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HABEAS PETITIONS IN DEPENDENCY CASES

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ELEMENTS OF A HABEAS PETITION

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The petition for writ of habeas corpus was originally developed for criminal defendants in state custody. (See *In re Paul W.* (2007) 151 Cal.App.4th 37, 53.) It has been expanded in California to apply to anyone in state custody, including those confined in state hospitals (*In re Parker* (1998) 60 Cal.App.4th 1453, 1460, fn. 8), delinquent children (*In re Robin M.* (1978) 21 Cal.3d 337, 341), and dependent children (*Paul W.,* at p. 53). Assuming a parent has standing to raise a claim generally (that is, the parent was an "aggrieved party" by the court's order), a petition for writ of habeas corpus is available for the parent to file a petition concerning the child. (*Id.* at pp. 55-56.)

" 'Because the rules on habeas corpus petitions evolved in the context of prisoners asserting unlawful confinement or conditions of confinement, they do not fit the dependency context well.' [Citation.] Nevertheless, habeas corpus petitions are recognized as proper vehicles for raising claims of ineffective assistance of counsel in dependency proceedings. [Citations.]" (*Paul W., supra* 151 Cal.App.4th at p. 53.) "Regardless of the nature of the proceeding in which the habeas corpus petition arises, the court must abide by the procedures set forth in Penal Code sections 1473 through 1508." (*Ibid.*, internal quotation marks omitted.)

"A habeas corpus proceeding begins with the filing of a verified petition for a writ of habeas corpus. The petition 'must allege unlawful restraint, name the person by whom the petitioner is so restrained, and specify the facts on which [the petitioner] bases his [or her] claim that the restraint is unlawful.' " (*People v. Romero* (1994) 8 Cal.4th 728, 737; see Pen. Code, § 1474.)

Generally, a habeas petition must allege: (1) the identity of the petitioner and the general location of the child's custody; (2) the court order which led to the restraint; (3) an illegal restraint on the petitioner's liberty; (4) why the petition is being filed in the appellate court; (5) there is no plain, speedy, and adequate remedy at law; (6) the legal claim for relief and the factual predicate; (7) no previous petition had been filed or why a successive petition should be permitted; and (8) the petition is timely or why delay is justified. The petition must also include a prayer for relief and a verification. The document should contain points and authorities and exhibits. (See *Romero, supra,* 8 Cal.4th at p. 737; *In re Lawler* (1979) 23 Cal.3d 190, 194; see also *In re Reno* (2012) 55 Cal.4th 428, 458-459, fn. 15 ["the petition, not the informal reply or traverse, must include specific allegations indicating why a seemingly applicable procedural bar does not apply, or why the case falls within an exception to the procedural bar"].)

I.

The petition, of course, needs to identify the petitioner. The petition must name the respondent, which would normally be the department. (*Paul W., supra* 151 Cal.App.4th at p. 53; see also *id.* at p. 70 (conc. opn. of Bamattre-Manoukian, J.) ["The responding party in a habeas corpus proceeding in a dependency matter is generally the social services agency, which is the constructive custodian of the child or children."].) It must also name all real parties in interest, including the child or children.

II.

The petition should identify the court order leading to the restraint in liberty and the orders being contested. (See *Romero, supra,* 8 Cal.4th at p. 737.)

III.

"The allegations [must] include facts describing the child's custody, the petitioner's interest in the child, and why the petitioner is claiming that the custody of the child is unlawful." (*Paul W., supra* 151 Cal.App.4th at p. 68 (conc. opn. of Bamattre-Manoukian, J.).)

IV.

Although appellate courts have jurisdiction to consider habeas petitions (Cal. Const., art. VI, § 10), courts expect them normally to be filed in the superior court (*In re Hillery* (1962) 202 Cal.App.2d 293, 294). Appellate counsel needs to allege why the petition is being filed in the court of appeal. It is usually sufficient to state that direct appeal is pending in the court of appeal. (See, e.g., *In re Darlice C.* (2003) 105 Cal.App.4th 459, 463; *In re Carrie M.* (2001) 90 Cal.App.4th 530, 534-535 & fn. 4.)

