

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
MINUTES

October 25, 2012

The meeting of the Arizona Prosecuting Attorneys' Advisory Council was called to order by the Chair, Sheila Polk, on Thursday, October 25, 2012, at 10:00 a.m., at the APAAC Office which is located at 1951 W. Camelback Road, Suite 202, in Phoenix, Arizona.

COUNCIL MEMBERS PRESENT

Michael Whiting	Apache County Attorney (telephonic)
Ed Rheinheimer	Cochise County Attorney
Samuel Vederman	La Paz County Attorney
Brad Carlyon	Navajo County Attorney
Barbara LaWall	Pima County Attorney (telephonic)
James Walsh	Pinal County Attorney (video)
Sheila Polk	Yavapai County Attorney
Jon Smith	Yuma County Attorney (video)
Jon Eliason	Mesa City Prosecutor (telephonic)
Baird Greene	Tucson City Prosecutor (telephonic)
Tobin Sidles	Oro Valley Town Prosecutor

PROXIES

Daisy Flores	Gila County Attorney Proxy Sheila Polk
William Montgomery	Maricopa County Attorney Proxy Mike Mitchell
George Silva	Santa Cruz County Attorney (telephonic) Proxy Lilliana Ortega
Tom Horne	Arizona Attorney General Proxy Andrew Pacheco
David Byers	Arizona Supreme Court (telephonic) Proxy Jerry Landau
Aaron Carreon-Ainsa	Phoenix City Prosecutor (telephonic) Proxy Jessica Breedlove

STAFF PRESENT

Elizabeth Ortiz	Executive Director
Kim MacEachern	Staff Attorney
Denise Helm	Executive Assistant
Daniel Woolston	Law Clerk
John Gaylord	Law Clerk

VISITORS

Kathleen Mayer	Pima Deputy County Attorney
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Matthew Polk
Richard Speer
William Mills

Intern, AZ Supreme Court
Paradise Valley Town Prosecutor (telephonic)
Tucson Assistant City Prosecutor (telephonic)

CONSENT AGENDA

Mr. Tobin Sidles made a motion, seconded by Mr. Edward Rheinheimer, to approve the items on the consent agenda. Motion carried.

CHAIR'S REPORT

Ms. Sheila Polk recognized La Paz County Attorney, Mr. Sam Vederman, who was recently appointed to serve as a judge on the La Paz County Superior Court bench, effective December 17, 2012. Ms. Polk presented Mr. Vederman with a plaque from the Council in appreciation of his outstanding service and dedication to the criminal justice system and the community while serving on APAAC from January 2009 to December 2012.

Mr. Vederman acknowledged the plaque and thanked the Council members for their support.

EXECUTIVE DIRECTOR'S REPORT

Ms. Elizabeth Ortiz reported that she participated by invitation of Mr. Aaron Carreon-Ainsa in the 11th Annual International Day of No Prostitution Candlelight Awareness Walk, a multidisciplinary event attended by prosecutors, law enforcement, survivors, and others. Ms. Ortiz indicated that Mr. Carreon-Ainsa will give a presentation at the next Council meeting on the Phoenix Prosecutor's Office's prostitution diversion program.

Ms. Ortiz updated the Council on her recent visits to the Navajo County Attorney's Holbrook office and the Coconino County Attorney's Office in her continuing effort to visit all the Council offices. Ms. Ortiz invited any office that would like her to schedule such a training visit to contact either her or Ms. Kim MacEachern.

Ms. Ortiz congratulated the current APAAC interns, Mr. Daniel Woolston and Mr. John Gaylord, who recently passed the state bar exam. Mr. Woolston and Mr. Gaylord have both indicated a desire to make prosecution their career. Ms. Ortiz recognized both interns for their hard work in their various roles at APAAC and encourages the Council to consider these new attorneys as they seek employment within the prosecution community.

JUVENILE PROSECUTOR OF THE YEAR AWARD

Ms. Ortiz provided the Council a draft of the award criteria language for the Juvenile Prosecutor of the Year Award, which was recently approved by the Council as an additional APAAC Summer Conference award.

Mr. Jim Walsh made a motion, seconded by Mr. Sidles, to approve the language of the Juvenile Prosecutor of the Year Award for the Summer Conference. Motion carried.

SELECTION OF 2012 SUPPORT STAFF OF THE YEAR AWARD

Ms. Ortiz announced the nominees for the 2012 Support Staff Award and invited the nominating office to supplement the information provided on the written nomination form in support of their candidate: Yvonne Bentello from the Maricopa County Attorney's Office; Christine Hardin, Yavapai County Attorney's Office; Jill Luke, Tucson City Prosecutor's Office; Alexandra Sanchez, Phoenix City Prosecutor's Office; Tami Suchowiejko, Coconino County Attorney's Office; and, Heidi Tadlock, Pima County Attorney's Office.

