

[Handwritten Signature]
2010 MAY 25 AM 11:26

RECEIVED & FILED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Case No. 10 CR 01831 & 10 CR 01832
Dept. No. A

The undersigned does hereby affirm that this Document does not contain the social security number of any person.

JUSTICE COURT
PAHRUMP TOWNSHIP

THE STATE OF NEVADA,

Plaintiff,

vs.

MOTION TO STRIKE COMPLAINT

David Boruchowitz

Defendant.

COMES NOW, DEFENDANT, IN PRO PER, and moves this HONORABLE COURT to Dismiss and/or STRIKE the criminal complaint filed against him on May 24th, 2010.

This motion is based upon all the papers and pleadings on file herein, and the attached points and authorities, the affidavit of David Boruchowitz, and the evidence, testimony, and argument to be adduced at hearing.

DATED this 25th day of May, 2010

David Boruchowitz
Pro Per

By *[Handwritten Signature]*
David Boruchowitz

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

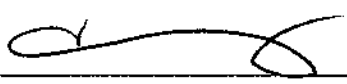
NOTICE OF MOTION

TO: ROBERT S. BECKETT, and to ROBERT BETTINGER, The State of Nevada

NOTICE IS HEREBY GIVEN that the undersigned will bring on the foregoing Motion to Dismiss and/or STRIKE the criminal complaint for hearing before the above-entitled court in the Justice Courtroom, Department A at Pahrump, Nevada, on the ____ day of May, 2010, at the hour of ____ .m., or as soon thereafter as counsel may be heard.

DATED this 25 day of May, 2010.

David Boruchowitz
Pro Per

By 

David Boruchowitz

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS AND PROCEDURAL HISTORY

On May 5, 2010 Detective David Boruchowitz arrested Nye County District Attorney Robert S. Beckett on numerous felony counts to include allegations that Beckett embezzled county money from his Office's "Bad Check Program".

On May 6, 2010 Robert Beckett held a press conference accompanied by Leslie Stovall outlining that Stovall was being appointed to investigate allegations pertaining to the arrest of Beckett.

On May 14, 2010, an appointment of "Special Deputy District Attorney" was filed with the Nye County Clerk, appointing attorney Leslie Stovall, Justin Stovall and Alexander Leveque as a "special Deputy DA". See Exhibit A.

On May 20, 2010, a subsequent Appointment of Special Deputy District Attorney was filed with the Nye County Clerk, appointing C. Conrad Claus as a "special Deputy DA." See Exhibit B. In addition, upon information and belief, at this time, Stovall was no longer acting as a "special prosecutor" and would instead be acting as Beckett's personal defense attorney.

On that same day, May 20, 2010, Claus filed with this Honorable Court a "criminal complaint", sworn out under oath, alleging that Defendant Boruchowitz committed some 25 felony counts. This criminal complaint was physically filed with this Honorable Court by Michael Inglinski accompanied by Justin Stovall, the son of Leslie Stovall, and a licensed attorney in Stovall's office. Despite Leslie Stovall's indication that his office would act as defense attorney to Beckett, Justin Stovall, upon information and belief, indicated to the clerk that he was filing the complaint as a "special prosecutor" on behalf of Claus.

Neither Leslie Stovall, nor Justin Stovall, nor C. Conrad Claus were ever approved by the Nye County Commissioners to act as special prosecutors; and they were never appointed as

1 special prosecutors by any district court judge, as is required by NRS 252.070 and NRS 245.070.

2 In addition, the Attorney General issued an official "opinion letter" to Gary Hollis, Nye
3 County Board of Commissioners Chairman, opining that any attorney appointed in the manner
4 Claus was appointed, was not authorized to act in this capacity. The opinion further indicated
5 that Beckett should be disqualified to act in the instant manner and that they believe it falls to the
6 district court to appoint an attorney to prosecute the criminal case. See Exhibit C.

7
8 On May 21, 2010, the Defendant in this case, in pro per, filed with this Honorable Court
9 a motion to dismiss or strike the complaint filed by Claus, as being a rogue document.

10 On May 21, 2010 Robert Beckett identified to questioning media that he had retained
11 Leslie Stovall as "his defense attorney".