V.

A habeas petition cannot be used as a vehicle to relitigate issues already resolved in an appeal (*In re Waltreus* (1965) 62 Cal.2d 218, 225; *Reno, supra,* 55 Cal.4th at pp. 476-490) or could have been litigated in an appeal (*In re Dixon* (1953) 41 Cal.2d 756) unless there are new facts not in the record on appeal (*In re Harris* (1993) 5 Cal.4th 813, 825-829 & fn. 7). The petitioner must allege there is no plain, speedy and adequate remedy at law. (*Id.,* at p. 825.) Often it is sufficient that the claim cannot be adequately presented from the record on appeal. (*People v. Pope* (1979) 23 Cal.3d 412, 426, fn. 17; *In re Mancillas* (2016) 2 Cal.App.5th 896, 904-905.) For example, a claim of ineffective assistance of counsel can be considered on direct appeal only if " 'there simply could be no satisfactory explanation' for trial counsel's action or inaction.' [Citation.]" (*In re Dennis H.* (2001) 88 Cal.App.4th 94, 98, fn. 1.)

Another reason why habeas relief may be appropriate is the need for an expedited

resolution of the dispute (*In re Duran* (1974) 38 Cal.App.3d 632, 635; see *In re Newbern* (1960) 53 Cal.2d 786, 788-789), but this should be rare in dependency cases where appeals are normally fast-tracked.

A petition for extraordinary relief is appropriate when it is not certain whether the order is appealable. (*Cox v. Superior Court* (2016) 1 Cal.App.5th 855, 858; e.g. *People v. Massip* (1990) 235 Cal.App.3d 1884, 1890-1892.)

Except for when a petition is filed purely as an attempt to expedite review or because it is questionable the order is appealable, the purpose of the petition is to introduce evidence not found in the record on appeal. Thus, a petition without exhibits is pointless.

VI.

Of course, the petitioner must make a legal claim why he or she is entitled to relief. (Pen. Code, § 1474.) "The petition should both . . . state fully and with particularity the facts on which relief is sought and the legal grounds for relief." (*People v. Duvall* (1995) 9 Cal.4th 464, 474; see also *Paul W., supra* 151 Cal.App.4th at p. 68 (conc. opn. of Bamattre-Manoukian, J.).) "[T]he petitioner bears a heavy burden initially to *plead* sufficient grounds for relief . . . . " (*Ibid.,* emphasis in original.) "Conclusory allegations made without any explanation of the basis for the allegations do not warrant relief, let alone an evidentiary hearing." (*Paul W.,* at p. 68-69, internal quotation marks omitted.) As in any advocacy in a dependency case, claims should be federalized whenever possible. Thus, the legal claim needs to contain (a) the legal error; (b) the factual predicate; (c) prejudice; and (d) if possible, federal authority. Further, "[s]ince the dependency proceeding is an ongoing process, the petition should include allegations describing the child's current situation." (*Id.* at p. 69.)

Consequently, it is not enough to simply allege ineffective assistance of counsel. The petitioner needs to expressly state a violation of the due process clause of the Fourteenth Amendment, the factual predicate demonstrating how counsel's performance was deficient, and that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." (*Strickland v. Washington* (1984) 466 U.S. 668, 694; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1667-1668.) There must be a declaration from trial counsel of his or her tactical reasons or from someone (sometimes the petitioner) who witnessed trial counsel's deficiencies, or from appellate counsel describing how trial counsel would not respond to inquiries. (*People v. Montoya* (2007) 149 Cal.App.4th 1139, 1152.) Declarations should be factual only and not include any legal analysis.

A claim in the superior court of ineffective assistance of counsel should be raised by a habeas petition, not a modification petition under Welfare and Institutions Code section

388, because a habeas petition would permit relief even if it is not in the minor's best interests. (*In re Jackson* (2010) 184 Cal.App.4th 247, 258-260.)

