

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL  
MINUTES

December 4, 2014

The meeting of the Arizona Prosecuting Attorneys' Advisory Council was called to order by the Chair, Sheila Polk, on Thursday, December 4, 2014, at 10:00 a.m. at the Phoenix Convention Center, Room 104B, located at 100 N. Third Street, in Phoenix, Arizona.

COUNCIL MEMBERS PRESENT

Sheila Polk	APAAC Chair, Yavapai County Attorney
Jon Smith	APAAC Vice-Chair, Yuma County Attorney
Brad Beauchamp	Gila County Attorney
Brad Carlyon	Navajo County Attorney
Vicki Hill	Interim Phoenix City Prosecutor
Bill Montgomery	Maricopa County Attorney
Derek Rapier	Greenlee County Attorney
Ed Rheinheimer	Cochise County Attorney (telephonic)
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

John Belatti	Mesa City Prosecutor Proxy Tobin Sidles
David Byers	Arizona Supreme Court Proxy Jerry Landau
Tom Horne	Arizona Attorney General Proxy Paula Alleman
Barbara LaWall	Pima County Attorney Proxy Kathleen Mayer
Douglas Sylvester	Dean of the ASU College of Law Proxy Chad Noreuil (telephonic)
Michael Whiting	Apache County Attorney Proxy Sheila Polk

STAFF PRESENT

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

GUESTS

Mr. Will Barnow*	Legislative Liaison, Arizona Department of Corrections
Ms. Toni Brown*	Phoenix Police Department; and TASA Multi-Disciplinary Protocol Committee
Mr. John Dempsey*	Registrar of Contractors; and Chairperson, TASA Multi-Disciplinary Protocol Committee
Dr. Mike Dolny*	Research Manager, Arizona Department of Corrections
Ms. Beth Kempshall*	Executive Director, Arizona High Intensity Drug Trafficking Area
Ms. Megan Kintner**	Senior Legislative Associate, Arizona Association of Counties
Mr. Doug Nick*	Community Director, Arizona Department of Corrections
Ms. Cheyenne Piper*	Extern, Arizona Department of Corrections
Mr. Rich Rosky*	Training Director, Arizona High Intensity Drug Trafficking Area
Mr. Charles Ryan*	Director, Arizona Department of Corrections

*\*left meeting after their respective presentations      \*\*arrived late; left at 10:55 a.m.*

CONSENT AGENDA

Ms. Sheila Polk presented the minutes from the October 16, 2014, Council meeting consideration and approval by the Council. Pursuant to a request by Mr. Jerry Landau, the minutes were removed from the consent agenda, and the title of Ms. Brittany Reed was changed from "AOC Legislative Intern" to "AOC Legislative Extern." Mr. Derek Rapiere made a motion, seconded by Mr. Landau, to approve the minutes, as amended. Motion carried.

*(The next three agenda items were taken out of sequence, in consideration of guest speakers.)*

STAFF ATTORNEY REPORT

Ms. Kim MacEachern presented a Press Release for Council consideration and approval concerning the recently updated Fischer Report. Ms. MacEachern credited the Arizona Department of Corrections (ADC) for providing the prisoner data used by Dr. Daryl Fisher in updating this study. The target date for release is December 5, 2014. ADC Director Charles Ryan expressed appreciation to APAAC for the work that was done in this important study.

Mr. Tobin Sidles made a motion, seconded by Ms. Kathleen Mayer, to accept and publish the Prisoner Report Update and related Press Release. Ms. Polk made a friendly amendment to the motion to allow quotes in the press release to be modified by their author. The motion carried, as amended, with Mr. Landau abstaining.

## ARIZONA HIGH INTENSITY DRUG TRAFFICKING AREA (HIDTA) UPDATE

HIDTA's Executive Director Beth Kempshall announced it is involved in the Heroin Project and has partnered with ACOP and ASU's Walker Cronkite School of Broadcasting to produce a documentary that will air on January 13, 2015, from 6:30-7:00 p.m. on radio, social media and all broadcast television channels statewide. HIDTA is also funding a 100-line call center at ASU to address questions from the public after the broadcast. Ms. Elizabeth Ortiz will disseminate information from HIDTA on the broadcast to Council members. Ms. Polk stated that Yavapai County has organized two community symposiums that will take place during this broadcast to inform the public.

HIDTA Training Director Rich Rosky expressed his appreciation to APAAC for its partnership in raising the level of drug enforcement training statewide, which will ultimately help prosecutors build stronger cases. HIDTA will offer annually and free of charge five 40-hour core classes: a basic class, an advanced class, a course for supervisors, a comprehensive drug interdiction course and, coming in February 2015, an 80-hour course for intelligence analysts. HIDTA also provides specialty training to supplement each of these core classes. Many of the classes have prosecutors as presenters. Mr. Rosky invited input from the Council on trends and trainings of interest to the prosecution community for HIDTA consideration

## TASK FORCE AGAINST SENIOR ABUSE (TASA)

Mr. John Dempsey, Chief Investigator at the Registrar of Contractors, and Det. Toni Brown of the Phoenix Police Department, presented on the Task Force Against Senior Abuse (TASA). Their objective is to create a statewide protocol by updating the current county protocol and broadening the scope to all vulnerable adults, which would include the elderly. TASA is seeking APAAC's assistance in that process.

