



QUATTRONE CENTER

for the Fair Administration of Justice

GUIDELINES FOR PROSECUTORS WORKING WITH AN UNREPRESENTED PERSON FOR A REVIEW BY A CONVICTION INTEGRITY UNIT

GUIDELINES FOR PROSECUTORS WORKING WITH AN UNREPRESENTED PERSON FOR A REVIEW BY A CONVICTION INTEGRITY UNIT¹

Conviction review units are often inundated with requests for assistance from unrepresented individuals. Many, due to lack of resources, will not investigate pro se applications, preferring to work directly with an applicant’s counsel. The result most often is applications from unrepresented individuals are not pursued. Without the resources to devote to reviewing pro se submissions, those applicants—who may outnumber those lucky enough to secure some level of representation²—risk being effectively left out of the conviction review process altogether. This document is meant to provide CIUs with guidance to ethically engage with unrepresented applicants.

CONTENTS

Making Internal Review Policies Available	2
Is the Individual Truly Unrepresented?	2
Contacting Former Counsel	2
Contacting an Innocence Organization	2
Informing the Unrepresented Applicant on the CIU Process and Risks	3
The CIU staff are not defense lawyers	3
Information about the CIU process	3
Risks and benefits of working with the CIU	4
Intake Form/Questionnaire	4
Stage of Investigation to Reach out to Counsel	4
Finding Counsel for an Unrepresented Applicant	5
Waiver of Attorney-Client Privilege and Communications	6
Letter Templates	7
APPENDIX	8
Discussion Participants	9
Sample Questionnaire	10
Notifications for unrepresented people about the CIU structure, process, procedures	18
Review of attorney-client privilege and communication issues	21

1 These Guidelines are the product of conversations with lawyers from innocence organizations, private firms, and prosecutor offices as well as experts in professional ethics. A list of participants is included in the Appendix. The Guidelines are meant to provide guidance and not to dictate how every case should be handled. There is great variation among jurisdictions regarding post-conviction discovery, freedom of information laws, and rules of professional conduct. Each jurisdiction will need to research these issues to develop workable standards for their unit.

2 Some units report over 70% of people writing to them for assistance are pro se; several report that all but a handful of applications come from unrepresented individuals.



Making Internal Review Policies Available

CIUs should have publicly available policies and procedures explaining their review criteria and priorities so potential applicants may do their own research to determine whether they wish to pursue the process. These policies and procedures should be detailed enough to give an applicant a fair understanding of the unit's scope, processes, and potential risks. The CIU should prominently feature this information on its website and provide FAQs and a video where possible.

A one-page document that clearly explains the process for unrepresented applicants is helpful. Such a flier could be sent out to prison law libraries, placed on a website, or included in letters with initial questionnaires.

Is the Individual Truly Unrepresented?

Before engaging with an applicant who says they are unrepresented, the CIU should ensure there is no active representation. This would include, at a minimum, checking the court docket system for any pending cases or active probation/parole violation hearings. If it appears the individual is represented by counsel, the CIU should contact counsel to inform them of the applicant's correspondence. The CIU may also contact prior attorneys to determine whether there is ongoing representation in place.³

If a CIU has been assured there is no ongoing representation, the CIU should carefully assess its interaction with the applicant.

Contacting Former Counsel

It is often necessary for a CIU to speak with an applicant's trial or appellate counsel as part of a post-conviction review, even when that representation has long since concluded. Before requesting that counsel or an innocence organization provide any information about the case, it is essential for the CIU to obtain a clear waiver of attorney-client privilege. Even if active representation has ended, former defense counsel is ethically unable to provide information without their client's informed consent to waive otherwise protected privileges.

A proposed waiver process and specific language is laid out below, and sample waiver forms are included in the Appendix.

Contacting an Innocence Organization

Should a CIU contact an innocence organization (IO) to determine whether the IO has investigated the case? This is not a recommended practice.

First, even if the CIU's motivation is simply to ensure no duplication of effort, prosecutors need to be aware that many states consider a client's identity—especially in the investigation stage—to be confidential.

