

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
MEETING MINUTES

July 31, 2012

The meeting of the Arizona Prosecuting Attorneys' Advisory Council was called to order by the Chair, Sheila Polk, on Tuesday, July 31, 2012, at 2:00 p.m., in the Indigo Room at the Westin La Paloma, which is located at 3800 East Sunrise Drive in Tucson.

COUNCIL MEMBERS PRESENT

Kenneth Angle	Graham County Attorney
Brad Carlyon	Navajo County Attorney
Aaron Carreon-Ainsa	Phoenix City Prosecutor
Jon Eliason	Mesa City Prosecutor
Daisy Flores	Gila County Attorney
Baird Greene	Tucson City Prosecutor
Tom Horne	Arizona Attorney General
Bill Montgomery	Maricopa County Attorney
Sheila Polk	Yavapai County Attorney
Lawrence Ponoroff	Dean, UA James E. Rogers College of Law
Derek Rapier	Greenlee County Attorney
Ed Rheinheimer	Cochise County Attorney
Tobin Sidles	Oro Valley Town Prosecutor
Jon Smith	Yuma County Attorney
Sam Vederman	La Paz County Attorney
Rob Walecki	Glendale City Prosecutor
James Walsh	Pinal County Attorney
Michael Whiting	Apache County Attorney

OTHERS PRESENT WITH PROXY

David Byers	Arizona Supreme Court Proxy Jerry Landau
Barbara LaWall	Pima County Attorney Proxy Kellie Johnson
David Rozema	Coconino County Attorney Proxy Michael Lessler
George Silva	Santa Cruz County Attorney Proxy Liliana Ortega

STAFF PRESENT

Elizabeth Ortiz	Executive Director
Kimberly MacEachern	Staff Attorney
Denise Helm	Executive Assistant

VISITORS

Clarence Carter	Director, Department of Economic Security
Amelia Cramer	Pima Deputy County Attorney
Katie Dotts	OSAM Document Solutions
Kevin Flanagan	OSAM Document Solutions
Kathleen Mayer	Pima Deputy County Attorney
Andrew Pacheco	Assistant Attorney General
Richard Platt	Pinal Deputy County Attorney
Ed Truman	Assistant Attorney General

CONSENT AGENDA

Mr. Montgomery made a motion, seconded by Mr. Jon Smith, to approve the Consent Agenda. Motion carried.

CHAIR'S REPORT

Ms. Polk reviewed details of the DEA group tour arranged by APAAC for Council members and their chief deputies on Wednesday, August 1, 2012. Those who previously signed up for the tour and submitted their information for security clearance should meet at the front door of La Paloma at 8:45 a.m. The charter bus will depart at 9:00 a.m. Attire is business casual. A sack lunch will be provided on the return bus trip, which should arrive back at La Paloma by 1 p.m.

Ms. Polk also reminded members of the no-host Council dinner on Tuesday, July 31, 2012, at 6:00 p.m. The Council dinner is for members and their spouses and will be held at the Pinnacle Peak Restaurant. Ms. Ortiz has provided a map and directions. Attire is western wear.

Ms. Polk provided an overview of the governor's Substance Abuse Partnership "Prescription Drug Abuse Reduction Project." The governor's office has identified three counties as pilot sites: Yavapai, Pima and Pinal. The initiative calls for a concerted response county-wide to address prescription drug misuse. Implementing the plan will require partners from all levels of the community: namely, law enforcement, prosecution, nonprofits, behavioral health, pharmaceuticals industries, doctors and hospital emergency room staff. If the plan is successful, it will then be available to all counties in Arizona. Ms. Polk asked that further questions be directed to her.

EXECUTIVE DIRECTOR'S REPORT

Ms. Ortiz directed Council members' attention to the proposed council meeting calendar for the fiscal year 2012-2013.

Mr. Carlyon mentioned that the 2013 AACo conference, which usually coincides with the November Council meeting, will instead be held in August, rather than in November as it has been in previous years. That calendar modification was noted by Ms. Ortiz. Any additional alternative dates should be sent to Ms. Ortiz.

Ms. Polk recommended the Council allow Ms. Ortiz to move forward with the proposed dates, pending further modifications, rather than require Council to vote on each calendar change. There were no objections noted.

Ms. Ortiz announced that NDAA's Western Regional Children's Advocacy Center is sponsoring an October 2012 training program in Glendale for forensic interviewers and prosecutors. Registration is limited, so APAAC will be sending the program announcement specifically to the attorney general and all county attorneys, as well as their chief deputies, with a request for each office to recommend a specific team or special prosecutor to attend.

STAFF ATTORNEY'S REPORT

Ms. MacEachern updated the Council on the July 2012 National Association of Prosecutor Coordinators (NAPC) conference in Deadwood, South Dakota. Ms. MacEachern reported that NAPC is alerting its members to the fact that groups, such as the PEW Research Center, are conducting unsolicited studies of state's criminal justice systems, sometimes in a particular topic area, with a goal of providing facts and data to help inform the national dialogue. NAPC encouraged members to be diligent and proactive in participating with PEW in that process, which will have a significant impact on the results disseminated to the public.