With a claim the petitioner's admission was involuntary, one needs to allege the defendant was misadvised or otherwise had his will overborne and that he would not have entered the plea. (See *Hill v. Lockhart* (1985) 474 U.S. 52, 59; *In re Resendiz* (2001) 25 Cal.4th 230, 251-253 (lead opn.); *In re Moser* (1993) 6 Cal.4th 342, 345; *In re Alvernaz* (1992) 2 Cal.4th 924, 933-934.) Consequently, a petition to attack an admission cannot be made without at least an affidavit from the parent.

A claim of insufficient evidence or sufficiency of a defense cannot be raised in a habeas petition. (*Reno, supra,* 55 Cal.4th at pp. 505-506; *In re Lindley* (1947) 29 Cal.2d 709, 723.)

One appellate court has said that the issues that can be raised on habeas corpus in a dependency case are limited to wrongful withholding of custody of the child, including lack of jurisdiction, and ineffective assistance of counsel. (*In re Cody R.* (Dec. 17, 2018, D073527) __ Cal.App.5th __ [2018 Cal.App. Lexis 1168].) In that case, appellate counsel claimed on habeas corpus in the court of appeal that the juvenile court failed to properly consider placement with relatives. The appellate court said the matter should have been brought in the juvenile court through a section 388 petition. The appellate court might have reached the correct decision for the wrong reason. Its language limiting the scope of habeas corpus in dependency matters appears to be unsupported by the law. But habeas corpus cannot substitute for an appeal. (*Dixon, supra,* 41 Cal.2d 756) The better claim would have been that trial counsel was ineffective for not arguing or not seeking placement with relatives. (Cf. *Jackson, supra,* 184 Cal.App.4th at pp. 258-260.)

VII.

A habeas petition should allege no other habeas petition had been filed or, if another had been filed, when the previous petition was filed and the court's ruling. (Pen. Code, § 1475, ¶ 2; see *In re Lynch* (1972) 8 Cal.3d 410, 439, fn. 26.) Otherwise, the claim would be procedurally barred. (*Reno, supra,* 55 Cal.4th at pp. 501-505.) To justify a successive petition, it must be shown that the factual basis for the claim was not known and the petitioner had no reason to believe the claim might be made at the time of the previous habeas petition. (*Clark, supra,* 5 Cal.4th at p. 782.) A change in law can be a sufficient reason for a successive petition. (*Id.*, at p. 775.) When a lower court denies a petition, seeking appellate review with a new petition in a higher court is not considered to be a successive petition. (*Id.*, at p. 767, fn. 7.)

VIII.

"For noncapital cases in California, there is no express time window in which a petitioner must seek habeas relief. (*In re Huddleston* (1969) 71 Cal.2d 1031, 1034.) Rather, the general rule is that the petition must be filed 'as promptly as the circumstances allow . . . .' " (*In re Douglas* (2011) 200 Cal.App.4th 236, 242, quoting *Clark,* 5 Cal.4th at p. 765, fn. 5.)

"First, a claim must be presented without substantial delay. Second, if a petitioner raises a claim after a substantial delay, we will nevertheless consider it on its merits if the petitioner can demonstrate good cause for the delay." (*Reno, supra,* 55 Cal.4th at p. 460, quoting *In re Robbins* (1998) 18 Cal.4th 770, 780-791; see also *In re Sanders* (1999) 21 Cal.4th 697, 703-704.) "Substantial delay is measured from the time the petitioner or counsel knew, or reasonably should have known, of the information offered in support of the claim and the legal basis for the claim." (*Robbins,* at p. 787.) The petitioner must allege with particularity the due diligence in bringing the claims. (*Ibid.*; accord, *Clark, supra,* 5 Cal.4th at pp. 781, 786; see also *Reno,* at p. 460.) Because the court prefers only one habeas petition, good cause for delay can be that one of the claims could not have been brought earlier. (*Id.* at p. 780.)