Many times, CIUs want to know whether a particular attorney or an IO is reviewing or has reviewed a case. The CIU should recognize the innocence organization may have ethical or other issues in answering what seems an innocuous

³ One unit from a major metropolitan area has a five-year look back policy: if the applicant has an attorney on the docket from within five years the unit reaches out to that lawyer.



question. Indeed, due to ethical considerations, the IO cannot answer that question in many instances. For example, the IO may have received an application from the individual but decided not to pursue it for a range of reasons including lack of evidence, because the case did not meet organizational requirements, or they found new evidence that seemed to indicate guilt. Because the IO is duty-bound to not harm someone who has sought their help, the IO often faces an ethical quandary in answering the CIU's question. Finally, some innocence organizations may perceive the request as trying to determine whether the organization has investigated (and rejected) a particular case.

Informing the Unrepresented Applicant on the CIU Process and Risks

At the fundamental level, prosecutors who work with unrepresented individuals must advise the unrepresented person about the consequences of working directly with a prosecutor. The prosecutor must ensure there is no misunderstanding about the prosecutor's role and responsibilities. This can be done through the application process by providing the applicant with a form to complete which outlines the issues and requires the applicant to initial each one.⁴

There are at least three areas a prosecutor must make sure an applicant understands:

- (1) that the CIU attorneys are prosecutors, not defense counsel, and that the applicant's confidences, information and interests are not protected as they would be with a defense lawyer;
- (2) the benefits and risks of working with a CIU including potential inculcation of the applicant or someone close to them; and
- (3) the various rights and privileges the applicants have with respect to communications with their prior attorneys.

More specifically, the prosecutor must seek informed agreement from the applicant to proceed that includes the following areas.

The CIU staff are not defense lawyers

- o The CIU is a unit within the prosecutor's office dedicated to identifying cases where the individual convicted is not the person who committed the crime (or otherwise wrongly convicted).
- o CIU lawyers do not represent the applicants who write to them, they will not provide legal advice or assist in the preparation of petitions or court documents raising claims of wrongful conviction.
- o The CIU lawyers are prosecutors who work in an office that has interests directly opposed to the applicant's.

Information about the CIU process

- o The CIU's stages of review and gathering of information should be explained in as much detail as possible.
- o Letting the applicant know they should not contact the CIU for information, but the CIU will reach out when necessary.
- o The CIU may contact witnesses the applicants identify on an application or provide in a letter and interview them directly.
- o The CIU will pull all investigative files related to the case and review them as part of their investigation.

⁴ A sample Notification form is included in the Appendix.

Risks and benefits of working with the CIU

- o The applicant has the right to consult with an attorney and the CIU encourages them to do so.
- o It is not possible to know what the outcome of this investigation will be.
- o If information becomes available through the course of the investigation that establishes the applicant's innocence, the prosecutor may recommend the conviction be vacated.
- o It is possible the prosecutors will uncover information conclusive of guilt or involvement in this case, or even implicates the applicant (or the applicant's family or loved ones) in other crimes for which they were not prosecuted or could be prosecuted.
- o The CIU may stop an investigation at any time and is not obligated to explain why.
- o There is no guarantee of an agreed-upon outcome, and the process could turn adversarial.

Intake Form/Questionnaire

Prosecutors should use a written application for those seeking to have a conviction reversed.⁵ While many offices prefer the "just tell us your story" approach, an applicant who provides long narratives may inadvertently divulge information otherwise protected by attorney-client privilege. It is not possible for a prosecutor to "just ignore" information contained in these communications.

The better practice is to provide a form for the applicant to complete which has been carefully constructed so the information requested does not call for privileged information or communications.

Moreover, using a standardized questionnaire is helpful to CIUs to assess a case more quickly. When an applicant sends a letter to a CIU requesting assistance, the correspondence is often unfocused on the issues relevant to CIU review. A questionnaire focuses the applicant on particular issues, shortens the review time for the CIU, and makes the review more effective. The questions on the form should be written to allow applicants to complete it without relying on narrative (preferring checkboxes or other short answer formats), using an open design easy to complete, and in non-legal language. A sample questionnaire is included in the Appendix.

