

# **Placer County District Attorney's Office**

## **21.00 – SPECIAL CIRCUMSTANCE CASES-FILING POLICY**

### **21.01 PURPOSE**

The purpose of this policy is to establish guidelines by which the decision to file and prosecute special circumstances cases shall be made. A special circumstance case is a case in which the accused is punishable either by death or life without the possibility of parole, pursuant to one or more special circumstances enumerated in Penal Code section 190.2. The procedures set forth below are to be followed in connection with the filing of a special circumstance case.

### **21.02 AUTHORITY TO FILE**

A special circumstances case shall not be filed by other than a Supervising Deputy District Attorney or higher. A special circumstance case shall be charged:

- a. If there is sufficient evidence to establish probable cause to believe that the special circumstance is applicable, and
- b. Regardless of whether the death penalty is to be ultimately sought.

Because of the possibility that the death penalty may be sought, it is appropriate that the accused be ineligible for bail. (See § 1270.5 P.C.).

The deputy who files the case shall review and consider all available evidence to determine whether special circumstances exist. The deputy shall request further investigation as needed for making this determination. All such requests shall be documented on a "Request for Further Investigation" form and forwarded to the appropriate investigating agency. In addition, the suspect's Penal Code Section 969(b) packet and certified copies of prior convictions, if any, shall be ordered.

Before the preliminary examination, the members of the Special Circumstances Committee shall meet to discuss the case and assess whether the death penalty is likely to be sought. The purpose of this preliminary assessment is to assist the law enforcement agency and District Attorney staff in promptly obtaining the information and evidence necessary to the presentation of the penalty phase of the trial.

When special circumstances are charged in the complaint, the assigned prosecutor shall present supporting evidence at the preliminary hearing.

Where special circumstances are not charged in the Complaint because of a lack of evidence at the time of filing, and the preliminary examination deputy becomes aware of facts which qualify as special circumstances, the preliminary examination deputy shall

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present all available evidence in support of the special circumstances allegation. Upon completion of the preliminary examination, the District Attorney and/or the Assistant District Attorney shall be notified that the case qualifies as a special circumstances case.

The District Attorney or the Assistant District Attorney shall authorize the filing of the special circumstances allegation in the information when sufficient evidence, in support thereof, has been presented at the preliminary examination and the accused had due notice of the charge. (See Talamantez v. Superior Court (1981) 122 Cal. App. 3d 629, 634-636). Note: All special circumstances allegations, including the allegation that the defendant has previously been convicted of murder (§ 190.2(a)(2) P.C.), must be supported by evidence presented at the preliminary hearing.

### **21.03 SPECIAL CIRCUMSTANCES PENALTY EVALUATION MEMORANDUM**

Within twenty working days of the filing of the case, the deputy assigned to the case shall complete the Special Circumstances Penalty Evaluation Memorandum (see attachment "A"). The memorandum shall contain the handling deputy's evaluation and recommendation as to which of the two penalties – death or life without the possibility of parole – is appropriate with respect to the case.

The penalty evaluation memorandum shall be forwarded to the District Attorney, with copies to the Assistant District Attorney and Special Circumstance Committee. The memorandum is attorney work product and shall not be disclosed to the court or opposing counsel.

### **21.04 FACTORS TO CONSIDER IN DECIDING**

- a. The factors listed below shall be considered and discussed in the Special Circumstances Penalty Evaluation Memorandum.
- b. A recommendation or determination that the death penalty is appropriate in a special circumstances case shall not be made unless it is believed that the evidence bearing on the issue is of such convincing force that a reasonable and objective fact finder, after considering all the relevant evidence, would conclude that the aggravating circumstances substantially outweigh the mitigating circumstances. The determination shall be made after careful deliberation, taking into account any matter relevant to aggravation or mitigation of the sentence, including but not limited to:
  - (1) The circumstances of the crime committed of which the accused is Charged and the existence of any special circumstance listed in § 190.2 P.C., as well as victim-impact evidence;

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- (2) The presence or absence of criminal activity by the accused which involves the use or attempted use of force or violence or the express or implied threat to use force or violence;
- (3) The presence or absence of any valid prior felony conviction;
- (4) Whether or not the offense was committed while the accused was under the influence of extreme mental or emotional disturbance;
- (5) Whether or not the victim was a participant in the accused's homicidal conduct or consented to the homicidal act;
- (6) Whether or not the offense was committed under circumstances which the accused reasonably believed to be a moral justification or extenuation for his or her conduct;
- (7) Whether or not the accused acted under extreme duress or under the substantial domination of another person;
- (8) Whether or not at the time of the offense the capacity of the accused to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was impaired as a result of mental disease or the effects of intoxication;
- (9) The age of the accused at the time of the crime;
- (10) Whether or not the accused was an accomplice to the offense and his or her participation in the commission of the offense was relatively minor;
- (11) Any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime;
- (12) The accused's character, background, history, mental condition and physical condition, except that no criminal activity which did not involve the express or implied threat to use force or violence shall be considered unless it has resulted in a prior felony conviction.