Ms. Ortiz asked for a hand count of the Council members to determine the winner by majority vote. The winner will be announced at the Support Staff Conference Award Luncheon on December 7, 2012.

SELECTION OF 2012 LEGAL ASSISTANT OF THE YEAR AWARD

Ms. Ortiz announced the nominees for the 2012 Legal Assistant Award and invited the nominating office to supplement the information provided on the written nomination form in support of their candidate: Jeff Colbert from the Maricopa County Attorney's Office; Michele Duran, Navajo County Attorney's Office; Jennifer Gluck, Phoenix City Prosecutor's Office; Nancy James, Paradise Valley Town Prosecutor's Office; Kristi Pesqueira, Santa Cruz County Attorney's Office; Margaret Robertson, Yavapai County Attorney's Office; Nicole Rogers, Pima County Attorney's Office; and, Meghan Warman, Mesa City Prosecutor's Office.

Ms. Ortiz asked for a hand count of the Council members to determine the winner by majority vote. The winner will be announced at the Legal Assistant Conference Award Luncheon on November 2, 2012.

PHOENIX CITY PROSECUTOR'S OFFICE PROSTITUTION DIVERSION PROGRAM

Ms. Polk stated that Mr. Carreon-Ainsa's report from the Phoenix City Prosecutor's Office on their Prostitution Diversion Program has been tabled, and may be on the next Council meeting agenda in January 2013.

ARIZONA ASSOCIATION OF COUNTY ORGANIZATIONS REPORT

Mr. Carlyon reported that AACo's annual conference will be held at the Carefree Resort from November 14-16, 2012. At this meeting, AACo will adopt their proposals for the next legislative session. Mr. Carlyon suggested the Council members review the list of AACo's legislative proposals for consideration. Although there are not criminal law proposals, there are some civil matters that may impact the prosecuting community, which some offices may

want to consider. One item noted by Mr. Carlyon is a proposed statutory change in the minimum requirements for future sheriff candidates; specifically, that they have law enforcement experience, in addition to being at least 18 years of age and not a felon. Mr. Carlyon noted that Ms. MacEachern sits in as a guest on all the legislative committee policy meetings to give APAAC a voice on behalf of the prosecuting community.

Mr. Carlyon also stated that the National Association of Counties' fall meeting will be held this December in Memphis, Tennessee. Ms. Ortiz may be attending. Mr. Carlyon, Ms. Ortiz, and Mr. Derek Rapier are members of the NACo's Public Safety Committee. Mr. Carlyon noted that several proposals for consideration this year by NACo are looking at budget issues rather than the safety of our citizens and our communities. Some of those include: not allowing the transfer of juveniles, getting rid of the death penalty, and major sentencing reform. Mr. Carlyon stressed the importance of prosecutors having a "voice at the table" now to weigh in on these significant issues at the legislative level.

TRAINING COMMITTEE REPORT

Mr. Sidles referred to the agenda attachment which represents a schedule of the recent APAAC seminars, as well as a preview of the upcoming training events. Introduction to Trial Advocacy in October had 19 attendees; the Professionalism course will be held on October 26, 2012; Legal Assistants' conference and Psychology of the Criminal Mind are scheduled in November; and, the Support Staff conference is set for December. Mr. Richard Wintory's trial advocacy training is ongoing and has been well-received with very good feedback.

Mr. Carlyon commented that their recent training by Mr. Wintory was outstanding and stated that it was nice to have such worthwhile training brought in-house, thereby minimizing travel and time away from the office for the attorneys who attended.

Ms. Ortiz thanked Maricopa County Attorney's Office for providing their training facility at no cost for the recent Introduction to Trial Advocacy course. Also, Ms. Ortiz expressed her appreciation to MCAO, the Phoenix City Prosecutors Office and the Arizona Attorney General's office for allowing their attorneys and staff members to volunteer for the jury selection exercise, which contributed greatly to the success of the program.

The next Training Committee meeting will be on November 9, 2012 at 10:00 a.m. at APAAC.

LEGISLATIVE POLICY COMMITTEE REPORT

Mr. Walsh reported on the recent LPC meeting, specifically:

Criminal Cleanup - Mr. Walsh stated this bill used to be called "omnibus legislation," which is meant to take care of technical changes and inconsistencies in the law. Further, that Mr. Jerry Landau provided LPC with a comprehensive description of his research regarding what needs technical correction from the Courts' perspective, as set forth in the agenda attachment. The bill has not yet been drafted, and comments or corrections to the current proposed language are welcome. While the primary sponsor of this bill still needs to be

identified, it is important to recognize that this bill is being proposed as a technical amendment, and that aspect of the bill must be adhered to by the legislators and enforced by leadership so unintended substantive changes to the law are not made.

