

Standby Counsel

I was just been appointed as "standby counsel" on a case. I have never done that before. Would appreciate some guidance as to exactly what my duties are, if any , other than to answer questions. Are there any written guidelines?

Thoughts would be appreciated.

Regards,
Charles G. Morton, Jr.

RE: Standby Counsel

Other than answering stupid questions, you sit quietly like a jerk while you watch your "co-counsel" master over his personal train-wreck. Don't make faces or laugh out loud when your "co-counsel" makes his "objections" or tries to "cross-examine" the complaining witness, police officers, and especially state experts. Limit your mental excursions using your iPad or phone and pay enough attention to the proceedings in case your "co-counsel" decides that practicing law when he is facing life is not for him and you have to jump in.

This is why I accept appointments only for appeals and habeas cases. No constitutional right to pro se representation on appeal per *Martinez v. Cal. Ct. App.*, 528 U.S. 152 (2000).

Michael Mowla

RE: Standby Counsel

When I was at the Public Defender's Office a colleague and I were appointed standby counsel for a guy accused of Aggravated Robbery with a Deadly Weapon. It was horrible. You still have to prepare for trial as the client (excuse me, "counsel") could decide to hand the case off to you at a moment's notice. However, unless your hero throws in the towel you are treated to a front row view of a trainwreck of a proceeding with an experienced DA vs. the type of person who would represent themselves in court. Basically take notes, help your guy if asked, and thank your lucky stars for *Gideon v. Wainwright*.

On a related note, I don't think it's possible to be an ineffective standby counsel. *Rodriguez v. State*, 491 S.W.3d 18, 29 (Tex. App.-Houston [1st Dist] 2016, pet. ref'd)

But "when a convicted defendant has insisted upon self-representation, any subsequent claim of ineffective assistance of counsel is not to be considered." *Perez v. State*, 261

S.W.3d 760, 766 (Tex.App.-Houston [14th Dist.] 2008, pet. ref'd) (citing *Faretta*, 422 U.S. at 834 n. 46, 95 S.Ct. 2525).

Scott Stillson

RE: Standby Counsel

I was standby counsel in a DP case,,,, worst experience I've ever had,,,,, bottom line u can not do anything in front of the jury that impedes on the D's right to represent himself,,,, there are numerous articles on this subject ,,, google them,,,,, be prepared to step in if D decides he wants representation or the Judge terminates his right pursuant to *Indiana v Edwards*???

Jeff L. Haas

RE: Standby Counsel

Charles, make sure the trial court understands the role of standby counsel. Many don't. Many think standby counsel exists just to answer the defendant's questions and play gofer—e.g., get subpoenas issued and served for the D. As Scott has noted that's not the case at all. Standby counsel must work the case up completely and be ready to take over at any moment. The bill you turn in will be at least as large as if you tried the case. Be sure the trial judge knows this. If the trial judge isn't okay with that or has a different role in mind for you, move to withdraw to preserve error.

(Mr.) Leigh W. Davis

RE: Standby Counsel

Absolutely correct. Educate the judge early.

David A. Schulman

RE: Standby Counsel

Leigh, you and Scott have raised a very good question. Must standby counsel really be prepared to take over at a moment's notice upon order by the trial court? Or should the now newly appointed counsel get at least the 10 days the Code ordinarily requires for appointed counsel?

Because once the judge orders standby counsel to take over, the Defendant should then have the right to the effective assistance of counsel. Which requires a host of things standby counsel may not have been in a position to do.

David Aurthor Gibson

RE: Standby Counsel

David, try that if you want, but I think you'll burn in with it and might stand a chance of being found ineffective (which I generally agree with Scott standby counsel can't be). Standby counsel is not newly appointed counsel. Standby counsel is appointed to be ready to try the case when the defendant decides he's screwed it up enough himself, which could be mid trial. Understand also that the court doesn't decide when or if you take over. With the exception of the *Indiana v. Edwards* scenario that Jeff noted above, it's the client's decision to continue pro se or put the first team in.

I'm with Mowla on this: I don't want anywhere near a standby counsel assignment.

(Mr.) Leigh W. Davis

RE: Standby Counsel

The 10 days notice is notice of trial to appointed counsel. Unless they only gave the defendant 3 days notice, chances are 10 days notice was probably given upon trial setting. I would think standby counsel would have received the trial setting and accordingly be bound to be ready.

Probably not what you wanted to hear, but I don't think one would get a continuance in the courts I regularly practice within.

Best Regards,
Bart C. Craytor

RE: Standby Counsel

I have a brand new client that sounds like a Republic of Texas believer. He wants to represent himself, but I feel I may have to request a competency exam before, or in connection with, advising the Court of his wish to represent himself. He thinks I am one of "them". It may just be his repeating the Republic of Texas nonsense about the

government has no authority over him etc., but he sounds nutty as a peanut patty.

Gary D. Peak

RE: Standby Counsel

Except when it is a death case or something where your co-counsel will really get hurt, being stand-by is the most fun you will ever have with your pants on, and you'll get paid. Win win

Patrick S. Metze