

**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: July 31, 2009

SUBJECT: Criminal Law: Petition and Order for Dismissal (revise Judicial Council forms CR-180 and CR-181) (Action Required)

Issue Statement

The proposed revisions to the *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) add a basis for dismissal and additional instructions to the petition, an advisement to the order to indicate that dismissals under Penal Code section 1203.4 do not restore a defendant's ability to hold public office, and a check box to the order to allow the court to indicate that it denies the petitioner's request to reduce the charge to a misdemeanor under Penal Code section 17(b).

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council:

1. Effective January 1, 2010, revise the *Petition for Dismissal* (form CR-180) to add an "interests of justice" basis for dismissal and an instruction requiring defendants to explain the basis for those dismissals by completing and attaching the optional *Attached Declaration* (form MC-031);
2. Effective July 1, 2010, add an advisement to the *Order for Dismissal* (form CR-181) to indicate that dismissals under Penal Code section 1203.4 do not restore a defendant's ability to hold public office; and
3. Effective July 1, 2010, add a check box to the *Order for Dismissal* (form CR-181) to allow the court to indicate that it denies the petitioner's request to reduce the charge to a misdemeanor under Penal Code section 17(b).

The text of the proposed revisions to the *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) is attached at pages 4–5.

Rationale for Recommendation

A defendant who is granted probation may petition to dismiss the conviction under three circumstances: (1) after successful completion of probation, (2) after early discharge from probation, or (3) in the “interests of justice.” (Pen. Code, § 1203.4.) The current *Petition for Dismissal* (form CR-180) contains check boxes to petition for dismissal after successful completion of probation and early discharge from probation, but *not* in the “interests of justice.” The proposed revisions incorporate this additional statutory basis for dismissal to the petition and advise defendants that they must explain why granting a dismissal would be in the interests of justice by completing and attaching the *Attached Declaration* (form MC-031).

Assembly Bill 2092 (De La Torre; Stats. 2008, ch. 94) recently amended Penal Code section 1203.4 to clarify that a dismissal under that section does not permit a defendant prohibited from holding public office as a result of the underlying conviction to thereafter hold public office. (Pen. Code, § 1203.4(a).) The proposed revision of the *Order for Dismissal* (form CR-181) adds an advisement to indicate that dismissals under Penal Code section 1203.4 do not restore a defendant’s ability to hold public office.

Penal Code section 17(b) authorizes courts under certain circumstances to reduce felony offenses to misdemeanors. Requests for reduction under section 17(b) are frequently made in conjunction with requests for dismissal. Although the order includes a check box for the court to indicate that a request to reduce is granted, there is no corresponding check box to indicate that a request is denied. The proposed revision adds a check box to the *Order for Dismissal* (form CR-181) to allow the court to indicate that the petitioner’s request to reduce the charge to a misdemeanor is denied.

Alternative Actions Considered

As explained in the next section, two of the proposed revisions were circulated as part of the spring 2009 comment cycle. The third proposed revision, which adds a check box to the order to indicate that the request to reduce the offense to a misdemeanor is denied, did not circulate for public comment because it was approved by the committee after the comment period had ended. Nevertheless, the committee decided to include the revision with this proposal because it involves a minor form change that is nonsubstantive and noncontroversial.

Comments From Interested Parties

As noted in the section above, two of the proposed revisions were circulated as part of the spring 2009 comment cycle. A total of eight comments were received. Of those, seven agreed with the proposal and one agreed with the proposal if modified. A chart with all the comments received and committee responses is attached at pages 6–7.

One commentator suggested a minor technical revision that the committee approved but no notable substantive suggestions were received.

Implementation Requirements and Costs

Expected costs would be limited to making the revised forms available for use by petitioners 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. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____	
PETITION FOR DISMISSAL (Pen. Code, §§ 17, 1203.4, 1203.4a)	CASE NUMBER: _____
DEFENDANT'S INFORMATION	
CII: _____ DRIVER'S LIC #: _____ SSN # (LAST FOUR DIGITS ONLY): _____ DATE OF BIRTH: _____	