Even if a unit uses a questionnaire or other form to help applicants, CIUs should still be open to receiving non-conforming applications. Those who don't have access to the form or who just prefer to send a narrative should not be deprived of engaging with the CIU. The issue is the prosecutor should not be soliciting otherwise protected information, even if done inadvertently.

Stage of Investigation to Reach out to Counsel

Many CIUs struggle with the questions of when and how to bring in counsel for an applicant. To fully and fairly review a claim of innocence or wrongful conviction it is often necessary to speak with the applicant to understand the case from their perspective. This is especially true when trying to understand the potential value of information which may not have been disclosed earlier. Moreover, prosecutors often feel they are unable to fully review a file without having someone looking at the case through the eyes of the applicant. Because of all of these issues, it is often necessary for a CIU to help the applicant obtain their own counsel.

⁵ A sample questionnaire is included in the Appendix.



While many will reach out to an innocence organization within the jurisdiction, as explained above the innocence organization may have a conflict or be unable to pursue the case for a variety of reasons. To compound the problem, if the innocence group cannot pursue a case because they have previously reviewed and rejected the case they cannot communicate that to the CIU without potentially harming their former prospective client. If they do provide the information for one client, that could harm other clients if they decline to give information to the CIU in the future (the inference being that the organization reviewed the case but did not pursue it).

Where a CIU wants to move a case forward or wants to speak with the applicant directly⁶ the better practice, although more cumbersome, is to contact the applicant and inform them that they need to engage counsel in some form for the review to continue.⁷ CIUs should be able to provide the names of qualified attorneys who will take on a pro bono representation, even if only for the limited purpose of reviewing the case and discovery with the applicant, along with the information for any law clinics or innocence organizations the applicant can contact directly. The CIU should also notify the attorneys, clinic programs, or innocence organizations they have forwarded their contact information to the applicant. The lawyers or organizations can then contact the applicant directly without fear of impacting the CIU's view of the case.

Finding Counsel for an Unrepresented Applicant

There are several levels of engagement where pro bono counsel could be asked by the CIU to assist and potentially represent the pro se individual.

Assistance not necessarily requiring a limited representation agreement:

- 1) Explaining to the applicant the CIU's process and procedures, the risks and benefits of trying to work with the CIU, and other basic information.
- 2) Ensuring the applicant fully understand the process.

Assistance that would require a limited representation agreement and engagement:

- 1) Assisting the applicant with the application process – going over the application, helping the applicant understand how to phrase and emphasize issues that are more likely to be of use to the CIU (a time commitment of at least several hours).
- 2) Reviewing discovery with the applicant to get their take on what evidence the state has, what may have not been disclosed and the potential impact that information may have had on the trial process so the information can be reviewed through their eyes and experience (a time commitment of likely several weeks to months depending upon the complexity of the case).
- 3) Assisting with the investigation by attending witness interviews, arranging for forensic testing, helping to map out strategy and assess information as it is developed to determine whether the information is sufficient to raise a colorable post-conviction relief petition.
- 4) Representing the individual through the investigation and litigation process.
 - a. In certain circumstances, where the CIU has done significant work and it is clear the conviction should, at a minimum, be vacated the representation could consist of reviewing all of the materials with the applicant and entering an appearance for the sake of obtaining relief.

⁶ Prosecutors should approach interviews with unrepresented applicants with extreme caution. Not only are there risks the applicant may divulge information otherwise protected from disclosure (or implicate themselves unwittingly in the crime under investigation), judges reviewing a prosecutor's actions may feel the prosecutor took advantage of the situation. At the very least, prosecutors should never interview an unrepresented applicant alone.

⁷ Some jurisdictions may allow the court to appoint counsel before a petition is filed for the purposes of investigating a claim. A CIU from a large county has a relationship with the state defender office to have "screening counsel" appointed on a limited retainer basis so counsel can do a preliminary review of a case without having to file anything in court.

