justify why the prisoner is being detained.[2] After a court hearing, the judge decided whether the imprisonment was legal, and either permitted continued imprisonment or freed the person. This traditional use of habeas corpus allows prisoners to challenge their convictions and sentences. It also allows prisoners to challenge parole revocations and denials of parole by the Board of Parole Hearings (BPH) or the governor.

In modern times, state habeas corpus actions can be used to review the legality of prison or jail conditions, even if the person who is complaining about the conditions is not challenging the validity of his or her underlying criminal or civil commitment.[3] These claims can be based on any rights guaranteed by the federal or state constitutions, statutes or regulations. Examples of issues that can be raised include the need for safe housing, classification or worktime credit errors, visiting denials, due process violations in disciplinary proceedings, and illegal parole conditions. California prisoners can also use state habeas corpus to seek proper health care; this is true even though the prison medical care system is currently run by a receiver (the California Prison Health Care Receivership Corp.) appointed by a federal court.[4]

Through a habeas corpus proceeding, a prisoner can ask a court to order "injunctive relief," meaning that the court will order prison officials to do something or to stop doing something. For example, a court could order prison or parole officials to vacate a disciplinary finding, grant worktime credits, provide medical care, allow visitation, provide safe housing, or drop an invalid parole condition. A court could also vacate a criminal conviction or order a change in a criminal sentence.[5]

The published case law is silent on whether a person may obtain money damages through habeas proceedings, but at least one unpublished case has held that money compensation is not

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[1] See In re Jackson (1964) 61 Cal.2d 500, 503 [39 Cal.Rptr. 220].

[2] See, e.g., Penal Code §§ 1476-1484.

[3] In re Davis (1979) 25 Cal.3d 384, 387 [158 Cal.Rptr.384].

[4] In re Estevez (2008) 165 Cal.App.4th 1445 [83 Cal.Rptr.3d 479], as modified on denial of rehearing (Sept. 08, 2008) (state courts have habeas jurisdiction over federal prison health care Receiver, and both the Receiver and prison Warden are necessary and proper respondents in a prison medical care habeas case).

[5] There are other ways to challenge conditions of confinement; for example, a prisoner can seek injunctive relief by filing a civil rights action under 42 U.S.C. § 1983 in federal or state court. However, state habeas corpus is a relatively simple and speedy legal procedure, so it is recommended that prisoners file state habeas corpus petitions if they are seeking injunctive relief and are representing themselves.

available.[6] In one case, a court did allow a prisoner to proceed on a habeas petition seeking payment for the value of property destroyed by prison staff; the court treated the habeas petition as a petition for writ of mandate for recovery of property or its value.[7] However, in other types of situations, a prisoner seeking money damages for personal injuries should opt to file a federal civil rights action under 42 U.S.C. § 1983 or a state tort lawsuit.[8]

This following portions of this manual contain a step-by-step guide to California state habeas corpus process, including court forms and sample court pleadings.

WHEN TO FILE

There is no set time limit for filing a state petition for writ of habeas corpus.[9] Still, courts require a person to be diligent in seeking relief when the facts and law supporting the petition are known or should be known.[10] When there has been a long delay before the petition was filed, the petitioner should explain in detail why the case was not filed earlier.[11]

In addition, a prisoner who is challenging a criminal conviction or life parole denial via a state habeas petition – and who may want to bring the same claims in federal court if the state habeas petition is denied – should be aware that there are strict time limits for filing federal petitions for writ of habeas corpus.[12] Those federal time limits are "tolled" – meaning that the clock is not running – while a prisoner is pursuing a "properly filed" state habeas corpus

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[6] In re Willard (2d Dist. Ct. of Appeal Dec. 17, 2001) No. B146725 [2001 WL 1600764] (refusing to grant prisoner compensation for pay lost as a result of CDCR wrongdoing).

[7] Escamilla v. Dept. of Corrections and Rehabilitation (2006) 141 Cal.App.4th 498, 510-511 [46 Cal.Rptr.3d 408].

[8] A packet that discusses lawsuits for money damages against state prison officials is available upon request from the Prison Law Office.

[9] In re James (1952) 38 Cal.2d 302.

[10] See In re Harris (1993) 5 Cal.4th 813 [21 Cal.Rptr.2d 373].

[11] In re Sanders (1999) 20 Cal.4th 1083 [84 Cal.Rptr.2d 403]; In re Clark (1993) 5 Cal.4th 750 [21 Cal.Rptr.2d 509]; In re Swain (1949) 34 Cal.2d 300; In re Moss (1985) 175 Cal.App.3d 913 [221 Cal.Rptr. 645].

[12] A *federal* habeas petition usually must be filed within one year of either: 1) the conclusion of the state court review; 2) the date that an unconstitutional impediment to filing was removed; 3) the date a newly recognized retroactive right was recognized by the U.S. Supreme Court; or 4) the date that the facts behind the claim "could have been discovered" through "the exercise of due diligence." 28 U.S.C. § 2244(d)(2). A separate manual on federal habeas corpus is available from the Prison Law Office upon request.

Prisoners should note that *federal* habeas actions can be brought only to challenge official acts that affect the length of incarceration, such as a criminal conviction or sentence, disciplinary credit loss, or denial or revocation of parole. *Federal* habeas actions *cannot* be filed to challenge unlawful prison conditions or other types of unlawful prison policies.

petition.[13] However, some or all of the time might not be tolled if there was an "unreasonable" delay in bringing the state habeas petition or in filing the state petition to the next court level.[14] A period of 30 to 60 days between a lower court denial and the filing of a habeas petition in a higher court is presumptively reasonable.[15] Otherwise, there is no "bright-line" rule about how much delay is "unreasonable" and courts have reached various decisions.[16] In any event, prisoners who may want to file federal habeas petitions should file their state habeas petitions as soon as they can do so; a prisoner who does not file a state petition soon enough (or who does not file the state petition to the next court level after a denial soon enough) may then not be able to meet the deadlines to file a habeas petition in federal court.

Also, a prisoner must file the petition while he or she is still subject to some sort of custody; custody includes being on parole or probation as well as being in prison, jail or a state hospital.[17] A prisoner also must still be affected by the illegal conviction or prison policy at the time the petition is filed. A court will usually dismiss a petition if the petitioner is no longer suffering from the wrong that is the subject of the petition. Such cases are said to be "moot." However, courts do have discretion to hear cases that are moot, and should do so under certain circumstances.[18] In particular, courts should decide moot cases that raise important issues which are likely to come up repeatedly, but which may otherwise not get resolved.[19] Such cases often involve disputes that usually are resolved by other means more quickly than the time it takes to complete the habeas process.[20]

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[13] 28 U.S.C. § 2244(d)(2); Artuz v. Bennett (2000) 531 U.S. 4 [121 S.Ct. 361; 148 L.Ed.2d 213]; Smith v. Duncan (9th Cir. 2001) 274 F.3d 1245.

