

UTAH PROSECUTION COUNCIL
Friday, January 5, 2018
Utah Association of Counties Offices
5397 S. Vine Street
Murray, Utah

APPROVED MINUTES

UPC : Barry Huntington, Chair, Garfield County Attorney
 Haley Christensen, UPAA Co-Chair, Salt Lake County District Attorney's Office
 Jann Farris, Morgan County Attorney
 Stephen Foote, Chair-elect, Duchesne County Attorney
 Steven Garside, Layton City Attorney
 Scott Stephenson, Deputy Director of P.O.S.T (*designee of Commissioner Keith Squires*) via telephone
 Scott Sweat, Wasatch County Attorney

VIA PHONE: Robert Cosson, Chief Prosecutor, St. George City Attorney

EXCUSED: Sim Gill, Salt Lake County District Attorney
 Sean Reyes, Utah Attorney General
 Commissioner Keith Squires, Utah Department of Public Safety

UPC Bob Church, Director
STAFF: Marilyn Jaspersen, Training Coordinator
 Peter Leavitt, Staff Attorney
 Tyson Skeen, Staff Attorney
 Ronald Weight, IT Director

GUESTS: Jeff Buhman, Utah County Attorney
 Stephen Hadfield, Box Elder County Attorney
 Margaret Olsen, Summit County Attorney
 Ryan Peters, Juab County Attorney
 James Swink, Cache County Attorney
 G. Mark Thomas, Uintah County Attorney
 Robert Van Dyke, Kane County Attorney

I. WELCOME - THANK YOU TO STEVE GARSIDE AND "CHANGE OF COMMAND" ISSUES

- A. The Council members were welcomed and the meeting convened.
- B. Thanks to Steve Garside for his two years of serving as the UPC Chair. The Council welcomed Barry Huntington as the new UPC Chair.
- C. Council Membership
 - 1. Chair-elect Appointment: Pursuant to §67-5a-2(5), "The council shall elect by a majority vote one of its members as chair at its first meeting and then annually." Many years ago the Council adopted three resolutions, never memorialized in the statute:

1. A person elected as UPC Chair should serve for two years;
 2. Creation of the position of Vice-Chair / Chair Elect, with the intent that the Chair Elect would succeed to the office of Chair upon the end of the previous Chair's term; and
 3. Rotation of the chair so the chair will be held by a member from a large county, followed by a small county, followed by a city.
Steve Garside made the motion to nominate Stephen Foote to be the UPC Chair-elect. Jann Farris seconded and the motion passed by acclamation.
 4. Region II: Thanks Scott Sweat for serving as Region II's representative. Scott's term of service is up as of January 10, 2018. He has chosen not to run for reelection.
 5. Region IV: Stephen Foote's term of service was up on November 15, 2017. He would like to continue his service on the Council and can continue to serve for four months from the date his term expired.
 6. To fill these two seats, UCDAAs will make those recommendations to the Council. UCDAAs meet January 5, 2018 at 1:00 p.m. Elections will be held during that meeting for those two regions. **Bob will report the outcome at the next Council meeting. (Ryan Peters was nominated during UCDAAs's meeting.)**
- D. Barry Huntington announced that retired Uintah County Attorney JoAnn Stringham recently passed away. She was very well respected as a county attorney and will be missed.

II. APPEARANCE BY JUDGE DANE NOLAN, EDITOR-IN-CHIEF, UTAH JOURNAL OF CRIMINAL LAW

- A. Judge Nolan gave a brief overview of the Journal. He stated he was appearing before the Council to raise awareness for the Journal and to seek a donation. He expressed the benefits of the publication as bringing a balanced discussion among judges, defense and prosecuting attorneys, legal defenders, etc. Articles that have appeared in the Journal included Doctrine of Chances, state constitution, legislative update, trauma informed for sexual assault, and an ethics/confidentiality between defense and prosecutor attorneys just to name a few. After a brief discussion, the Council agreed it would be a good investment, but that the Journal would need to give prosecutors the same name recognition as defense attorneys. Stephen Foote made the motion to approve Bob Church to donate \$1500 to the Utah Journal of Criminal Law for printing costs with the condition that prosecutors receive the same name recognition as defense attorneys and prosecutors are encouraged to submit articles to the Journal. Jann Farris seconded the motion and the motion passed unanimously.

III. APPROVAL OF THE MINUTES

Jann Farris made the motion to approve the minutes from both October 3, 2017 and the special council meeting of November 20, 2017 and to include a word change on Page 4 from "cancer" to "canker." Stephen Foote seconded the motion and it passed unanimously.

IV. FINANCIAL REPORT

- A. Financial Reports
Bob Church gave an in depth report on the following completed conferences. Please

refer to the Director's Summary for details.