Waiver of Attorney-Client Privilege and Communications

The CIU should never require an applicant’s full or partial waiver of attorney-client communications or privilege before they are willing to begin a review.⁸

There is simply no need for a prosecutor to contact prior defense counsel to start reviewing an application. After an application has been reviewed and the CIU wants to move forward with an investigation, prosecutors often must talk with the applicant’s prior counsel. This is particularly true to see whether information thought to have been withheld was previously provided. But doing so requires a waiver of the attorney-client privilege, which must be fully explained before a client can knowingly waive.⁹ The prosecutor, then, is in the position of advising the applicant of their rights and privileges before they can even ask whether the applicant is willing to waive them.

While the better practice, as noted above, is to advise the applicant to retain counsel that may not always be the best way forward: prosecutors may have a pressing need to speak with former defense counsel to resolve an issue quickly or even move forward with an exoneration. Moreover, an individual may insist on pursuing a review with the CIU without counsel.

In either situation, the CIU should make every accommodation to ensure the individual understands the rights and privileges they have before the CIU seeks to obtain information from prior counsel or that is otherwise protected.¹⁰ For example, the applicant should be informed:¹¹

- o Normally, attorneys must keep confidential all information they gather in the course of representing a client - including information that is already public – and may not share that with anyone without the client’s consent.
- o In addition, any communications between a lawyer and client ordinarily may not be disclosed and cannot be disclosed unless the client expressly consents.
- o Communications could include anything a client has said to an attorney throughout their relationship, including admissions to the crime in question or other criminal activity for which they have not been prosecuted (but could be).

⁸ Asking an applicant to waive the attorney client privilege as a condition of even filing the application is not appropriate. Rule of Professional Conduct 3.8(c) forbids a prosecutor from “seek[ing] to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing.” Although not directly applicable to the post-conviction investigation, the policy of not taking advantage of unrepresented people carries through. While not suggesting that a CIU can never request a waiver of privilege, doing so before the unit will even read an application should not happen.

⁹ Rule 1.0 (e) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. This is crucial to ensuring a client fully understands the strategy of the representation. Rule 1.4 (b) (“A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”).

¹⁰ Waiver of attorney-client privilege is different from waiving confidentiality protections with the client. The attorney-client evidentiary privilege is so closely related to the ethical duty of confidentiality that the terms “privileged” and “confidential” are often used inter-changeably. But the two are entirely separate concepts, applicable under different sets of circumstances and using different standards.

The ethical duty is broad, protecting from disclosure all “information relating to the representation,” and does not end with the termination of the representation. The attorney-client privilege, however, is more limited: it protects from compelled disclosure the substance of a lawyer-client communication made for the purpose of obtaining or imparting legal advice or assistance and applies only in the context of a legal proceeding governed by the rules of evidence.

Confidentiality may also include information within the public information sphere. If the information was obtained during the course of representation, it is presumptively included within confidentiality protections. Because of that, lawyers working with CIUs should be careful when sharing information from their files lest it be interpreted as a waiver of confidentiality. Without a client’s informed consent (see Model Rules 1.0 and 1.4(b)), the lawyer could be acting adverse to the client’s interests.

¹¹ A sample Notification form is included in the Appendix.



- o Communications also include conversations about trial strategy (like whether to testify in court or not, or whether to accept a plea bargain).
- o Communication could also include information about a client's family or loved ones and risk their arrest for other criminal activity.
- o A lawyer's memos and recorded thoughts are also protected from disclosure as "work product." Sometimes memos include notes from interviewing witnesses who may have shared information harmful to the client, such as revealing the client admitted the crime to the witness, the witness negating the client's alibi, or revealing additional information which can implicate the client in criminal activity.
- o Every attorney the applicant has worked with must keep protected communications and information gathered during the course of their representation, not just the last attorney who represented them.
- o Any waiver would not just apply to the last innocence organization or attorney who represented the applicant, but to all attorneys who represented them in the process including trial or appellate attorneys.

