

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
MINUTES

June 25, 2014

The meeting of the Arizona Prosecuting Attorneys' Advisory Council was called to order by its Vice-Chair, Jon Smith, on Wednesday, June 25, 2014, at 11:00 a.m., at the JW Marriott Desert Ridge Resort located at 5350 East Marriott Drive in Phoenix, Arizona.

COUNCIL MEMBERS PRESENT

Jon Smith	APAAC Vice-Chair, Yuma County Attorney
Brad Beauchamp	Gila County Attorney
John Belatti	Mesa City Prosecutor
Brad Carlyon	Navajo County Attorney
Baird Greene	Tucson City Prosecutor (telephonic)
Bill Montgomery	Maricopa County Attorney
Derek Rapier	Greenlee County Attorney
Tony Rogers	La Paz County Attorney
David Rozema	Coconino County Attorney (telephonic)
Matt Smith	Mohave County Attorney
Lando Voyles	Pinal County Attorney
P. Rob Walecki	Glendale City Prosecutor (telephonic)

COUNCIL MEMBERS PRESENT BY PROXY

Sheila Polk	APAAC Chair, Yavapai County Attorney Proxy William Hughes
David Byers	Arizona Supreme Court Proxy Amy Love
Aaron Carreon-Ainsa	Phoenix City Prosecutor Proxy Jessica Breedlove
Tom Horne	Arizona Attorney General Proxy Paula Alleman
Barbara LaWall	Pima County Attorney Proxy Amelia Cramer
Ed Rheinheimer	Cochise County Attorney Proxy Brian McIntyre
Tobin Sidles	Oro Valley Town Prosecutor Proxy Bill Montgomery

STAFF PRESENT

Kim MacEachern	Staff Attorney
Diana Cooney	Office Manager

CONSENT AGENDA

Mr. Jon Smith presented the minutes from the May 16, 2014, Council meeting for consideration and approval by the Council. Mr. Derek Rapier made a motion, seconded by Ms. Amelia Cramer, to accept the minutes. Motion carried.

CHAIR'S REPORT

On behalf of APAAC Chair, Ms. Sheila Polk, Mr. Smith announced that APAAC's next Council Meeting is scheduled for Tuesday, July 29, 2014 at 2:00 p.m. at The Westin La Paloma in Tucson, in conjunction with APAAC's 2014 Annual Conference. Additional details will be provided by APAAC staff via email prior to the meeting.

A no-host, casual Council dinner will be held on the evening of Tuesday, July 29, 2014, and all Council members, Chief Deputies, and their families are invited to attend. Additional details will be provided by APAAC staff via email in the weeks ahead.

EXECUTIVE DIRECTOR'S REPORT

On behalf of Ms. Elizabeth Ortiz, Ms. Kim MacEachern reported that Ms. Ortiz visited the Mohave County Attorney's Office on June 13, 2014, for a settlement conference in a conflict case.

Ms. Ortiz will be teaching at the Governor's Office of Highway Safety's Training Conference on July 8-10, 2014, along with Council members, Mr. John Belatti, Mr. Baird Greene, Ms. Sheila Polk, and Mr. Tobin Sidles. This is a joint program for prosecutors and law enforcement; Council offices were encouraged to send participants.

Ms. Ortiz was nominated to be an officer for the National Association of Prosecutor Coordinators (NAPC) and will be attending their Summer Conference and Annual Meeting in Denver, Colorado, from July 16-18, 2014.

In conjunction with the NAPC trip and on behalf of Mr. Rapier, APAAC's delegate for the National District Attorneys Association (NDAA), Ms. Ortiz will be attending their Summer Conference also being held in Denver, Colorado, from July 20-23, 2014.

STAFF ATTORNEY REPORT

Ms. MacEachern reported that she is now a member of the Mental Health Court Advisory Committee, formed as the result of a study done to determine how Mental Health Courts are performing and whose purpose it is to draft standards for use in establishing these courts in other jurisdictions. Ms. MacEachern states the committee is well-represented by a variety of different disciplines and provides a good opportunity to compare the roles of mental health providers and law enforcement in the system. Discussion was held with regard to which individuals in the justice system are amenable

to early detection for mental health services, as well as the issue of building up treatment capacity, especially for rural jurisdictions. Ms. MacEachern encourages input from Council members and staff with the Mental Health Courts to enhance her ability to give prosecutors a voice.