c. In addition to the above specific factors, the four basic purposes of a criminal prosecution shall also be considered:

- (1) The *protection of society* from individuals who pose a danger to the person of other individuals;

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- (2) The *deterrence* of other individuals from posing a similar danger in the future;
- (3) The *punishment* of individuals for failing to fulfill their responsibilities to obey the laws on which the preservation of an orderly and free society rests;
- (4) The *rehabilitation* of individuals to the extent that they will not be a threat to others within the state prison system.

### 21.05 OPPORTUNITY FOR INPUT FROM THE VICTIM'S FAMILY

Prior to the meeting of the Special Circumstances Committee, the trial deputy assigned to prosecute the case shall contact the victim's family. The family shall be advised that they have the option of expressing their views in writing to the District Attorney, meeting personally with at least two members of the Special Circumstances Committee or, if they desire, to not participate in the process. The family's input concerning the victim, defendant, offense, and penalty shall be considered by the members of the Special Circumstances Committee when it meets.

### 21.06 SPECIAL CIRCUMSTANCES COMMITTEE

The members of the Special Circumstances Committee shall be comprised of the District Attorney, the Assistant District Attorney, Supervising District Attorneys, Senior Deputy District Attorneys, Chief Investigator, Supervising Investigator, assigned trial deputy and investigator.

Upon receipt of the penalty evaluation memorandum, and after the victim's family has been provided the opportunity for input, the District Attorney will notify the committee members of the date and time that the committee will meet to discuss the case. The committee shall consider all material submitted in accord with this policy in making its decision. A tentative determination as to which of the two penalties will be sought shall be decided by the committee.

### 21.07 OPPORTUNITY FOR INPUT BY DEFENSE COUNSEL

If it is decided that the death penalty is appropriate, before the decision becomes final, a letter will be sent to defense counsel for the defendant inviting their input regarding the decision. Defense counsel will be provided a reasonable opportunity (within 30 days of the date of the letter) to either respond in writing or to participate in a group meeting with at least three members of the Special Circumstances Committee.

Thereafter, within 10 working days of the receipt of defense counsel's input, the committee will meet to discuss that input. At the conclusion of that meeting, or within a

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reasonable time thereafter, the Special Circumstances Committee will make the final decision as to which of the two available penalties will be recommended.

### **21.08 DECISION NOT TO SEEK THE DEATH PENALTY**

If the Special Circumstances Committee decides not to seek the death penalty, a letter shall be sent to defense counsel advising him/her of that decision. A copy of this letter shall be sent to the Clerk of the Superior Court and the Official Court Reporter's office. This decision shall also be stated orally on the record at the next scheduled court appearance.

The decision of the District Attorney not to seek the death penalty is not final. If the District Attorney becomes aware of facts or circumstances which warrant reconsideration of that decision, the District Attorney may re-convene the Special Circumstances Committee to discuss whether the earlier decision should be reversed. If the additional facts or change in circumstances support a decision to seek the death penalty, and the District Attorney does in fact decide to reverse his/her earlier decision, defense counsel, the Court, and the Official Court Reporter's office shall immediately be notified in writing.

### **21.09 CASE SETTLEMENT**

The complexion of a case sometimes changes as it passes from stage to stage in the justice system. Factors may emerge which, when considered with all other factors in a case, call for a reevaluation of previous decisions. Because of the unique demands of equal justice that attach to death penalty cases, the following special rules shall be applicable to the handling of special circumstances cases:

- a. In the event that it is objectively determined, subsequent to filing, that a special circumstance allegation is fatally defective or irremediably deficient because of evidentiary or legal reasons, the allegation may be dismissed only with the prior approval of the District Attorney.
- b. In some murder cases a formal allegation of special circumstances is not included in the complaint, but it is determined subsequent to filing and before the preliminary hearing that an allegation of special circumstances would be supported by the evidence. In this situation, an amended complaint alleging the special circumstance shall be prepared and filed with the Court and served on defense counsel.

