

SPECIAL DIRECTIVE 18-04

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: JOHN K. SPILLANE 
Chief Deputy District Attorney

SUBJECT: ADDENDUM TO SPECIAL DIRECTIVE 17-09 –
PENAL CODE SECTION 1473.7 MOTIONS

DATE: APRIL 17, 2018

Special Directive 17-09 set forth the Los Angeles County District Attorney's Office (Office) policy regarding motions brought under Penal Code section 1473.7 to vacate a conviction or sentence based on prejudicial error damaging a defendant's ability to meaningfully understand, defend against or knowingly accept the immigration consequences of the conviction. Although not expressly mentioned in the policy, templates and training materials posited that such motions were not ripe unless the moving party had actually received a notice of removal proceedings or a final removal order from federal authorities, relying on subdivision (b) of the statute.

Upon reexamination, the Office is persuaded that the Legislature intended section 1473.7 to apply regardless of whether the moving party has received notice of removal proceedings or a removal order. The moving party must still demonstrate that the conviction or sentence subjects him or her to adverse immigration consequences (e.g., that a federal statute makes him or her deportable, excludable or ineligible for citizenship). The moving party must also file the motion with "reasonable diligence" if he or she does receive a removal notice or order.

The Brief Bank on LADAnet no longer contains the Opposition Motion referenced in SD 17-09. The Opposition Motion template in PIMS has been edited to reflect the new policy. A training video on the Training Division Home Page on LADAnet has also been edited to remove reference to our previous policy.

Section 17.01.03 (Motion to Vacate a Conviction or Sentence – Penal Code § 1473.7) of Chapter 17 (Post Conviction Proceedings) of the Legal Policies Manual has also been revised in two places. The following new paragraph has been inserted after the current third paragraph:

The Office's position is that the moving party may bring a motion pursuant to Penal Code § 1473.7 (a)(1) even though there is no pending removal proceeding or final removal order, if the moving party proves that he or she may potentially suffer an adverse immigration consequence as the result of the conviction (e.g., that a federal statute makes the defendant deportable, excludable, or ineligible for citizenship).

The last paragraph of section 17.01.03 has been modified to read, "Templates for an opposition motion, waiver of the attorney-client privilege and order waiving the attorney-client privilege are available in PIMS."

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