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Public Law 101 Conference

Code Prosecution and Enforcement

Wednesday, November 15, 2023
10:45 a.m. – 11:45 a.m.

Speakers:

Brittany Brace, Deputy City Attorney
City of Sacramento

Conference Reference Materials

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BRITTANY N. BRACE, DEPUTY CITY ATTORNEY

Ms. Brace is a Deputy City Attorney with the City of Sacramento City Attorney's Office. She is the lead attorney for the City Attorney's Cannabis Enforcement Program representing the city in its prosecution of the city's administrative cannabis penalties as well as cannabis writ petitions and advises the Sacramento Police Department's Marijuana Compliance Team.

Prior to serving at the City of Sacramento, Ms. Brace advised public agencies on water rights and public law at a Sacramento law firm.



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Code Prosecution & Enforcement (Litigation Track)

Brittany Brace, November 15, 2023

Overview

I. Prosecutorial Duties

II. Criminal Prosecution Strategies

III. Administrative Prosecution Strategies

IV. Civil Prosecution Strategies

Background

Brittany Brace

City of Sacramento City Attorney's Office

Prosecutorial Duties

- Advising city officials on legal issues regarding enforcement of laws relating to the city;
- Reviewing and understanding ordinances and resolutions required by legislation;
- Prosecuting city code violations and other misdemeanors.

Ethical Duties of Prosecutors

- Duty of Truth/Candor
- Duty of Professionalism/Fairness
- California Rules of Professional Conduct, Rule
3.8
- Other Duties, e.g., Business and Professions
Code § 6068

Criminal Prosecution Strategies

Process:

- Review facts, usually a police report;
- Review the relevant statute;
- Determine whether each element of crime is met;
- Decide whether or not to file;
- Work with court actors to resolve pursuant to the interest of justice.

Criminal Prosecution Strategies: Prosecutorial Discretion

- Not charge at all. (Cal. Gov. Code § 26501; Cal. Rules of Prof. Conduct, Rule 3.8(a))
- Decide whom to charge and what charges to file. (*People v. Birks* (1998) 19 Cal.4th 108, 134)
- Elect to proceed under either of two statutes that proscribe the same conduct. (see *Mitchell v. Superior Court* (1989) 49 Cal.3d 1230, 1250; *People v. Cockburn* (2003) 109 Cal.App.4th 1151, 1157)
- Move to dismiss the accusatory pleading, or individual counts. (See Cal. Pen. Code §§ 1385, 1386; *People v. Roman* (2001) 92 Cal.App.4th 141, 145.)
- Cannot add or change any of the offenses charged (Cal. Pen. Code § 1009; *People v. McKinney* (1979) 95 Cal.App.3d 712, 742).
- If a charged offense is not shown by the evidence, the prosecutor may decide to drop a charge. In the criminal context, this is usually done by amending the complaint. (*People v. Simpson* (2014) 223 Cal.App.4th Supp 6, 9.)

Administrative Prosecution Strategies

- Remedies are cumulative, not exclusive;
- Procedure
 - Same as criminal, but burden of proof for elements is preponderance of the evidence; not beyond a reasonable doubt. *In re Angelica P.* (1981) 20 Cal.3d 908; Evid. Code, § 115.)
 - Settlement Negotiations
 - Administrative Hearing with a Neutral Hearing Examiner
 - Record of Decision

Administrative Prosecution Strategies: Appeal of ROD

- Appellants may appeal unfavorable administrative decisions in one of two ways:
 - Writ of Mandate, Cal. Code Civil Procedure § 1094.5
 - De Novo Appeal, Cal. Government Code § 53069.4
- Settlement Negotiations
- Trials

Civil Prosecution Strategies

- Public Nuisance Abatement
 - Cal. Civil Code § 3490, et seq.
 - Health and Safety Code § 11570, et seq.
 - Elements: Ownership & Nuisance
 - City Code Violations declared a Public Nuisance
 - E.g., Sacramento City Code § 8.132.050(B)
 - Remedies
 - E.g., Per Day versus Per Plant

Pros & Cons of Civil v. Administrative v. Criminal

- **Criminal**
 - More “teeth”
 - Public Defense
 - “Harsher” penalty
 - Higher Burden of Proof
 - Lack of Control

Pros & Cons of Civil v. Administrative v. Criminal

- **Civil**
 - Stricter Rules of Evidence
 - More Resources at the Outset
 - Lessened Burden of Proof

Pros & Cons of Civil v. Administrative v. Criminal

- **Administrative**
 - Less formal than civil and criminal
 - Subject to appeal and further litigation
 - Lessened Burden of Proof
 - Rules of Evidence Relaxed

Questions?

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