12 On May 24, 2010 this Honorable Court issued an order striking the criminal complaint
13 filed by C. Conrad Claus, and also indicating in the order that Beckett, or one of his deputies,
14 was free to file the complaint.

15 Consequently, on that same day, Robert Bettinger, a Deputy District Attorney under
16 Robert Beckett, filed two new complaints against Defendant Boruchowitz.

17
18 On May 25, 2010 DDA Bettinger approached Defendant Boruchowitz in tears
19 apologizing and stating that he was told to sign the complaint by Robert Beckett over his
20 objection. The same day as a separate filing, DDA Bettinger filed an affidavit with this court
21 citing that he only signed the complaints under order by Robert Beckett and in fact cited in the
22 affidavit that he was employed "at the pleasure of Robert Beckett" and that he personally thought
23 this complaint should be filed through a "special prosecutor".
24

25 **Statement of Law and Argument**

26 **NRS 171.102** indicates that a criminal complaint is "a written statement of the essential
27 facts constituting the public offense charged. It must be made upon:
28

- 1 1. Oath before a magistrate or a notary public; or
- 2 2. Declaration which is made subject to the penalty for perjury.

3 Furthermore, several Nevada cases have been decided which help to define our
4 jurisprudence when it comes to the filing of criminal complaints. Although the common-law rule
5 of strict construction of complaints and indictments has been liberalized by statutes (see, e.g., Ex
6 Parte Noyd, 48 Nev. 120 (1924)), there are still several standards which must be met. Although
7 any person may file a complaint with the court, that person must have “**personal knowledge**” of
8 a crime. Scott v. Justice’s Court, 84 Nev. 9, 435 P.2d 747 (1968). (emphasis added). And,
9 although the Supreme Court has ruled, for example, that a police officer, who did not investigate
10 a matter or make the arrest, could sign and file a complaint, the Court emphasized that that
11 officer based his signing of the complaint upon police reports of the crime and arrest. Sanders v.
12 Sheriff, Washoe County, 85 Nev. 179, 451 P.2d 718 (1969).
13

14 **A. DDA Bettinger has no personal knowledge of the crimes alleged**

15 Bettinger, as Deputy District Attorney to Robert Beckett, obviously has no personal
16 knowledge of the events in either of the criminal complaints filed against the Defendant. So
17 while Bettinger is a duly authorized DDA, the complaint, when signed by him, is defective on its
18 face. Current Nevada law, based upon the above-cited cases, still requires some scintilla of
19 personal knowledge from the person filing the complaint. This is the very reason that the District
20 Attorney’s offices relies upon a member of the Nye County Sheriff’s Office to sign their
21 complaints. This is usually done by William Weldon or Richard Marshall. Occasionally, upon
22 information and belief, a DDA will sign a criminal complaint, but this is done based upon, at
23 minimum, a declaration of arrest.
24

25 Here, not only is there no declaration of arrest, or police report, or any type of
26 information that Bettinger could have reviewed, but Bettinger also took the unprecedented step
27 of filing his own affidavit with this Court attempting to distance himself from the complaint.
28

1 Clearly, Bettinger has no personal knowledge of ANY crimes committed by the Defendant, and
2 the complaint is therefore defective.

3 **B. DA Beckett has no personal knowledge of the complaint regarding Holmes and**
4 **Cobel**

5 Robert Beckett, as District Attorney, obviously has no personal knowledge of the
6 events in the criminal complaint filed against Defendant Boruchowitz regarding the arrest of
7 Holmes, or daughter of Cobel. Again, no reports of criminal activity by the Defendant with
8 regard to those events have been reviewed by him. Therefore, the same legal standard applies to
9 DA Beckett that applies to DDA Bettinger, and the complaint is defective.