Ms. MacEachern shared handouts from Ms. Shayna Malone regarding the Arizona Criminal Justice Commission's pilot Rx drug collection program, which addresses the prescription drug abuse national crisis. Arizona leads the nation in statistics for the number of drugs prescribed. In conjunction with the Drug Enforcement Agency, this program encourages the installation of drop boxes across the state for the safe disposal of expired or unused prescription drugs. DEA will not approve mobile drop box units; however, police and fire stations are approved locations. Currently, 34 drop boxes have been approved by the DEA in Arizona. Alternatives programs include local take-back collection events and public education, both in schools and with the elderly. Mr. Lando Voyles notes that Pinal County leads the nation with over 2 million lbs. of prescription drugs collected.

FINANCE COMMITTEE REPORT

Mr. Rapier presented APAAC's April 2014 financial reports, as previously reviewed by the Finance Committee. Mr. Rapier made a motion, seconded by Mr. Montgomery, to approve the April 2014 financial reports. Motion carried.

Mr. Rapier presented the proposed APAAC budget FY2014-15. The first budget attachment was developed and approved by the Finance Committee, and the second budget was subsequently revised to reconcile the actual revenue received through June 2014, increasing the projected revenue figure and conversely supplementing the APAAC seminar expense under "Training." Mr. Rapier also stated that APAAC training is fully funded by this proposed budget. If revenues in FY2014-15 exceed budget projections, Mr. Rapier suggests that the Council begin now to identify priorities for the use of those excess funds.

Mr. Rapier made a motion, seconded by Mr. Brian McIntyre, to adopt the revised "Proposed APAAC Budget FY2014-15" as presented. Motion carried.

LEGISLATIVE POLICY COMMITTEE REPORT

Mr. Brad Carlyon proposed for Council consideration two options that would allow APAAC's lobbyist Ms. MacEachern to better respond to evolving legislative proposals during session. Discussion was held. Mr. Carlyon made a motion, seconded by Mr. John Belatti, to delegate authority to the Legislative Policy Committee (LPC) to set positions between Council meetings. Mr. Matt Smith made a friendly amendment to the motion that LPC meeting notices be sent to the full Council. Amendment passed. The original Motion, as amended, carried.

Ms. MacEachern asked for Council consideration concerning DUI and Carboxy THC, stemming from the Arizona Supreme Court's recent opinion. Mr. Bill Hughes shared Ms. Sheila Polk's recommendation that APAAC's Medical Marijuana Working Group review this issue and make a recommendation to the LPC. Mr. Carlyon recommends the LPC consider those suggestions at a subsequent committee meeting and make recommendations to the Council at the September 12, 2014, meeting.

Ms. MacEachern requested the Council's direction for the Children's Action Alliance upcoming meeting in August to discuss the potential for extending juvenile jurisdiction to 19 years of age in the next legislative session. Mr. Montgomery made a motion, seconded by Mr. McIntyre, to oppose the adoption of any increase in the juvenile jurisdiction age. Discussion was held. Mr. Carlyon stated that, since the Council is not voting on a specific bill at this time, the LPC would consider the motion as a guideline for the LPC as it considers proposals on this issue. Motion carried, with Ms. Amy Love abstaining.

Mr. Carlyon encouraged Council members to send to Ms. MacEachern any bill proposals for the LPC to review and consider at its meetings in the upcoming months.

TRAINING COMMITTEE REPORT

On behalf of Mr. Sidles, Mr. Montgomery shared the training seminar report, providing attendance numbers at APAAC's May and June, 2014 seminars. .

SELECTION OF APAAC's 2014 ANNUAL CONFERENCE ATTORNEY AWARDS

Ms. MacEachern announced the nominees for the following APAAC attorney awards: Felony Prosecutor of the Year (large jurisdiction); Felony Prosecutor of the Year (small jurisdiction); Misdemeanor Prosecutor of the Year; Juvenile Prosecutor of the Year, Appeals Prosecutor of the Year, Rising Star Award; and, Lifetime Achievement Award. Mr. Montgomery made a motion, seconded by Mr. Tony Rogers, to vote for the Lifetime Achievement Award nominees as a group. Motion carried. Representatives of the nominating office advocated for their nominee, including those nominated for the David R. White Excellence in Victim Advocacy Award. A hand vote of the Council members was taken to determine the winner(s) of each category*, who will be announced at APAAC's 2014 Annual Conference on July 30-August 1, 2014, at the La Paloma in Tucson.

