



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 21, 2018

Title

Criminal Justice Realignment: Petition and
Order for Dismissal

Agenda Item Type

Action Required

Effective Date

January 1, 2019

Rules, Forms, Standards, or Statutes Affected

Forms CR-180 and CR-181

Date of Report

August 6, 2018

Recommended by

Criminal Law Advisory Committee
Hon. Tricia Ann Bigelow, Chair

Contact

Eve Hershcopf, 415-865-7961
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Executive Summary

The Criminal Law Advisory Committee recommends revisions to two Judicial Council forms in response to recent legislation that authorizes dismissal relief for defendants sentenced to state prison for a felony that, if committed after the 2011 Realignment Legislation, would have been eligible for sentencing to a county jail under Penal Code section 1170(h)(5). The proposed revisions would incorporate the new statutory basis for relief on both forms.

Recommendation

The Criminal Law Advisory committee recommends that the Judicial Council, effective January 1, 2019, revise the *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) to incorporate the new statutory basis for relief under Penal Code section 1203.42, as follows:

1. Add a reference to section 1203.42 to the caption of both forms;
2. Add new item 6 to form CR-180 for petitioners to indicate the new option for requesting relief under section 1203.42;

3. Include in the instructions for new item 6 of form CR-180 that the petitioner may provide an explanation in the space below or complete and attach an *Attached Declaration* (form MC-031) or submit other relevant documents, and revise the instructions in items 3, 4 and 5 to indicate the same, for relief under sections 1203.4a, 1203.49 and 1203.41, respectively;
4. Remove the check boxes on renumbered item 9 on form CR-180, and reference the forms of relief that the petitioner has indicated “under the Penal Code section(s) noted above”;
5. Add five references to section 1203.42 to the body of form CR-181 to incorporate the new basis for relief: a check box with a citation to section 1203.42 to items 3 and 4, and a citation to section 1203.42 to current items 6, 8, and 9; and
6. Add space for notations following items 1–5 on form CR-181, and reverse the order of items 6 and 7.

The text of the revised forms is attached at pages 4–8.

Relevant Previous Council Action

The Judicial Council most recently updated the *Petition for Dismissal* and the *Order for Dismissal*, effective January 1, 2017, adding an option for petitioners to request relief under section 1203.43 for those who had successfully completed a deferred entry of judgment program.

Analysis/Rationale

Forms CR-180 and CR-181 are used by petitioners and courts to facilitate the dismissal procedures authorized by Penal Code sections 1203.4, 1203.4a, 1203.41, 1203.43, and 1203.49.¹ These are two of the most heavily used optional criminal law forms and form CR-180 is frequently submitted by self-represented petitioners.

Criminal justice realignment implemented changes to long-standing felony sentencing laws, including authorizing that certain eligible defendants be sentenced to jail rather than prison under section 1170(h)(5). The felony county jail sentence option became effective October 1, 2011. In 2013, legislation² added section 1203.41 to authorize courts to permit a defendant who received a felony county jail sentence under section 1170(h)(5) to withdraw his or her guilty or no contest plea and enter a plea of not guilty after the lapse of one or two years following the defendant’s completion of the sentence, and then dismiss the action.

In September 2017, the Legislature enacted Assembly Bill 1115,³ adding section 1203.42, which further expands dismissal relief by providing the same relief as in section 1203.41, but for defendants who were sentenced to state prison for a felony that, if committed after the 2011

¹ All further statutory references are to the Penal Code.

² Assem. Bill 651 (Bradford; Stats. 2013, ch. 787).

³ Assem. Bill 1115 (Jones-Sawyer; Stats. 2017, ch. 207).

realignment legislation, would have been eligible for a county jail sentence under section 1170(h)(5). The recommended revisions to forms CR-180 and CR-181 incorporate the relief provided under section 1203.42.

Comments

This proposal circulated for comment from April 9 to June 8, 2018. A total of three comments were received. The Superior Court of San Diego County agreed with the proposal, as did the Orange County Bar Association. Neighborhood Legal Services of Los Angeles County (NLS) did not identify a position but offered several comments for the committee's consideration.

