



CRIMINAL AND JUVENILE TRIAL COUNSEL NOT TO REPRESENT CLIENTS

ON APPEAL

THE COURT:

In criminal and juvenile appeals, the court will not appoint the appellant’s trial attorney to represent the appellant on appeal, because trial counsel is not able to objectively review the record to determine if trial counsel committed ineffective assistance of counsel. (*People v. Bailey* (1992) 9 Cal.App.4th 1252, 1254-1255 [trial counsel may not be appointed to represent on appeal the defendant he represented at trial]. See *People v. Kipp* (2001) 26 Cal.4th 1100, 1139 [“representation by the same attorney at trial and on appeal” entails “an inherent conflict’ because counsel ‘is in the untenable position of urging his own incompetency’” citing *Bailey* with approval].) If trial counsel wants the appeal to raise a particular issue, trial counsel may discuss the issue with appointed appellate counsel.

Furthermore and for the same reason, in criminal and juvenile appeals, the court discourages the appellant’s trial attorney, whether retained or appointed by the trial court, from representing appellant on appeal beyond filing the notice of appeal. By “retained” the court refers to all counsel who are not appointed by a court, including without limitation those who have been paid a retainer or fees, those who have

received a promise to pay a retainer or fees, and those who have performed or intend to perform appellate attorney services for no compensation.

Furthermore and for the same reason, this court discourages the public defender's office from representing on appeal a client the public defender's office represented at trial. Even though Government Code section 27706, subdivision (a), authorizes the public defender to represent on appeal clients the public defender represented at trial, that authorization does not remove the inherent conflict of interest. If the public defender's office nevertheless decides to represent on appeal a defendant the public defender's office represented in the trial court, this court urges the public defender's office to use counsel other than the counsel who represented the appellant in the trial court.

The order is effective on the date of its filing and remains effective unless and until the order is vacated or superseded by an order of this court.



Presiding Justice