

APR 27 2023

By   
DEPUTY CLERK

IN THE JUSTICE COURT OF SPARKS TOWNSHIP  
COUNTY OF WASHOE, STATE OF NEVADA

IN THE ADMINISTRATIVE MATTER OF  
PUBLIC DEFENDER AND ALTERNATE  
PUBLIC DEFENDER “CONFLICT NOTICES”

**AMENDED  
ADMINISTRATIVE ORDER 2023-01**

WHEREAS the Sparks Justice Court has changed its practices regarding “Conflict Notices” as requests to withdraw from a case or as a notice of withdrawal of counsel; and

WHEREAS the Chief Judge of the Sparks Justice Court has the authority pursuant to NRS 4.157(c) to make administrative decisions pertaining to the business of the Court, and good cause appearing,

WHEREAS the Second Judicial District Court – Indigent Defense Report Amended Model Plan 2019 requires that the Alternate Public Defender’s office undertake representation of defendants in all cases where the Public Defender’s office determines there is a conflict of interest,

The Sparks Justice Court will accept a ‘notice of case transfer’ outlining the reason for the conflict from the Public Defender’s office when transferring a case to the Alternate Public Defender’s office. See also NRS 7.115.

The Sparks Justice Court will no longer accept a “Conflict Notice” or an Ex Parte Motion for Withdrawal as a notice of withdrawal of counsel or as a request to withdraw from a case from the Alternate Public Defender’s office, Conflict Counsel, or privately retained counsel. In the absence of a notice of substitution of counsel signed by former and substituting counsel and served on all parties; defense counsel will be required to file a motion to withdraw, properly serve all parties, and a hearing will be set by the Court as is required by the Rural Justice Court Rules, the Washoe District Court Rules, the Criminal Rules of Practice for the Second Judicial District Court, the Nevada Rules of Criminal Practice, the Nevada Supreme Court Rules, and the Nevada Rules of Professional Conduct, more specifically set forth below:

*Sparks Justice Court*

1 Rural Justice Court Rule 12 provides, in pertinent part, that:

2 1. . . .

3 2. Counsel of record, when intending to withdraw, shall serve  
4 notice of such intention upon the prosecution and file proof of the  
5 same with the clerk. No withdrawal within 20 days of the date set  
6 for trial will be recognized by the court, which may, if necessary to  
7 prevent a continuance, require such attorney to proceed with the  
8 trial. The attorney intending to withdraw shall give the client at  
9 least 10 days actual notice of such intention and file proof of the  
10 same with the clerk. In addition, there must be strict compliance  
11 with SCR 46 relative to any such withdrawal. The request to  
12 withdraw must generally relate to counsel's inability to adequately  
13 defend his client, with reasons given in relation thereto, rather than  
14 to matters relating to the financial arrangements between the  
15 attorney and client.

16 3. Any form of order permitting withdrawal of an attorney  
17 submitted to the court for signature shall contain the address at  
18 which the party is to be served with notice of all further  
19 proceedings.

20 4. Except for good cause shown, no application for withdrawal or  
21 substitution shall be granted if a delay of the trial or hearing of any  
22 other matter in the case would result. Discharge of an attorney may  
23 not be grounds to delay a trial or other hearing. *See* RJCR 12(2)-  
24 (4).

25 Washoe District Court Rule 3(6) requires:

26 . . . When desiring to withdraw from a case, attorneys shall serve a  
27 motion upon the district attorney and their client, file the same with  
28 the filing office, and set the motion for hearing.”

29 The Criminal Rules of Practice for the Second Judicial District Court (“Local Criminal  
30 Rules”) require:

31 . . .

32 (b) Any withdrawal of counsel shall be in writing, approved by the  
33 court and served on opposing counsel and notice to the party  
34 affected.

35 (c) Substitutions of counsel shall be in writing and served on  
36 opposing counsel. Substituted counsel shall transfer all files and  
37 discovery to the defendant's new counsel within 5 days of the date  
38 of substitution.