NLS expressed concern both about the length of the form and about the lack of sufficient space for narratives provided on items 4, 5, and 6 of form CR-180 to allow petitioners to meaningfully explain the bases for which they seek relief. NLS suggested removing the spaces for petitioners' narratives. The committee declined this suggestion because form CR-180 is designed to strike a balance between the length of the form and the functionality to provide options for submitting narrative information directly on the form or through the use of attachments. The committee also revised the form CR-181 to provide the court with sufficient space for notations following items 1–5 and to reverse the order of items 6 and 7.

NLS expressed concern that the check boxes in item 9 on form CR-180 are redundant and confusing. The committee accepted the suggestion to revise item 9 by removing the check boxes for specific statutory sections.

NLS suggested that the committee provide guidance for pro per litigants regarding appropriate narrative information to include in support of their request for relief, and provided a sample questionnaire for developing such guidance. The committee declined the suggestion at this time, because such a substantive change to the proposal would require that it be recirculated for public comment. However, the committee may consider adding an information sheet for form CR-180 in the future.

Alternatives considered

The committee considered creating new forms to address the new form of relief provided under section 1203.42. The committee concluded, however, that this would be unnecessarily burdensome and potentially confusing to petitioners and courts because the relief provided in section 1203.42 so closely resembles that provided by section 1203.41, which is currently included on forms CR-180 and CR-181. A second option considered was to remove section 1203.41 relief from forms CR-180 and CR-181 and create new optional dismissal forms for the relief provided under sections 1203.41 and 1203.42, but the committee also rejected this approach as unnecessary and potentially confusing.

Fiscal and Operational Impacts

Expected costs include training, possible case management system updates, and the production of new forms. No other implementation requirements or operational impacts are expected.

Attachments and Links

1. Forms CR-180 and CR-181, at pages 5–9
2. Chart of comments, at pages 10–13
3. Link A: Assembly Bill 1115,
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1115

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	CASE NUMBER:
PETITION FOR DISMISSAL (Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, 1203.49)	FOR COURT USE ONLY DATE: TIME: DEPARTMENT:

1. On (date): _____, the petitioner (*the defendant in the above-entitled criminal action*) was convicted of a violation of the following offenses or was granted deferred entry of judgment for the following offenses:

Code	Section	Type of offense (<i>felony, misdemeanor, or infraction</i>):	Eligible for reduction to misdemeanor under Penal Code, § 17(b) (<i>yes or no</i>)	Eligible for reduction to infraction under Penal Code, § 17(d)(2) (<i>yes or no</i>)

If additional space is needed for listing offenses, use *Attachment to Judicial Council Form* (form MC-025).

2. ☐ **Felony or misdemeanor with probation granted (Pen. Code, § 1203.4)**

Probation was granted on the terms and conditions stated in the docket of the above-entitled court; the petitioner is not serving a sentence for any offense, on probation for any offense, or under charge of commission of any crime, and the petitioner (*check all that apply*)

- 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.
- c. ☐ should be granted relief in the interests of justice. (*Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below, or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.*)

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:

CASE NUMBER:

3. ☐ **Misdemeanor or infraction 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. Petitioner has complied with the sentence of the court and is not serving a sentence for any offense or under charge of commission of any crime; and the petitioner (*check one*):

- a. ☐ has lived an honest and upright life since pronouncement of judgment and conformed to and obeyed the laws of the land; **or**
- b. ☐ should be granted relief in the interests of justice. (*Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.*)

4. ☐ **Misdemeanor conviction under Penal Code section 647(b) (Pen. Code, § 1203.49)**

Petitioner has completed a term of probation for a conviction under Penal Code section 647(b) and should be granted relief because the petitioner can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking.

(*Please note: You may provide evidence that the conviction was the result of your status as a victim of human trafficking. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.*)

5. ☐ **Felony county jail sentence under Penal Code section 1170(h)(5) (Pen. Code, § 1203.41)**

Petitioner is not under supervision under Penal Code section 1170(h)(5)(B); is not serving a sentence for, on probation for, or charged with the commission of any offense; and should be granted relief in the interests of justice, and (*check one*)

- a. ☐ more than one year has elapsed since petitioner completed the felony county jail sentence **with** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(B); **or**
- b. ☐ more than two years have elapsed since petitioner completed the felony county jail sentence **without** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(A).