10 **C. DA Beckett Should be disqualified from filing a complaint relating to his arrest**

11 Robert Beckett initially correctly felt that it was an inherit conflict to prosecute a case
12 against Defendant Boruchowitz, who was the police officer responsible for his own arrest. He
13 proceeded to appoint (in contravention to Nevada law) two individuals as "special prosecutors"
14 to pursue charges against the arresting officer. When the motion was made before this
15 Honorable Court pointing out the errors in his appointment this Honorable Court dismissed the
16 original criminal complaint. Against the opinion and recommendation of the Attorney General
17 to use the appropriate method to appoint an independent special prosecutor to investigate this
18 case he "ordered" a Deputy District Attorney with no personal knowledge of the events alleged
19 in the criminal complaint to sign such document.
20
21

22 The NRS, particularly NRS 252.100, is quite clear. When the District Attorney is
23 disqualified from acting in any manner coming before the court, the court may appoint some
24 other person to fulfill the DA's role. Here, although this Honorable Court has not ruled that DA
25 Beckett is disqualified, Beckett has already conceded the point through his actions of *trying* to
26 appoint a special prosecutor. Quite simply, Beckett has put the cart before the horse. Nevada law
27 makes it clear, that in this case, Beckett should correctly have the County Commissioners
28

1 approve a person selected by a judge. Then, if that person investigates the matter, and finds
2 evidence of crimes, then he or she may file a criminal complaint.¹

3 It is quite clear that Beckett is attempting to use his official capacity as the Nye County
4 District Attorney to maliciously and unlawfully prosecute the Defendant for his own political
5 reasons and for revenge on the Defendant. This Honorable Court should not allow him to usurp
6 the legal process, or to use it for his own personal reasons.

7
8 **CONCLUSION**

9 Based upon the NRS and case law, and based upon the facts of this case, this Honorable
10 Court should dismiss both complaints filed by Robert Beckett and signed by Robert Bettinger.
11 They were clearly filed in direct contravention to Nevada law, and should not be entertained by
12 this Court.

13 Defendant Boruchowitz urges this Honorable Court to sanction Beckett to follow the law,
14 and to admonish him to use the appropriate methods in place to conduct an independent "special
15 prosecution" of any alleged crimes committed by Defendant Boruchowitz through a duly
16 appointed special prosecutor.

17
18 DATED this 25th day of May, 2010.

19 **David Boruchowitz**
20 **Pro Per**

21 By 

22 **David Boruchowitz**

23
24
25
26
27 ¹ Ironically, Beckett himself started this correct procedure in the underlying case against
28 Ted Holmes.

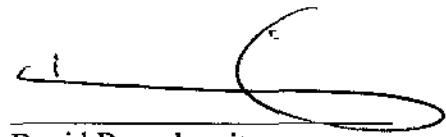
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AFFIDAVIT OF DEFENDANT

STATE OF NEVADA)
)
COUNTY OF NYE)

David Boruchowitz, first being duly sworn, deposes and says that:

1. I am the defendant in this action
2. That the statements made herein are true and correct to the best of my knowledge and belief, except as to those matters therein stated on information and belief, and as to those matters I believe them to be true.
3. I declare under penalties of perjury under the laws of the State of Nevada that the foregoing is true and correct.



David Boruchowitz

SUBSCRIBED AND SWORN TO ME
THIS 25 DAY OF MAY, 2010

K.S. Medina

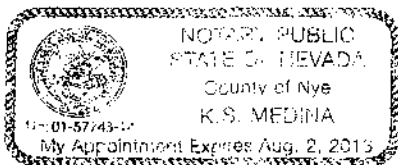


EXHIBIT A

DOC # 745628

Official Records Nye County Nevada

Byron Foster - Recorder

06/14/2016 11:51:48 AM

Requested By: NYE COUNTY DIST ATTY

Recorded By: kh

Recording Fee: \$8.00

Non Conformity Fee: \$

Page 1 of 3



APN _____

Recording Requested By:

Name Nye County District Attorney

Address PO Box 39

City / State / Zip Pahrump NV 89041

Appointment and Oath

(Print Name of Document on the Line Above)

I the undersigned hereby affirm that this document submitted for recording contain personal information (social security number, driver's license number or identification card number) of a person as required by a specific law, public program or grant that requires the inclusion of the personal information. The Nevada Revised Statute (NRS), public program or grant referenced is:

(Insert the NRS, public program or grant referenced in the line above)

Signature _____

Title _____

Print Name _____

Unofficial Copy

DOC # 745634

Official Records Nye County Nevada
Byron Foster - Recorder
05/14/2010 11:48:12 AM
Requested By: NYE COUNTY 00
Recorded By: pb
Recording Fee: 00.00
Non Conformity Fee: 0
Page 1 of 3



