

10.12 DEPARTURE FROM POLICY

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

- When the admissible evidence is legally insufficient to establish the defendant's guilt; or
- When unusual or extraordinary circumstances exist that demand a departure in the interests 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 Head Deputy or Deputy-in-Charge.

In those rare cases when 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 shall be approved by the appropriate supervisor.

10.12.01 CONSIDERATION OF ADVERSE IMMIGRATION CONSEQUENCES

Pursuant to Penal Code § 1016.3(b), deputies shall consider the avoidance of adverse immigration consequences as one factor in reaching a just resolution of a case at all times when engaged in the plea negotiation process.

If deviation from case settlement policy is warranted due to these considerations, prior approval by the Head Deputy or Deputy-in-Charge shall be obtained. The proposed disposition and the reasons for the disposition shall be noted in the file and signed by the Head Deputy or Deputy-in-Charge.