[14] Carey v. Saffold (2002) 536 U.S. 214 [122 S.Ct. 2134; 153 L.Ed.2d 260]; Evans v. Chavis (2006) 546 U.S. 189 [126 S.Ct. 846; 163 L.Ed.2d 684].

[15] Evans v. Chavis (2006) 546 U.S. 189 [126 S.Ct. 846; 163 L.Ed.2d 684].

[16] Gaston v. Palmer (9th Cir. 2006) 447 F.3d 1165 (no tolling for unexplained gaps of 15 months, 18 months and 10 months); Culver v. Director of Corrections (C.D. Cal. 2006) 450 F.Supp.2d 1135, 1140-1141 (intervals of 97 and 71 days between state petitions were unreasonable); Osumi v. Giurbino (C.D. Cal 2006 445 F.Supp.2d 1152, 1158-1159 (96 and 98 day intervals were not unreasonable in case with lengthy briefs).

[17] In re Marzec (1945) 25 Cal.2d 794 (parole); In re Hochberg (1970) 2 Cal.3d 870 [87 Cal.Rptr. 681] (probationer); In re Bye (1974) 12 Cal.3d 96, 99 [115 Cal.Rptr. 382] (civil addict parolee).

[18] In re Fleury (1967) 67 Cal.2d 600 [63 Cal.Rptr. 298]; In re William M. (1970) 3 Cal.3d 16 [89 Cal.Rptr. 33]; In re Bye (1974) 12 Cal.3d 96 [115 Cal.Rptr. 382].

[19] See, e.g., In re Garcia (1998) 67 Cal.App.4th 841 [79 Cal.Rptr.2d 357]; In re Angel M. (1998) 58 Cal.App.4th 1498 [68 Cal.Rptr.2d 825]; People v. Superior Court (Hamilton) (1991) 230 Cal.App.3d 1592 [281 Cal.Rptr. 900].

[20] See In re Arias (1986) 42 Cal.3d 667, 673 [230 Cal.Rptr. 505]; In re Robin M. (1978) 21 Cal.3d 337, 341, n. 6 [146 Cal.Rptr. 352]; In re William M. (1970) 3 Cal.3d 16 [89 Cal.Rptr. 33].

EXHAUSTION OF ADMINISTRATIVE REMEDIES

A prisoner who is challenging a criminal conviction or sentence does not need to exhaust any "administrative remedies" before filing a habeas petition. But if the legal issue could have been raised in a direct criminal appeal, the petitioner must explain to the court why it was not raised at that time.[21] On the other hand, if the issue was raised in a previous direct appeal, a court may not allow the prisoner to re-litigate the issue via a habeas petition unless there are new facts, law, or evidence that were not previously available and are not in the appellate record.[22] Still, a violation of fundamental rights can be challenged on habeas corpus even when the claim was previously rejected on appeal if the petitioner can show that the defects so affected the trial "as to violate the fundamental aspects of fairness and result in a miscarriage of justice."[23]

A prisoner who wishes to file a habeas corpus petition challenging prison or parole conditions must first "exhaust administrative remedies" by filing a grievance with the agency responsible for the matter.[24] Prisoners in the California Department of Corrections and Rehabilitation (CDCR) can do this by submitting an administrative appeal such as a CDCR Form 602. If a prisoner is challenging a failure to provide adequate medical care, the administrative appeal should be filed using CDCR Form 602-HC. If the problem involves disability issues, a prisoner should submit a CDCR Form 1824 Reasonable Modification or Accommodation Request. No matter which type of administrative appeal is used, the prisoner should pursue the appeal through the Third (Director's) Level of Review before filing a habeas petition.

A prisoner or parolee who is challenging an action of the Board of Parole Hearings (BPH),[25] does not generally need to exhaust administrative remedies; as of May 2004, the BPH does not have any general administrative appeal process. However, the BPH does have a process for requesting disability accommodations and appealing denials of such accommodations. Prisoners and parolees with disability-related issues should thus exhaust administrative remedies by filing Form 1073 ("Notice of Rights and Request for Reasonable Accommodation") and Form 1074 ("Review of Reasonable Accommodation Request and Grievance Process").

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[21] In re Walker (1974) 10 Cal.3d 764 [112 Cal.Rptr. 177]; In re Ronald E. (1977) 19 Cal.3d 315 [137 Cal.Rptr. 781] (court denied petition because of failure to explain why challenge to plea bargain allegations were not raised on direct appeal). See also, In re Seward (1995) 10 Cal.4th 447 [41 Cal.Rptr.2d 695]; In re Antazo (1970) 3 Cal.3d 100 [89 Cal.Rptr. 255]; In re Fuller (1981) 124 Cal.App.3d 251 [177 Cal.Rptr. 233]. In some circumstances, issues that were not previously addressed in the trial court and/or on direct appeal can be raised in a habeas petition as a claim of ineffective assistance of counsel. (In re Seaton (2004) 34 Cal.4th 193 [17 Cal.Rptr.3d 633].

[22] In re Gay (1998) 19 Cal.4th 771 [80 Cal.Rptr.2d 765]; In re Harris (1993) 5 Cal.4th 813 [21 Cal.Rptr.2d 373].

[23] In re Harris (1993) 5 Cal.4th 813 [21 Cal.Rptr.2d 373].

[24] In re Muszalski (1975) 52 Cal.App. 500, 503 [125 Cal.Rptr. 286].

[25] BPT actions include parole revocation decisions, denial of parole suitability for life prisoners, or parole conditions set by the BPT. CDC is responsible for some other aspects of parole, including determining location of parole and most parole conditions, and such actions should be appealed using the CDC 602 process.

Courts are reluctant to allow exceptions to the requirement that prisoners and paroles exhaust their administrative remedies. However, "the doctrine of exhaustion of administrative remedies has not hardened into inflexible dogma."[26] In an exceptional case, such as where the administrative remedy is inadequate,[27] an attempt to obtain administrative remedies would be futile[28] or delay would result in irreparable injury,[29] a court has discretion to hear the case without requiring exhaustion of administrative remedies. Ultimately, the requirement of exhausting administrative remedies should not apply when "injustice might otherwise result."[30]

As a practical matter, prisoners are often faced with dilemmas about how to proceed, since administrative appeals may be lost or answered in an untimely fashion, delaying the prisoner's ability to seek relief in the courts. To ensure that the court does not deny a habeas petition for failure to exhaust administrative remedies, the prisoner should always file a 602 administrative appeal right away. While the appeal is pending, the prisoner can prepare the petition. If the problem is not resolved through the administrative appeal process, the prisoner should attach the third level appeal response to the completed petition and file the documents in the appropriate court.