PRAYER FOR RELIEF

The petitioner must make a prayer for relief. (Pen. Code, § 1474.) The prayer normally requests the granting of the writ, alternatively the issuance of an order to show cause, and any other relief which may be appropriate in the interest of justice. Commonly, appellate counsel requests the case be consolidated with the appeal or requests expedited review. It is also common to request the court of appeal to take judicial notice of the record in the concurrent appeal. Do not request or purport to reserve the right to supplement or amend the petition; any change to the original petition may be made only by leave of court. (*Clark, supra,* 5 Cal.4th at pp. 781-782 & fn. 16.)

When the prayer for relief stated, "grant the Petition for Writ of Habeas Corpus and reverse [petitioner's] convictions, or in the alternative, hold an evidentiary hearing," this was enough to require an evidentiary hearing once an order to show cause was issued unless the court would grant relief. (*Rose v. Superior Court* (2000) 81 Cal.App.4th 564, 574.)

VERIFICATION

"The petition must be verified by the oath or affirmation of the party making the application." (Pen. Code, § 1474, subd. 3; *Clark, supra,* 5 Cal.4th at p. 778, fn. 15.) The verification may be signed by the client. Alternatively, it may be signed by the attorney if

the client is in another county or if the attorney has superior knowledge of the relevant facts. (Code Civ. Proc., § 446, subd. (a).) The verification must be based on personal knowledge. (*Clark,* at p. 778, fn. 15; *Adoption of Alexander S.* (1988) 44 Cal.3d 857, 865; *People v. McCarthy* (1986) 176 Cal.App.3d 593, 596-597.)

" 'I make this verification as petitioners' counsel because I am familiar with the facts relevant to this petition. The facts referred to in this petition are true based on my personal knowledge from my review of the pleadings, briefs, and other documents filed in the superior court' " was a sufficient verification. (*Bounds v. Superior Court* (2014) 229 Cal.App.4th 468, 476.)

The verification is not an affidavit; it does not serve as evidence or establish any facts in evidence. (Code Civ. Proc., § 446, subd. (a).) Thus, exhibits ordinarily must be attached to the petition. (*Clark, supra,* 5 Cal.4th at p. 766; *Fields, supra,* 51 Cal.3d 1063, 1071; *Paul W., supra* 151 Cal.App.4th at p. 55.) "The petition should 'include copies of reasonably available documentary evidence supporting the claim,' including affidavits, declarations, and pertinent portions of the trial transcript. (*Paul W.,* at p. 69 (conc. opn. of Bamattre-Manoukian, J.).)

POINTS AND AUTHORITIES

The points and authorities is the "legal brief" of the document. Some practitioners allege in the pleadings to incorporate by reference the point of authorities and the exhibits, just in case the pleadings fail to mention an element contained in the legal argument. (See, e.g., *Fields, supra,* 51 Cal.3d at p. 1070, fn. 2.) A habeas petition must be an independent self-contained document. It cannot incorporate by reference appellate briefs or other petitions. (*In re Ronald E.* (1977) 19 Cal.3d 315, 322, fn. 3.)

The declarations attached to the petition do not initially serve as evidence but only to help persuade the court there is a sufficient factual basis to support the claim for relief. (*Fields, supra,* at p. 1070, fn. 2.) To be admitted into evidence, declarations must comply with the rules in the Evidence Code. Thus, declarations must be based on personal knowledge and not contain inadmissible hearsay (e.g., "on information and belief"). (*Id.*, at p. 1070 & fn. 3.) Declarations should be factual only and should not include any legal analysis. This is because when "affidavits purport to set forth erroneous opinions, conclusions, irrelevant or immaterial matter, they are properly disregarded." (*In re Krieger* (1969) 272 Cal.App.2d 886, 889; accord *In re Connor* (1940) 16 Cal.2d 701, 712-713; *In re Marriage of Heggie* (2002) 99 Cal.App.4th 28, 30, fn. 3.)

"The petition should be served on all parties to the dependency proceeding, or on their attorneys if represented, and on the juvenile court." (*Paul W., supra* 151 Cal.App.4th at p. 69 (conc. opn. of Bamattre-Manoukian, J.).)

