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Re: Moving to be relieved as counsel on appeal

Dear Panel Attorney:

It has come to our attention that the Ninth Circuit Court of Appeals has been sending out notices in some cases informing a panel attorney that the filing fee of \$455 must be paid before a direct criminal appeal may proceed even though the defendant appeared in forma pauperis in the district court.

The problem occurs when an attorney other than trial counsel files the notice of appeal but there is no court order relieving trial counsel and appointing the new appeal attorney. When there is no order, the Ninth Circuit Court of Appeals assumes that the new attorney is retained, not appointed, and the order regarding the filing fee is issued.

As the Ninth Circuit Rules make clear, "Counsel in criminal cases, whether retained or appointed by the district court, shall ascertain whether the defendant wishes to appeal and file a notice of appeal upon the defendant's request. Counsel shall continue to represent the defendant on appeal until counsel is relieved and replaced by substitute counsel or by the defendant pro se in accordance with this rule." Circuit Rule 4-1(a). If you do not wish to represent an indigent criminal defendant on appeal, it is *your* responsibility to move to be relieved as counsel. The better practice is to move to be relieved as counsel in the district court at the time of sentencing. *On the same day* the court grants your request, *you should contact Cynthia Compton or Lupé Hernandez (in Sacramento) or Nancy McGee (in Fresno), and let them know about the order so that they can locate appellate counsel, who can then file a notice of appearance and a timely notice of appeal. But remember, you continue to represent the defendant (and are therefore responsible for filing the notice of appeal) until you are "relieved and replaced by substitute counsel."*

If, for whatever reason, you have filed the notice of appeal but do not wish to represent the defendant on appeal, the Ninth Circuit Rules require that you file a motion to withdraw as counsel with the Clerk of the Ninth Circuit within 21 days after the filing of the notice of appeal. Please read Circuit Rule 4-1(c) carefully because it specifies the information that should be contained in such a motion. The appellate commissioner has indicated that the "statement of reasons," which must accompany the motion, may be very short (such as "my current caseload prevents me from taking any new appeals" or "my practice does not include prosecuting appeals"), and that he will act on the motion expeditiously.

If you have any questions, please feel free to contact Cynthia, Lupé, or Nancy.

Sincerely,

Daniel J. Broderick
Federal Defender

California Parole

How One Gets on Parole

Parole in California is not early release for inmates sentenced determinately. Parole is a statutorily defined period of time that is given to every determinately sentenced (adult) inmate of the California Department of Corrections and Rehabilitation (CDCR) at the end of that inmate's sentence.

Parole Periods

Most defendants sentenced determinately will be placed on a three-year parole period. (See P.C. §§3000(b)(1), (4), 3057(a).) The exceptions to this rule are those inmates convicted of certain specified sex crimes. (ibid.) Life inmates (i.e. indeterminately sentenced inmates) may be placed on five years parole or life parole, depending on the charges they were convicted of. (See P.C. §§3000(b)(2), 3000.1(b) and the chart below.)

<i>Type of Commitment</i>	<i>Date of Offense</i>	<i>Length of Parole</i>
Non-Life	On or before 12-31-77	1 year
Life	On or before 12-31-78	3 years
Non-Life (See below 5 yr Parole Period For Specified Sex Offenses)	On or after 1-1-79	3 years
Life (All Life Crimes Including Murders)	On or after 1-1-79 to 12-31-82	5 years
Life, Murder 1 st or 2 nd	On or after 1-1-83	Life

Life Crimes other than Murder 1 st or 2 nd	On or after 1-1-83	5 years
Non-Life (specified offenses) PC 261(a)(2) PC 261 (a)(6) PC 262 (a)(1) PC 262 (a)(4) PC 264.1 PC 286(c)(2) PC 286(d) PC 288 (a) PC 288 (b)(1) PC 288.5 PC 288a(d) PC 288a(c)(2)	On or after 11-8-2006	10 years
PC 289(a)(1)	On or after 1-1-2003	5 years

Conditions of Parole

The liberty of California parolees is subject to conditions. (See PC §3052, 3053.) These conditions are imposed prior to their release from CDCR. An inmate must sign these conditions prior to that inmate's release or he/she will not be released on parole. The person will remain in custody; however, the person's status will change from an inmate who is serving a sentence to that of parolee. These conditions can be appealed by the 602 (request for administrative review) process. (See PC §§3000(b)(3), 3003.)

