

Judge Dailey—as we discussed on the phone, Judge Freyre has raised a question about the Petition for Crim P. 35 form, which is Form 4 to the Criminal Rules. The heart of Judge Freyre’s suggestion to modification of the form is:

However, one critical item was not included on this form that I think should be added to promote judicial economy. That is a question that asks whether the mandate has issued and to provide a line for that date along with a notation that the court has no jurisdiction to consider the petition without this date. It could be added to the “Direct Appeal” section which asks questions about whether there was a direct appeal, when the opinion issued and what the outcome was. In a case I have set later this month, the defendant filed several 35(c) motions during the pendency of his direct appeal (based on the passage of new legislation) which the district court found it had no jurisdiction to consider. The defendant then filed appeals of each of those orders here and our motions division dismissed them. It is clear the defendant did not understand that finality was tied to the mandate rather than the date our decision issued. This created procedural confusion by the court and parties in my case and would have been completely avoidable if the mandate information had been required as part of Form 4.3

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