(*Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.*)

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:

CASE NUMBER:

6. ☐ **Felony prison sentence that would have been eligible for a felony county jail sentence after 2011 under Penal Code section 1170(h)(5) (Pen. Code, § 1203.42)**

Petitioner is not under supervision and is not serving a sentence for, on probation for, or charged with the commission of any offense; more than two years have elapsed since petitioner completed the felony prison sentence; and petitioner should be granted relief in the interests of justice.

(Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.)

7. ☐ **Deferred entry of judgment (Pen. Code, § 1203.43)**

Petitioner performed satisfactorily during the period in which deferred entry of judgment was granted. The criminal charge(s) were dismissed under former Penal Code section 1000.3 on (date): . Furthermore (check one),

a. ☐ court records are available showing the case resolution; **or**

b. ☐ petitioner declares under penalty of perjury that the charges were dismissed after he or she completed the requirements for deferred entry of judgment. Petitioner (check one)

(1) ☐ has

(2) ☐ has not

attached a copy of his or her state summary criminal history information.

8. Petitioner requests that the eligible felony offenses listed above be reduced to misdemeanors under Penal Code section 17(b) and eligible misdemeanor offenses be reduced to infractions under Penal Code section 17(d)(2).

9. Petitioner requests that he or she 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 the Penal Code section(s) noted above.

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

Date:



(SIGNATURE OF PETITIONER OR ATTORNEY)

(ADDRESS OF PETITIONER)

(CITY)

(STATE)

(ZIP CODE)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	
ORDER FOR DISMISSAL (Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, 1203.49)	

The court finds from the records on file in this case, and from the foregoing petition, that the petitioner (*the defendant in the above-entitled criminal action*) is eligible for the following requested relief:

1. The court **GRANTS** the petition for reduction of a felony to a misdemeanor (maximum punishment of 364 days per Pen. Code, § 18.5) under Penal Code section 17(b) and/or for reduction of a misdemeanor to an infraction under Penal Code section 17(d)(2) and reduces
- a. ☐ ALL FELONY CONVICTIONS in the above-entitled action.
- b. ☐ ALL MISDEMEANOR CONVICTIONS in the above-entitled action.
- c. ☐ only the following convictions in the above-entitled action (*specify charges and date of conviction*):
2. The court **DENIES** the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) and/or for reduction of a misdemeanor to an infraction under Penal Code section 17(d)(2) for
- a. ☐ ALL FELONY CONVICTIONS in the above-entitled action.
- b. ☐ ALL MISDEMEANOR CONVICTIONS in the above-entitled action.
- c. ☐ only the following convictions in the above-entitled action (*specify charges and date of conviction*):
3. The court **GRANTS** the petition for dismissal regarding the following convictions under Penal Code (*check all that apply*)
- ☐ § 1203.4 ☐ § 1203.4a ☐ § 1203.41 ☒ § 1203.42 ☐ § 1203.43 ☐ § 1203.49
- and it is ordered that the pleas of guilty or nolo contendere or verdicts or findings of guilt be set aside and vacated and a plea of not guilty be entered and that the complaint or information be, and is hereby, dismissed for (*check one*)
- a. ☐ ALL CONVICTIONS OR PLEAS FOR DEFERRED ENTRY OF JUDGMENT in the above-entitled action.
- b. ☐ only the following convictions or pleas for deferred entry of judgment in the above-entitled action (*specify charges and date of conviction or plea for deferred entry of judgment*):

