

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Criminal Law Advisory Committee
Hon. Steven Z. Perren, Chair
Arturo Castro, Committee Counsel, 415-865-7702,
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DATE: August 6, 2009

SUBJECT: Criminal Law: Felony Notice of Appeal (revise Judicial Council
form CR-120) (Action Required)

Issue Statement

The *Notice of Appeal—Felony (Defendant)* (form CR-120) contains several check boxes to indicate the grounds for appeal and the type of proceeding the appeal follows. Frequently, the check boxes are marked incorrectly by self-represented defendants who are unclear about the applicable check boxes and grounds for appeal.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2010, revise the *Notice of Appeal—Felony (Defendant)* (form CR-120) to:

1. Reorganize the check boxes and add instructions to distinguish appeals after trials and contested violations of probation from appeals after pleas and admissions;
2. Add a check box to specify an “other basis for appeal”; and
3. Provide additional information regarding the requirements for completion of the form.

The text of the proposed revisions to the *Notice of Appeal—Felony (Defendant)* (form CR-120) is attached at pages 4–5.

Rationale for Recommendation

To reduce confusion and misuse by self-represented defendants, this proposal (1) reorganizes the check boxes to distinguish appeals after trials and contested violations of probation from appeals after pleas and admissions, which may also require the defendant to submit a request for certificate of probable cause; (2) adds instructions to direct defendants to the appropriate set of check boxes based on the type of proceeding the appeal follows; (3) adds a check box to specify an “other basis for appeal”; and (4) provides enhanced information regarding the grounds for appeal and requirements for completion of the form.

Alternative Actions Considered

The committee considered adding instructions to the top of the form to direct defendants to the appropriate check boxes. Instead, the committee decided to incorporate those instructions into the body of the form to reduce confusion.

The committee also considered adding an advisement to indicate that the notice of appeal and request for certificate of probable cause are not required to be filed simultaneously. (*Drake v. Superior Court* (July 27, 2009, H033614) __ Cal.App.4th __ [09 Cal. Daily Op. Serv. 9562].) The committee decided against the advisement to avoid inadvertently encouraging defendants to file those documents separately.

Comments From Interested Parties

The proposed revisions were circulated as part of the spring 2009 comment cycle. A total of nine comments were received. Of those, six agreed with the proposal, one agreed with the proposal if modified, and two did not specify a position. A chart with all of the comments received and the committee responses to each is attached at pages 6–9.

One commentator suggested that the following advisement improperly implies that the defendant is required to obtain the judge’s signature *before* filing the notice of appeal: “You must complete the Request for Certificate of Probable Cause on the other side of this form and obtain the signature of the trial judge granting the request.” To eliminate confusion, the committee revised the advisement to read: “You must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature.”

The committee also incorporated a suggestion to add an “other” basis for appeal and an advisement to complete and submit the request for certificate of probable cause to the group of check boxes for appeals after pleas and admissions of probation violations.

The only other substantive comment, which suggests changes that exceed the scope of the proposal, was deferred for future consideration by the committee.

Implementation Requirements and Costs

Expected costs would be limited to making revised forms available for use by defendants and the courts and any associated judicial officer and court staff training.

Attachments

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT:	
Date of birth: _____ Cal. Dept. of Corrections and Rehabilitation No. (if any): _____	
NOTICE OF APPEAL—FELONY (DEFENDANT) (Pen. Code, §§ 1237, 1237.5, 1538.5(m); Cal. Rules of Court, rule 8.304)	CASE NUMBER(S):

NOTICE

- **You must file this form in the SUPERIOR COURT WITHIN 60 DAYS after the court rendered the judgment or made the order you are appealing.**
- **IMPORTANT:** If your appeal challenges the validity of a guilty plea, a no-contest plea, or an admission of a probation violation, you must also complete the Request for Certificate of Probable Cause on page 2 of this form. (Pen. Code, § 1237.5.)

1. Defendant appeals from a judgment rendered or an order made by the superior court.
NAME of defendant: _____
DATE of the order or judgment: _____

2. **Complete either item a. or item b. Do not complete both.**
 - a. If this appeal is after entry of a plea of guilty or no contest or an admission of a probation violation, check all that apply:**
 - (1) This appeal is based on the sentence or other matters occurring after the plea that do not affect the validity of the plea. (Cal. Rules of Court, rule 8.304(b).)
 - (2) This appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5.
 - (3) This appeal challenges the validity of the plea or admission. (You must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature.)
 - (4) Other basis for this appeal (you must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature) (specify): _____

 - b. For all other appeals, check one:**
 - (1) This appeal is after a jury or court trial. (Pen. Code, § 1237(a).)
 - (2) This appeal is after a contested violation of probation. (Pen. Code, § 1237(b).)
 - (3) Other (specify): _____

3. Defendant requests that the court appoint an attorney for this appeal. Defendant was was not represented by an appointed attorney in the superior court.

