

MAR 24 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"

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,

The Sparks Justice Court will no longer accept a "Conflict Notice" as a request to withdraw from a case, or as a notice of withdrawal of 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:

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

1. . . .
2. Counsel of record, when intending to withdraw, shall serve notice of such intention upon the prosecution and file proof of the same with the clerk. No withdrawal within 20 days of the date set for trial will be recognized by the court, which may, if necessary to prevent a continuance, require such attorney to proceed with the trial. The attorney intending to withdraw shall give the client at least 10 days actual notice of such intention and file proof of the same with the clerk. In addition, there must be strict compliance with SCR 46 relative to any such withdrawal. The request to withdraw must generally relate to counsel's inability to adequately

1 defend his client, with reasons given in relation thereto, rather than
2 to matters relating to the financial arrangements between the
attorney and client.

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

7 4. Except for good cause shown, no application for withdrawal or
8 substitution shall be granted if a delay of the trial or hearing of any
9 other matter in the case would result. Discharge of an attorney may
10 not be grounds to delay a trial or other hearing. *See* RJCR 12(2)-
11 (4).

12 Washoe District Court Rule 3(6) requires:

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

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

18 . . .
19 (b) Any withdrawal of counsel shall be in writing, approved by the
20 court and served on opposing counsel and notice to the party
21 affected.

22 (c) Substitutions of counsel shall be in writing and served on
23 opposing counsel. Substituted counsel shall transfer all files and
24 discovery to the defendant’s new counsel within 5 days of the date
25 of substitution.

26 (d) Transfer of primary responsibility for cases between attorneys
27 within the same office requires the filing of a Notice of Appearance.
28 This applies but is not limited to government agencies of the
Washoe County District Attorney’s Office, the Washoe County
Public Defender’s Office, and the Washoe County Alternate Public
Defender’s Office. *See* L.C.R. 11(a)-(d).

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

An attorney in any case may be changed:

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

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

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

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

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

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

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

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

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

IT IS HEREBY ORDERED that from this date forward, in the event a conflict arises
counsel shall comply with 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

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Practice, the Nevada Supreme Court Rules, and the Nevada Rules of Professional Conduct. Defense counsel shall continue to represent a defendant until such a time that either a notice of substitution of counsel signed by former and substituting counsel and served on all parties or an appropriate motion is filed, a hearing is held, and this Court grants a withdrawal of counsel. Counsel should further note that in the absence of an alternate attorney to represent a defendant such a request will not be granted.

This Administrative Order 2023-01 shall stay in full force and effect until amended or rescinded by the Sparks Justice Court.

IT IS SO ORDERED.

Dated this 24th day of March 2023.



Chief Judge Kevin Higgins
Justice of the Peace