If it is vital that the problem be resolved promptly, but the CDCR is not meeting the administrative appeal response time limits and has not given notice that the appeal will be decided soon, the prisoner can consider filing the petition before receiving all of the appeal responses. The prisoner should argue in the petition that the court should hear the case because the appeal system is inadequate to resolve the problem in a timely fashion and irreparable injury will result if exhaustion is required. The prisoner should describe in the petition all attempts that have been made to resolve the problem administratively. The prisoner should also attach any supporting documents that confirm these attempts.

PREPARING THE PETITION AND SUPPORTING DOCUMENTS

A habeas corpus proceeding starts when a prisoner files a petition for writ of habeas corpus. The petition must (1) identify the place of confinement and the person with authority over that prison or jail, (2) describe the imprisonment and what makes it illegal, (3) state whether

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[26] Ogo Associates v. City of Torrance (1974) 37 Cal.App 3d 830, 834 [112 Cal.Rptr. 761].

[27] Glendale City Employees' Assn., Inc. v. City of Glendale (1975) 15 Cal.3d 328, 342-343 [124 Cal.Rptr. 513].

[28] In re Dexter (1979) 25 Cal 3d 921 [160 Cal.Rptr. 118]; In re Thompson (1985) 172 Cal.App.3d. 256, 262-263 [218 Cal.Rptr. 192]; In re Reina (1985) 171 Cal.App.3d. 638, 642 [217 Cal.Rptr. 535]; but see In re Serna (1978) 76 Cal.App.3d. 1010 [143 Cal.Rptr. 350].

[29] See In re Serna (1978) 76 Cal.App.3d. 1010, 1015-1023 [143 Cal.Rptr. 350] (Stephens J., dissenting).

[30] Greenblat v. Munro (1958) 161 Cal.App.2d 596,606.

any prior court actions have been file about this issue and describe those proceedings, and (4) be "verified" (meaning that the statements in the petition are sworn to be true).[31]

The courts have created a form for prisoners to use when filing a petition for writ of habeas corpus. (Judicial Council Form MC-275 [Rev. Jan. 1, 2007], available at http://www.courtinfo.ca.gov/forms/documents/mc275.pdf.) The form is primarily designed for challenges to criminal convictions and sentences. This form is of little use to prisoners who are preparing petitions challenging conditions of confinement. However, a prisoner filing a petition in pro per (without an attorney) must use the form, regardless of the issues that are being raised.[32] Therefore, prisoners who are bringing their own cases should always fill out and file the form.

The petition should name the "respondent" or opposing party in the case. For state prisoners, the respondent will be the warden; the Director of the CDCR can also be named if the case involves a state-wide policy.[33] If the petition involves prison medical care, the Prison Health Care Receiver should also be named as a respondent. A person who is under civil commitment in a state hospital should name the superintendent or director of the hospital as the respondent. If the petitioner is in county jail custody, the respondent will be the sheriff or the jail superintendent.

When a prisoner wants to add more information than can fit on the standard petition form – particularly in a case involving prison or parole conditions – he or she should also submit a separate petition and memorandum of points and authorities.[34] Relevant documents and sworn declarations of any supporting witnesses should be attached to the petition as exhibits. A sample petition for writ of habeas corpus and explanation of how the pleading should be organized is attached to this manual as Form B. Form B also includes a sample verification and memorandum of points and authorities.

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[31] Penal Code §§ 1474-1475. To "verify" the petition, the person making the application must declare under penalty of perjury that the facts stated in the petition are true. The person making the verification ordinarily will be the prisoner. However, in exceptional circumstances someone else can file an application to verify the petition as a "next friend." In re Harrell (1970) 2 Cal.3d 675, 689 [87 Cal.Rptr. 504]; but see In re Davis (1979) 25 Cal.3d 384, 389 [158 Cal.Rptr.384].

[32] California Rules of Court , rule 4.551(a)(1).

[33] Some CDCR prisoners are now housed in out-of-state facilities. In such cases, the petitioner should name the CDCR Director and/or the CDCR Out of State Correctional Facility Chief Deputy Administrator as respondents.

[34] A prisoner who is challenging a conviction or sentence, and who may someday want to raise those issues in federal court, should make sure the state habeas petition preserves the federal nature of those claims. The state petition should clearly state if a claim is based on federal law in addition to state law and should cite federal statutes, the U.S. Constitution or federal court cases. Peterson v. Lampert (9th Cir. 2002) 277 F.3d 1073.

WHERE AND HOW TO FILE THE PETITION

Generally, a habeas petition should first be filed in the county superior court.[35] A prisoner challenging a prison condition or policy, or a parole revocation or condition, should file in the county in which he or she is incarcerated. A petition challenging a criminal conviction or sentence should be filed in the county in which the prisoner was convicted and sentenced. A petition by a life prisoner challenging a denial, reversal or rescission of parole should also be filed in the county where the prisoner was sentenced.[36] A list of court addresses, organized by county and stating which prisons are located in each county, is attached to this manual.

Fortunately, a prisoner really can't go wrong in choosing where to file, since a superior court must accept any petition for writ of habeas corpus. The court will then determine whether the petition states a possible case for relief. If there is a case for relief, and the petitioner has filed the case with the wrong court, the court will transfer the case to the appropriate court.[37]

The prisoner should file one copy of the petition with the superior court. The petition can be "filed" simply by mailing it to the superior court clerk.

Anytime the petitioner files a document with the court, the petitioner should also send the court an extra copy of the cover page (or the full document if it is very short) with a self-addressed stamped envelope so the court can send the petitioner a copy showing the date of filing and the case number.

The petition will have to be served on the opposing party if the court decides that the case can proceed.[38] "Serving" a document means sending it to the opposing party in the case, and a "proof of service" is a form that verifies that the document has been served. There are two ways the petition can be served:

(1) When the petitioner files the petition, he or she can send an extra copy to the superior court. If the court decides to allow the case to go forward, the court will usually serve the extra copy of the petition on the attorney for the opposing party at that time.