4. Defendant's mailing address is: same as in attorney box above.
 as follows: _____

Date: _____

_____ (TYPE OR PRINT NAME)	_____ (SIGNATURE OF DEFENDANT OR ATTORNEY)
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All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Appellate Court Clerks Association Joseph A. Lane Clerk/Administrator Court of Appeal, Second Appellate District	NI	We recommend that item 3(d)—“Other basis for the appeal (<i>specify</i>):”—be eliminated and instead that you add this option to item 2 as item 2(c). If you decide to retain item 3(d), we still request adding this provision to item number 2 and would request adding language to item 3(d) that indicates that if this box is checked that a certificate of probable cause is required, i.e., “ <i>You must complete the Request for Certificate of Probable Cause on the other side of this form and obtain the signature of the trial judge granting the request.</i> ”	The suggestion to move a check box from one item to another is unnecessary because the committee reorganized the check boxes and incorporated the instructions into the body of the form to reduce confusion. The committee also added an “other” basis for appeal to the group of check boxes for appeals following pleas and admissions of probation violations. In addition, the committee added the following advisement to inform defendants of the requirement to complete and submit a request for certificate of probable cause: “ <i>You must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature.</i> ”
2.	Katherine Lynn Managing Attorney Court of Appeal, Second Appellate District	A	No specific comment.	No response required.
3.	Orange County Bar Association Michael G. Yoder President	A	No specific comment.	No response required.
4.	San Diego County Bar Association Matthew C. Mulford Chair, Appellate Court Committee	NI	We agree that the proposed changes improve the clarity of the form. We propose an additional amendment to	This comment exceeds the scope of the proposal. The committee appreciates the suggestion, however, and will separately consider it at a future meeting.

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			<p>page two of the form. We propose the following language be added to delineate the basic standards and authorities for trial courts to follow in deciding whether to grant or deny the request:</p> <p>“A certificate of probable cause is required in an appeal after a plea of guilty or nolo contendere or an admission of a probation violation, in order to raise an issue challenging the validity of the plea. (Pen. Code, §1237.5; Cal. Rules of Court, rule 8.304(b). A common example of a challenge to the plea is a contention that the trial court improperly denied the defendant’s motion to withdraw the plea.”</p> <p>A certificate of probable cause should be issued unless a challenge to the plea on appeal would be “clearly frivolous and vexatious.” (<i>People v. Ribero</i> (1971) 4 Cal.3d 55, 63, fn. 4.) Signing the certificate does not mean the trial court believes the contention is “probably” meritorious or will result in reversal; it merely means there can be an honest difference in opinion about the issue. (<i>Id.</i>)</p> <p>Such language would provide guidance for trial courts, would increase efficiency by</p>	

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			eliminating the need for trial courts to research the applicable standard, and would decrease the need for petitions of writs of mandate due to the application of an improper standard.	
5.	Superior Court of Kern County Laura Rusk Supervising Court Clerk	A	No specific comment.	No response required.
6.	Superior Court of Los Angeles County	A	No specific comment.	No response required.
7.	Superior Court of Orange County Lupe Chaidez Felony Appeals Supervisor	AM	Language on the first page under 3(c) indicates: “You must complete the request for Certificate of Probable Cause on the other side of this form and obtain the signature of the trial judge granting the request.” Parties are not required to obtain the signature of the trial or sentencing judge to file the notice of appeal and this form suggests that they will have to, which may lead to further confusion not only by the parties but also court staff in causing further undue delays in processing or parties desiring to appear in the courtroom before filing. Suggest modified wording of: “You must complete the request for Certificate of Probable Cause on the other side of this form for review by the trial or sentencing	The committee agrees that the proposed instruction improperly implies that defendants must obtain the judge’s signature <i>before</i> filing the notice. To reduce potential confusion, the committee revised the instruction to read: “ <i>You must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature.</i> ”

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	Commentator	Position	Comment	Committee Response
			judge pursuant to rule 8.304(b) of the California Rules of Court and Penal Code section 1237.5.”	
8.	Superior Court of Riverside County Carrie Snuggs Regional Operations Director	A	No specific comment.	No response required.
9.	Superior Court of San Diego County Michael M. Roddy Executive Officer	A	No specific comment.	No response required.