

SPECIAL DIRECTIVE 03-04

TO: ALL DEPUTY DISTRICT ATTORNEYS
FROM: SLC STEVE COOLEY
District Attorney
SUBJECT: COLLATERAL CONSEQUENCES
DATE: SEPTEMBER 25, 2003

The Los Angeles County District Attorney's Office Felony Case Settlement Policy begins with a general statement of purpose as follows:

The purpose of the criminal justice system is to protect the rights of society in general, and crime victims in particular, by appropriately punishing those who have been lawfully convicted of crimes. This Felony Case Settlement Policy has been formulated to ensure that case dispositions in Los Angeles County will further that purpose. (See LPM 7.IV.F.)

In order to arrive at the appropriate punishment for a criminal defendant, prosecutors routinely review and consider all relevant factors relating to the crime itself as well as all relevant factors relating to the defendant. In some cases the factors relating to the defendant include adverse collateral consequences that the defendant will suffer in addition to the direct consequences of the conviction. In many of these cases the adverse collateral consequences are appropriate and just. In other cases, collateral consequences can have so great an adverse impact on a defendant that the resulting punishment may not fit the crime.

The Felony Case Settlement Policy in Chapter 7 of the Legal Policies Manual includes a provision that enables deputies to deal appropriately with such cases. This provision authorizes a departure from policy when "unusual or extraordinary circumstances exist which demand a departure in the interest of justice." (See LPM 7.IV.F.1.b.) The Misdemeanor Case Settlement Policy includes a similar provision. (See LPM 6.II.B.5.b.)

Because the Legal Policies Manual does not fully address this issue, the policy set forth below replaces the sections of the manual dealing with departure from policy in our misdemeanor and felony case settlement policies and is now the policy of this office. This policy addresses the role of the prosecutor in case settlements involving collateral consequences and identifies the appropriate supervisor or supervisors required to approve such settlements. These revisions will be reflected in the online versions of the Legal Policies Manual (in Lotus Notes and on the LADA Intranet Web Site).

LEGAL POLICIES MANUAL

CHAPTER 6	MUNICIPAL COURT
PART II	MISDEMEANOR
SECTION B	MISDEMEANOR CASE SETTLEMENT POLICY

5. Departure from Policy

Departure from this Misdemeanor Case Settlement Policy may be made in cases not enumerated in Penal Code section 1192.7 in two instances:

- a. When the admissible evidence is legally insufficient to establish the defendant's guilt; or,
- b. When unusual or extraordinary circumstances exist that demand a departure in the interest of justice.

Unusual or extraordinary circumstances that may justify a departure from policy include circumstances that will result in indirect or collateral consequences to the defendant in addition to the direct consequences of the conviction. A departure from policy in a misdemeanor case based on unusual or extraordinary circumstances requires the prior approval of the appropriate head deputy or deputy-in-charge.

In those rare cases where a settlement is proposed based upon one or more of the factors listed above, prior approval by the head deputy or deputy-in-charge shall be obtained and the proposed disposition and its reasons shall be noted upon the file and signed by the head deputy or deputy-in-charge.

Commentary

Collateral consequences can, in some cases, have a greater adverse impact on a defendant than the conviction alone. When collateral consequences will have so great an adverse impact on a defendant that the resulting "punishment" will be disproportionate to the punishment other defendants would receive for the same crime, a departure from policy may be warranted.

The California Rules of Court include collateral consequences in the rules that courts are to follow when imposing sentence. Rule 4.414 lists the criteria to be considered when deciding whether or not to grant probation for a defendant who has suffered a felony conviction. These criteria are divided into (a) factors relating to the crime and (b) factors relating to the defendant. One of the factors relating to the defendant is: "(6) The adverse collateral consequences on the defendant's life resulting from the felony conviction."

A departure from policy based on collateral consequences may only be made in unusual or extraordinary circumstances that demand a departure in the interest of justice. All departures from policy based on collateral consequences must be approved by the appropriate supervisor.

LEGAL POLICIES MANUAL

CHAPTER 7 SUPERIOR COURT PART IV FELONY CASE SETTLEMENT POLICY

F. DEPARTURE FROM POLICY

This felony case settlement policy shall be strictly adhered to in all cases enumerated in Penal Code section 1192.7.

1. Departure from this Felony Case Settlement Policy may be made in cases not enumerated in Penal Code section 1192.7 in two instances:
 - a. When the admissible evidence is legally insufficient to establish the defendant's guilt; or,
 - b. When unusual or extraordinary circumstances exist that demand a departure in the interest of justice.
2. Unusual or extraordinary circumstances that may justify a departure from policy include circumstances that will result in indirect or collateral consequences to the defendant in addition to the direct consequences of the conviction.

Commentary

Collateral consequences can, in some cases, have a greater adverse impact on a defendant than the conviction alone. When collateral consequences will have so great an adverse impact on a defendant that the resulting "punishment" will be disproportionate to the punishment other defendants would receive for the same crime, a departure from policy may be warranted.

The California Rules of Court include collateral consequences in the rules that courts are to follow when imposing sentence. Rule 4.414 lists the criteria to be considered when deciding whether or not to grant probation for a defendant who has suffered a felony conviction. These criteria are divided into (a) factors relating to the crime and (b) factors relating to the defendant. One of the factors relating to the defendant is: "(6) The adverse collateral consequences on the defendant's life resulting from the felony conviction."

A departure from policy based on collateral consequences may only be made in unusual or extraordinary circumstances that demand a departure in the interest of justice. All departures from policy based on collateral consequences must be approved by the appropriate supervisor.

3. Whenever any departure from policy is made, the deputy actually prosecuting the case shall prepare a disposition report setting forth the reasons for the departure. The disposition report shall be signed by the

person or persons required by this section to approve the departure and placed in the case file before the action is taken.

Any departure from policy in a special circumstances case must be approved in writing by the Chairperson of the Special Circumstances Committee, prior to the action being taken, in accordance with the special case settlement rules in special circumstances cases set forth elsewhere in this manual.

- a. When the departure is based on the legal insufficiency of the evidence, the action must be approved as follows:
 - (1) In cases involving Major Crimes, the prior written approval of the appropriate head deputy must be obtained and the proposed action must be communicated beforehand through channels to the Chief Deputy District Attorney.
 - (2) In all other cases the prior written approval of the appropriate head deputy or deputy-in-charge must be obtained.
- b. When the departure from policy is based on unusual or extraordinary circumstances in the interest of justice, the prior written approval of the appropriate head deputy must be obtained.

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