Like probation, parole conditions are divided into two categories--general and special. Parolees are all subject to the same general conditions of parole; for example, they must obey all laws, report to the local parole office and be subject to search by law enforcement without a warrant. (See PC §3067.) Special conditions of parole may include, drug testing, stay-away conditions, no contact orders and non-association with gang members. Special conditions must be based on past or future criminality. Conditions of parole cannot not be overly broad, and they may not impinge on a constitutional right unless they do so to the extent required by the legitimate demands of the parole process. (See *People v. Lent* (1975) 15 Cal.3d 481, & *People v. Burgener* (1986) 41 Cal.3d 505.)

Early Discharge

Parolees may discharge early from parole. To do so, a parolee must have a period of continuous parole. Continuous parole is a term of art meaning good performance without revocations or breaks in supervision. (See CCR Title 15 §2515.) How long this term must be before early discharge is dependent on what the parolee was convicted of. (See PC §§3001, 3000(b), 3000.1, 667.5.)

<u>Type of Commitment</u>	<u>Parole Length</u>	<u>Early Discharge</u>
Nonviolent Felony	3 years	1 year + 30 days
Violent Felony Per PC §667.5	3 years	2 years + 30 days
Violent Felony Per PC §667.5	5 years	3 years + 30 days
First Degree Murder	Life	7 years + 30 days
Second Degree Murder	Life	5 years + 30 days

The extra month attached to all the above periods is the statutory period the BPH has to determine if they will retain or discharge the parolee. The parolee must be given notice of the decision to retain. (See PC §3001(c).) If the BPH fails to make a decision, the default position is that the parolee discharges from parole. (See *In re Neber* 217 Cal.3d 872.) The continuous period must be the time from release, and cannot be “any” specified period of time.

Revocation Time

The maximum amount of time a person can be returned to custody based upon a parole violation is 12 months. (See PC §3057(a).) A violation, i.e. revocation, of parole must be based upon a good cause finding that the parolee violated a condition(s) of parole. Determinations regarding whether a parolee violated a condition of his parole are made by a Deputy Commissioner (DC) of the Board of Parole Hearings (BPH formerly the Board of Prison Terms).

Parolees may be eligible for credits on their revocation time. Parolees not eligible for credits are specified in Title 15 of the CCR §2744.

Parole Revocation Extension Time A person remains on parole while he/she is in custody on a parole violation. Therefore, that parolee still has conditions of parole, which must be abided by. Failure to do so while in custody may result in an extension of the parole revocation time. Extension time can be up to 6 months for any felony, 3 months for a misdemeanor. The total time that one can serve on extension is 365 days. (See PC §3057(c).)

Abscond or Parolee at Large

A parolee who is not under supervision of his/her agent is considered a Parolee at Large (PAL). PALs are not eligible for credit against the parole term until they come back under an agent's supervision. (See PC §3064.)

Extension of the Parole Period

As discussed, parolees may discharge early, but they may also have their parole extended. The parole period may be extended up to a year for parolees on a three-year parole period and up to two years for those on a five-year parole period. Parole terms may be extended by revocation time. Every day a parolee spends in jail or prison while serving revocation time will be added to the parole period, up to the maximum of 365 days for three-year parolees and 730 days for five-year parolees. A parolee can serve his whole entire parole period in custody. However, only the first 365 (or 730) extend the parole period.

Parole Revocation System prior to Valdivia

Morrissey

How Valdivia has changed the System

Timeline

Attorneys

Coordination between Parole Revocation Defense Attorneys and Criminal Defense Attorneys

How we can help you

How you can help us