SUBSEQUENT PROCEEDINGS

Initial judicial review. The court may summarily deny the petition if it does not allege a prima facie case for relief. (*Duvall, supra,* 9 Cal.4th 464, 475.) A prima facie case exists when, assuming the factual allegations are true, the petitioner would be entitled to relief. (*Id.*, at pp. 474-475; *Clark, supra,* 5 Cal.4th at p. 769, fn. 9.) A petition may also be summarily denied if it is procedurally barred. (*Clark,* at p. 769, fn. 9.) If the petition is filed in the superior court, the court must issue a written ruling within 60 days unless the court grants itself an extension. (Cal. Rules of Court, rule 4.551(a)(3)(A).)

Informal response. Before ruling on the petition, a court may request an informal response. An informal response serves as a "screening function" whereby the government responds before the court decides whether to summarily deny or grant the petition. (*Romero, supra,* 8 Cal.4th 728, 741.) After the response, the petitioner may file a reply.

Order to show cause. If the court is satisfied the petition states on its face a prima facie case for relief, and the petition is otherwise not defective, the court is required to issue an order to show cause or issue the writ. (Pen. Code, §§ 1480, 1483; *Duvall, supra,* 9 Cal.4th at p. 475; *Romero, supra,* 8 Cal.4th at p. 737, 740.) Granting the writ is not the same as granting relief; it merely begins the process of litigating the claims. (*Romero, supra,* at p. 740.) Normally, granting the writ involves transporting the petitioner (or child) to court for a hearing. (*Ibid.*) An order to show cause permits the court to order a return and hold a hearing without requiring a transportation order. (*Ibid.*; *Duvall,* at p. 475; *Lawler, supra,* 23 Cal.3d at p. 194.) When the court grants the writ or issues an order to show cause, it must appoint counsel for an unrepresented indigent petitioner. (Rule 4.551(c)(2).) The issues are limited to those listed in the order to show cause. (*Duvall,* at p. 475; *Clark, supra,* 5 Cal.4th at p. 781, fn. 16; *Board of Prison Terms v. Superior Court (Ngo)* (2005) 130 Cal.App.4th 1212, 1234.)

Return. Upon granting the writ or order to show cause, the government must file a return or opposition. (Pen. Code, § 1480; *Lawler, supra,* 23 Cal.3d at p. 194.) "The return is not to the petition, but to the writ" or the order to show cause. (*In re Egan* (1944) 24 Cal.2d 323, 330.) The government has the right to file a return; the court cannot grant peremptory relief. (*Romero, supra,* 8 Cal.4th at pp. 738-739; *In re Campbell* (2017) 11 Cal.App.5th 860, 871.) The government can designate the informal response be the return. (See, e.g., *In re Sodersten* (2007) 146 Cal.App.4th 1163, 1173, fn. 6.)

"[R]espondent may not raise additional issues in its return. (*People v. Green* (1980) 27 Cal.3d 1, 43, fn. 28, overruled on other grounds in *People v. Hall* (1986) 41 Cal.3d 826, 834, fn. 3.)" (*Board of Prison Terms, supra,* 130 Cal.App.4th at p. 1235.)

The purpose of the return is to narrow the scope of facts the petitioner must prove in order to gain relief. (*Duvall, supra,* 9 Cal.4th at p. 486.) Any allegation made in the petition which is not denied in the return is deemed admitted. (*Serrano, supra,* 10 Cal.4th at p. 455.) The government cannot just deny the allegations made in the petition; it must also affirmatively allege whether the child is in the government's constructive custody and the state's authority for the confinement. (Pen. Code, § 1480; *Duvall,* at pp. 476, 485; *Romero, supra*, 8 Cal.4th at pp. 738-739.) The government must include documentation of the order authorizing custody. (Pen. Code, § 1480.) Thus, general denials and "conclusionary statements" are disfavored. (*Duvall,* at p. 479.)