(2) When the petitioner files the petition, he or she may serve the opposing party's attorney and file a proof of service with the court. In a case challenging a criminal conviction, the petition should be served on the county District Attorney; if the case is in the court of appeal or California supreme Court, it is advisable to

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[35] Griggs v. Superior Court (1976) 16 Cal.3d 341 [128 Cal.Rptr. 223]. The petition can also be filed initially with the Court of Appeal or even the California Supreme Court, if there are special reasons why those courts should hear it at once. Article VI, Sec. 10 of the California Constitution.

[36] In re Roberts (2004) 36 Cal.4th 575 [1 Cal.Rptr.3d 458].

[37] Griggs v. Superior Court (1976) 16 Cal.3d 341, 347 [128 Cal.Rptr. 223].

[38] Penal Code § 1475.

also serve the state Attorney General. For prison or parole cases, the petition should be served on the state Attorney General. Petitions involving county jail conditions can be served on the city or county Attorney's Office. The Prison Health Care Receiver has his own in-house legal counsel who can be served with petitions regarding prison medical care. Documents in state habeas corpus cases can be served by sending them through regular U.S. mail. A sample "Proof of Service" form for documents served by mail is included as Appendix 14-E.

A petitioner should always keep a copy of the petition or any other document filed with the court, even if it is only a hand-written duplicate.

The are no court fees for filing a petition for writ of habeas corpus.

HOW TO ASK THE COURT TO APPOINT AN ATTORNEY

Prisoners have no right to a court-appointed attorney in a state habeas proceeding before the court issues an Order to Show Cause (OSC), although nothing bars a court from appointing an attorney to prepare a habeas petition should it determine that to be necessary. However, if a prisoner files a petition in pro per, and if the court issues an Order to Show Cause, the court must then appoint counsel for any prisoner who requests an attorney but cannot afford to hire one.[39]

A petitioner can request an attorney by filing with the court a separate document entitled "Declaration of Indigency and Request for Appointment of Counsel." (A sample request for counsel is attached to this manual as Form C.) A prisoner should also request appointment of an attorney in the "prayer for relief" portion of the petition.

THE COURT'S RESPONSE TO THE PETITION

The court must act on a habeas petition within 60 days of its filing.[40] If a court does not act on a petition within 60 days, the petitioner should send a "notice and request for ruling" to the court. The notice must include a declaration sworn under penalty of perjury stating the date the petition was filed and the date the request for ruling is being filed, and stating that the petitioner has not received a ruling. A copy of the original petition must be attached to the request. Once the court receives a complete "notice and request for ruling," the case should be assigned to a judge and calendared for a decision to be made within 30 days.[41]

When the court does act, it has several options for how to proceed. The court can:

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[39] California Rules of Court, rule 4.551(c)(2).

[40] California Rules of Court, rule 4.551(a)(3)(A).

[41] California Rules of Court, rule 4.551(a)(3)(B).

1) Deny the petition. If the court denies a petition it must explain the reason for the denial. An order that merely states that the petition is denied is not sufficient.[42]

(2) Request an informal response from the respondent or custodian of any relevant records.[43]

(2) Issue an order to show cause.[44] This order will require the respondent to file a return explaining any reasons why the relief requested by the petitioner should not be granted.

INFORMAL BRIEFING PROCEDURE

If the court believes the case may have some merit, but wants more information before taking any formal action, the court can request that the parties submit informal briefing.

The Attorney General's, Health Care Receiver's or District Attorney's informal response, which is usually in the form of a letter, will be due 15 days after the court's request is issued, unless the court sets a different deadline. The opposing party's attorney should must send a copy of the informal response to the petitioner.

After an informal response is filed, the petitioner can then file an informal reply. The reply can be in the form of a letter to the court. The reply will be due 15 days after the date the informal response is served on the petitioner, unless the court sets a different deadline.[45] The petitioner must serve a copy of the reply letter on the opposing party by mailing it to the attorney for the opposing party; the petitioner must also send a proof of serve form to the court declaring that the opposing party has been served. Because the court has the power to deny the petition without any further briefing, the petitioner should draft a reply that disputes all factual errors and improper legal authorities and conclusions that are in the informal response.

THE ORDER TO SHOW CAUSE AND THE RETURN

If the court decides that the case sets forth potentially valid grounds for relief, the court will issue an "order to show cause." The order to show cause can be issued either without informal briefing or after informal briefing has been submitted. The order to show cause will direct the respondent to set forth any legal or factual reasons why the relief requested by the petitioner should not be granted.

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[42] California Rules of Court, rule 4.551(a)(4)(B) and (g). See People v. Romero (1994) 8 Cal.4th 728, 737 [35 Cal.Rptr. 270] (discussing summary denials); In re Scott (1994) 27 Cal.App. 4th 946 [33 Cal.Rptr. 27].

[43] California Rules of Court, rule 4.551(a)(4)(C)and (b)(1).

[44] California Rules of Court, rule 4.551(a)(4)(A).

[45] California Rules of Court, rule 4.551(b).

The court's order to show cause may not require the respondent to address issues that were not raised in the petition. If the court identifies potential issues that were not raised in the petition, the court can invite the petitioner to file a supplemental petition with additional claims.[46]

In response to the order to show cause, the opposing party's attorney will file a "return." The return is the legal document that explains why the respondent believes the petition should not be granted. Any allegation in the petition that is not disputed in the return is deemed true.

The court must give the respondent at least 24 hours to file the return;[47] the usual practice is to give 30 days.[48] The respondent's attorney must send the petitioner a copy of the return.

THE DENIAL AND EXCEPTION (TRAVERSE)

After the return is filed, the petitioner should file a "denial and exception to the return." The denial and exception (sometimes called a "traverse") is used by the petitioner to answer and deny any false allegations or points of law in the return.[49] The denial is extremely important because any claim or argument that is made in the return, and that is not denied, will be deemed by the court to be true. Usually the petitioner is given 30 days to file the denial.[50] The petitioner should also serve the denial by mailing a copy to the attorney for the opposing side at the same time the denial is mailed to the court. The petitioner should also file a proof of service form with the court. A sample denial is attached to this manual as Form D. A sample proof of service is attached as Form E.

EVIDENTIARY HEARING AND DISCOVERY

After a denial or informal reply is filed, the court has 30 days to decide the petition or order an evidentiary hearing.[51] An evidentiary hearing is required only if there is a reasonable likelihood that the petitioner may be entitled to relief and the court finds the case depends on the

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[46] Board of Prison Terms v. Superior Court (Ngo) (2005) 130 Cal.App.4th 1212, 1241-1242 [31 CalRptr.3d 70].