Ms. Mayer made a motion, seconded by Mr. Bill Montgomery, directing Ms. Ortiz to appoint an APAAC working group that will coordinate with Det. Brown at TASA to help develop and update the existing protocol. Motion carried.

## CHAIR'S REPORT

Ms. Polk, along with Mr. Tony Rogers, attended Shared Hope International's Juvenile Sex Trafficking (JuST) Conference in Washington, D.C. on November 6-8, 2014. Ms. Polk encouraged Council members to attend an executive level training course on Sex Trafficking sponsored by AzPOST at the Phoenix Country Club on December 12, 2014. On December 17, 2014, APAAC-On-Demand will premiere a program on Human Trafficking course by Deputy Yavapai County Attorney Bill Hughes.

Ms. Polk reported that the "Marijuana: The Science and the Experiment" Conference in Phoenix on November 18, 2014, went well. There were approximately 370 attendees, along with some protesters. Mr. Montgomery gave the closing speech.

Ms. Polk remarked that the “What You Do Matters: Lessons from the Holocaust” state-wide training will have 26 new facilitators, including Mr. Brad Carlyon, Mr. Matt Smith, Ms. Ortiz and Ms. Polk.

Ms. Polk announced that Mr. Sidles’ appointment to the Council has been renewed through May 31, 2017.

Ms. Polk welcomed Ms. Vicki Hill as the Interim Phoenix City Prosecutor, following the recent retirement of Mr. Aaron Carreon-Ainsa.

### EXECUTIVE DIRECTOR’S REPORT

Ms. Ortiz advised that APAAC will soon be announcing its inaugural Victim Advocate Conference to be held on March 6, 2015. The Arizona Victim Assistance Academy is assisting APAAC with the conference curriculum. In addition, APAAC will soon begin accepting nominations for the 2015 Victim Advocate of the Year Award, which will be given out at the conference. Victim advocates who work within a prosecution office are eligible for the award. Nominations are due by January 30, 2015. The Council will vote on the award at the February 15, 2015, Council meeting.

Ms. Ortiz reported that the first “Train the Trainer” course as part of the State Bar’s CLE program was held on November 6, 2014, with several prosecutors as faculty members.

Ms. Ortiz announced that the State Bar Board of Governors’ consideration of the pre-certification of CLE program providers issue was postponed to their December 12, 2014, meeting. Members may continue to direct any feedback to the State Bar.

Ms. Ortiz provided an update of the J.R. Justice Grant, a federal grant program administered through the Arizona Office of the Courts (AOC) which provides reimbursement to public defenders and prosecutors for their student loans. A committee comprised of AOC representatives, public defenders, Ms. Ortiz, and Mr. Carlyon reviewed the applications and are recommending an award formula based upon debt/income ratio, which would result in 27 total awards of approximately \$1200 each, with 14 awards to prosecutors. Mr. David Byers of AOC will now review the recommendation and render a decision.

### FINANCE COMMITTEE REPORT

Mr. Derek Rapier presented APAAC’s financial reports for September 2014 and October 2014 for review and approval. Ms. Ortiz received notice that the November 2014 CJEF revenue was deposited today, and the amount is significantly below the projected revenue for this month. Mr. Rapier stated that the Finance Committee will continue watching the revenue trends into 2015 to determine if APAAC’s spending budget will need to be adjusted to reflect the decrease in income.

Mr. Rapier made a motion, seconded by Ms. Polk, to approve the September 2014 and October 2014 financial reports. Motion carried.

### LEGISLATIVE POLICY COMMITTEE REPORT

Mr. Carlyon reported that the Legislative Policy Committee (LPC) meeting on November 20, 2014, did not have a quorum; therefore, no bills from that meeting can be considered by Council at this time. However, the following bills were recommended at the LPC's October 16, 2014, meeting for Council support:

DUI—Define Initial Term of Incarceration – Mr. Carlyon made a motion, seconded by Mr. Rapier, to support, as an APAAC bill, language pertaining to clarification of the term of incarceration with respect to DUI legislation. Motion carried, with Mr. Landau and Mr. Chad Noreuil abstaining.

§13-3967 Release on bailable offenses before trial – Ms. Mayer made a motion, seconded by Mr. Carlyon, for APAAC to support this Pima County sponsored bill. Concerns were raised by several Council members regarding the language of paragraph (E)3: “A condition prohibiting the person from possessing a deadly weapon.” Discussion ensued. Ms. Mayer and Mr. Carlyon withdrew their motions to allow revision of the bill's language for reconsideration at the next LPC meeting.

