

1 **CLANCY LITIGATION GROUP**
Patrick E. Clancy, SBN 60805
2 Dr. Demosthenes Lorandos, SBN 177644
1600 S. Main St., Suite 185
3 Walnut Creek, CA 94596
Tel:(925)256-4600
4 eFax:(888) 802-5089

5 Attorneys for Defendant

6

7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____

8 THE PEOPLE OF THE STATE OF)	Case No.
CALIFORNIA,)	
9)	MOTION IN LIMINE
Plaintiff,)	RE: IMPEACHMENT WITH DRUG USE
10 vs.)	OR COMPLETED DIVERSION
)	
11)	
)	Date:
12 Defendant.)	Time:
)	Dept:

13

ISSUE

14

15 May the District Attorney impeach a witness with a completed
16 Diversion on a drug case or the prior use of illegal drugs for
17 which there is no arrest or conviction?

FACTS

18

19 This case involves allegations of child molest. There are
20 no allegations of drug usage or involvement in the crime charged.
21 One or more of defense witnesses may have completed diversion or
22 previously used drugs with no arrest or conviction.

LAW

23

24 "§ 210. Relevant Evidence
25 'Relevant evidence' means evidence, including evidence
26 relevant to the credibility of a witness or hearsay
declarant, having any tendency in reason to prove or
disprove any disputed fact that is of consequence to
the determination of the action."

27

28 "§ 350. Evidence Limitation
No evidence is admissible except relevant evidence."

1 "§ 352. Exclusion of Evidence-Time-Consuming,
2 Prejudicial, Confusing, Misleading
3 The court in its discretion may exclude if its
4 probative value is substantially outweighed by the
5 probability that its admission will (a) necessitate
6 undue consumption of time or (b) create substantial
7 danger of undue prejudice, of confusing the issues, or
8 of misleading the jury."

9 "§ 780. Basis of Credibility
10 Except as otherwise provided by statute, the court or
11 jury may consider in determining the credibility of a
12 witness any matter that has any tendency in reason to
13 prove or disprove the truthfulness of his testimony at
14 the hearing, including, but not limited to any of the
15 following:

- 16 (a) His demeanor while testifying and the manner in
17 which he testifies.
18 (b) The character of his testimony.
19 (c) The extent of his capacity to perceive, to
20 recollect, or to communicate any matter about which he
21 testifies.
22 (d) The extent of his opportunity to perceive any
23 matter about which he testifies.
24 (e) His character for honesty or veracity or their
25 opposites.
26 (f) The existence or non-existence of a bias, interest
27 or other motive.
28 (g) A statement previously made by him that is
 consistent with his testimony at the hearing.
 (h) A statement made by him that is inconsistent with
 any part of his testimony at the hearing.
 (i) The existence or non-existence of any fact
 testified to by him.
 (j) His attitude toward the action in which he
 testifies or toward the giving of testimony.
 (k) His admission of untruthfulness. (1965 ch. 299)"

20 **THE USE OF ILLEGAL DRUGS WITHOUT**
21 **POLICE CONTACT IS IMPERMISSIBLE IMPEACHMENT.**

22 Anyone born after 1950 has come in contact with illegal
23 drugs in one form or another. Many have used or experimented
24 with illegal drugs. However, it has long been the law that a
25 witness may not be impeached with evidence of general alcohol or
26 drug use. (**People vs. Stanley** (1962) 206 Cal.App.2d 795, 799;
27 **People vs. Ashford** (1968) 265 Cal.App.2d 673, 679; **Springers vs.**
28 **Reimers** (1970) 4 Cal.App.3d 325.

1 To ask merely about the use of illegal drugs is a highly
2 prejudicial fishing expedition. It is not in any way related to
3 the charges in this case. It is time consuming, prejudicial and
4 unless such use at or about the time the offense at issue took
5 place can be established, irrelevant. (**People vs. Buono** (1961)
6 191 Cal.App.2d 203, 229-233.) Under the Court's discretion
7 afforded by Evidence Code § 352 it should be prohibited.

8 **COMPLETED DIVERSION CANNOT BE**
9 **USED TO IMPEACH A WITNESS.**

10 Drug diversion is provided for under Penal code Section 1000
11 et. seq., the underlying concept being that education is better
12 than conviction. Section 1000.4 specifically provides in part:
13 "Upon successful completion of a deferred entry of judgment
14 program, the arrest upon which the judgment was deferred shall be
15 deemed to have never occurred." The purpose and history of this
16 section (which was labeled 1000.5 at the time) were discussed in
17 **Sandoval vs. State Personnel Bd.** (1990) 225 C.A. 3d 1498, 275 CR
18 702. The court said:

19 "As stated before, one of the purposes of the diversion
20 statutes was to give the first-time offender, with no
21 prior criminal record or history of violence, an
22 opportunity to avoid criminal prosecution by referral
23 to appropriate treatment or educational agencies.
24 Section 1000.5 also serves to restore the diverttee to
25 productive citizenship without the lasting stigma of a
26 criminal conviction. (People v. Superior Court (Oh Tai
27 Ho)). In other words, the statute was intended to give
28 first-time offenders a second chance (Staff Analysis of
Sen. Bill No. 714 as amended June 12, 1972) and to
expunge the criminal record which accompanies offenders
as a 'millstone around their necks'. (Governor Reagan's
message to the Leg. Apr. 27, 1972.)"

26 **CONCLUSION**

27 Therefore, the defense requests this court to limit the
28

1 scope of the prosecution's impeachment of defense witnesses. The
2 People should be ordered not to ask questions about drug use or
3 about arrests which were followed by evidence of successfully
4 completed diversion.

5 Dated:

6 Respectfully submitted,
7

8
9 PATRICK E. CLANCY
10 Attorney for Defendant
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28