APN _____

Recording Requested By: _____

Name Nye County District Attorney

Address PO Box 39

City / State / Zip Pahrump NV 89041

Appointment and Oath

(Print Name of Document on the Line Above)

I the undersigned hereby affirm that this document submitted for recording contain personal information (social security number, driver's license number or identification card number) of a person as required by a specific law, public program or grant that requires the inclusion of the personal information. The Nevada Revised Statute (NRS), public program or grant referenced is:

(Insert the NRS, public program or grant referenced in the line above)

Signature _____ Title _____

Print Name _____

Unofficial Copy

NYE COUNTY DISTRICT ATTORNEY

ROBERT S. BECKETT

P.O. BOX 588

TONOPAH, NEVADA 89049-0588



APPOINTMENT OF SPECIAL DEPUTY DISTRICT ATTORNEY

1
 2
 3 I, ROBERT S. BECKETT, the duly elected, qualified and
 4 acting District Attorney of Nye County, Nevada, do hereby
 5 constitute and appoint Leslie Mark Stovall, of Las Vegas,
 6 Nevada, Special Deputy District Attorney of Nye County, State
 7 of Nevada, for the sole purpose of acting as special prosecutor
 8 to (1) Investigate and prosecute violations of chapter 197 of
 9 the Nevada Revised Statutes via Public Officials of Nye County,
 10 (2) Investigate and prosecute political corruption in Nye
 11 County by Public Officials of Nye County, (3) Investigate and
 12 prosecute individuals who have engaged in the abuse of police
 13 power in Nye County, (4) Investigate and prosecute violations
 14 of constitutional rights of citizens of Nye County by Public
 15 Officials of Nye County, such appointment beginning May 10,
 16 2010 and to remain in effect until revoked by me.

DATED this 14th day of May, 2010.

17
 18
 19 
 20 ROBERT S. BECKETT
 Nye County District Attorney

21
22
23
24
25

Unofficial

NYE COUNTY DISTRICT ATTORNEY
ROBERT S. BECKETT
P.O. BOX 593
TONOPAH, NEVADA 89049-0593

1 STATE OF NEVADA)
2 COUNTY OF NYE) ss.
3
4

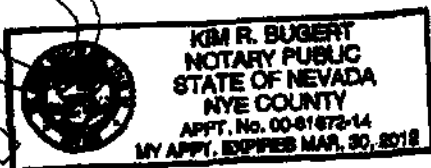
5 OATH OF OFFICE

6 I, LESLIE MARK STOVALL, do solemnly swear that I will
7 support, protect and defend the Constitution and government of
8 the United States, and the Constitution and government of the
9 State of Nevada, against all enemies, whether domestic or
10 foreign, and that I will bear true faith, allegiance and
11 loyalty to the same, any ordinance, resolution or law of any
12 state notwithstanding, and that I will well and faithfully
13 perform all the duties of the office of Special Deputy District
14 Attorney of Nye County, Nevada, on which I am about to enter,
15 so help me God.

16 LESLIE MARK STOVALL

17
18 SUBSCRIBED and SWORN to before me
19 this 14th day of May, 2010.

20 Kim R. Bugert
Notary Public



COPY

UNOFFICIAL



DOC # 745627

Official Records Nye County Nevada

Byron Foster - Recorder

05/14/2010 11:01:48 AM

Requested By: NYE COUNTY DIST ATTY

Recorded By: kh

Recording Fee: \$0.00

Non Conformity Fee: \$

Page 1 of 3



APN _____

Recording Requested By:

Name Nye County District Attorney

Address PO Box 39

City / State / Zip Pahrump NV 89041

Appointment and Oath

(Print Name of Document on the Line Above)

I the undersigned hereby affirm that this document submitted for recording contain personal information (social security number, driver's license number or identification card number) of a person as required by a specific law, public program or grant that requires the inclusion of the personal information. The Nevada Revised Statute (NRS), public program or grant referenced is:

(Insert the NRS, public program or grant referenced in the line above)

