

Words & Phrases

The following words and phrases appear in the directives, guidelines and policies, and have these meanings:

“shall” or “must”: signify an unconditional requirement and usually relate to a legal obligation or procedural necessity. These are few in number.

“must seek approval from the Chief Crown Attorney [or other designated person]”: signifies that the action or decision requires supervisory approval.

“Approval” means prior consent where possible, and “*ex post facto*” reporting of the decision where it was not possible to obtain prior consent. The requirement for approval from a supervisor is rare and applies only to decisions which usually can be approved in advance. The requirement for prior approval is not attached to decisions that counsel make with great frequency. Prior approval may be required on more rare and serious discretionary decisions which have a permanent impact on the course of a particularly serious charge, e.g. reducing murder to manslaughter. It may also be required where the decision has widespread legal implications, e.g. conceding an appeal.

“must, absent exceptional circumstances,”: signals to counsel the fact that the policy very strongly leans toward the suggested course of action since experience has shown that the public interest is rarely better served by departing from the stated policy. Nonetheless, this definition allows for some discretion, taking into account the unique circumstances which may arise in individual cases.

“Exceptional circumstances” is a concept which is difficult to define in absolute terms. “Exceptional circumstances” are circumstances where public safety or the overall public interest is demonstrably better served by a deviation from the policy (expediency never constitutes an exceptional circumstance). Whenever prosecutors deviate from a policy for “exceptional circumstances” the reason for doing so should be stated in court, unless confidentiality is necessary. Prosecutors must make a note to file setting out the exceptional circumstances.

“should”: indicates that there is a presumption that prosecutors will carry out the task, but recognizes that it may not always be possible or desirable to do so in the particular circumstances of an individual case. Prosecutors must be able to articulate a reasonable basis for departing from the suggested course of action.

“may”: highlights an issue for prosecutors and alerts them to an action or decision which they may or may not take in the exercise of their discretion.