(d) Transfer of primary responsibility for cases between attorneys  
within the same office requires the filing of a Notice of Appearance.  
This applies but is not limited to government agencies of the

1 Washoe County District Attorney's Office, the Washoe County  
2 Public Defender's Office, and the Washoe County Alternate Public  
3 Defender's Office. *See* L.C.R. 11(a)-(d).

4 The Nevada Rules of Criminal Practice provide, in pertinent part, that:

5 An attorney in any case may be changed:

6 (A) When a new attorney substitutes in place of the attorney  
7 withdrawing. In this circumstance, consent of the incoming  
8 attorney and the client and acknowledgment of the outgoing  
9 attorney shall be filed with the court and served upon all parties or  
10 their attorneys; or

11 (B) When no attorney has been retained to replace the attorney  
12 withdrawing. In this circumstance, withdrawal must be requested  
13 by a properly noticed motion and ordered by the court.

14 (i) If the attorney makes the motion, the attorney shall include  
15 in a declaration the address, or last known address, phone number,  
16 and email address at which the client may be served with notice of  
17 further proceedings. The attorney shall serve a copy of the motion  
18 and supporting papers upon the client and all other parties to the  
19 action or their attorneys. *See* N.R.Cr.P. 3(A)-(B).

20 N.R.Cr.P. 3(5) further provides that “. . . Except for good cause shown, no application  
21 for withdrawal or substitution shall be granted if a delay of the trial or of the hearing of any  
22 other matter in the case would result. . . .”

23 Supreme Court Rule 46(2) only allows the withdrawal of an attorney “(u)pon the order  
24 of the court or judge thereof on the application of the attorney or the client.”

25 Supreme Court Rule 48 states “When an attorney is changed, as provided in Rule 47,  
26 written notice of the change and of the substitution of a new attorney, or of the appearance of  
27 the party in person, shall be given to the adverse party; until then he shall be bound to recognize  
28 the former attorney.”

Finally, the Nevada Rules of Professional Conduct 1.16(c) affirms this procedure as  
follows:

A lawyer must comply with applicable law requiring notice to or  
permission of a tribunal when terminating representation. When  
ordered to do so by a tribunal, **a lawyer shall continue  
representation notwithstanding good cause for terminating the  
representation.** (Emphasis added.)

1 The informal practice of accepting “Conflict Notices” used by Sparks Justice Court was  
2 a quick and speedy method when alternate counsel was readily available to accept these  
3 conflicts. However, this Court has an ethical and legal obligation to ensure all indigent  
4 defendants are represented by counsel at all times. Therefore,

5 IT IS HEREBY ORDERED that from this date forward when a conflict of counsel  
6 arises, with the exception of a case transfer pursuant to the Second Judicial District Court –  
7 Indigent Defense Report Amended Model Plan 2019 outlined on pg. 1, ¶ 4 above, counsel shall  
8 comply with the Rural Justice Court Rules, the Washoe District Court Rules, the Criminal Rules  
9 of Practice for the Second Judicial District Court, the Nevada Rules of Criminal Practice, the  
10 Nevada Supreme Court Rules, and the Nevada Rules of Professional Conduct. Defense counsel  
11 shall continue to represent a defendant until such a time that either a notice of substitution of  
12 counsel signed by former and substituting counsel and served on all parties or an appropriate  
13 motion is filed, a hearing is held, and this Court grants a withdrawal of counsel. Counsel should  
14 further note that in the absence of a new attorney who is available to represent a defendant, such  
15 a request will not be granted.

16 This Amended Administrative Order 2023-01 supersedes Administrative Order 2023-01  
17 filed on March 24, 2023, and shall stay in full force and effect until amended or rescinded by  
18 the Sparks Justice Court.

19 IT IS SO ORDERED.

20 Dated this 27<sup>th</sup> day of April 2023.

21 

22 \_\_\_\_\_  
23 Chief Judge Kevin Higgins  
24 Justice of the Peace  
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