[47] Penal Code, § 1475; California Rules of Court, rule 4.551(d); See People v. Duvall (1995) 9 Cal.4th 464, 475-476 [37 Cal.Rptr. 259] (discussing standards governing a return).

[48] California Rules of Court, rule 4.551(d).

[49] "The [petitioner]...may deny or controvert any of the material facts or matters set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge." Penal Code § 1484. See People v. Duvall (1995) 9 Cal.4th 464, 477[37 Cal.Rptr. 259].

[50] California Rules of Court, rule 4.551(e). The rule further provides, however, that "the court may shorten or extend the time for doing any act under this rule." Thus, a prisoner who cannot meet the timeline should ask the court to grant an extension of time.

[51] California Rules of Court, rule 4.551(f).

resolution of an issue of fact.[52] The petitioner must be produced at the evidentiary hearing unless the court, for good cause, directs otherwise.[53] If the court does not hold a hearing, the judge usually will go ahead and decide the case based on the pleadings and exhibits. If the court does hold a hearing, then the court will decide whether to grant or deny relief after the hearing.

A petitioner who wants to force the respondent to produce evidence that he or she thinks will benefit the case can ask the court to order the respondent to provide "discovery" of such information. Examples of information that can be obtained during discovery are copies of official documents or answers to questions posed by the petitioner. The power to order discovery in a habeas case usually arises only after the court has issued an order to show cause.[54]

THE DECISION

The next step is for the court to issue a decision. If no evidentiary hearing is ordered, the court has 30 days after the traverse is filed to decide whether to grant or deny the petition.[55] The court rules do not say how quickly a court must decide a case after an evidentiary hearing.

If the petition is granted, the petitioner should make sure that the prison or parole officials receive a certified copy of the order from the court. A petitioner can sometime resolve problems with enforcement by contacting the deputy Attorney General who worked on the case and explaining that the prison officials have not received or complied with the court order.

AFTER SUPERIOR COURT: THE COURT OF APPEAL

1. <u>If the petition is granted</u>

If the superior court issues an order granting relief to the petitioner, the respondent may appeal.[56] The notice of appeal must be filed within 60 days after the superior court issues its order.[57] While the appeal is pending, the respondent can request that the order be "stayed" so that it does not take effect while the appeal is pending; either the superior court or the Court of

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[52] California Rules of Court, rule 4.551(f); <u>People v. Romero</u> (1994) 8 Cal.4th 728, 739 [35 Cal.Rptr. 270].

[53] California Rules of Court, rule 4.551(f).

[54] <u>In re Scott</u> (2003) 29 Cal.4th 783, 814 [129 Cal.Rptr.2d 605]; <u>In re Avena</u> (1996) 12 Cal.4th 694, 730 [49 Cal.Rptr.2d 413]; <u>Board of Prison Terms v. Superior Court (Ngo)</u> (2005) 130 Cal.App.4th 1212, 1241-1242 [31 Cal.Rptr.3d 70] (consideration for review on court's own motion pending as of Sept. 15, 2005). However, in cases where the proceeding challenges a conviction for which the sentence is death or life in prison without the possibility of parole, a court may order discovery prior to the filing of a habeas petition upon a showing of unsuccessful good faith efforts to obtain the requested discovery materials from trial counsel. Penal Code § 1054.9; <u>In re Steele</u> (2004) 32 Cal.4th 682, 691 [10 Cal.Rptr.3d 536].

[55] California Rules of Court, rule 4.551(f).

[56] Penal Code § 1506.

[57] California Rules of Court, rule 8.104(a).

Appeal may grant such a stay.[58] If no stay is issued, then the relief ordered by the superior court should be carried out while the appeal is pending.

If the state does file a notice of appeal, a petitioner who does not have enough money to hire a lawyer should ask the Court of Appeal to appoint counsel; the appellate courts routinely appoint counsel in these circumstances.

2. If the petition is denied

If the petition is denied in the superior court, the petitioner has no right to appeal. Instead, the petitioner can file a new petition with the Court of Appeal.[59] The new petitioner should contain the same claims as the first petition. The petitioner should attach the superior court's decision as an exhibit to the new petition and include in the "facts" portion of the petition a statement showing that the petitioner has already applied to the superior court for relief.

A pro per petition in the Court of Appeal may be submitted in generally the same form as the superior court petition, using the standard judicial council form. The petitioner need file only one copy of the petition and supporting documents.[60] The addresses of all the state courts of appeal and the boundaries of their jurisdiction is attached to this manual. The petitioner should also mail a copy of the petition to the attorney for the opposing party and send a proof of service to the court.[61]

Once the petition is filed with the Court of Appeal, the procedure for briefing and hearing the case is similar to that for a petition filed in the superior court.

AFTER THE COURT OF APPEAL: THE STATE SUPREME COURT

If the petition is denied in the Court of Appeal and the petitioner still wants to continue, he or she can ask the California Supreme Court to hear the case. This can be done in two ways.

One method for presenting the case to the California Supreme Court is to file a petition for review.[62] If a petition for review is filed, the entire record of the Court of Appeal will be sent to the Supreme Court and the petitioner will not have to supply new copies of the exhibits. The petition for review should start with one-sentence descriptions of each of the legal issues and

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[58] Penal Code § 1506.

[59] See California Rules of Court, rule 8.380.

[60] California Rules of Court, rule 8.380(a). An attorney who is filing a habeas petition need not use the judicial council form. Also, an attorney should file an original and four copies of the petition and supporting documents. California Rules of Court, rules. 8.44(a) and 8.384(b).

[61] California Rules of Court, rule 8.25(a).

[62] A petition for review is especially preferred if the Court of Appeal has ordered that the opinion in the case be published in the case law books. In re Michael E. (1975) 15 Cal.3d 183, 193, fn. 15 [123 Cal.Rptr.103].

include a discussion of why the issues are important enough for the Supreme Court to hear the case. A copy of the Court of Appeal decision must be attached to the petition.[63] The petition must be filed within 10 days after a denial without a detailed opinion by the Court of Appeal and within 40 days after a denial with an opinion.[64] If possible, the petitioner should file the original petition for review plus 13 copies.[65] If the petitioner cannot get sufficient copies, he or she should send a cover letter to the Supreme Court explaining why. The address of the California Supreme Court is in the state court list attached to this manual. The petitioner must serve both the attorney for the opposing party and the Court of Appeal with copies of the petition.[66]

If a petitioner cannot meet the deadline for filing a petition for review or wants to include updated information or exhibits not filed below, the petitioner can file a new petition for writ of habeas corpus in the California Supreme Court. The format can be similar to the petitions filed in the lower courts, and again, a petitioner without an attorney should use the judicial council form. If possible, the petitioner should file the original plus 10 copies of the petition[67] and send a copy to the attorney for the opposing party. Filing the petition will start the whole general habeas procedure once again.

