



**STATE OF NEVADA
DEPARTMENT OF INDIGENT DEFENSE SERVICES**

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May 31, 2022

Carson City Board of Supervisors
201 N. Carson Street, Suite 2
Carson City, NV 89701

RE: Conflict Counsel Contract #20300005-B

Dear Carson City Board of Supervisors,

The purpose of this letter is to provide public comment on Item 13, Conflict Counsel Contract #20300005-B.

Carson City's Indigent Defense Services Plan outlines the process for hiring contract indigent defense counsel. The Plan provides:

At a regularly scheduled public meeting, the Carson City Board of Supervisors may enter into a contract for conflict counsel services with none or any or all of the attorneys submitting letters of interest.

The judges of the Courts, DIDS, or any other interested person or entity may submit public comment regarding the selection of conflict counsel.

When selecting conflict counsel, Carson City will consider:

1. the experience and qualifications of an applicant;
2. applicant's past representation of indigent persons;
3. applicant's ability to comply with DIDS regulations;
4. the cost of applicant's proposed services;
5. whether the applicant resides in or has an office in Carson City; and
6. any other criteria that bears upon a conflict counsel contract.

Judicial input should not be the sole basis for the selection of conflict counsel.

Contracted conflict counsel must be a DIDS qualified attorney.

Conflict counsel contracts must comply with all applicable DIDS requirements.

Carson City's Indigent Defense Plan, page 9.

Judicial Input

The District Court and Justice Court judges have made a recommendation for the contract; however, as provided in the Plan, judicial input ***should not*** be the sole basis for the selection of conflict counsel.

DIDS Qualified Attorney

All applicants have submitted applications to the Department. Their qualification level is discussed below.

Experience and Qualifications of the Applicant

To ensure that the ability, training and experience of an attorney in a criminal matter matches the complexity of a case, attorneys are required to submit an application to the Department of Indigent Defense Services (hereinafter “Department”) to demonstrate compliance with the standards and regulations of the Board on Indigent Defense Services pertaining to training, education and qualifications.

The Board on Indigent Defense Services has adopted regulations which required experience levels to qualify for:

- Misdemeanor;
- Gross Misdemeanor and Category E, D, C, and B (for which the maximum penalty is less than 10 years) felonies;
- Category B (for which the maximum penalty is 10 years or more) and non-capital Category A felonies;
- Direct Appeals – Non-Capital; and
- Juvenile case representation.

See NAC 180, sections 27-36.

Christopher Day, Richard Molezzo, Maria Pence and Paul Yohey have demonstrated the required experience levels to independently handle all the above categories of cases.

Andrew Coates and Daniel Spence do not have sufficient experience levels to handle Category B (for which the maximum penalty is 10 years or more) and non-capital Category A felonies (hereinafter “Category B+/A”).

The required experience to handle Category B+/A felonies is as follows:

- Be licensed to practice law in the State of Nevada;
- Have practiced criminal law for 3 full years, either as a prosecutor, provider of indigent defense services or retained counsel; and
- Have been trial counsel, alone or with other trial counsel, and handled a significant portion of **three felony** jury trials that were tried to completion.

See NAC 180, Section 33.

Andrew Coates:

- licensed to practice law since May 2019;
- has practiced criminal law for 1 year and will require two more years of experience before he is qualified;
- has handled 0 felony jury trials, alone or with other trial counsel; and must complete three felony jury trials before he is qualified.

Daniel Spence:

- licensed to practice law since 2013;
- has practiced criminal law for 8 years;
- has handled 0 felony jury trials, alone or with other trial counsel and must complete three felony jury trials before he is qualified.

Andrew Coates and Daniel Spence do not have sufficient experience levels to handle Category B+/A cases, therefore they will be unable to independently complete the terms of this contract.

The Cost of Applicant's Proposed Services

As discussed above, Christopher Day, Richard Molezzo, Maria Pence and Paul Yohey have demonstrated the required experience levels to handle all the above categories of cases independently.