Letter Templates

Having standardized responses to pro se correspondence is helpful to ensure a consistent message and decrease the likelihood of confusion or disparate treatment. For example, units should have letters for each stage of engagement – receipt of initial letter, responses to request for updates, information regarding how a review is proceeding, and explanation of why a case is being closed. Consistent with ethical responsibilities, prosecutors should include limiting language in these letters each time reminding the applicant that the prosecutors do not represent them, that the individual must continue any post-conviction litigation on their own, and that the applicant will be updated when there is a development.



APPENDIX

- 1 – Discussion Participants
- 2 – Sample questionnaire
- 3 – Notifications for unrepresented people about the CIU structure, process, procedures
- 4 – Review of attorney-client privilege and communication issues



Discussion Participants

Shawn	Armbrust	Mid-Atlantic Innocence Project
Sharon	Beckman	Boston College Innocence Program
R. Michael	Cassidy	Professor and Dean's Distinguished Scholar - Boston College Law School
Dara	Gell	Innocence Project
Stacie	Lieberman	Capital Area Private Defender Service Forensic Project
Jennifer	Merrigan	Phillips, Black
Megan	Richardson	Michigan Innocence Clinic
Tricia	Rojo Bushnell	Midwest Innocence Project
Nilam	Sanghvi	Pennsylvania Innocence Project
Barry	Scheck	Professor – Benjamin N. Cardozo School of Law; Co-Founder and Special Counsel - Innocence Project
Shelley	Thibodeau	4 th Judicial Circuit State's Attorney Office (Jacksonville, FL)
Ellen	Yaroshevsky	Director-Monroe Freedman Institute for the Study of Legal Ethics - Maurice A. Deane School of Law Hofstra University



Sample Questionnaire

An editable copy of this questionnaire can be accessed through the Quattrone Center's online Conviction Review/Integrity Units Resource Center at convictionreview.net



Please provide the required information and complete this form in its entirety to petition our office for review of your conviction. Be sure to include copies of any documents that support your petition/claims. **Do not send original documents or your only copy of any documents.** This form and supporting documents may be mailed to:

MAILING ADDRESS

Where “petitioner”, “you” or “your” is indicated, the requested information needs to be provided about the person seeking to have his/her case reviewed by our office. If the person completing this petition is not the petitioner, please indicate that and complete the section.

The CIU will only accept cases for review where the following apply:

1. You must have been convicted of a felony in the **[relevant geographic jurisdiction]**.
2. You must present a plausible claim of actual innocence (for instance, you did not commit or participate in the crime charged).
3. [The direct appeal has become final, the mandate (final order) has been issued, and there is no pending litigation.]

Please keep in mind the following. The Conviction Integrity/Review Unit/Division (“CIU”) is not reviewing lawful sentences. The CIU is not reviewing affirmative defenses, claims, or information/evidence that were previously considered and litigated before the original finder of fact (jury or judge). For example, we will not review cases of self-defense, or consent versus rape.

Initial each statement below to show your understanding and agreement with the following:

_____ **Requesting review of my case by the CIU will not toll or stop the time I have to pursue post-conviction remedies, such as filing an appeal or post-conviction motion. I need to pursue those remedies separately.**

_____ **If the CIU acknowledge receipt of this Petition it does not mean they accept my case for investigation, and does not mean they accept my claim of innocence.**



PETITIONER INFORMATION

Please check “yes” or “no” for each question:

[Are you a U.S. Citizen? Yes No]

» ***The answer to this question will NOT affect whether your case is considered. It is so we know there might be an immigration hold.***

Is English your primary language Yes No

If not, what language do you normally speak? _____

Is someone reading this form to you? Yes No

Is someone writing on this form for you? Yes No

Are you still serving your sentence from this conviction? Yes No

If “Yes”, are you in prison on probation on parole

Your name:	Your DOC Number:
Your Address:	Your Date of Birth:
CASE Number:	Charges on conviction(s):
Date of Conviction:	Original Sentence:
Name of Attorney who represented you at trial:	Name of Judge who sentenced you:

IMPORTANT: If you are currently represented by an attorney, the CIU will only communicate with your attorney. You should consult your attorney prior to submitting your Petition; your attorney may want to wait to submit the Petition or submit the Petition on your behalf.¹²

Are you currently represented by a lawyer? Yes No

If yes, who is your Attorney? _____

¹² The State/Prosecuting/District Attorney’s Office cannot provide legal advice. Please consult with an attorney before submitting a Petition if you need assistance or have any questions regarding anything contained in this Petition.



