



PROSECUTORIAL AUTHORITY OF THE JUSTICE CENTER RESTRICTED

On July 11, 2019, the Appellate Division, Third Department, in a series of three criminal cases, significantly limited the authority of the NYS Justice Center for the Protection of People With Special Needs (“JC”) Special Prosecutor. In the lead case, *People v. Hodgdon*, the Third Department held that the JC Special Prosecutor did not have independent prosecutorial authority apart from a district attorney and that a JC Special Prosecutor may only act with the knowing written consent of a district attorney who retains the ultimate responsibility for the prosecution. The court further held that the authority of the Special Prosecutor is subordinate to that of a district attorney and as such, the Special Prosecutor is limited by any choices made by a district attorney.

The decision has state-wide implications and will change current practices. The JC Special Prosecutor may no longer independently threaten criminal prosecution as the ultimate decision of whether to prosecute must be made by a district attorney and the district attorney must take ultimate responsibility for the prosecution. Whether this reduces the number of criminal cases emanating from JC investigations remains to be seen, but the additional involvement of a district attorney provides welcome independent oversight of all future JC prosecutorial decisions.

* * * * *

If you have any questions about this alert, please contact a member of our [Discharge Planning, Patient Rights and Elder Law Group](#) or the [Garfunkel Wild attorney](#) with whom you regularly work.

Contact Information:

111 Great Neck Road Great Neck, NY 11021 516.393.2200	411 Hackensack Avenue Hackensack, NJ 07601 201.883.1030	350 Bedford Street Stamford, CT 06901 203.316.0483	677 Broadway Albany, NY 12207 518.242.7582
-------------------------------------------------------------	---------------------------------------------------------------	----------------------------------------------------------	--------------------------------------------------

If you would like to receive Legal Alert mailings from Garfunkel Wild, P.C. electronically in the future, or if you would like to be removed from the mailing list, please contact us at info@garfunkelwild.com. This material is intended as informational only and the content should not be construed as legal advice. Readers should not act upon information in this material without first seeking professional advice. This material may be considered Attorney Advertising under certain rules of professional conduct. © 2019 Garfunkel Wild, P.C.