*Mr. Jon Smith indicated that APAAC will send out the required open meeting law notice scheduling a special meeting for the Council to vote on the winner of the David R. White Excellence in Victim Advocacy Award.

FISCHER REPORT

Ms. MacEachern offered the final draft of the 2014 Update on Selected Topics to the Prisoners in Arizona report for Council review. The report was compiled by Dr. Fischer from a database provided by the Department of Corrections (DOC). Ms. MacEachern asked for the Council to approve the report, so it can be published.

Mr. Montgomery inquired about apparent discrepancies in the percentages of violent repeat offenders between this report and the 2011 report ; Ms. MacEachern offered that it is a “data” classification issue caused by the updating of the database between the periods. To clarify any public misperception of the statistics, Mr. Rogers suggested the report include an asterisk to explain the discrepancy, as noted.

Mr. Montgomery also asked Ms. MacEachern to have Dr. Fischer break out the statistics for possession of marijuana to distinguish between “for sale” and “for personal possession” as was done in previous reports.

Mr. Rapiere made a motion, seconded by Mr. Montgomery, to table this item for possible action at the next Council meeting, pending the requested revisions to the report. Motion carried.

INTERSECTION BETWEEN BEHAVIORAL HEALTH & CRIMINAL JUSTICE CONFERENCE

Ms. MacEachern reported on the planning of the upcoming Behavioral Health and Criminal Justice Conference, including assisting with drafting the conference agenda. She noted the program will include a moderated panel on which Mr. Montgomery and another Council member will participate and encouraged Council members to attend and provide input on the topic of behavioral health from the criminal justice perspective. She indicated that the conference would like to partner with APAAC as a co-sponsor.

Ms. Cramer made a motion, seconded by Mr. McIntyre, to support the conference by providing APAAC representation without financial support at this time. Motion carried.

Ms. MacEachern also brought to the Council’s attention that the Arizona Justice Alliance, a statewide coalition promoting criminal justice policy, does not currently include any representation from the prosecution community - with the exception of two prosecutors serving on its diversion work group. Ms. MacEachern urged Council members to consider getting involved with this group.

REGIONAL BEST PRACTICES COMMITTEE MEETING

Ms. MacEachern announced that, Ms. Kris Hammond, a guest speaker at the April Council meeting, has scheduled two DOJ funded Regional Best Practices Committee meetings: July in Denver, Colorado; and, October in St. Louis, Missouri. Mr. Montgomery, Ms. Ortiz and Ms. Polk will be attending the regional meeting in St. Louis.

EXECUTIVE SESSION

Mr. Jon Smith tabled the Executive Session discussion for the next Council meeting.

CALL TO THE PUBLIC

Mr. Rogers congratulated Mr. Rapier as chair of the Finance Committee for the fine work he has done to resolve APAAC's fiscal issues being addressed by the committee.

Mr. Montgomery said the Governor's office is seeking counties who wish to participate through amici, seeking to intervene, or otherwise assisting with resolving the remainder of a Department of Justice lawsuit that is now focused on the human smuggling statute, in particular ARS §13-2319. A provision referencing the ability to stop a vehicle where probable cause is based on a civil traffic violation is the subject of a DOJ request for a blanket injunction, which may negatively impact certain jurisdictions. Mr. Montgomery will follow up with Ms. Polk to send out a reminder email to Council on this topic.

Mr. Montgomery reports that the Department of Health Services (DHS) is in the process of establishing rules associated with the Medical Marijuana Act, specifically, R9-17***, which seeks to permit a dispensary license holder to contract out the operation of their dispensary. Mr. Montgomery states this is fraught with danger and may exceed DHS's rule-making authority because it would allow someone to contractually assume the role of "dispensary agent," which is defined by statute. Ms. MacEachern noted that she is following that rulemaking for APAAC as well.

Mr. Montgomery asked to place an item on the agenda for the next Council meeting to discuss forming a sub-committee to review ethics rules for government lawyers / prosecutors.

NEXT COUNCIL MEETING

The next Council meeting will be held on Tuesday, July 29, 2014, at 2:00 p.m. at the Westin La Paloma Resort in Tucson, in conjunction with APAAC's Annual Conference.

ADJOURNMENT

Ms. Jon Smith declared the meeting adjourned at 1:28 p.m.