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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4. The court **DENIES** the petition for dismissal under Penal Code (check all that apply)
☐ § 1203.4 ☐ § 1203.4a ☐ § 1203.41 ☒ § 1203.42 ☐ § 1203.43 ☐ § 1203.49 for (check one)
- a. ☐ ALL CONVICTIONS OR PLEAS FOR DEFERRED ENTRY OF JUDGMENT in the above-entitled action.
- b. ☐ only the following convictions or pleas for deferred entry of judgment in the above-entitled action (specify charges and date of conviction or plea for deferred entry of judgment):
5. In granting this order under the provisions of Penal Code section 1203.49, the court finds that the petitioner was a victim of human trafficking when he or she committed the crime. The court orders (check one)
- a. ☐ the relief described in section 1203.4.
- b. ☐ the relief described in section 1203.4, with the following exceptions (specify):
6. If the order is granted under the provisions of Penal Code section 1203.49, the Department of Justice is hereby notified that petitioner was a victim of human trafficking when he or she committed the crime, and of the relief ordered.
7. If this order is granted under the provisions of Penal Code section 1203.4, 1203.41, or 1203.42,
- a. the petitioner 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 Commission; and
- b. dismissal of the conviction does not *automatically* relieve petitioner from the requirement to register as a sex offender. (See, e.g., Pen. Code, § 290.5.)
8. If the order is granted under the provisions of Penal Code section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.49, the petitioner is released from all penalties and disabilities resulting from the offense except as provided in Penal Code sections 29800 and 29900 (formerly sections 12021 and 12021.1) and Vehicle Code section 13555. In any subsequent prosecution of the petitioner for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. 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 29800 or 29900 (formerly sections 12021 and 12021.1). Dismissal of a conviction does not permit a person prohibited from holding public office as a result of that conviction to hold public office.
9. In addition, as required by Penal Code section 299(f), relief under Penal Code sections 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.49 does *not* release petitioner 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 petitioner 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).
10. The basis for an order of dismissal granted under the provisions of Penal Code section 1203.43 is the invalidity of defendant's prior plea due to misinformation in former Penal Code section 1000.4 regarding the actual consequences of making a plea and successful completion of a deferred entry of judgment program.

FOR COURT USE ONLY

Date:

(JUDICIAL OFFICER)

SPR18-14**Criminal Procedure: Amend Forms CR-180 and CR-181 to Incorporate Dismissal Relief Under Penal Code Section 1203.42**

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

	Commentator	Position	Comment	Committee Response
1.	Neighborhood Legal Services By: Kevin Reyes Staff Attorney	N/I	<p>Dear Honorable Judicial Council: Neighborhood Legal Services of Los Angeles County (NLSLA) is a civil legal aid organization serving low income communities in Los Angeles County and is one of the largest and most prominent public interest law firms in California. Our work is dedicated to addressing the most critical needs of communities living in poverty. To that end, we have developed a comprehensive and robust program to support people with criminal records that hope to rejoin their communities and remove critical barriers related to employment, housing, and other supportive resources.</p> <p>The NLSLA Clean Slate Initiative coordinates two monthly clinics that assist many San Fernando, San Gabriel and Antelope Valley residents with clearing their criminal records and ultimately reversing the collateral consequences of their convictions. In addition to our clinics, we also provide direct legal services for clients that face more complex issues as a result of prior criminal justice involvement and expend significant time educating the community through workshops and “Know Your Rights” presentations on various remedies available to this population. Through our work, we assist clients that seek Penal Code 1203.4 dismissals in the hopes of improving their lives. As a result, we are very familiar with the Judicial Council CR- 180 and CR- 181 forms.</p> <p>NLSLA applauds the judicial councils’ suggestion to include a section for relief codified under Penal Code Section 1203.42. This will allow pro per</p>	No response required.

SPR18-14

Criminal Procedure: Amend Forms CR-180 and CR-181 to Incorporate Dismissal Relief Under Penal Code Section 1203.42

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

	Commentator	Position	Comment	Committee Response
			<p>litigants to effectively request the remedies available under this provision without having to prepare additional forms. However, we are concerned that some of the sections on the form may lead to unnecessary confusion and limit a pro per petitioner's accessibility to obtain the relief sought.</p> <p>Below are our specific comments on the proposed revisions to forms CR-180 and CR-181 under SPR18-14 and submit the following comments:</p> <p>The additional spaces provided on Items 4, 5 & 6 of the CR-180 form are unnecessary and may increase administrative costs for low-income, pro per litigants.</p> <p>The Judicial Council proposes to allow petitioners to add narratives in Item(s) 4, 5 & 6 of the CR-180 petition to provide them an opportunity to explain the reasons why they believe relief should be granted. Generally, many of those seeking relief under this provision are low-income and do not have the assistance of an attorney.</p> <p>The inclusion of these small spaces do not allow petitioners to meaningfully explain the bases for which they seek relief. It also requires that a petitioner print out an additional page which will increase printing costs for our clients, many of whom have income that fall well below 125% of the Federal Poverty Level. For example, if a person wants to file a petition for two cases. They must make 3 copies for each case which would result in a total of 24 pages at a cost of .50 cents to \$1.00 per page. This is regardless of whether they are actually</p>	<p>The committee declines the suggestion to remove the spaces for petitioners' narratives as form CR-180 is designed to strike a balance between the length of the form and providing options for submitting narrative information directly on the form or through the use of attachments.</p>