1. On (date): _____ the defendant in the above-entitled criminal action was convicted of a violation of section(s) (specify): _____ of the (specify): _____ Code.
2. The offense was a misdemeanor felony.
 Felony offense (Pen. Code, § 17):
 The offense listed above is a felony that may be reduced to a misdemeanor under Penal Code section 17.
3. Offense with probation granted (Pen. Code, § 1203.4):
 Probation was granted on the terms and conditions set forth in the docket of the above-entitled court; the defendant is not serving a sentence for any offense, nor on probation for any offense, nor under charge of commission of any crime, and the defendant (check one):
 - a. has fulfilled the conditions of probation for the entire period thereof;
 - b. has been discharged from probation prior to the termination of the period thereof; or
 - c. should be granted relief in the interests of justice. (Please note: You must explain why granting a dismissal would be in the interests of justice by completing and attaching the optional Attached Declaration (form MC-031).)
4. Offense with sentence other than probation (Pen. Code, § 1203.4a):
 Probation was not granted; more than one year has elapsed since the date of pronouncement of judgment. The defendant has complied with the sentence of the court and is not serving a sentence for any offense nor under charge of commission of any crime, and since said pronouncement of judgment has lived an honest and upright life and conformed to and obeyed the laws of the land.

Petitioner requests that defendant be permitted to withdraw the plea of guilty, or that the verdict or finding of guilt be set aside and a plea of not guilty be entered and the court dismiss this action under section 1203.4 or 1203.4a of the Penal Code.

Petitioner requests that the felony charge be reduced to a misdemeanor under Penal Code section 17.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on: _____
(DATE)

▶ _____
 (SIGNATURE OF PETITIONER OR ATTORNEY)

 (ADDRESS, DEFENDANT)

 (CITY)

 (STATE)

 (ZIP CODE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____	
ORDER FOR DISMISSAL (Pen. Code, §§ 17, 1203.4, 1203.4a)	CASE NUMBER: _____
DEFENDANT'S INFORMATION CII: _____ DRIVER'S LIC #: _____ SSN # (LAST FOUR DIGITS ONLY): _____ DATE OF BIRTH: _____	

1. The court denies the petition.
2. The court grants the petition. The court finds from the records on file in this case, and from the foregoing petition, that the defendant is eligible for the relief requested.
3.
 - a. The court reduces the felony offense to a misdemeanor.
 - b. The court denies the request to reduce the felony offense to a misdemeanor.
4. It is ordered that the plea, verdict, or finding of guilt in the above-entitled action be set aside and vacated and a plea of not guilty be entered and that the complaint be, and is hereby, dismissed.
5. If this order is granted under the provisions of Penal Code section 1203.4:
 - a. The defendant is required to disclose the above conviction in response to any direct question contained in any questionnaire or application for public office or for licensure by any state or local agency or for contracting with the California State Lottery.
 - b. Dismissal of the conviction does not permit a person prohibited from holding public office as a result of that conviction to hold public office.
 - c. The defendant may also be eligible to obtain a certificate of rehabilitation and pardon under the procedure set forth in Penal Code section 4852.01 et seq.
6. If the order is granted under the provisions of either Penal Code section 1203.4 or 1203.4a, the defendant is released from all penalties and disabilities resulting from the offense except as provided in Penal Code sections 12021 and 12021.1 and Vehicle Code section 13555. The dismissal does not permit a person to own, possess, or have in his or her control a firearm if prevented by Penal Code sections 12021 or 12021.1.
7. In addition, as required by Penal Code section 299(f), relief under Penal Code sections 17, 1203.4, or 1203.4a does *not* release defendant from the separate administrative duty to provide specimens, samples, or print impressions under the DNA and Forensic Identification Database and Data Bank Act (Pen. Code, § 295 et seq.) if defendant was found guilty by a trier of fact, not guilty by reason of insanity, or pled no contest to a qualifying offense as defined in Penal Code section 296(a).

Date: _____

 (JUDICIAL OFFICER)

FOR COURT USE ONLY

SPR09-23**Criminal Law: Petition and Order for Dismissal** (revise Judicial Council forms CR-180 and CR-181)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Cathy Honseler Paralegal San Bernardino County Public Defender's Office	A	The "interests of justice" addition to the form will save a lot of trouble for all involved in making these decisions. Thank you!	No response required.
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.	Margaret Stevenson Professor San Jose State University	A	Thank you for this proposed change to bring the Judicial Council form into compliance with the statute.	No response required.
5.	Superior Court of Los Angeles County	A	No specific comment.	No response required.
6.	Superior Court of Orange County Lynn Branch Executive Officer, Civil Operations	AM	Page 1 of the proposed "Petition for Dismissal" form has "Executed on: _____ at _____ California" above the signature line. Suggest removing "at _____ California" from the form as it is not required per Code of Civil Procedure section 2015.5.	The committee agrees. The data field to note where the petition is signed will be deleted as unnecessary.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

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	Commentator	Position	Comment	Committee Response
7.	Superior Court of Riverside County Carrie Snuggs Regional Operations Director	A	No specific comment.	No response required.
8.	Superior Court of San Diego County	A	No specific comment.	No response required.