There was a brief discussion at the NAPC conference about the recent United States Supreme Court case Miller v. Alabama concerning whether or not states can impose life sentences on juveniles. Activists will likely use this decision to push for reforms. Meanwhile the victims' group www.teenkillers.org plans to partner with prosecutors to ensure that all victims concerns are addressed.

At the NAPC conference, Ms. MacEachern obtained information on the growing issue of novelty powders. Apparently, problems associated with finding pharmacologists who can testify to the effects of these substances are causing many to look at consumer fraud/retail sales approaches to stemming their availability. Further, Michigan had a chemist from Upjohn come up with a comprehensive definition of cannabinoids to avoid the analogue issues.

NAPC provided information regarding the National Attorneys General Training and Research Institute (NAGTRI), which has programs that may be of interest to fight faculty fatigue, moot court all Supreme Court Cases, and for joint training. It is self-funded through civil settlements through AGOs/Robert Wood Johnson Foundation, and also has an international aspect. Chris Toth is the contact #202-326-6021.

Further discussion at the NAPC conference concerned a federal constitutional amendment with regard to victim's rights that was recently introduced in Congress by Trent Franks and others. Because Arizona is ahead of other states with regard to victim's rights, many are looking at it and have questions about it would work. For example, Illinois was concerned

about how that rule affects the role of the victim in the courtroom. Mr. Montgomery observed that the proposed amendment is less broad than the state constitutional victim bill of rights.

Another topic at the NAPC conference was prosecutorial misconduct. Given that there have been 900 "mistakes" out of 400 million convictions over 20 years, a record that no other profession could possibly boast, there is a way to drive the discussion which is being re-debated nationwide as the Innocence Project moves about the country. Elected DAs from the AR/OK/LA/TX convened a regional meeting to discuss the issues, and it was so successful that they are encouraging other regions to consider doing the same.

Other topics at NAPC included proper reporting for defendants with firearms restrictions, a presentation by the VERA Institute, and the ½ hour webinars available for CLE at your desk from Prosecutor's Encyclopedia.

CHILD ABUSE INVESTIGATIONS

Ms. Polk introduced Mr. Clarence Carter, Director of the Arizona Department of Economic Security, to make a presentation on their child abuse investigations.

Mr. Carter emphasized the vital relationship between the law enforcement judicial mechanism and the child welfare mechanism. With 20 years in the administration of human services, he acknowledges there are problems in the DES system; first a fundamental design flaw in the safety net due to the aggregation of individual programs. These programs were implemented to address some specific aspect of the human condition and were not designed to operate in conjunction with each other. Second the practices and protocols are burdensome, bureaucratic, redundant and inefficient. DES must redefine how it measures success. The system is not meeting the needs of the 1.6 million people it serves. The goal of DES should be to deliver necessary services AND move people successfully through the system. Therefore, his mission is to reinvent DES with that objective.

The first step is an efficient child welfare system which will ensure the safety of the child and engage law enforcement appropriately and effectively. One of the recommendations from the Governor's Task Force was the creation of a DES Office of Child Welfare Investigations. In the next few weeks, Mr. Carter will announce the candidate to head the new Office, who will report directly to the Director of DES. Finally, Mr. Carter emphasized his intention to improve the DES system and his commitment to build relationships by partnering with law enforcement and the prosecuting community to better protect Arizona's children in the future.

Mr. Montgomery commented on the Task Force's vision for the Office of Child Welfare Investigations. He indicated the task force was established to take away those investigative responsibilities from CPS and focus on responding to criminal abuse/neglect and training investigators to cooperate with law enforcement, thereby allowing CPS to focus on delivery of special welfare services.

Ms. Amelia Cramer asked Mr. Carter what the department's standard is for child safety, as it concerns the decision for removal, remediation, and possibly reunification.

Mr. Carter replied that it is the state's priority to protect the child first and, if removal is necessary, then to move quickly in that direction. Ultimately, the reunification of the child to their birth family is what society hopes for; however, when that is not possible, other permanent arrangements need to be made. Mr. Carter would like to make the statutory language more clear with regard to the standard for prioritizing child safety and hopes to address that during the next legislative session.

OSAM DOCUMENT SOLUTIONS

Ms. Polk introduced Ms. Katie Dotts and Mr. Kevin Flanagan from OSAM Document Solutions to give the Council an educational presentation on the "paperless" prosecution office. OSAM provides standardized document management. Some of their current Arizona customers include Pima County Attorney's office, and a few other prosecution offices, along with the Arizona Supreme Court, Court of Appeals and all of the Superior Courts, with the exception of Pima County. The two major benefits of electronic content management are increased efficiency and eliminating the need for physical records space. With the proper preparation and foresight in mapping out a plan, an office can get best use out of the software. Namely, transactional documents can be more readily accessed and easily adapted; for example, with HR and finances, with creating discovery packets for opposing counsel, and in tracking contract requests, revisions and renewals.

TRAINING COMMITTEE REPORT

Ms. Ortiz presented attendance data and evaluation scores concerning APAAC's seminars and courses for the CLE year which ran from July 1, 2011, through June 30, 2012. One of the highest rated seminars was the Intermediate Advocacy for DV & DUI Prosecutions. That seminar is scheduled to run again during the last week of August 2012. Room is still available for this training, and offices are asked to encourage staff to attend.