Daniel Spence and Andrew Coates may seek conditional approval from the Department to be assigned to cases for which they lack the requisite experience levels. In the case at hand, a conditional approval requires a mentor to be present at all critical hearings for every Category B+/A felony to which the attorney is assigned, until the attorney has completed the requisite experience requirements. Critical hearings include, but are not limited to: arraignments, preliminary hearings, motion hearings, entries of plea, trials, and sentencings.

If the contract is assigned to an attorney that has a conditional approval, the Department has concerns that this could impact the Cost of Applicant's Proposed Services as well as the effectiveness of the Plan for Indigent Defense Services.

- The contract rate does not appear to compensate a mentor for this contract position.
- If the mentor is unable to attend a critical hearing on a Category B+/A felony, Mr. Spence and Mr. Coates will be unable to fulfill the contract obligations.
- The mentor is under no contractual obligation to serve as a mentor and may withdraw at any time. If this happens, Mr. Spence and Mr. Coates will be unable to fulfill the contract obligations.

The Department recommends that the contract be awarded to Christopher Day, Richard Molezzo, Maria Pence or Paul Yohey as they are independently qualified to handle all case types. If Carson City intends to offer the contract to Mr. Spence or Mr. Coates, to

alleviate the concerns of the Department, it is recommended that the contract not include representation for Category B+/A felonies or that the City contract with an appropriate mentor, at City expense, to ensure and require the mentor's presence at all critical hearings until the requisite experience to handle such cases independently is obtained.

Ultimately, if the contract is offered to Mr. Spence or Mr. Coates and the mentor is not present at all critical hearing for Category B+/A felonies, Carson City would not be in compliance with its Plan for Indigent Defense Services and may result in corrective action under NRS 180.450.

If you need further information, please do not hesitate to contact us.

Sincerely,


Marcie Ryba
Executive Director


Thomas Qualls
Deputy Director


Peter Handy
Deputy Director

From: [K Franco Simmons](#)
To: [Public Comment](#)
Cc: [Jason Woodbury](#)
Subject: Public Comments for 6/2/2022 Empire Cemetery moratorium
Date: Wednesday, June 1, 2022 2:26:50 PM

This message originated outside of Carson City's email system. Use caution if this message contains attachments, links, or requests for information.

Honorable Board of Supervisors,

As you know, I have been working toward resolving issues regarding Empire Cemetery over the past few years toward restoring my family's burial rights at Empire Cemetery. I've written to you and stated in public meetings that multiple generations of my family, the Howard family, are buried in Empire Cemetery, and that my father, George Howard, has always intended to be buried in one of the remaining family plots, next to his grandfather, Morris Howard, great-grandfather Frank Howard, and great-great-grandparents Mathew Howard and Charlotte Eden Howard, and others. I've stated that when my uncle, Robert Howard passed away in 2018, city staff did not allow my Aunt Cheryl to bury him in Empire Cemetery with our family as he fully had expected. There are numerous reasons city staff have given for this, and I am trying to work through all of them on behalf of my father, George Howard.

Yesterday, I spoke with Nick Wentworth, Special Projects Manager, Parks and Recreation. Mr. Wentworth informed me that the **Director of Parks and Recreation and the District Attorney are having discussions about placing a moratorium on burials in Empire Cemetery**. He indicated this is to be brought to the Board of Supervisors soon.

I and my family have not even been afforded the courtesy of any communication from any City staff member or the DA on this proposed action.

Please encourage staff to be transparent, open, honest and communicative on their intentions and the intentions of the City with regard to Empire Cemetery, most specifically regarding our family's burial rights.

Please do not take action to adopt an ordinance and or moratorium on burials at Empire Cemetery. Please direct staff to take every available means to restore my father's burial rights at Empire Cemetery, including, but not limited to finding the records of the Howard plots, finding the available plot that belongs to my father, use GPS tagging for that section, use ground-penetrating radar or any other technological means to find the available plot, use other resources such as "Find a Grave" etc. to find burial plots nearby and locate our remaining plot(s). Please, if by no other resolution, *grandfather-in* my father's right to be buried with his father, grandfather and great-grandfather.

Thank you for your consideration.
Kathleen Franco Simmons
2108 Utah Street
Carson City, NV 89701