<u>GENERAL OFFICE MEMORANDUM 21-102</u>

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: SHARON L. WOO
Chief Deputy District Attorney

SUBJECT: SPECIAL CIRCUMSTANCES CASES – UPDATED PROCEDURES

DATE: OCTOBER 19, 2021

Special Directive 20-11, issued on December 7, 2020, superseded Chapter 7 of the Legal Policies Manual and stated, in part, that this Office will not seek the death penalty in any case moving forward. Additionally, the Special Circumstances Committee was permanently disbanded. Further, Special Directive 21-01 states that deputies are prohibited from filing special circumstances allegations. This General Office Memorandum (GOM) clarifies the procedure and guidelines for deputies handling cases where special circumstances allegations were previously filed.

1. **"SPECIAL CIRCUMSTANCES CASE INFORMATION" MEMORANDUM & "WAIVER AND AGREEMENT" FORM**

In any case where special circumstances allegations were filed prior to the issuance of SD 21-01, this Office will **<u>never</u>** seek the death penalty. To curtail the expenditure of resources by the court and defense bar, it is important to notify all parties that the death penalty is not being pursued, as early as possible in the proceedings. Accordingly, within 20 working days of the issuance of this GOM, in any case in which special circumstances allegation(s) are filed, the Head Deputy shall cause a "Special Circumstances Case Information" memorandum to be executed and transmitted to the Chief Deputy District Attorney (Chief Deputy), through the appropriate chain of command. In addition to all case information—including defense attorney name, contact, and mailing address—the memorandum should contain a factual summary of the case and an evaluation of the case. A copy of the file-stamped charging document shall be attached to the memorandum.

The Chief Deputy will send a letter together with a "Waiver and Agreement" form to the defendant's attorney providing notice that the Office is not seeking the death penalty. The defendant, through counsel, will be invited to (a) waive any right to a penalty hearing to which he or she may be entitled and (b) agree that the judge may impose a sentence of life imprisonment without possibility of parole in lieu of a penalty hearing if the defendant is found guilty of first-degree murder and a special circumstances allegation is found true. The trial deputy shall file a copy of the letter with the court.

2. **LENIENCY AND IMMUNITY**

In all cases where special circumstances allegations are filed, all requests to offer leniency or immunity must be submitted in writing through the chain of command to the Chief Deputy. The

memorandum should include a detailed analysis of the case and justification for the request. Such requests should be made well in advance of a pending preliminary hearing or trial date.

3. SPECIAL CIRCUMSTANCES CASE SETTLEMENT

All settlement offers on cases where special circumstances allegations are filed must be approved by the Chief Deputy. All defense offers/counter-offers shall be presented to the Chief Deputy for review. Additionally, any request to dismiss special circumstances allegations, either as part of a plea deal or due to a change in evidence, must be approved by the Chief Deputy. The assigned deputy shall prepare an explanatory memorandum setting forth the facts and the justification for the proposed action (settlement, rejection of defense offer, or dismissal), which shall be forwarded through the chain of command to the Chief Deputy.

4. CASE DISPOSITION MEMORANDUM

Within 30 working days after all proceedings have concluded in the trial court, the Head Deputy shall submit a "Special Circumstances Case Disposition Memorandum" through the appropriate chain of command. The memorandum should include the result of the case: if there was a conviction, the precise charges of which the defendant was convicted; if there was an acquittal, dismissal, mistrial, or hung jury—the reason for that outcome; whether the case resolved due to a negotiated disposition; and, the specific sentence imposed.

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