



U.S. Department of Justice


Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

March 7, 2008

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS  
UNITED STATES ATTORNEYS

FROM: Craig S. Morford   
Acting Deputy Attorney General

SUBJECT: Selection and Use of Monitors in Deferred Prosecution Agreements  
and Non-Prosecution Agreements with Corporations

Assuring the integrity of our nation's business organizations is a critical aspect of the mission of the Department of Justice. The vitality of our economy and welfare of our people are directly affected by the manner in which the affairs of our business organizations are conducted. Since the early part of this decade, when the corporate fraud crisis undermined confidence in our nation's capital markets, we have made it our mission to restore the integrity of those markets and protect the public from corporate corruption.

In pursuing this mission, the Department has sought not only to deter and punish corporate fraud, but also to reform the corporate culture that gave rise to it in the first instance. There are occasions when criminal charges should be brought against a corporation to achieve these goals, as set forth in the Department's Principles of Federal Prosecution of Business Organizations (the latest version of which was issued on December 12, 2006, and is known as the "McNulty Memo"). But the criminal conviction of a corporation may have harmful collateral consequences for employees, pensioners, shareholders, creditors, consumers, and the general public, or may otherwise be unnecessary to achieve the best results for victims and the public. In such cases, the Department has availed itself of alternative dispositions that mitigate these consequences or avoid them altogether, while also promoting corporate reform and reducing corporate recidivism, obtaining prompt payment of penalties and/or restitution, and encouraging cooperation that facilitates the prosecution of culpable individuals.

Among these dispositions are deferred prosecution agreements and non-prosecution agreements. Such agreements are designed to ensure, among other things, that corporations operate lawfully and have the capacity to detect, deter, and respond to misconduct. To accomplish that goal, it may be appropriate in a given case to employ the services of a corporate monitor. It is critical in such cases to ensure that a qualified monitor be selected and used

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Page 2

appropriately. To provide direction in that regard, we are issuing the attached nine Principles. These Principles control the selection and use of monitors in deferred prosecution agreements and non-prosecution agreements with corporations.

These Principles are based upon, among other things, discussions within the Department of Justice, including the Criminal Division and the Attorney General's Advisory Committee of United States Attorneys, a review of existing agreements, relevant case law, and academic literature on the subject.

Attachment