Council members were provided a copy of the new 2012-2013 training calendar, featuring winning artwork from APAAC's first calendar art contest. Art entries were submitted from the prosecutor community across the state. APAAC waived the Summer Conference registration fee for prosecutors with winning artwork, and recognized non-prosecutor winners with an acknowledgement gift.

LEGISLATIVE POLICY COMMITTEE REPORT

Mr. Walsh reported that most of the discussion from the LPC's recent wrap-up meeting related to how the state is going to deal with novelty powders – such as K2s, spices, and bath salts. This will be a critical issue going into the next legislative session, so Council members should let the LPC know when and if they have formulated a plan that LPC can bring to the legislature.

Mr. Walsh also asked that any other proposal or plan for legislative consideration should be submitted sooner than later for discussion by LPC in concept form. LPC will not make any

recommendations until the committee sees some kind of legislation is going to be introduced on that same issue. LPC may meet again before the next Council meeting in September.

Mr. Landau noted that the legislature passed Senate bill 1127, which changed the term “child custody” to “legal decision-making”; however, the change was made only in one chapter, Title 25, and conforming changes in the rest of Title 25 and Title 13, Chapter 36 were not made. Mr. Landau wanted to make the Council aware of the inconsistency, and how it may affect some of the domestic violence statutes and to forward any other technical “criminal cleanup” issues.

NDAAs REPORT

Mr. Walsh reported on his attendance at NDAA’s July 2012 Summer Conference in Connecticut. Mr. Montgomery and Ms. Ortiz were also present, as was Assistant Attorney General and NDAA Board Member Richard Wintory. Mr. Walsh attended the summer board meeting as part of the conference, and learned that we are at 100% state participation. Mr. Walsh stated that NDAA has been working very closely with the ADA criminal justice committee to replace the terminology of ‘prosecutorial misconduct’ with the more appropriate term ‘prosecutorial error,’ which he would like to see done in Arizona, as well.

Mr. Montgomery indicated that the State Bar committee in criminal procedure is considering it, and his office has requested a proposal as well.

Mr. Walsh reported on two important issues that NDAA is following: First are the various types of forensic reform being discussed in Washington. Senator Rockefeller of West Virginia is the chairman of the Senate Commerce Committee and would like to put forensic regulation on a national basis in the National Standards Institute. This is the result of a pro-defense report issued a couple of years back about the status of forensic science in the United States, which was not favorable to prosecutors. The second issue is the crime commission proposed by Senator James Webb, Democrat from Virginia who is in his last term. Mr. Walsh conveyed that the commission is proposing to do an in-depth 18-month study of the whole criminal justice system in the United States and then make recommendations. This is concerning as the commission has virtually no prosecutors on it, and is especially lacking in local prosecutors, who handle 95% of the criminal cases.

Regarding NDAA’s recordkeeping audit of federal grants they received, NDAA is asking its members to contact their congressional delegation and ask for help in getting the DOJ to sit down and have a meeting with the board to resolve the remaining issues and wrap up the audit that has been ongoing for 22 months.

During the victim’s round table at the board meeting, discussion was held concerning the House Joint Resolution 106 sponsored by Representative Trent Franks of Arizona, which would be the first step in adopting a crime victim’s rights amendment to the federal Constitution. The amendment is in a major committee in the House; it would be a significant step in the legislative process to get it out of committee and onto the floor for a vote this year. Mr. Walsh believes it would be very good for the rest of the delegation and for NDAA to have

a resolution from APAAC in support of the National Crime Victim's Rights Amendment to the United States Constitution.

Mr. Walsh made a motion, seconded by Mr. Montgomery that APAAC go on record with a letter to all members of the delegation and to NDAA in support of HJR106. Motion carried. Mr. Landau will take this to AJC to get an official vote on the issue.

PROSECUTORS SIGNING LONG-FORM COMPLAINTS

Mr. Landau asked the Council to address a question for the Court: What is required to establish probable cause for signing of complaints, as there are several ways to go about it. Discussion followed, which included the procedures in use in the various jurisdictions. Any additional information on this subject can be directed to Mr. Landau.

CALL TO THE PUBLIC

Ms. Polk handed out to each Council member a copy of APAAC's new coloring book, "A Kid's Day in Court".

Ms. Ortiz stated that this was a project previously approved by the Council and created in-house by APAAC staff. The coloring books, along with crayons, will be provided to prosecutor offices upon request directed to Ms. Ortiz. It is APAAC's intention that they be given to child victims or witnesses involved in prosecution cases.

Mr. Carlyon noted that Ms. Polk was recognized with an award Arizona Narcotic Officers Association for all the drug coalition work being done in Yavapai County.

NEXT COUNCIL MEETING

Ms. Polk announced that the next Council meeting will be held at APAAC on September 28, 2012, at 10:00 a.m.

ADJOURNMENT

Mr. Montgomery made a motion, seconded by Mr. Sidles, to adjourn the meeting at 3:55 p.m. Motion carried.