SPR18-14

Criminal Procedure: Amend Forms CR-180 and CR-181 to Incorporate Dismissal Relief Under Penal Code Section 1203.42

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

	Commentator	Position	Comment	Committee Response
			<p>required to provide a narrative in the case.</p> <p>While we affirm that a declaration remain optional for those that choose to use it, the Council should limit the CR-180 to two pages so as not to be overly cumbersome. We would recommend that when a declaration is mandatory, a check box is added with language at the end of that section which reads, “<i>You MUST fill out the attached MC-031 declaration</i>” so that petitioners are aware that they have to include a statement. This will make it clear to a petitioner that they should include a statement with their petition and not potentially run out of space. We would also strongly encourage the Council to include some version of the attached questionnaire with the MC-031 form declaration to help guide pro per litigants on what information they could include in their statement when they do not have the benefit of an attorney. (See Proposed Exhibit 1)</p> <p>Item 9 on Form CR-180 is redundant and may limit a petitioner’s access for relief.</p> <p>The Judicial Council also proposes to include a check box in Item 9 on the CR-180 form that requires the petitioner to restate what Penal Code section they are requesting for dismissal of their conviction. This is confusing for pro per petitioners and may create a barrier for them in getting the relief sought.</p> <p>Unlike others sections of the form, Item 9 does not provide an explanation as to the various Penal Code sections that may apply and what each section</p>	<p>The committee declines the suggestion as there is not a mandatory format for petitioners to provide information in support of their requests for relief.</p> <p>The committee declines the suggestion to provide petitioners with guidance regarding the type of narrative information to include at this time, as that would be substantive change to the proposal that would require recirculation. The committee may consider adding an information sheet for form CR-180 in the future.</p> <p>The committee accepts the suggestion to revise item 9 by removing the check boxes for particular statutory sections, and to reference the forms of relief that the petitioner has indicated “under the Penal Code section(s) noted above” on form CR-180.</p>

SPR18-14**Criminal Procedure: Amend Forms CR-180 and CR-181 to Incorporate Dismissal Relief Under Penal Code Section 1203.42**

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

	Commentator	Position	Comment	Committee Response
			<p>requires. As such, a petitioner is prompted to check the box for the corresponding Penal Code section a second time, when they have already indicated it in the preceding paragraphs. Many of the petitioners may not realize they are required to restate the Penal Code Section they are requesting relief under. In fact, in some of our clinics, trained pro bono volunteers often forget or do not realize they must check off one of the boxes in Item 9. Luckily, our volunteers are closely supervised and we are able to catch this error before the petition is filed. However, the risk of error is increased for a pro per litigant not trained in the legal field.</p> <p>We recommend that Item 9 be entirely removed due its redundancy and confusing nature or in the alternative remove all of the check boxes so that it simply reads:</p> <p><i>“Petitioner requests that he or she 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 the Penal Code section previously indicated.”</i></p> <p>We believe the measures mentioned in our comments are necessary to ensure that a post-conviction dismissal is equally accessible to all those who need it, regardless of their education level or economic status. Thank you for your time and consideration.</p>	
2.	Orange County Bar Association By: Nikki P. Miliband President	A		No response required.

SPR18-14

Criminal Procedure: Amend Forms CR-180 and CR-181 to Incorporate Dismissal Relief Under Penal Code Section 1203.42

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

	Commentator	Position	Comment	Committee Response
3.	Superior Court of California, County of San Diego By: Mike Roddy Executive Officer	A		No response required.