

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

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DIRECTIVE #4-06
[SUPERSEDES DIRECTIVE #34A-65]

[Questions or comments may be
directed to 609-292-1589.]

TO: Assignment Judges
Trial Court Administrators

FROM: Philip S. Carchman, J.A.D.

SUBJ: Prosecutor's Role in Violation of Probation (VOP) Proceedings

DATE: April 7, 2006

At its January 10, 2006 Administrative Conference, the Supreme Court concurred with the Judicial Council's recommendation that Directive #34A-65, Violation of Probation, issued by then Administrative Director Edward B. McConnell on July 11, 1966, be restated and reaffirmed. Accordingly, this Directive restates the substance of that earlier directive, that is, that County Prosecutors, and not Probation Officers, are responsible for the prosecution of defendants charged with violating the terms of their probation. This Directive, by thus restating the substance of Directive #34A-65, supersedes that earlier Directive.

During the course of the Probation Vicinage Visitation Program (as part of the implementation of the Outcome Based Standards for Probation Supervision (OBS)) it became apparent that, despite the provisions of Directive #34A-65, there has been considerable variation in vicinage practice with respect to the prosecution of violations of probation. This variation was confirmed in the responses to an informal survey conducted by the AOC Probation Services Division. Thus, in some counties the Prosecutor has been fully involved in violation of probation (VOP) proceedings, while in others Probation staff has handled all aspects of the VOP process.

The Conferences of Criminal Presiding Judges and Vicinage Chief Probation Officers reviewed the current practice and concluded that the policy contained in the 1966 Directive should be reaffirmed. The Criminal Presiding Judges reasoned that because a VOP involves a defendant already sentenced by the court, it is akin to contempt for violating a court order. The Prosecutor represents the state's interest at contempt proceedings and the same should hold true for VOP proceedings. The Presiding Judges were of the view that the Prosecutor has a fundamental role at VOP proceedings to represent the interests of the state and the victims. They

also noted that the Probation Officer ought not to act as both witness and prosecutor at the VOP proceeding. The Judicial Council reviewed the recommendations of both Conferences and concurred in the recommendation that the substance of Directive #34A-65 be reaffirmed. And, as noted, the Supreme Court agreed.

The Attorney General and the County Prosecutors will be advised that the Supreme Court has reaffirmed this policy. In the event that any vicinage encounters any difficulty in the implementation of this policy, please let me know. Any questions or comments regarding this Directive should be directed to Robert P. Sebastian, Assistant Director, Probation Services, at (609) 292-1589.

P.S.C.

cc: Chief Justice Deborah T. Poritz
Criminal Presiding Judges
Family Presiding Judges
Theodore J. Fetter, Deputy Administrative Director
AOC Directors and Assistant Directors
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