

Practice Standards

December, 2012

Section VI, Qualifications and Duties of Counsel

32. Representation in Ancillary Proceedings

A. The Public Defender Act authorizes assigned counsel to represent indigent clients only in limited instances. Nevertheless, it may be advantageous to any given client to resolve or initiate ancillary proceedings when reaching the global resolution of a case for which counsel has been assigned. For instance, if a client has been charged with DUI it may be possible to reach a global settlement of that charge which includes the Prosecution conceding the return of the client's driver's license in spite of the fact that the client refused to provide a breath sample at the time of the client's stop or arrest.

B. If counsel is able to reach a global settlement of a case which requires only entry of appearance of counsel in an ancillary proceeding **for the sole purpose** of finalizing a global settlement of matters which include a case for which counsel has been assigned, counsel may do so. If counsel is a contract lawyer counsel shall be reimbursed for counsel's time and expense incurred in making an appearance in an ancillary proceeding solely for the purpose of finalizing a global settlement and for counsel's time in reviewing or drafting a settlement or judgment pursuant to a settlement and appearance in court to affect the settlement. On the other hand, if the ancillary proceeding is, or has the possibility of becoming, adversarial or contested, OPD employees shall not represent a client in an ancillary proceeding and contract counsel shall not be compensated by OPD for representing a client in an ancillary proceeding.

C. Counsel shall inform a client of the client's right or opportunity to initiate an ancillary proceeding when that right or opportunity exists (e.g. Petitioning for Return of Driver's License after refusal to provide breath sample, filing a Federal Habeas Corpus Petition, filing a Claim or Counterclaim for violation of the client's Civil Rights Claim pursuant to 42 U.S.C. 1983, or filing an answer in a forfeiture proceeding) but shall also advise the client that the client must seek counsel outside the Public Defender System to represent the client in such matters.