

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL  
MINUTES

March 21, 2014

The meeting of the Arizona Prosecuting Attorneys' Advisory Council was called to order by the Chair, Sheila Polk, on Friday, March 21, 2014, at 10:00 a.m., at the APAAC Office located at 1951 W. Camelback Road, Suite 202, in Phoenix, Arizona.

COUNCIL MEMBERS PRESENT

|                     |   |
|---------------------|---|
| Sheila Polk         | APAAC Chair, Yavapai County Attorney                |
| Brad Beauchamp      | Gila County Attorney                                |
| Brad Carlyon        | Navajo County Attorney                              |
| Aaron Carreon-Ainsa | Phoenix City Prosecutor                             |
| Baird Greene        | Tucson City Prosecutor (telephonic)                 |
| Barbara LaWall      | Pima County Attorney                                |
| Bill Montgomery     | Maricopa County Attorney                            |
| Derek Rapier        | Greenlee County Attorney (telephonic at 11:22 a.m.) |
| Tony Rogers         | La Paz County Attorney                              |
| Tobin Sidles        | Oro Valley Town Prosecutor                          |
| Matt Smith          | Mohave County Attorney (telephonic)                 |
| Lando Voyles        | Pinal County Attorney                               |
| P. Rob Walecki      | Glendale City Prosecutor (telephonic)               |

COUNCIL MEMBERS PRESENT BY PROXY

|                 |  |
|-----------------|--|
| Jon Smith       | APAAC Co-Chair, Yuma County Attorney<br>Proxy Roger Nelson |
| David Byers     | Arizona Supreme Court<br>Proxy Jerry Landau                |
| Tom Horne       | Arizona Attorney General<br>Proxy Paula Alleman            |
| Derek Rapier    | Greenlee County Attorney<br>Proxy Donielle Wright          |
| Ed Rheinheimer  | Cochise County Attorney<br>Proxy Brian McIntyre            |
| David Rozema    | Coconino County Attorney<br>Proxy Sheila Polk              |
| George Silva    | Santa Cruz County Attorney<br>Proxy Liliana Ortega         |
| Michael Whiting | Apache County Attorney<br>Proxy Sheila Polk                |

STAFF PRESENT

|                 |                    |
|-----------------|--------------------|
| Elizabeth Ortiz | Executive Director |
| Kim MacEachern  | Staff Attorney     |
| Diana Cooney    | Office Manager     |

VISITORS

|                |   |
|----------------|---|
| Jon Eliason    | Deputy Maricopa County Attorney             |
| Kris Hamann    | Visiting Fellow, U.S. Department of Justice |
| Kathleen Mayer | Deputy Pima County Attorney                 |

CONSENT AGENDA

Ms. Sheila Polk presented the minutes from both the January 16, 2014, and February 21, 2014, Council meetings for approval by Council. Mr. Tobin Sidles made a motion, seconded by Mr. Brad Carlyon, to approve both sets of minutes. Motion carried.

CHAIR'S REPORT

Ms. Sheila Polk stated that several governing bodies in Yavapai County have passed the 'Resolution Opposing the Legalization of Marijuana' sponsored by MATFORCE. The resolution is being revised and the final form will be brought back for possible approval at the next Council meeting. Ms. Polk alerted Council that Mr. Chris Thomas of the Arizona School Board Association has advised one client that ARS 15-511 prohibits the use of public resources to influence the outcome of a ballot election and that, since the legalization of marijuana might be on the ballot someday, the more conservative approach would be to decline to address the resolution. Ms. Polk cited similar Arizona statutes regarding counties (§11-410) and cities/towns (§9-500.14) should Council members want to consider them.

Ms. Polk presented the flyer for a "Marijuana Harmless? Think Again!" event hosted by MATFORCE on April 17, 2014. The morning session, by invitation, addresses how to mobilize the initiative. The afternoon public session features speakers Kevin Sabet, Ph.D., Beth Kempshall of HIDTA, and Ms. Polk. Seating is limited and the event is by reservation only. Ms. Polk encouraged a high attendance by the prosecution community. Invitations have been emailed to Council members.

EXECUTIVE DIRECTOR'S REPORT

Ms. Elizabeth Ortiz reported on her recent visits to La Paz County on March 7, 2014, and to the Maricopa County's Attorney Office on March 12, 2014 to teach Ethics.

Ms. Ortiz reported that the March 5, 2014, presentation of the Fischer Report to the Nevada Advisory Commission on the Administration of Justice was well-received. Her message to the commission concerning APAAC's purpose for the report was to get data into the decision-maker's hands. At the request of Mr. Bill Montgomery, Ms. Ortiz will determine if APAAC can get access to the Nevada data used in a similar report they commissioned by Dr. Austin, to compare its demographics and findings.

