

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
MINUTES

June 19, 2013

The meeting of the Arizona Prosecuting Attorneys' Advisory Council was called to order by the Chair, Sheila Polk, on Wednesday, June 19, 2013, at 9:30 a.m., at the APAAC Office which is located at 1951 W. Camelback Road, Suite 202, in Phoenix, Arizona.

COUNCIL MEMBERS PRESENT

Sheila Polk	APAAC Chair, Yavapai County Attorney
Jon Smith	APAAC Vice-Chair, Yuma County Attorney (telephonic)
Brad Carlyon	Navajo County Attorney
Aaron Carreon-Ainsa	Phoenix City Prosecutor
Jon Eliason	Mesa City Prosecutor
Baird Greene	Tucson City Prosecutor (telephonic)
Tom Horne	Arizona Attorney General
Dean Marc Miller	Dean, James E. Rogers College of Law, University of Arizona
Ed Rheinheimer	Cochise County Attorney (telephonic)
Tony Rogers	La Paz County Attorney
David Rozema	Coconino County Attorney (telephonic)
Matt Smith	Mohave County Attorney (telephonic)
Lando Voyles	Pinal County Attorney
P. Rob Walecki	Glendale City Prosecutor (telephonic)

COUNCIL MEMBERS PRESENT BY PROXY

Dave Byers	AZ Supreme Court Proxy Jerry Landau
Barbara LaWall	Pima County Attorney Proxy Kellie Johnson
Derek Rapier	Greenlee County Attorney Proxy Sheila Polk
Tobin Sidles	Oro Valley Town Prosecutor Proxy Sheila Polk
Michael Whiting	Apache County Attorney Proxy Sheila Polk

STAFF PRESENT

Elizabeth Ortiz	Executive Director
Kim MacEachern	Staff Attorney
Diana Cooney	Legal Secretary II

VISITORS

Caron Close	Scottsdale City Prosecutor (telephonic)
Kathleen Mayer	Pima Deputy County Attorney
Carol Mitchell	Administrative Office of the Courts Staff Liaison to the AZ Supreme Court Commission on Victims in the Courts
The Hon. Ron Reinstein (Ret.)	Chairperson, AZ Supreme Court Commission on Victims in the Courts

CONSENT AGENDA

Mr. Jerry Landau made a motion, seconded by Mr. Brad Carlyon, to approve the consent Agenda. Motion carried.

2013 SUMMER CONFERENCE ATTORNEY AWARDS

Ms. Elizabeth Ortiz announced the attorney award nominations for presentation at the 2013 Summer Conference and solicited supporting arguments from each nominator in the following categories:

- 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
- David R. White Award
- Lifetime Achievement

Ms. Ortiz asked for a hand vote of the Council members to determine the winner of each category. Winners will be announced at the APAAC Summer Training Conference awards luncheon.

RULES CHANGES IMPACTING VICTIM IDENTIFICATION

Ms. Sheila Polk introduced a guest speaker, The Hon. Ronald Reinstein (Ret.), Chairperson of the Arizona Supreme Court Commission on Victims in the Courts (COVIC) to address recent rule changes which will provide significant benefit to victims throughout Arizona. Current rules allow a victim's name to be published in court documents that are accessible to the public and online, either through LexisNexis or via search engines, like Google. The amendments, adopted by the Arizona Supreme Court on December 10, 2012, establish new obligations of prosecuting agencies and Superior Court clerk's offices: Upon filing a charging document in a criminal case in which the defendant is charged with any offense listed in A.R.S. Title 13, chapters 14, 32, 35 or 35.1, or in the case of a victim who was a juvenile at the time of the offense, the prosecuting agency shall advise the clerk that the case is subject to the provisions of Supreme Court Rule 123 (g)(1)(C)(ii)(h) and Rule 2.3, Rules of Criminal Procedure, as amended effective September 1, 2013. The appellate court provisions also require the use of a "victim identifier" (initials or other substitute) in place of a victim's name in

any opinion, memorandum decision or order in any case concerning like offenses or involving a juvenile victim. Council offices may contact Carol Mitchell, the Commission's AOC staff liaison, at cmitchell@courts.az.gov, for additional assistance. Ms. Ortiz indicated that APAAC will distribute the information to members of the prosecution community.

FINANCE COMMITTEE REPORT

Ms. Polk, on behalf of Mr. Derek Rapiere, Chair of the Finance Committee, referred Council members to the APAAC Financial Report and Financial Statement for May 2013, for their consideration and review.

Mr. Jon Eliason made a motion, seconded by Mr. Brad Carlyon, to approve the Financial Report and Financial Statement for May 2013. Motion carried.

LEGISLATIVE POLICY COMMITTEE REPORT

Ms. Kim MacEachern announced the 51st Legislature's first regular session has adjourned sine die, wrapping up a contentious session. While there are 64 bills on the governor's desk awaiting her signature, Ms. MacEachern does not anticipate that any APAAC-supported bills will be vetoed. The general effective date for measures that passed is September 13, 2013.

Mr. Landau stated the effective date for the budget reconciliation bills is September 12, 2013.

Mr. Tom Horne reported that the legislature included a last minute \$1.2 million budget cut from the state's cross border fund, which his office will seek to reinstate next session.