The California Supreme Court ruling will usually be the end of the case if the issues involve prison conditions or policies. If there are federal legal issues in the case, the prisoner can file a petition for writ of certiorari asking the United States Supreme Court to hear the case; such petitions are very rarely granted.[68] In cases involving prison conditions, a prisoner who has brought an unsuccessful habeas case in state court may be barred from raising the same issues in a federal civil rights suit.[69] On the other hand, if the state habeas corpus case challenged a criminal conviction or sentence, civil commitment, disciplinary credit loss, or parole revocation or denial, AND the case raises a federal legal issue, then the petitioner may be able to file a habeas corpus petition in federal court.[70]

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[63] California Rules of Court, rules 8.500(b) and 8.504(b).

[64] California Rules of Court, rules 8.500(e)

[65] California Rules of Court, rules 8.44(a).

[66] California Rules of Court, rules 8.25(a) and 8.508(c).

[67] California Rules of Court, rules 8.380(a)(3); see also 8.384(b)(7) and 8.44(a)(2).

[68] A manual and forms for filing a pro per petition for certiorari is available on the U.S. Supreme Court website at www.supremecourtus.gov/casehand/guideforifpcases.pdf. The manual might also be available by writing to the Clerk, Supreme Court of the United States, Washington, D. C. 20543.

[69] Silverton v. Department of Treasury (9th Cir. 1981) 644 F.2d 1341, 1346; Sperl v. Deukmejian (9th Cir. 1981) 642 F.2d 1154.

[70] A separate manual on federal habeas corpus is available from the Prison Law Office upon request. Federal courts have an independent responsibility to interpret federal law. Williams v. Taylor (2000) 529 U.S. 362 [120 S.Ct. 1495; 146 L.Ed.2d 389]. However, federal courts may not grant a habeas petition on a claim that has been denied in state court, unless the state court decision was: (1) was contrary to, or involved an unreasonable application of, clearly established federal law as determined by the United States Supreme Court; or (2) was based

CHECKLIST

Before mailing pleadings to the court, check this list to ensure that all necessary documents have been included.

When filing a petition for writ of habeas corpus, include a:

1. Judicial Council MC-275 form, available at http://www.courtinfo.ca.gov/forms/documents/mc275.pdf [this form alone may be sufficient for a petitioner who is attacking a criminal conviction or sentence]

2. Petition

3. Verification

4. Supporting Memorandum of Points and Authorities

5. Any supporting exhibits or declarations

5. Second copy of the Petition and supporting documents (so the court can serve the respondent OR a Proof of Service (if the petitioner has served the petition and supporting documents on the respondent).

6. Request for Appointment of Counsel and Declaration of Indigency [optional].

If the Court issues a request for informal briefing, and the Attorney General files an informal response, then file an:

1. Informal Reply Letter, with proof of service on the respondent

If the court issues an order to show cause, and the Attorney General files a return, then file a:

1. Denial and Exception to the Return (also called a "Traverse")

2. Supporting Memorandum of Points and Authorities

5. Any new or additional supporting exhibits or declarations

3. Proof of service on the respondent

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on an unreasonable application of the facts in light of the evidence. 28 U.S.C. § 2254; Baker v. City of Blaine (9th Cir. 2000) 205 F.3d 1138; Moore v. Calderon (9th Cir. 1997) 108 F.3d 261.

FORM B

[Petitioner's Name]

[Mailing Address]

In Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF _____

[If you are challenging a prison or parole condition, file in the county in which you are housed; if you are attacking your conviction or sentence, or are a life prisoner challenging a parole denial, reversal or rescission, then you should file in the county in which you were convicted and sentenced]

In re [Place your name here] On Habeas Corpus	No. PETITION FOR WRIT OF HABEAS CORPUS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF.

INTRODUCTION

[Give a brief explanation of what the petition is about. If possible, the petition should be typed and double-spaced; if it is hand-written, please write neatly.]

EXAMPLE:

1. Petitioner was found guilty at a prison disciplinary hearing of battery on an officer. Petitioner contends that he was denied his due process rights under Wolff v.McDonnell (1974) 418 U.S. 539, Penal Code section 2932, subdivision (a)(3) and Title 15, California Code of Regulations, section 3315(e) to have witnesses present at his hearing. He further contends that the failure of prison officials to appoint a staff assistant violated his due process rights as protected by Title 15,California Code of Regulations, sections 3315(d) and 3318(b) and the State and Federal Constitutions.

II.

PARTIES

[Identify yourself, the prison in which you are being held, and the name of the warden, director of the department of corrections, health care receiver, or any other prison officials who are involved in the issue.]

EXAMPLE:

2. Petitioner [your name and institutional number], is a prisoner of the State of California incarcerated at [place name of the prison here].

3. [Name of warden or superintendent of prison] is the warden of _____ prison and the legal custodian of petitioner.

4. _____ is the Director of the California Department of Corrections and Rehabilitation (CDCR) and is responsible for the operation of each of its state prisons, including the operation of _____ prison.

III.

STATEMENT OF FACTS

[This is the most important part of the petition. Give a complete description of the situation, including all the relevant facts. Include exact dates and full names to the extent possible. Describe the facts of your problem in the order that they occurred, starting with the first relevant event and going up through the exhaustion of administrative remedies. Number each paragraph in order.

Refer to any supporting relevant documents. Whenever you state a fact that can be backed up by a document, describe the document right after stating the fact, and attach the document to the end of the memorandum as an exhibit. Documents that you may need to attach can include prison or court records, medical records, or sworn statements (called “declarations”) made “under penalty of perjury” by witnesses or experts. For example after telling about what happened at a classification hearing, you should state: "See classification chrono, CDCR form 128-G, dated 00/00/00, attached as Exhibit A."] Number or Letter the Exhibits in Order; if there are a lot of Exhibits you should also include a page that lists all the exhibits.]

IV.

CONTENTIONS

[List the main legal arguments that you will be making]

EXAMPLE

I. PETITIONER WAS DENIED HIS DUE PROCESS RIGHTS UNDER WOLFF V. MCDONNELL (1974) 418 U.S. 539, PENAL CODE SECTION 2932, SUBDIVISION (a)(3) AND CALIFORNIA CODE OF REGULATIONS, TITLE 15, SECTION 3315(e) TO HAVE INMATE _____ PRESENT AS A WITNESS AT HIS DISCIPLINARY HEARING.

