WHEN THE FEDS TAKE PART OF A CASE, WHAT SHOULD AN ASSISTANT PUBLIC DEFENDER BE DOING IN STATE COURT?

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- Try not to get unnecessary convictions that will affect the federal sentence (make it worse)
  - Probation officers that draft the Presentence Investigation Report will obtain a complete criminal record to be submitted to the Judge

- In some cases, when a defendant is going to do be doing a substantial amount of time in federal prison, the DA will dismiss the cases in State court – whether it is related or not

TIP: When you know cases are pending in Federal Court, call the Assistant Federal Defender for his or her opinion on how to proceed.

You have a case where your client is going to be doing a substantial amount of federal time and you represent him on state charges that the DA is not going to dismiss.

What do you do?

1. Advise client’s federal defender of pending charges. Ask for guidance if you are not sure how to proceed.

2. The best option if the state will not dismiss the charges is a concurrent sentence.

HOW TO RUN A STATE SENTENCE CONCURRENT WITH A FEDERAL SENTENCE

1. If client is in federal and state custody, unsecure the state bond if possible – then client will be in federal custody only.

2. Once client has been sentenced on the federal charges, bring him to state court and ask the Court to run the sentence concurrent to the federal sentence.

Sometimes the federal sentence shall run at the expiration of the state sentence. Nothing can be done.
• If the instant offense was committed while defendant was serving a term of imprisonment (including work release, furlough, or escape status), or after sentencing for, but before commencing service of, such term of imprisonment for the instant offense shall be imposed to run consecutively to the undischarged term of imprisonment. §5G1.3 (a) 2012 Sentencing Guideline Manual.

Whether a federal sentence runs consecutive or concurrent to a state sentence already imposed is otherwise in the discretion of the court except when a term of imprisonment resulted from another offense that is relevant conduct to the instant offense conviction and was the basis for an increase in the offense level for the instant offense. In this case, the sentence for the instant offense shall be imposed to run concurrently to the remainder of the undischarged term of imprisonment. §5G1.3 (b) 2012 Sentencing Guideline Manual.

How do you know what is relevant conduct?

• Call your client’s Assistant Federal Defender.
• Don’t try to make that determination yourself. The Sentencing Guidelines are complicated.

Take it out of federal court’s discretion to run case consecutive – handle the federal case first. Handle the state case when the federal sentence has commenced. Negotiate with the DA for a sentence that runs concurrent to the federal sentence your client is already serving.

Another way to accomplish a concurrent sentence is to have the state dismiss the state charges will leave and refile after Defendant has commenced his federal sentence.

WHO HAS PRIMARY JURISDICTION?

The sovereign that made the arrest has primary jurisdiction, until relinquished (i.e. bond is unsecured, bond is posted, case is dismissed, or state sentence has been served).

If the state has primary custody and the defendant pleads guilty in state court with an agreement that the state time will run concurrently with the time defendant may receive in federal court, defendant’s state sentence will be served first and then the federal sentence. In effect, this is a consecutive sentence.

If client gets arrested first by the state, then the feds writ him and he pleads guilty in federal court, the State still has primary custody. When the client is brought back to State Court and a plea agreement is entered for concurrent time, defendant will still have to complete state sentence before he is transferred back to federal custody. In effect, a consecutive sentence.