CASE INFORMATION

Please list all the Attorney(s) who have represented you:

Please check every box for every statement **that is true**. You can check as many boxes as you need.

- I did not do any parts of the crime I was convicted of
- My conviction happened in **[relevant jurisdiction]**
- My direct appeal – the appeal following my sentence – is over

The date your appeal was denied: _____

Please check every box for every statement **that is true**. You can check as many boxes as you need. If none apply, check the box saying “None of the above statements apply to me.”

- I had no role in the crime I was convicted of.
- I did some of what I was convicted for, but not all of it.
- I did something illegal, but I was drunk or high at the time of the incident.
- I did something illegal, but I have a condition that affects my ability to act or understand right from wrong..
- I did something illegal because I was forced to do it by someone else.
- I did something illegal, but I got too much time in prison for it.
- None of the above statements apply to me.

How were you convicted?

- A jury or judge found me guilty OR I entered a guilty or no contest plea

Please provide dates for the following

When did the crime occur (date)? _____

When were you arrested? _____

When were you sentenced? _____

Prior post-conviction appeals

Do you have any active appeals or post-conviction motion? Yes No

If yes, please provide the case number: _____



If you have an active appeal, what court is it in:

- Trial Court
- State Court of Appeal
- State Supreme Court
- Federal District Court
- # Circuit Court of Appeals
- US Supreme Court

Have you filed any post-conviction motions before in this case?

- Yes
- No

If Yes, provide case information: _____

Prior DNA Testing

Was DNA evidence used at your trial? Yes No

If yes, was it by State Defense

Have you filed a motion for DNA testing under STATE law? Yes No

Was the motion granted? Yes No

Was testing done? Yes No

Contact with Innocence Organizations

Have you contacted the Local Innocence Organization about your case? Yes No

If yes, are they currently investigating? Yes No

Have you contacted any other innocence organization/project about your case?

- Yes
- No

If yes, which organization(s) and when?

New evidence or evidence that shows I am innocent

Please check every box for every statement that is true. You can check as many boxes as you need. If none apply, check the box saying "None of the above statements apply to me."

- A witness/informant who testified against me has recanted or changed their testimony.
- I was not at the crime scene and have an alibi.



New evidence or evidence that shows I am innocent (continued)

- There is new evidence that proves my innocence that wasn't available when I went to trial or entered my plea.
Briefly explain what evidence: _____
- There is new evidence that shows my trial was unfair that wasn't available when I went to trial or entered my plea.
Briefly explain what evidence: _____
- There was scientific testimony at my trial that was wrong or has been discredited.
Briefly explain what testimony: _____
- There is DNA in my case that was never tested.
- The officer who arrested me or presented testimony against me was arrested or has a sustained finding of dishonesty or bias.
Name of officer and badge number: _____
- None of the above statements apply to me.

Questions about scientific evidence

Please check every box for every statement that is true. You can check as many boxes as you need. If none apply, check the box saying "None of the above statements apply to me."

- The State said I hurt or killed a baby by shaking the baby.
- The State said I intentionally started a fire.
- The State used bite mark evidence (teeth marks) against me.
- The State used hair comparison evidence against me.
- None of the above statements apply to me.

Information about Evidence in your case

Please check every box for every statement that is true. You can check as many boxes as you need. If none apply, check the box saying "None of the above statements apply to me."

- I testified at my trial.
- Police said I confessed to them, but I did not.
- Police said I confessed to them, but my statement was coerced.



An eyewitness or victim didn't know me but identified me as the committing the crime, and got it wrong.

» If you were identified, which of the following fit how you were identified:

An eyewitness or victim identified me from a show-up or confrontation.

An eyewitness or victim identified me from a photo array or photo lineup.

An eyewitness or victim identified me from a live lineup.