II THE FAILURE OF PRISON OFFICIALS TO APPOINT A STAFF ASSISTANT VIOLATED PETITIONER'S RIGHT TO A FAIR HEARING AS PROTECTED BY CALIFORNIA CODE OF REGULATIONS, TITLE 15, SECTIONS 3315(d) AND 3318(b) AND THE DUE PROCESS CLAUSES OF THE STATE AND FEDERAL CONSTITUTIONS.

V.

PRAYER FOR RELIEF

[Describe what you want the court to do.]

EXAMPLE:

Petitioner is without remedy save by writ of habeas corpus.

WHEREFORE, petitioner prays the Court:

1. issue a writ of habeas corpus;

2. declare the rights of the parties;

3. reverse the guilty finding of the disciplinary charge;

4. restore the 150 days of lost behavior credits to petitioner;

5. expunge all references to the disciplinary charge from petitioner's central file;

6. appoint counsel award reasonable attorney fees; and

7. grant any other and further relief the Court deems proper.

DATED: Respectfully submitted,

[Signature]_____

[Type petitioner's name]

VERIFICATION

I, [Place full name here], state:

I am the petitioner in this action. I have read the foregoing petition for writ of habeas corpus and the facts stated therein are true of my own knowledge, except as to matters that are therein stated on my own information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at [place name of city where you are located] on [place date here].

_____

Petitioner

_____

CDCR Number

MEMORANDUM OF POINTS AND AUTHORITIES

[Along with the petition and verification, you should file a legal memorandum discussing the law and how the facts that have been described show that your rights were violated. Although the Penal Code does not require that you submit a memorandum of points and authorities – and a court can issue a writ upon the filing of the petition alone – a memorandum that describes the legal basis for the claims and demonstrates the existence of a legal right will strengthen your case. This document does not have to be very long or fancy, and it should stick to the most important and relevant legal doctrines. It should also show how the general legal principles apply to the facts of your case. The example below is for reference purposes only. Do not copy this memorandum because it may not apply to your situation or the law that is cited may become outdated.]

EXAMPLE:

I. PETITIONER WAS DENIED HIS DUE PROCESS RIGHTS UNDER WOLFF V. MCDONNELL (1974) 418 U.S. 539, PENAL CODE SECTION 2932 SUBDIVISION (a)(3) AND THE CALIFORNIA CODE OF REGULATIONS, TITLE 15, SECTION 3315(e) TO HAVE INMATE _____ PRESENT AS A WITNESS AT HIS DISCIPLINARY HEARING.

In Wolff v. McDonnell (1974) 418 U.S. 539, 566, the Supreme Court stated that "[an] inmate facing disciplinary proceedings should be allowed to call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institution safety or correctional goals." The United States Supreme Court has affirmed that the federal constitution's Fourteenth Amendment protects the due process right of an inmate to present friendly witnesses unless his disciplinary board had a legitimate basis for excluding them. (Ponte v. Real (1985) 471 U.S. 491, 506).

While recognizing that the right to call witnesses can be limited where institutional safety or correctional goals would be compromised, Ponte cautioned that the Wolff requirement of witnesses would be undermined if the practice of denying witnesses without explanation was condoned:

> [T]o hold that the Due Process Clause confers a circumscribed right on the inmate to call witnesses at a disciplinary hearing and then conclude that no explanation need ever be

> vouched for the denial of that right...would change an admittedly circumscribed right into a privilege conferred in the unreviewable discretion of the disciplinary board. We think our holding in Wolff, supra, meant something more than that.

(Ponte v. Real, supra, at pp. 498-499.)

Penal Code section 2932, subdivision (a)(3) is a codification of the Supreme Court's holding in Wolff and requires that the reasons for the denial of witnesses "shall be set forth in writing and a copy of such document shall be presented to the prisoner." This statute reflects the Legislature's recognition of the importance of establishing the written record at the time of the hearing to insure the exclusion of witnesses was not arbitrary.

Further, Title 15 of the California Code of Regulations, section 3315(e)(1) requires the presence of both friendly and adverse witnesses when called by the inmate to a disciplinary hearing unless the person conducting the hearing denies the request for one of the legitimate reasons set forth in the regulation Additionally, under section 33l5(e)(2), the reasons for denial must be documented on the rule violation report.

In this case, petitioner was accused of a disciplinary violation for committing a battery on an officer by grabbing his arm; petitioner asserted at the hearing that he accidentally touched officer _____ when he lost his footing while trying to get out of the officer's way. (See Exhibit A [115 dated 00/00/00.) Petitioner requested that inmate _____, who lives just down the tier from where the incident happened, be called as a witness because petitioner believes inmate _____ saw the interaction between himself and officer _____ that formed the basis for the disciplinary violation. (See Exhibit B [declaration of petitioner].) Respondents denied petitioner's request for a witness without giving any reason for this action. They then found appellant guilty of the charged disciplinary violation, and took away 150 days of his good conduct credits. (See Exhibit A].) Respondents have claimed that denying petitioner's witness was appropriate because "it is doubtful the witness could have observed the incident from

several cells away..." (See Exhibit C [602 appeal and responses].) However, this reasoning cannot support a denial of a witness where Wolff v. McDonnell, supra at p. 566, requires, the presence of a witness when called by an inmate unless the testimony of a witness would be "unduly hazardous to institutional safety or correctional goals."

In petitioner's case, the disciplinary hearing became a classic swearing match: Officer _____ offered his version of the facts and petitioner offered his version. Under these circumstances, testimony from an observer of the incident is relevant, and perhaps critical, to the question of whether petitioner in fact intentionally touched Officer _____ or was an aggressor in the incident. The denial of inmate _____'s testimony at petitioner's hearing was improper and prejudicial to his defense.

II. THE FAILURE OF PRISON OFFICIALS TO APPOINT A STAFF ASSISTANT VIOLATED PETITIONER'S RIGHT TO A FAIR HEARING AS PROTECTED BY THE CALIFORNIA CODE OF REGULATIONS, TITLE 15, SECTIONS 3315(d) AND 3318(b) AND THE DUE PROCESS CLAUSES OF THE STATE AND FEDERAL CONSTITUTIONS.