Pima County Legislative Agenda - Ms. Kathleen Mayer stated that Pima County would be seeking support for the proposed bill titled, Involuntary Commitment of Incompetent/Non-Restorable Defendants, which the Council has approved two times in the past. The agenda attachment is last session's iteration, namely HB2531. The other two new bills on the agenda for Council's consideration are amendments to A.R.S. §§13-2804 and 13-4433.

Mr. Walsh suggested that comments or ideas on these bills be provided Ms. MacEachern before they are taken up again at the next LPC meeting.

MATForce Medical Marijuana Proposals – Mr. Walsh introduced the legislative proposals from MATForce, some of which came forth last year – although a few were a bit late in the session. Mr. Walsh asked that any requests for specific APAAC-sponsored bills, or if there are bills looking for a sponsor, be directed to Ms. MacEachern. LPC will review them, put the language in bill form, and bring those back to the Council with a recommendation for action.

Mr. Carlyon will check with Craig Sullivan at County Supervisors' Association on the status of the MATForce Legislative Proposal #1.

Ms. Polk, who co-chairs MATForce, stated that Legislative Proposal #7 may be the most controversial one as it is requesting a presumptive THC level. She feels that in order for this item to move forward the Department of Public Safety and other labs will need to be on board to determine if they support it and can test for it. It would have implications for not only DUI, but also drug testing in the workplace. Ms. Polk indicated that MATForce will be working with LPC on these legislative proposals.

Mr. Mitchell stated that the Maricopa County Attorney's Office favors the MATforce proposals as a temporary solution until the medical marijuana act is properly pre-empted by federal law.

Ms. MacEachern noted that another meeting of the metal theft committee was held on October 24, 2012, which Ms. Mayer attended. Ms. MacEachern will watch the video and review the information received from the few offices that responded to her request for data on this issue. The metal theft committee may be soliciting LPC's help in drafting the language for their bill.

The next LPC meeting is scheduled for 2:00 p.m. on November 30, 2012, at the APAAC office.

NDAAs REPORT

Mr. Walsh reported that the next NDAA board meeting starts November 15th, so he will have a report for the January 2013 Council meeting. He will also provide the dates of the NDAA 2013 Summer Conference scheduled for July in San Diego, CA, for those who would like to attend.

POSSIBLE APAAC AMICUS CURIAE BRIEF

Mr. Baird Greene discussed the possibility of APAAC's participation in filing an *amicus* brief to support the Tucson City Prosecutor Office's petition for review to the Arizona Supreme Court in *State v. Cooperman*. Mr. Greene indicated that the Supreme Court's opinion invites speculation on behalf of the defense regarding expert issues in DUI cases, despite Arizona Rules of Criminal Procedure, Rule 403.

Mr. William Mills provided a summary of the petition for review and stated that *Cooperman* and *Guthrie v. Jones* are in direct conflict. *Cooperman* dramatically expands on the factors to be considered in determining impairment as previously established by *Guthrie*, creating a battle of the criminalists, an expensive, time consuming proposition. The case does an end run around establishing foundation pursuant to statute.

Mr. Sidles made a motion, seconded by Mr. Rheinheimer, to file supporting *amicus* brief in *Cooperman*. The motion passed, with Mr. Andrew Pacheco abstaining on behalf of Mr. Tom Horne.

PROPOSED AMENDED TO APAAC AMICUS CURIAE POLICY

Ms. Ortiz referred to the agenda attachment which is the current APAAC *amicus curiae* policy approved by the Council in 2010. Ms. Ortiz is asking the Council to consider allowing a subgroup, such as the Executive Committee, rather than the full Council, to review and have authority to approve *amicus* requests due to the short timelines often associated with these matters. The current policy poses challenges with calling a full Council meeting to review and approve the request within a compressed timeframe. Discussion followed.

Mr. Sidles made a motion, second by Mr. Walsh, to table this item until further research can be done on the issue of whether or not filing an *amicus* brief is an action that only the full Council can take or whether that would fall under the duties of the Executive Director with direction from a subgroup, such as the Executive Committee. Motion carried.

CALL TO THE PUBLIC

Mr. Walsh reported that Pinal County has meet with some success in following the lead of Yavapai County in dealing with the novelty powders problem using civil injunctive relief. Law enforcement started going out with community participation agreements, notices of the danger of novelty powers, and copies of the preliminary injunction used by Yavapai County. Already, ten voluntary compliance signups have been received, and more are expected. Pinal County will follow up with injunctive action later in November against any of the outlets that don't voluntarily participate. The extent of this problem and the damage that is being done by these substances are much greater than the public really knows. Mr. Walsh thanked Yavapai County for its great work and providing Pinal County a format as it continues to follow their lead.

NEXT COUNCIL MEETING

Ms. Polk announced that the next Council meeting will be held on Friday, January 11, 2013, at 10:00 a.m. at the APAAC office.

ADJOURNMENT

Mr. Sidles made a motion, seconded by Mr. Rheinheimer, to adjourn the meeting at 11:15 a.m. Motion carried.

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