" 'The issuance of either the writ of habeas corpus or the order to show cause creates a cause' . . . . " (*Romero, supra,* 8 Cal.4th at p. 740; accord, *In re Serrano* (1995) 10 Cal.4th 447, 455; cf. *Maas v. Superior Court* (2016) 1 Cal.5th 962, 974, 976.) "[I]t is through the return and the traverse that the issues are joined in a habeas proceeding." (*Romero,* at p. 739.) "In a habeas corpus proceeding the return to the order to show cause . . . is thus analogous to the complaint in civil actions. The traverse, which may incorporate the allegations of the petition, is analogous to the answer in civil actions." (*In re Sixto* (1989) 48 Cal.3d 1247, 1252.)

Traverse. After the return, the "habeas corpus petitioner may either file a traverse or the parties may stipulate that the original habeas corpus petition be treated as a traverse." (*Duvall, supra,* 9 Cal.4th at p. 477.) The traverse must reassert the allegations of the petition. (*In re Marquez* (2007) 153 Cal.App.4th 1, 12.) The traverse may do so by incorporating the allegations of the petition by reference. (*Romero, supra,* 8 Cal.4th at p. 739; *In re Stevenson* (2013) 213 Cal.App.4th 841, 856; see,.e.g., *Sodersten, supra,* 146 Cal.App.4th at p. 1173, fn. 6.)

The traverse should deny allegations made in the return; any allegations in the return not denied are deemed admitted. (Pen. Code, § 1484; *Duvall, supra,* 9 Cal.4th at p. 477; *Romero, supra,* 8 Cal.4th at p. 739; *Lawler, supra,* 23 Cal.3d at pp. 194-195.) In the traverse, the petitioner may also demur on allegations in the return because of insufficient evidence, raise objections to the return, and allege additional facts. (*Duvall, supra,* 9 Cal.4th at pp. 477-478.) Again, general denials and "conclusionary statements" are disfavored. (See *Duvall, supra*, at p. 479; *In re Lewallen* (1979) 23 Cal.3d 274, 278.)

A habeas petitioner may not raise additional issues in the traverse. "While the traverse

may allege additional facts in support of the claim on which an order to show cause has issued, attempts to introduce additional claims or wholly different factual bases for those claims in a traverse do not expand the scope of the proceeding which is limited to the claims which the court initially determined stated a prima facie case for relief." (*Clark, supra*, 5 Cal.4th at p. 781, fn. 16; *Board of Prison Terms, supra,* 130 Cal.App.4th at p. 1235; accord *Lawley, supra,* 42 Cal.4th at p. 1248.) "To bring additional claims before the court, petitioner must obtain leave to file a supplemental petition for writ of habeas corpus." (*Board of Prison Terms,* at p. 1235, citing *People v. Green* (1980) 27 Cal.3d 1, 43, fn. 28.) The petition should explain why there was a delay in bringing the new claim. (See *Clark, supra,* 5 Cal.4th at pp. 797-798.)

Evidentiary hearing. The court may hold an evidentiary hearing if resolution of the claims depend on resolution of disputed facts. (Pen. Code, § 1484; *Duvall, supra,* 9 Cal.4th at pp. 477-478; *Romero, supra,* 8 Cal.4th at pp. 739-740.) Because the appellate courts are ill-suited to hold evidentiary hearings, they usually transfer the matter to the superior court. Sometimes appellate courts retain control over the litigation and order an evidentiary hearings occur before a referee. (*Romero, supra,* at p. 740; *Clark, supra,* 5 Cal.4th at p. 771, fn. 10.) The petitioner bears the burden of proof by a preponderance of the evidence. (*In re Visciotti* (1997) 14 Cal.4th 325, 351.)

Discovery. There is no means of obtaining discovery until the court issues an order to show cause. At this point, discovery is at the discretion of the court.