As a follow-up to Ms. Ortiz's appearance on the Horizon Show with Law Professor Keith Swisher from the Arizona Summit Law School, she was invited to his Professional Responsibility class to teach on ethical obligations. Ms. Ortiz's presentation on March 11, 2014, was well received; and she received resumes from four students interested in prosecution who expressed a desire to volunteer at APAAC as an intern/extern.

Ms. Ortiz stated that she is a candidate in the upcoming election for one of nine open positions in District 6 for the State Bar Board of Governors. Ms. Ortiz encouraged Council members to alert their office staff that ballots will be sent electronically in April.

At the direction of Council, Ms. Ortiz has recommended to the Arizona Forensic Science Academy that they consider including a legal assistant track within their broader attorney track.

Ms. Ortiz updated the Council on APAAC's Fellowship Working Group, which continues to meet and discuss the structure and requirements of both the Udall and Truman Young Fellowship programs for the 2015-2015 academic year. The working group plans to have recommendation for the Council to consider at the April or May meeting.

Ms. Ortiz announced that APAAC will be seeking nominations for the APAAC Legal Assistant, Support Staff, and Prosecutor Annual Conference Awards. APAAC has sent out the general announcement, and nomination forms are available on the APAAC website. Nominations are currently being sought for the "Legal Assistant of the Year" award.

#### STAFF ATTORNEY REPORT

Ms. Kim MacEachern advised that Dr. Daryl Fischer is working on the data, graphs and narrative for his *Prisoners in Arizona 2014 Update*. Initial data shows an increase in incarcerations. Dr. Fischer anticipates the report will be completed after April 2014.

Ms. MacEachern provided a status report on recent efforts of the American Friends Service Committee (AFSC). Last year, this group did a public opinion survey on how money should be spent on corrections sponsored a bill on the efficacy of mental health courts and held a roundtable on deferred prosecution; this year, through their lobbyist they are pursuing more deferred prosecution programs.

## FINANCE COMMITTEE REPORT

On behalf of Mr. Derek Rapier, Ms. Polk presented for Council approval APAAC's January 2014 financial reports, as previously reviewed by the Finance Committee. Mr. Sidles made a motion, seconded by Mr. Carlyon, to approve the January 2014 Financial Reports. Motion carried.

The Finance Committee recommended that the Council approve an office-space proposal presented by APAAC's Executive Director to enter into a 65-month lease which would include both the current office space and an addition of approximately 800 square feet. Mr. Sidles made a motion, seconded by Mr. Jerry Landau, to approve the proposed lease, as recommended by the Finance Committee. Motion carried.

## LEGISLATIVE POLICY COMMITTEE REPORT

The Legislative Policy Committee (LPC) reported on the following legislative bills:

- HB2593 - The Council previously voted to support HB2593; however, language was added addressing the Miller v. Alabama issue. Mr. Montgomery made a motion, seconded by Mr. Lando Voyles, to support HB2593 as amended with the current language addressing Miller issue. Motion carried, with Mr. Landau abstaining.
- HB2462 –Rep. Farnsworth's "striker placeholder" that has gone through the House and is currently pending in the Senate. No Council action at this time.
- HB2339 – Mr. Carlyon stated that the Council previously voted to oppose, this Citizen's Defense League bill. He encouraged Council members to contact their respective legislators and let them know the safety issues and financial impact if concealed carry weapon permit holders are allowed to enter government buildings and public places.
- HB2517 –A companion bill to HB2339, imposes penalties on violators of firearms preemption, without due process. Council has previously opposed. Mr. Carlyon encouraged Council members to contact their legislators concerning the problematic impact this could have on line law enforcement officers.
- HB2437 – This bill would repeal or sunset public committees that did not meet their deadlines for filing guidelines, etc. Mr. Landau reported from his meeting with the bill's sponsor, Rep. Gowan, that the bill language would be changed so that public committee would be reviewed every eight years instead. Floor amendment will address any public committees or policies being affected by the current sunset rule.
- SB1366 –Firearms definition from the Citizen's Defense League: Mr. Carlyon made a motion, seconded by Mr. Montgomery, to support this bill with the current floor amendment concerning devices readily converted into firearms, or to oppose the bill without that floor amendment language. Motion carried, with Mr. Landau abstaining.

### RULES COMMITTEE REPORT

Ms. Polk tabled the item until the April Council meeting, so that Council members could review the draft comments prepared by the Rules Committee.

### TRAINING COMMITTEE REPORT

Mr. Sidles shared the attachment listing attendance at APAAC's February 2014 and March 2014 seminars, including the most recent Intermediate DV and DUI Advocacy course in Prescott.