An eyewitness or victim identified me for the first time in court.

The witness or informant who testified against me lied.

The witness or informant who testified against me had a deal with the State I just learned about.

Please explain the deal and how you learned of it: _____

Police said they found my fingerprint at the crime scene.

Police said they found my hair at the crime scene.

Police said they found my blood at the crime scene.

Police said they found other of my body fluids (semen, spit, sweat) at the crime scene.

Police said the victim's DNA was on me.

Police said I had the victim's property or other belongings.

None of the above statements apply to me.



INFORMATION ABOUT NEW EVIDENCE AND INNOCENCE

Please answer these questions in the boxes, including as much information as you know. If you need more space, use a separate piece of paper.

Please explain why you are innocent of this crime.

(For instance, if you were somewhere else when the crime happened, tell us where you were and what you were doing. If you don't think a crime really happened, please tell us why you believe that.)

Please explain what you were doing the day of the incident and how you came to be arrested.

Please list the names and phone numbers of witnesses or alibis, or any other person with relevant information, you think can provide information whom we should contact.

Do you know of anything new about your case you didn't know when you went to trial or pleaded guilty?

(Has a witness changed his story, or do you think they will? Has someone else confessed to the crime? Do you know about new evidence? Please include as many details as possible.)

Do you have information about who may have committed the crime?

Is there anything else you want the CIU to know about your case? If so please write it here (use additional paper if you need.



Notifications for Unrepresented People About CIU Structure, Process, Procedures

*An editable copy of these notifications can be accessed through the Quattrone Center's online
Conviction Review/Integrity Units Resource Center at convictionreview.net*



Please provide the required information and complete this form in its entirety to petition our office for review of your conviction. Be sure to include copies of any documents that support your petition/claims. **Do not send original documents or your only copy of any documents.** This form and supporting documents may be mailed to:

MAILING ADDRESS

Where “petitioner”, “you” or “your” is indicated, the requested information needs to be provided about the person seeking to have his/her case reviewed by our office. If the person completing this petition is not the petitioner, please indicate that and complete the section.

The CIU will only accept cases for review where the following apply:

4. You must have been convicted of a felony in the **[[relevant geographic jurisdiction]]**.
5. You must present a plausible claim of actual innocence (for instance, you did not commit or participate in the crime charged). (**OR** You must present a plausible claim of a wrongful conviction (you did not commit the crime, or you may have participated in the crime but should not have been convicted due to misconduct or having had an unfair trial).)
6. [The direct appeal has become final, the mandate (final order) has been issued, and there is no pending litigation.]

Please keep in mind. The Conviction Integrity/Review Unit/Division (“CIU”) is not reviewing lawful sentences. The CIU is not reviewing claims, information, or evidence that were previously considered and litigated. We also can’t look at cases where you had a justification (like you acted in self-defense or were forced to do the crime) or a defense (like consent versus rape, intoxication, or mental illness).

Initial each statement below to show your understanding and agreement with the following:

_____ **Requesting review of my case by the CIU will not toll or stop the time I have to pursue post-conviction remedies, such as filing an appeal or post-conviction motion. I need to pursue those remedies separately.**

_____ **If the CIU acknowledge receipt of this Petition it does not mean they accept my case for investigation, and does not mean they accept my claim of innocence.**



IMPORTANT – NOTIFICATIONS

REQUIRED

Please initial each of the following statements to show that you have read it and you understand it. Don't initial any statement you don't understand or that is untrue or inaccurate.

_____ I understand the Conviction Integrity/Review Unit/Division is part of the State/Prosecuting/District's Attorney's Office.

_____ I understand the lawyers in the unit are not defense lawyers. They investigate innocence claims; they do not provide legal advice to people asserting innocence claims.

_____ I understand I am providing information about my case to a prosecutor's office, and these communications are not privileged or confidential.

_____ I understand my statements in this Petition can be used against me in court.

_____ I understand there are criminal penalties for knowingly making false statements in a petition like this.

_____ No-one has promised me anything to fill out and submit this Petition.

_____ I understand that even if the CRU accepts my case for further review, it doesn't mean I will receive relief.

_____ I understand I don't have a right to have the CRU review my case, and no right to appeal any decision I disagree with.