§13-1412 – This is a new bill sponsored by Pima County, proposing a Class 5 felony for peace officers who engage in sexual conduct with persons in custody or involved in an investigation. Ms. Mayer made a motion, seconded by Mr. Tobin Sidles, for APAAC to support this proposal. Motion carried, with Mr. Landau and Mr. Noreuil abstaining.

Ms. MacEachern introduced three ACJC bills related to the NICS improvement project:

ACJC Bills: 1) NICS Mental Health; 2) Prohibited Possessor/Guardian; and, 3) Judgment of Guilt Fingerprint - Mr. Rapier made a motion, seconded by Ms. Mayer, for APAAC to support all three ACJC bills; that is, Ms. MacEachern will sign in affirmatively for each bill; however, APAAC will not lead any supporting efforts. Discussion was held. Motion carried, with Mr. Landau and Mr. Noreuil abstaining.

### BEST PRACTICES COMMITTEE REPORT

Mr. Sidles referred the Council to the seminar report showing the number of APAAC trainings in October (8), November (5), and December (3), 2014.

APAAC's Annual Prosecutor Conference in June 2015 will feature plenary sessions by Mr. Mark Shlifka teaching technology in the courtroom; Mr. Bill Hughes and Ms. Polk presenting on ethics, and Mr. Richard Wintory with a Supreme Court update. In addition, several breakout sessions will be offered on the last day of the conference.

### NATIONAL ASSOCIATION OF COUNTIES (NACo) REPORT

Mr. Carlyon reported that NACo has information on the Department of Justice's release of its government website accessibility rules to address technical standards and obligations of state and local government agencies to make websites accessible to people with sight-impaired and hearing-impaired disabilities.

NACo is hosting a Health, Justice and Public Forum in Charleston, S.C., on January 21, 2015. Also, the NACo Legislative Conference in Washington D.C. is scheduled for February 21, 2015.

### NATIONAL DISTRICT ATTORNEY'S ASSOCIATION (NDAA) REPORT

Mr. Rapier attended the NDAA conference in Florida which provided presentations on the trend toward sequential lineup and a new approach to the federal government's initiative for smart prosecution. He reported that NDAA is also making good progress coming out of its past financial problems. The new NDAA Executive Director's leadership is having a positive impact. Mr. Rapier encouraged Council members to have key staff join NDAA and also to send staff to NDAA's training courses.

Ms. Ortiz stated she was able to secure a 2015 program at the APAAC Training Center on domestic violence and/or sexual assault taught by NDAA faculty. The faculty costs will be covered by a grant that NDAA obtained; APAAC will only be responsible for attendee travel costs. Ms. Ortiz will present this proposed training to the Best Practices Committee for possible inclusion in APAAC's 2015-2016 CLE calendar.

### STATUS OF APPEAL RELATING TO PROPOSITION 100 PRECLUSION OF BAIL, A.R.S. §13-2319

Mr. Montgomery reported that his office is currently drafting an appeal in the Supreme Court regarding the recent en banc court decision on Proposition 100. Due date is mid-January 2015. He may request APAAC consider filing an amicus brief in the matter.

### CALL TO THE PUBLIC

Ms. MacEachern shared, on behalf of Ms. Shayna Malone with ACJC, that a Prescription Drug Abuse Initiative meeting will be held in Phoenix on December 10, 2014. APAAC will send an email with the meeting details to Council this afternoon. Ms. Polk stated this meeting will be reviewing the initiative, the objectives, and what worked. The statistics from Yavapai County's program has shown success among its youth.

Ms. MacEachern handed out samples of the APAAC Fast Fact brochures used by Mr. Sidles' office in court cases. These templates will be available on the APAAC website.

Mr. Landau states the AOC has proposed new draft legislation with failure to appear cases which maintains the requirement that the court file criminal charges, combines two statutes into one, and continues the one-year purge policy. The LPC committee is reviewing the draft. Mr. Landau welcomes Council feedback on this issue.

Mr. Voyles announced the recent grand opening of Pinal County's Family Advocacy Center. Mr. Voyles stated that the Center is available to any statewide agency. Further, the Center has contracted the services of Phoenix Children's Hospital for "free" examinations.

On behalf of Ms. Amelia Cramer, APAAC's representative on the working group that is examining the Rules of Professional Conduct, Ms. Ortiz provided a handout of the working group's recommendations for Council review. Any comments should be directed to Ms. Cramer prior to the group's next meeting on December 18, 2014.

Mr. Carlyon is seeking feedback on Navajo County's recent medical marijuana case in Superior Court that ruled doctors have civil immunity from criminal charges even though their actions as gatekeepers are improper and/or illegal. Ms. Polk commented that this is the core piece of the Medical Marijuana Act, and she supports Navajo County pursuing an appeal of the court's ruling. Supporting amicus briefs can be filed, as well.

#### NEXT COUNCIL MEETING

The next Council meeting will be held on Friday, January 16, 2015, at 1:00 p.m. at the APAAC Office; this is a new meeting date to accommodate the LPC's legislative agenda.

#### ADJOURNMENT

Ms. Sheila Polk declared the meeting adjourned at 12:35 p.m.