The United States Supreme Court in Wolff v. McDonnell, supra, at p. 570 established that prisoners who are facing disciplinary charges are entitled to counsel-substitute when a need for such assistance can be demonstrated. Accordingly, Title l5 of the California Code of Regulations Code provides for staff to be assigned to assist prisoners under certain circumstances.

Section 3315 of that code reflects a recognition that a prisoner who is placed in segregation pending a disciplinary hearing is seriously disabled in his ability to collect evidence on his behalf. Therefore, subsection (d) of that section provides for the assignment of an investigative employee and/or staff assistant where "[t]he inmate's housing status makes it unlikely that he or she can collect and present the evidence necessary for an adequate comprehension of the case..."

In this case, petitioner was in segregation at the time of the incident and was transferred to a higher security unit immediately after the incident occurred. (See Exhibit D [classification chrono dated 00/00/00].) Petitioner continued to be housed in segregation pending the disciplinary hearing and, thus, had no opportunity to collect information and/or talk to witnesses in his behalf. Petitioner was assigned neither an investigative employee nor a staff assistant, and discovered only by happenstance that inmate _____ had witnessed the incident. (See Exhibit D.)

When charged with a serious rule violation and housed in a lockup unit, a prisoner is unable to collect information to build a defense. He was, therefore, clearly entitled to counsel-substitute either in the form of an investigative employee, a staff assistant, or both, to help him prepare his case. (Cal. Code of Regs., tit. 15, § 3315(d), 3318(a) and (b).)

An investigative employee would have been required to gather information, question staff and inmates, screen prospective witnesses and submit a written report to the disciplinary committee. (Cal. Code of Regs., tit. 15, § 3318(a).) However, an investigative employee does not represent a prisoner's position at the hearing, insure that it is understood, or insure that the prisoner understands the decision reached. Nor does he otherwise assist or advise the prisoner in preparation for the hearing. On the contrary, an investigative employee acts 'as a representative of the official who will conduct the disciplinary hearing rather than as a representative of the inmate. (*Ibid*.) In addition, the investigative employee is not subject to any requirement of confidentiality. (Cal. Code of Regs., tit. 15, § 3318(a)(4).)

> Starting with the assumption that an inmate has already been determined to be unable competently to pursue the matter without assistance, it can hardly be considered "adequate" that he is provided with a staff member whose duties as well as his loyalties require that he report important items of information to the inmate's adversary. An inmate cannot reasonably be expected to reveal such information to the staff assistant on pain of further punishment or other measures; yet the prison itself has already determined that the inmate is not competent to proceed on his own.

(Clutchette v. Enomoto (N.D. Cal. 1979) 471 F.Supp. 1113,1117.) Thus, assignment of an investigative employee alone is hardly conducive to the kind of "fair hearing" envisioned in Wolff v. McDonnell, supra. (Clutchette, supra, at p. 1117.)

Assignment of a staff assistant, on the other hand, would have assured petitioner of the confidentiality of any information concerning the incident that he disclosed to the assistant and would have provided him with advice and assistance preparatory to the hearing. The staff assistant would have represented his position at the hearing and insured that his position was understood and that he understood the decisions reached. (Section 3318(b)(1)(B).)

Petitioner, in particular, was in need of assistance by someone he could trust and with whom he could enjoy a confidential relationship. Not only was he completely inhibited from discovering/interviewing potential witnesses or otherwise gathering evidence on his own behalf, he was in need of someone to confide his version of the circumstances of the incident without fear his statements or other evidence uncovered by investigation would be used against him at the disciplinary hearing. A staff assistant could have conducted a full investigation of the events that led up to the incident, as well as the incident itself, under the direction of petitioner and would have been able to present this evidence at the hearing.

The failure of prison officials to assign a staff assistant was prejudicial and requires the reversal of the guilty finding.

CONCLUSION

For the above-stated reasons, the relief sought in the petition should be granted.

DATED:

Respectfully submitted;

[Signature]_____

[Type name]

In Pro Per

FORM C

[Petitioner's Name]

[Mailing Address]

In Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF _____

In re [Petitioner's name] On Habeas Corpus	No. REQUEST FOR APPOINTMENT OF COUNSEL AND DECLARATION OF INDIGENCY

I, [petitioner's name], declare that I am a petitioner to the above-referenced matter, that I am incarcerated at [name of prison], and that I an indigent and unable to afford counsel. My total assets are $_____ and my income is $_____ per month.

I hereby request that counsel be appointed in this matter so that my interests may be protected by the professional assistance required. In addition, when a court issues an order to show cause, counsel must be appointed for an indigent petitioner who requests counsel. California Rules of Court, rule 4.551 (c)(2).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on [date].

[Signature]

FORM D

[Petitioner's Name]

[Mailing Address]

In Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF _____

In re [Place your name here] On Habeas Corpus	No. [Enter case number] DENIAL AND EXCEPTION TO THE RETURN AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF.

For [his/her] denial and exception to the return to the order to show cause, petitioner states:

EXCEPTION

Respondent has failed to set forth sufficient facts or law to show cause why the relief requested in the petition should not be granted.

DENIAL

[In separate paragraphs, petitioner should specifically address – either admitting or denying – the statements in each paragraph of the Attorney General's return.]

EXAMPLE:

I.

Petitioner admits for purposes of this action only the allegations contained in paragraph I of the return, except that petitioner is lawfully incarcerated at X prison; petitioner denies this allegation.

II.

Petitioner denies the allegations contained in paragraph II of the return.

III.

Petitioner admits the allegations contained in paragraphs III, IV, and V of the return.

[Add any further allegations which are appropriate and not already included in the petition.]

Petitioner realleges and incorporates by reference herein all the allegations and contentions set forth in the petition.

WHEREFORE, petitioner requests that the relief prayed for in the petition be granted.

DATED:

Respectfully submitted,

[Signature]_____

[Type name]

[Attach a Memorandum of Points and Authorities to the Denial and Exception to the Return. This Memorandum should address the legal arguments made by the Attorney General or District Attorney. For a model format, please refer to the sample Memorandum of Points and Authorities included in Form B. Mail a copy of the denial to the court and a copy to the Attorney General, Health Care Receiver attorney, or District Attorney who filed the Return. Attach a proof of service form (see Form E].

FORM E

Proof of Service by Mail

[Case Name and Court Number]

I declare that:

I am a resident of _____ in the county of _____, California. I am over the age of 18 years. My residence address is:

_____.

On _____, I served the attached _____ on the _____in said case by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully paid, in the United States mail at

_____

addressed as follows:

_____

_____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on the date of _____, at _____, California.

_____

[Type or Print Name]

_____

[Signature]