EXECUTIVE SESSION

Ms. Polk announced that the performance evaluation of APAAC's Executive Director, Ms. Ortiz, would be discussed in Executive Session.

Mr. Carlyon made a motion, seconded by Mr. Eliason, for the Council to go into Executive Session. Non-Council members were asked to leave the meeting room during this session.

Ms. Carreon-Ainsa made a motion, seconded by Mr. Carlyon, to come out of Executive Session. Motion carried.

Upon return of the Executive Director to the meeting room, many Council members, including Messrs. Greene, Carlyon, Horne, Rogers, Eliason, Voyles, and Landau, along with Ms. Polk, made comments in support of Ms. Ortiz and her staff and commended her knowledge, skill, and leadership as Executive Director of APAAC over the past year.

CHAIR'S REPORT

Ms. Polk congratulated Dean Marc Miller on his recent appointment as the twelfth dean of The University of Arizona James E. Rogers College of Law.

Dean Miller thanked the Council and requested the opportunity to make a presentation at a future Council meeting.

Ms. Polk asked Council members to remind their respective prosecutors that the upcoming APAAC Summer Conference is a unique opportunity to receive expert training, obtain CLE hours, and network with other prosecutors from all over the state. Ms. Polk suggested that the Summer Conference opening session on July 31, 2013, include an introduction of all Council members to the general assembly. Ms. Polk asked Ms. Ortiz to remind the Council members of this new arrangement prior to Summer Conference and at the July 30, 2013, Council meeting.

EXECUTIVE DIRECTOR'S REPORT

Ms. Ortiz reported she made a visit to the Coconino County Attorney's Office on May 31, 2013.

Regarding the recent amicus briefs filed by APAAC: The matters of *State v. Cooperman* and *State v. Okun* are both pending review before the Arizona Supreme Court.

Ms. Ortiz announced that she has been named co-Chair of the State Bar of Arizona's CLE Committee, which is a two-year commitment. She will report to the Council regarding any State Bar CLE opportunities.

Ms. Ortiz was in Mexico City with Deputy Pinal County Attorney Jason Johannes and Assistant Attorney General Larry Cutler from June 10-14, 2013, to teach oral trial skills to Mexican prosecutors. CWAG will conduct training in Phoenix in August 2013.

TRAINING COMMITTEE REPORT

On behalf of Mr. Tobin Sidles, Ms. Ortiz reported on recent APAAC seminars: Forfeiture Training on May 31, 2013, had 45 attendees; and, Ethics Training on June 7, 2013, had 64 "in person" attendees, in addition to many more who attended via webcast. The webcast, made possible through the partnership of APAAC and MCAO was recorded and will be made available on the APAAC website for those prosecutors who wish to obtain ethics CLE.

Ms. Ortiz announced that APAAC's Felony Intermediate Advocacy course will be held in Flagstaff from June 24-28, 2013. Ms. Ortiz thanked Pinal County Attorney Lando Voyles for providing the funds for this training.

The 2013 Summer Conference theme will celebrate APAAC's 40th Anniversary. Ms. Ortiz asked that Council members submit photos from 1973.

NICS AND RULE 37.2, R. CR.

Mr. Landau summarized the criminal justice data management issues that have been the topic of recent discussions, particularly the NICS instant background checks and AZ. R. Crim. Pro. 37.2. The concerns center on data input and the statewide nature of the data programs and code tables.

NICS is done in compliance with federal regulations. It was determined that the court is in the position to enter data into criminal background check system and Ms. Marie Sullivan, AGO is on assignment out of Coconino County to study how this is accomplished. Out of that study is the recommendation to centralize the update for new statutes to comply with the process for gathering and entering data, adding information into NICS and also to create a mental health data repository for defendants.

At ACJC's request, Mr. Landau has drafted a legislative bill to update Titles 13, 14 and 32 and provisions related to prohibited possessors, guardianship and security guards to ensure accurate input and prosecutor access to data. Ms. Pat Nelson of ACJC will send it out to the criminal justice legislative liaisons to discuss at the Pow Wow meeting. Plans are to present a draft to the ACJC in November 2013.

Mr. Landau noted ongoing discussions, which have also involved APAAC, on ways to better use Criminal Justice disposition records within the system itself. The next step is the Rule 37.2 working group made up of a cross section of the state and the various levels of the system. That work is set to start July 24, 2013, to put together a program to send out for greater stakeholder review.

As previously discussed, the code tables must undergo an annual update and because they are used statewide, that process will be headed up by the Supreme Court's court services, which is currently forming a group. They are getting requests, including from some county attorneys' offices and others, such as AOC, APAAC, ADOT and ACJC, asking the Chair to include them. This is designed to be a practical group rather than a policy group as it will focus on identifying the charges and seeking to standardize how they are coded in the system. Priority for consideration: first, statutory changes from the legislative session, followed by a review of the entire code table.

CALL TO THE PUBLIC

No call to the public.

NEXT COUNCIL MEETING

Ms. Polk announced that the next Council meeting will be held at 2 p.m. on Tuesday, July 30, 2013, at the Tucson Westin La Paloma, in conjunction with the APAAC Summer Conference.

ADJOURNMENT

Ms. Polk declared the meeting adjourned at 11:40 a.m.