Further review. The government may appeal to the court of appeal an order by the superior court granting relief. (Pen. Code, § 1506.) If the petitioner loses in the superior court, he or she must file a new petition for writ of habeas corpus in the court of appeal. (*Clark, supra,* 5 Cal.4th at p. 767, fn. 7.) If the court of appeal denies relief, the petitioner may file a new petition for writ of habeas corpus in the supreme court. (See, e.g., *In re Catalano* (1981) 29 Cal.3d 1, 7.) The supreme court, however, prefers a petition for review. (*In re Reed* (1983) 33 Cal.3d 914, 918, fn. 2, overruled on other grounds in *People v. Castallanos* (1999) 21 Cal.4th 785, 798 (lead opn.); *In re Michael E.* (1975) 15 Cal.3d 183 193, fn. 15.) When the court of appeal summarily denies a habeas petition, it is final immediately unless the court of appeal also resolves a related appeal the same day; otherwise, the decision on habeas corpus is final in 30 days. (Cal. Rules of Court, rule 8.387(b).) When the court of appeal denies a habeas corpus petition and affirms the judgment on appeal, separate review petitions must be filed.

Federal review. A dependency decision can*not* be reviewed through a federal petition for writ of habeas corpus. (*Lehman v. Lyocoming Cnty. Children's Servs. Agency* (1982) 458 U.S. 502, 510-512.)

PRACTICAL CONCERNS

Appellate counsel need not seek expansion of the appointment in order to pursue a habeas corpus petition in the First or Sixth appellate districts. All time spent investigating a habeas petition, including communications, must be listed on line 11 of the compensation claim form, regardless of whether a petition is filed. Expenses for preparing a habeas petition also need to be segregated out on the compensation claim. In the Sixth District, approval from the court of appeal is necessary for claims of more than 12 hours in litigating a habeas petition. In the First District, funds can be claimed for up to $900 in investigating a habeas petition without requiring court approval. In the Sixth District, all funding requires court approval.

Rules concerning e-filing in the appellate courts require consecutive paginate to correspond with the pdf page number. If the exhibits are attached to the end of the petition, the author does not know the exact page number of a certain entry in an exhibit until the length of the petition with its tables are known (one of the tables must be the table of exhibits). An alternative approach is to file the exhibits as a separate volume. One can then pre-paginate the exhibits while preparing the petition and points and authorities. Remember that page 1 will be the cover of the exhibits, page 2 will be the table of exhibits, and page 3 will be a page simply labeled "Exhibit A." The first page of exhibit A therefore begins on page 4. In e-filing the petition, the filer must start a new proceeding; it is not filed under the appellate case number.

The cover of the petition should state, "related appeal pending" and give the case number. If a stay or some sort of immediate action is requested, this should also be stated on the cover. (See Cal. Rules of Court, rules 8.380 et seq.)

The petition should be filed no later than the filing of the reply brief. If a no issues brief is being filed on appeal, the petition should be filed with the brief. If the petition is filed afterward, the court might not give it full consideration. A petition cannot be considered after an order terminating parental rights becomes final. (*Adoption of Alexander S.* (1988) 44 Cal.3d 857, 862-863; *In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150.) If the court of appeal affirms the termination of parental rights, and the habeas petition must still be litigated, a review petition should be filed for the matter on appeal in order to preserve jurisdiction on the habeas matter.

It is much more difficult to correct a defective habeas petition than it is to correct a defective brief. It is usually a good idea to submit to your buddy draft declarations before they are sent to the witnesses and the draft petitions before they are filed.

HABEAS PETITION CHECKLIST

__ 1. Name the parties and assert the child is in custody
__ 2. The challenged court order
__ 3. Custody is unlawful
__ 4. Jurisdiction and why filed in this court
__ 5. No plain, speedy and adequate remedy at law
__ 6. Legal claims
    a. Predicate facts
    b. Claim of error
    c. Federalization
    d. Prejudice
__ 7. Whether a successive petition
__ 8. Timeliness
__ 9. Incorporate by reference points and authorities and exhibits
__ 10. Take judicial notice of the record on appeal
__ 11. Prayer for relief
    a. Consolidate with appeal
    b. Judicial notice of record on appeal
    c. Issue an order to show cause
    d. Appoint counsel (if necessary)
    e. Permit an evidentiary hearing or discovery
    f. Grant the relief requested
    g. Grant any other relief appropriate
__ 12. Verification
__ 13. Points and authorities
__ 14. Exhibits