_____ I understand the Conviction Integrity/Review Unit may contact any of the people I have listed in the Petition to talk with them about my conviction and the facts of the case.

_____ I submit this Petition voluntarily knowing I am asking the prosecutor's office to review and investigate my case.

_____ The statements contained in this Petition are true to the best of my knowledge.

The CIU strongly recommends applicants to work with an attorney. Please initial the following about your current representation status.

_____ I am not currently represented by an attorney or

_____ I am currently represented by an attorney but wish to submit this Petition on my own after consulting with my attorney.

Printed Name

Signature

Date



Notifications about Attorney-Client Privilege and Confidentiality

*An editable copy of these notifications can be accessed through the Quattrone Center's online
Conviction Review/Integrity Units Resource Center at convictionreview.net*



OPTIONAL AUTHORIZATION TO ALLOW PAST OR PRESENT LAWYERS TO PROVIDE OTHERWISE CONFIDENTIAL OR PRIVILEGED INFORMATION AND DOCUMENTS TO THE CIU

You have petitioned the CIU to investigate your claim of innocence. To conduct a thorough investigation, the CIU may want to talk to the attorneys who represented you at trial, on appeal, or in post-conviction proceedings in the case you have asked us to review. The CIU may also want to review your past attorneys' files and the files of any attorney or innocence organization currently representing you or with whom you're working.

You should understand your attorneys are required by law to keep confidential any information they learned about your case from representing you – including the contents of their files. They cannot share their knowledge of your case or their files with the CIU without your permission. You can choose to allow your attorneys to share this information if you want to. **You are not required to authorize your attorneys to provide information for the CIU to continue its investigation and review of your case. The CIU can still move forward if you do not consent to our staff contacting your past attorneys.**

Also, any communication between you and your attorneys – letters, conversations, messages, and so on - about the case is considered a privileged communication that the attorney cannot reveal to the CIU without your permission.

You may not know all the information your former or present attorneys have in their files; they may have information linking you or people you know to a crime. You must decide if you will permit your past and any current attorneys to share what they know about the case, their communications to you and from you, and their case files with the CIU. In making that decision, you may want to consult with a lawyer who is not part of the CIU.

You should also understand that the CIU may begin reviewing your petition even if you decide not to share confidential information or files with the CIU. By petitioning the CIU to review your conviction you have not waived any rights or consented to any privileged information being turned over to the CIU.

At some point, however, the CIU may advise you that our investigation cannot be completed and a decision cannot be made on your claim without speaking with your past attorneys and/or reviewing their case files. At that point, you will need to decide if you are willing to waive your rights and to give your past lawyers permission to share their information, case files, and communications with you to the CIU.

*** Continued on Next Page ***



Please initial one of the following statements to tell us your willingness or unwillingness at this time to have the CIU contact your attorneys:

AGREEMENT TO AUTHORIZE ATTORNEYS TO SHARE INFORMATION

- _____ I have read and understand the information provided in the Authorization to Allow Past or Present Lawyers to Provide Otherwise Confidential or Privileged Information and Documents to the CIU.
- _____ I understand that my past attorneys have information, privileged communications, and files they are not free to share with a prosecutor or anyone else without my permission. I have consulted with a lawyer about these issues or have decided I do not need to do so.
- _____ I give each and every one of my past lawyers in [CASE NAME], as well as [NAME OF INNOCENCE ORGANIZATION IN STATE] permission to share with the CIU whatever information, communications, or documents they have in their possession concerning their representation of me in the case as they deem appropriate.

-OR-

NON-AGREEMENT TO AUTHORIZE ATTORNEYS TO SHARE INFORMATION

- _____ I have read and understand the information provided in the *Authorization to Allow Past or Present Lawyers to Provide Otherwise Confidential or Privileged Information and Documents to the CIU*.
- _____ I do not give permission to my former attorneys to share information, communications, or files with the CIU at this time.

Printed Name

Signature

Date