Signature _____ Title _____

Print Name _____

Unofficial Copy

NYE COUNTY DISTRICT ATTORNEY

ROBERT S. BECKETT

P.O. BOX 588

TONOPAH, NEVADA 89048-0588



APPOINTMENT OF SPECIAL DEPUTY DISTRICT ATTORNEY

I, ROBERT S. BECKETT, the duly elected, qualified and acting District Attorney of Nye County, Nevada, do hereby constitute and appoint Justin Stovall, of Las Vegas, Nevada, Special Deputy District Attorney of Nye County, State of Nevada, for the sole purpose of acting as special prosecutor to

(1) Investigate and prosecute violations of chapter 197 of the Nevada Revised Statutes via Public Officials of Nye County, (2) Investigate and prosecute political corruption in Nye County by Public Officials of Nye County, (3) Investigate and prosecute individuals who have engaged in the abuse of police power in Nye County, (4) Investigate and prosecute violations of constitutional rights of citizens of Nye County by Public Officials of Nye County, such appointment beginning May 10, 2010 and to remain in effect until revoked by me.

DATED this 10th day of May, 2010.


 ROBERT S. BECKETT
 Nye County District Attorney

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Unofficial

1 STATE OF NEVADA)
2 COUNTY OF NYE) ss.
3
4

5 OATH OF OFFICE

6 I, JUSTIN STOVALL, do solemnly swear that I will
7 support, protect and defend the Constitution and government of
8 the United States, and the Constitution and government of the
9 State of Nevada, against all enemies, whether domestic or
10 foreign, and that I will bear true faith, allegiance and
11 loyalty to the same, any ordinance, resolution or law of any
12 state notwithstanding, and that I will well and faithfully
13 perform all the duties of the office of Special Deputy District
14 Attorney of Nye County, Nevada, on which I am about to enter,
15 so help me God.

16 JUSTIN STOVALL

17
18 SUBSCRIBED and SWORN to before me
19 this 10th day of May, 2010.

20 Kim R. Bugert
21 Notary Public

NYE COUNTY DISTRICT ATTORNEY
ROBERT S. BECKETT
P.O. BOX 563
TONOPAH, NEVADA 89049-0563



UNOFFICIAL COPY

NYE COUNTY DISTRICT ATTORNEY
ROBERT S. BECKETT
P.O. BOX 563
TONOPAH, NEVADA 89049-0563

1 STATE OF NEVADA)
2 COUNTY OF NYE) ss.
3
4

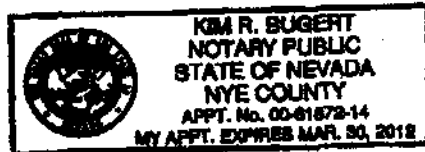
5 OATH OF OFFICE

6 I, ALEXANDER LEVEQUE, do solemnly swear that I will
7 support, protect and defend the Constitution and government of
8 the United States, and the Constitution and government of the
9 State of Nevada, against all enemies, whether domestic or
10 foreign, and that I will bear true faith, allegiance and
11 loyalty to the same, any ordinance, resolution or law of any
12 state notwithstanding, and that I will well and faithfully
13 perform all the duties of the office of Special Deputy District
14 Attorney of Nye County, Nevada, on which I am about to enter,
15 so help me God.

16 
ALEXANDER LEVEQUE

17
18 SUBSCRIBED and SWORN to before me
19 this 16th day of May, 2010.

20 
Notary Public
21
22
23
24
25



DUPLICATE COPY

EXHIBIT B

DOC # 746009

Official Records Nye County Nevada
Byron Foster - Recorder
05/28/2018 04:43:14 PM
Requested By: NYE COUNTY DA
Recorded By: pb
Recording Fee: \$8.80
Non Conformity Fee: \$
Page 1 of 3



APN _____

Recording Requested By: _____

Name Nye County District Attorney

Address P O Box 39

City / State / Zip Pahrump NV 89041

Appointment and Oath

(Print Name of Document on the Line Above)

I the undersigned hereby affirm that this document submitted for recording contain personal information (social security number, driver's license number or identification card number) of a person as required by a specific law, public program or grant that requires the inclusion of the personal information. The Nevada Revised Statute (NRS), public program or grant referenced is:

(Insert the NRS, public program or grant referenced in the line above)

