

## **CHAPTER 3**

### **HABEAS CORPUS AND ERROR CORAM NOBIS PETITIONS**

#### **Rule 3.3.1**

##### **Application**

This chapter does not apply to extraordinary writs in misdemeanor or infraction cases in which the San Diego Superior Court is named as respondent. Such writs are governed by Division VII rules (Appellate). (Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

#### **Rule 3.3.2**

##### **Place for Filing**

##### **A. Habeas Corpus Petitions.**

1. A petition for writ of habeas corpus should be filed in the criminal records division of the court that serves the area in which the underlying criminal case was or is pending.

2. A petition for writ of habeas corpus filed by or on behalf of an inmate at the R.J. Donovan Correctional Facility concerning a condition of confinement should be filed at the South County Division. A petition challenging a parole eligibility finding should be filed in the criminal records division of the court that serves the area in which the underlying criminal case was adjudicated.

**B. Error Coram Nobis Petitions.** A petition for writ of error coram nobis must be filed in the department of the supervising criminal judge of the division in which the underlying criminal case was or is pending.

**C. Subsequent Pleadings.** Unless otherwise ordered, any pleadings filed by any party after the original petition must be filed at the same location as the original petition, not in the department to which the petition has been assigned. (Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Renum. 1/1/2006; Rev. 1/1/2009)

#### **Rule 3.3.3**

##### **Service of Petition**

**A.** Except as provided in sections B and C of this rule, a petition will not be accepted by the clerk for filing unless it is accompanied by a proof of personal service upon the respondent.

**B.** When a petitioner is a defendant who is not represented by counsel, the clerk will accept the petition for filing if it is accompanied by a proof of personal service or service by mail upon the respondent.

**C.** When a petitioner is an incarcerated prisoner, the clerk will accept the petition for filing without requiring a proof of service.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

#### **Rule 3.3.4**

##### **Supporting Documents**

**A.** A petition for any of the writs included in this chapter must be accompanied by the following:

1. A copy of the order or judgment from which relief is sought;

2. Any declarations, relevant records, transcripts, or any other documents supporting a claim;

3. Documentation to show that a petitioner has exhausted any administrative remedies prior to filing the petition, if required, or a declaration under penalty of perjury explaining why administrative remedies have not been sought.

**B.** If a petitioner does not submit the required documents or does not provide facts sufficient to excuse the failure to submit the required documents, the court may summarily deny the petition.

(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

#### **Rule 3.3.5**

##### **Disposition of Petition**

**A. Habeas Corpus Petitions.** The parties must follow the procedures set forth in California Rules of Court, rules 4.550-4.552.

##### **B. Error Coram Nobis Petitions.**

1. Within 30 days after the filing of the petition, the court will either summarily deny the petition or set the matter for hearing.

2. If the matter is set for hearing, the court will allow at least 15 days for the respondent and any real party in interest to file a responsive pleading.

3. On motion of any party, or on the court's own motion, for good cause shown, the court may shorten or extend time for doing any act under this rule.

(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2001; Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006; Rev. 1/1/2009)