

SPECIAL DIRECTIVE 17-09

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: JOHN K. SPILLANE 
Chief Deputy District Attorney

SUBJECT: PENAL CODE SECTION 1473.7 MOTIONS

DATE: JUNE 07, 2017

This Special Directive sets forth the Los Angeles County District Attorney's Office (Office) policy regarding a Penal Code section 1473.7 motion to vacate a conviction or sentence based on prejudicial error damaging his or her ability to meaningfully understand, defend against or knowingly accept the immigration consequences of the conviction. The statute also authorizes the trial court to set aside a conviction based upon newly discovered evidence of the defendant's actual innocence. The statute applies to defendants who are no longer in state custody and whose probation or parole has expired.

New section 17.01.03 of Chapter 17 (Post-Conviction Proceedings) of the Legal Policies Manual (LPM) will be inserted into the 2017 edition of the LPM. Former section 17.01.03 Conviction Review Unit will be renumbered as 17.01.04, and former section 17.01.04 Indemnification of Persons Wrongfully Convicted and Imprisoned will be renumbered as section 17.01.05.

17.01.03 Motion to Vacate a Conviction or Sentence – Penal Code § 1473.7

Penal Code § 1473.7 authorizes a defendant to file a motion to vacate a conviction or sentence based on prejudicial error damaging his or her ability to meaningfully understand, defend against or knowingly accept the immigration consequences of the conviction. The statute also authorizes the trial court to set aside a conviction based upon newly discovered evidence of the defendant's actual innocence. The statute applies to defendants who are no longer in state custody and whose probation or parole has expired.

The Habeas Corpus Litigation Team (“HABLIT”) shall litigate Penal Code § 1473.7 motions alleging claims of actual innocence in the Superior Court.

The trial units which originally prosecuted the case shall litigate all other Penal Code § 1473.7 motions based on alleged error during the plea proceedings. The Head Deputy or Deputy-in-Charge of the trial unit may contact the Deputy-in-Charge of HABLIT for assistance. HABLIT deputies shall be available to consult with the assigned deputy to suggest practical steps to take in defense of the motions.

All Penal Code § 1473.7 motions that set forth a prima facie case for relief are entitled to a hearing, and, at the request of the moving party, the court may hold the hearing without the

personal presence of the moving party if counsel for the moving party is present and the court finds good cause for the moving party's absence. However, the following objections shall be made to ensure a full and fair hearing:

- Deputies shall object to a moving party's absence from the Penal Code § 1473.7 hearing;
- Deputies shall object to the admission of hearsay evidence (*In re Fields* (1990) 51 Cal.3d 1063, 1070);
- Deputies shall insist on exercising the right to cross-examine hearsay declarants pursuant to Evidence Code § 1203;
- Deputies shall object to plea withdrawals which do not take place in open court as required by Penal Code §§ 977 and 1018.

If a Court grants a petition on the basis of inadmissible hearsay evidence and denies the People's right to cross-examine the hearsay declarant, or permits a petitioner to withdraw his or her plea in violation of Penal Code § 1018, the handling deputy shall immediately contact the Appellate Division for consideration of appealing the trial court's rulings.

Templates for an opposition motion, waiver of the attorney-client privilege and order waiving the attorney-client privilege have been uploaded to LADAnet under [Library>Brief Bank>All Brief Bank Documents>Post-Trial Motions>PC 1473.7.](#)

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