Signature _____ Title _____

Print Name _____

Unofficial

1 STATE OF NEVADA)
2 COUNTY OF NYE) ss.

3
4
5 APPOINTMENT OF SPECIAL DEPUTY DISTRICT ATTORNEY

6
7 I, ROBERT S. BECKETT, the duly elected, qualified and acting District Attorney of Nye
8 County, Nevada, do hereby constitute and appoint C. CONRAD CLAUS, of Las Vegas, Nevada,
9 Special Deputy District Attorney of Nye County, State of Nevada, for the sole purpose of acting as
10 special prosecutor to (1) investigate and prosecute violations of Chapter 197 of the Nevada Revised
11 Statutes via Public Officials of Nye County; (2) Investigate and prosecute political corruption in
12 Nye County by Public Officials of Nye County, (3) Investigate and prosecute individuals who have
13 engaged in the abuse of police power in Nye County; (4) Investigate and prosecute violations of
14 constitutional rights of citizens of Nye County by Public Officials of Nye County, such appointment
15 beginning May 18, 2010 and to remain in effect until revoked by me.

16 DATED this 18th day of May, 2010

17
18
19 
20 ~~ROBERT S. BECKETT~~
21 Nye County District Attorney
22
23
24
25
26
27
28

1 STATE OF NEVADA }
2 COUNTY OF NYE } ss.

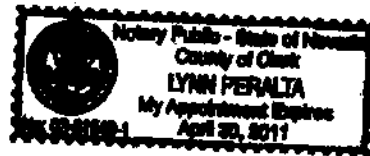
3
4
5 OATH OF OFFICE

6
7 I, C. CONRAD CLAUS, do solemnly swear that I will support, protect and defend the
8 Constitution and government of the United States, and the Constitution and government of the State
9 of Nevada, against all enemies, whether domestic or foreign, and that I bear true faith, allegiance
10 and loyalty to the same, any ordinance, resolution or law of any state notwithstanding, and that I will
11 well and faithfully perform all the duties of the office of Special Deputy District Attorney of Nye
12 County, Nevada, on which I am about to enter, so help me God.

13
14 
15 C. CONRAD CLAUS

16 SUBSCRIBED and SWORN to before me
17 this 18th day of May, 2010.

18 
19 NOTARY PUBLIC



20
21
22
23
24
25
26
27
28

UNOFFICIAL COPY

EXHIBIT C



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

JIM SPENCER
Chief of Staff

May 10, 2010

Gary Hollis, Chairman
Nye County Board of County Commissioners
2101 E. Calvada Blvd. #200
Pahrump, NV 89048

Dear Chairman Hollis:

On your behalf, the Nye County Manager, Richard Osborne Sr., has posed several questions to this Office and has requested an expedited reply.

FACTUAL BACKGROUND

The Nye County District Attorney was arrested and charged with various crimes relating to expenditures from a particular fund held within his Office. You have been advised that the District Attorney is proceeding to hire his own "special prosecutor" to investigate other county employees to see if there was collusion and improper motive to have the charges brought against him. Your questions flow from this background.

ANALYSIS AND CONCLUSIONS

Several of your questions can be answered by reference to NRS 283.440, which addresses the procedure for removing certain public officers for malfeasance:

1. *Any person now holding or who shall hereafter hold any office in this State, except a justice or judge of the court system, who refuses or neglects to perform any official act in the manner and form prescribed by law, or who is guilty of any malpractice or malfeasance in office, may be removed therefrom as hereinafter prescribed in this section.*

2. Whenever a complaint in writing, duly verified by the oath of any complainant, is presented to the district court alleging that any officer within the jurisdiction of the court:

(a) Has been guilty of charging and collecting any illegal fees for services rendered or to be rendered in his office;

(b) Has refused or neglected to perform the official duties pertaining to his office as prescribed by law; or

(c) Has been guilty of any malpractice or malfeasance in office, the court shall cite the party charged to appear before it on a certain day, not more than 10 days or less than 5 days from the day when the complaint was presented. On that day, or some subsequent day not more than 20 days from that on which the complaint was presented, the court, in a summary manner, shall proceed to hear the complaint and evidence offered by the party complained of. If, on the hearing, it appears that the charge or charges of the complaint are sustained, the court shall enter a decree that the party complained of shall be deprived of his office.