In an effort to help APAAC mitigate the financial impact due to last minute cancellations by attendees, Mr. Sidles asked Council to advise their office staff to better coordinate future training events with their work schedules to avoid any conflicts/cancellations.

Ms. LaWall reminded Council that APAAC was able to secure a nationally acclaimed speaker, Ms. Alison Levine, as the 2014 Annual Conference keynote speaker, with the assistance of Chief Deputy Pinal County Attorney Amelia Cramer, and through the financial support of County Attorney Offices of Maricopa, Pima and Pinal.

### NDAA REPORT

Mr. Rapier provided an update on the status of NDAA's ongoing investigation regarding Department of Justice grants. Mr. Rapier also reported:

- NDAA has partnered with the National Criminal Justice Academy, which recently held its first training program in March 2014 at the University of Utah;
- NDAA's President Henry Garza recently held strategic planning meetings in San Antonio, Texas, to look at NDAA's current bylaws and organizational structure, including possibly revising its lifetime directorship policy in an effort to decrease the number of current board members at that level who number 75-80.
- Kay Chopard Cohen, J.D., was selected to serve as NDAA's new Executive Director and provided her resume.

Mr. Rapier encouraged Council members, their Chief Deputies, and line prosecutors, to become members of NDAA.

### PROPOSED LESSONS FROM THE HOLOCAUST TRAINING

Ms. Polk proposed that APAAC consider providing financial support to offer a training course called "Lessons from the Holocaust," to Arizona law enforcement, corrections officers and prosecutors to cover travel costs for the initial training event at AZPost in

Phoenix on April 2-3, 2014 (approximately \$1,000), and a follow-up trip to the U.S. Holocaust Museum in Washington, D.C. in June or July 2014 for additional training (approximately \$20,000). Ms. Polk indicated long-term financial support would be sought from the Jewish Community Foundation to allow this training to continue moving forward.

Mr. Sidles made a motion, seconded by Mr. Landau, for APAAC to provide the financial support needed to cover travel costs associated with sending ten regional trainers to programs in Phoenix and Washington D.C. Motion carried, with Mr. Carlyon abstaining.

#### SELECTION FOR 2014 NATIONAL VICTIM ADVOCACY EXCELLENCE AWARD

Ms. Ortiz reminded Council that APAAC's inaugural "Victim Advocacy Excellence" award will be presented at the 2014 National Crime Victims' Rights Week luncheon at the Kroc Corps Community Center on April 9, 2014. Ms. Ortiz stated that ten nominations were received for consideration by the Council. Members spoke in support of their nominee, and votes taken. The winner of this year's award is Deputy Maricopa County Attorney Keli Luther. Ms. Ortiz will ask the 2013 David R. White Award recipient to co-present the award at the event.

#### CALL TO THE PUBLIC

Ms. Polk presented a plaque on behalf of APAAC to Mr. Jon Eliason, former Mesa City Prosecutor, in appreciation of his service on the Council and for his dedication to the criminal justice system and community. Mr. Eliason recently accepted a position as a Division Chief with the Maricopa County Attorney's Office.

Mr. Landau mentioned that the state's budget legislation caps the total amount to be spent by the state on Indigent Capitol Defense and State Grand Jury to amount appropriated in the General Appropriations Act plus any special appropriation.

Mr. Landau advised that several judges in multiple counties reported to his office that cases falling under the Attorney General's Tobacco Enforcement Program were being dismissed due to lack of proper service.

Ms. MacEachern encouraged Council members to attend the 2014 Arizona Problem Solving Courts Conference which will be held on April 28-29, 2014, at the Prescott Resort and Conference Center in Prescott.

Mr. Montgomery plans to have the best practices bid letter drafted by his office for review at the next Council meeting, in the event other offices want to join by signing.

Mr. Montgomery stated that, due to the new Rule 3.8, his office has sent a letter to the Justice Project asking them for any information on cases they have investigated, both

where it raises a question of innocence and where it corroborates a conviction, in the event his office receives any claims of innocence.

Mr. Montgomery advised that his office will no longer grant interviews to the show "Dateline" inasmuch as their editing essentially removes any information that would adequately inform the public on the prosecutor's perspective on the handling of a case.

Ms. Polk announced that APAAC has a new Council member: Mr. John Belatti, former Chandler City Prosecutor, who is now the new Mesa City Prosecutor.

#### NEXT COUNCIL MEETING

The next Council meeting is scheduled for Thursday, April 24, 2014, at 10:00 a.m.

#### ADJOURNMENT

Ms. Polk declared the meeting adjourned at 12:40 p.m.