Under no circumstances may a case settlement be entered into when it is known that evidence exists which would authorize the filing of a special circumstances allegation. Such a case settlement shall not be entered into without it first being considered and agreed upon by the Special Circumstances Committee.

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- c. Once the appropriate penalty in a special circumstances case has been determined by the Special Circumstances Committee, any change of such determination for any reason shall require the approval of the District Attorney. The change may be from a lesser to a greater penalty or from a greater to a lesser penalty. The change must be objectively determined in accordance with the criteria set forth in section 21.04 of this policy in conjunction with generally accepted felony case settlement factors. Actual notice shall be given to defense counsel and the defendant as soon as possible after any change is determined. The prosecutor shall state on the record at the next court appearance that a change in the determination of penalty has been made and that defense counsel has been notified.
- d. An allegation of special circumstances which is supported by the evidence shall not be dismissed or stricken by the handling deputy because of a personal or subjective belief that the case, in some respect, does not warrant either the death penalty or life without the possibility of parole. If the allegation is legally viable, it shall be pursued in the prosecution and be abandoned, where appropriate, only in accord with this policy.
- e. The reasons justifying the striking of a special allegation or a change in the penalty shall be fully documented with a typewritten memorandum which is to be placed in the case file.

### 21.10 POST-TRIAL REPORT

At the conclusion of all proceedings in the trial court, the deputy assigned to prosecute the special circumstances case shall submit a Post-trial Report to the District Attorney, with a copy to the Assistant District Attorney, within five working days after all the proceedings have been concluded. This report shall be completed regardless of whether the case went to trial. A copy of the report will be placed in the case file.

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# CONFIDENTIAL MEMORANDUM

## SPECIAL CIRCUMSTANCES PENALTY EVALUATION

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To: Bradford R. Fenocchio, District Attorney

From:

Date:

Re: People v. \_\_\_\_\_  
Case Number: \_\_\_\_\_

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Arraignment Date: \_\_\_\_\_

Department: \_\_\_\_\_

Charges: Count 1:

Count 2:

Count 3:

Count 4:

Special Circumstances:

Special Allegations:

Defense Attorney:

ATTACHMENT "A"



APPROPRIATENESS OF THE DEATH PENALTY – FACTORS TO CONSIDER:

- CIRCUMSTANCES OF THE CRIME

Age of the victim and whether the victim was particularly vulnerable

Relationship (if any) of the accused to the victim (e.g., victim's residence)

Victim's mental/physical condition prior to the murder

Location where the murder occurred (e.g., victim's residence)

Multiple victims

Whether other lives were endangered by the accused's actions

The amount of force used or other acts disclosing a high degree of cruelty, viciousness, or callousness

The manner in which the murder weapon was used and/or the extent to which it was used

The fact or likelihood that the victim suffered extreme pain and was conscious throughout all or a majority of the time during which the injuries ultimately resulting in death were inflicted.

The motive (if any) for the murder

The extent of planning or premeditation

The sophistication involved in carrying out the murder

Whether the accused acted alone or conspired with/involved others

Whether the evidence linking the accused to the murder is primarily based on direct or circumstantial evidence

The nature and extent of attempts or actions by the accused following the murder to escape detection/arrest (e.g., threats made to witnesses; mutilation of victim's corpse to prevent identification of the victim; arson used to destroy the crime scene, etc.)

Other felonious activity occurring after the homicide was committed



- PRIOR CRIMINAL ACTIVITY INVOLVING FORCE OR VIOLENCE
- PRIOR FELONY CONVICTIONS
- MENTAL OR EMOTIONAL DISTURBANCE OF THE DEFENDANT
- EVIDENCE OF VICTIM PARTICIPATION IN THE CRIME
- EVIDENCE OF MORAL JUSTIFICATION OR EXTENUATION
- EVIDENCE OF DURESS OR SUBSTANTIAL DOMINATION
- DEFENDANT'S CAPACITY TO APPRECIATE CRIMINALITY OF ACT
- AGE OF THE DEFENDANT
- ROLE OF THE DEFENDANT IN COMMISSION OF THE CRIME
- EXTENUATING CIRCUMSTANCES
- DEFENDANT'S CHARACTER, BACKGROUND, AND HISTORY
  - (a) history of defendant's conduct while in state prison (if any)
  - (b) misdemeanor convictions not involving violence
  - (c) other felonious activity occurring after the homicide was committed
- STRENGTH OF THE EVIDENCE
  - (a) direct vs. circumstantial
  - (b) quality of witnesses
  - (c) any other considerations

RECOMMENDATION:

ATTACHMENT "A"