3. The clerk of the court in which the proceedings are had, shall, within 3 days thereafter, transmit to the Governor or the board of county commissioners of the proper county, as the case may be, a copy of any decree or judgment declaring any officer deprived of any office under this section. The Governor or the board of county commissioners, as the case may be, shall appoint some person to fill the office until a successor shall be elected or appointed and qualified. The person so appointed shall give such bond as security as is prescribed by law and pertaining to the office.

4. If the judgment of the district court is against the officer complained of and an appeal is taken from the judgment so rendered, the officer so appealing shall not hold the office during the pendency of the appeal, but the office shall be filled as in case of a vacancy.

(Emphasis added.)

Applying the above statute to your questions, there must be a "formal charge of... Malfeasance." (Question 1.) The NRS 283.440 procedure is in the nature of a civil proceeding. (Question 6.) Your Question 7 was, "who actually files" the civil charges, and that is answered in NRS 283.440(2), a written, verified complaint filed by "any complainant." This includes a private citizen.

Gary Hollis, Chairman
May 10, 2010
Page 3

Question 2: May the District Attorney be placed on administrative leave during the pendency of the criminal, and possibly civil, actions. We find no authority to place the office on administrative leave, and answer this question "no." And, we point out that during the pendency of the criminal charges, an accused is presumed innocent.

Question 3: What is the status of the Deputy District Attorneys while the criminal, and possibly civil, proceedings are being resolved? The District Attorney retains the statutory authority of his Office and as such maintains authority over the daily activities of the Office, including staff assignments. We note that the individual deputies are licensed Nevada attorneys and are therefore subject to the rules of professional conduct that all Nevada attorneys are bound to follow.

Questions 4 and 5: What role will the Attorney General's Office play during the resolution of the criminal, and possibly civil, proceedings? Will the Attorney General prosecute the criminal charges? NRS 252.100 sets for the process to be followed where a District Attorney is disqualified from prosecuting a case:

1. *If the district attorney fails to attend any session of the district court, or for any reason is disqualified from acting in any matter coming before the court, the court may appoint some other person to perform the duties of the district attorney, who is entitled to receive the same compensation and expenses from the county as provided in NRS 7.125 and 7.135 for an attorney who is appointed to represent a person charged with a crime.*

2. *If the district attorney willfully neglects to attend any session of the district court the amount so paid must be deducted by the board of county commissioners from the salary allowed to the district attorney.*

(Emphasis added.)

We believe it to be beyond argument that the District Attorney must be disqualified to act in the instant matter. Accordingly, we believe that it falls to the district court to appoint an attorney to prosecute the criminal case. And since the NRS 283.440 action can be filed by "any complainant," this Office would have no role in the potential civil proceeding.

Gary Hollis, Chairman
May 10, 2010
Page 4

Question 8: May the District Attorney hire a special prosecutor as described above? This question brings up at least two issues. First, NRS 245.070 provides:

No county officer in any county in this State, except the board of county commissioners, shall contract for the payment or expenditure of any county moneys for any purpose whatever, or shall purchase any stores or materials, goods, wares or merchandise, or contract for any labor or service whatever, except the board of county commissioners, or a majority of it, shall order such officer to do the same.

Accordingly, if the special prosecutor was purportedly hired with county money and without Board approval, the legality of the employment would be challengeable as contrary to NRS 245.070.

Second, if the special prosecutor was hired with personal money by the District Attorney, he would not be acting as a county employee but would be acting in a private capacity only. While there is nothing per se illegal about that arrangement, problems could arise if the private attorney's activities interfered with the official criminal investigation and could result in charges being filed against the private attorney. See, for instance, NRS 199.305, providing criminal penalties for threatening or intimidating a witness.

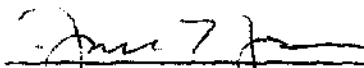
Question 9. The Governor's Office does not have authority to appoint a special prosecutor to assume control of the District Attorney's Office.

We hope that this satisfactorily answers your concerns.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:



JAMES T. SPENCER
Chief of Staff

JTS/MAS