1. Surcharge FY18 and Year to Date:
Surcharge report includes receipts from September to November 2017. Surcharge receipts for September 2017 ending at \$43,043.04 a difference of \$479.21 from 2016 ending at \$43,522.23. October 2017 ended at \$38,184.71 which was \$3,078.99 lower than last year. November 2017 ended at \$37,154.63 with slight difference of \$97.29 from last year.
 2. FY18 Budget:
Reimbursement numbers for Peter's salary have yet to be received
- B. John R. Justice Grant
1. This year the JRJ grant has been approved for \$36,409 with no matching funds.

V. CONFERENCES

- A. Basic Prosecutor Course - August 14-18, 2017, USU University Inn.
The conference was very well received and attended.
- B. Fall Prosecutors Training Conference (October 4-6, 2017) - St. George Hilton Garden Inn.
It was very well received. Came in under budget by \$6,391.21.
- C. Civil Conference (October 18-20, 2017) - St. George Hilton Garden Inn
Also, well received. Came under budget by \$3,203.27.
- D. County Attorney Executive Seminar
It was well attended and received good reviews.
- E. National Association of Prosecutor Coordinators (NAPC)
This year UPC hosted NAPC winter conference at the SpringHill Suites & Inn in Springdale (Zion's). The conference was well attended, everyone learned a lot, and fun was had by all. Kudo's to Marilyn for helping to negotiate the hotel contract, saving NAPC a huge amount of money - \$15,000. Also, kudos to Tyson who hosted his traffic safety resource prosecutor (TSRP) counterparts during NAPC's plenary session. He invited Ranger Brody Young to talk about seated FST's and a little about his miracle story. They discussed multiple timely and important topics. Tyson was told multiple times by multiple TSRP's that this was the best TSRP-breakout ever held at an NAPC conference! Also, Peter made great contacts and got some very useful information for his trauma training. Overall, a very productive training.

VI. UPCOMING CONFERENCES

- A. Spring Conference, April 26-27, 2018 - Salt Lake Sheraton Hotel
John Nielsen and a soon to be determined presenter will do the case law update. Tyson Skeen has volunteered to be part of the legislative update team.
- B. Regional Legislative Updates, April - May, 2018
Notices for the 2018 Regional Legislative Update will go out before the end of January.
- C. CJC/DV Conference, May 14-16, 2018 - Cliff Lodge Snowbird Resort
- D. UPAA, June 20-22, 2018 - Cedar City Ramada Hotel & Suites
- E. Top Gun (Advanced Train the Trainer) - September 2018 - Location TBD
 1. To pay for this course, Bob stated that he has applied to NAPC for a \$16,000 grant. If we get the grant we will work with the training committee to plan and implement this training. The course is being developed for our

instructors who present at our week-long Basic Prosecutor Course as well as our “elite” trainers. We plan to teach the following modules: Start the Learning Conversation, Basic Learning Concepts, Effective Feedback, Blooms Taxonomy and Brain Quadrants, Accelerated Learning Principles, Lecturer v. Facilitator, Problem Participants and Using Training Aids.

Marilyn explained that the purpose is to increase the skills our presenters learned at their previous Train the Trainer course. A major focus of the course will be on improving participants effective feedback skills. We will accomplish this through several different ways. First, each participant will teach at least one module of the course. Next, two “students” will provide feedback to the course instructor. Finally, two more “students” will provide feedback to the two students on how they provided feedback. Every participant will have the opportunity to teach and provide the two different types of feedback. We will also incorporate interactive role playing and other activities. The desired outcome is that participants become more proficient in effective feedback skills, recognize the need for their own improvement, become better mentors to those they teach, and improve their own training and trial ad skills.

VII. TRAINING COMMITTEE REPORT

Steve Garside, UPC Training Committee Chair gave the following report.

- A. Training Committee met October 16-17, 2017 in Torrey, Utah. They developed the Spring and Fall agenda. They also discussed Top Gun training and hope to receive the funding. The committee has set March 22, 2018 for their spring meeting.

VIII. UPAA

Haley Christensen, UPAA Co-Chair gave the following UPAA report.

- A. There were two newly reelected board members, JoEll Rowley from Wasatch County Attorney’s office and Christine Stevens of Millard County.
- B. The 2018 UPAA Conference will be held at the Cedar City Ramada Hotel & Suites, June 20-22, 2018.
- C. Haley informed the Council that the UPAA Board had amended their By-Laws that the UPAA Chair and Co-chair term of service be changed from two (2) years to three (3) years. Haley asked the Council to approve the amendment. Jann Farris made the motion to the amendment as stated. Steve Garside seconded the motion and the motion passed unanimously.

IX. RESOURCE PROSECUTORS REPORTS

- A. Tyson Skeen referred the Council to the in depth TSRP report as outlined in the handouts. He reported on his training schedule.
- B. Peter Leavitt referred the Council to the in depth SA/DVRP report as outlined in the handouts. He also informed the Council that he had received and accepted an unexpected employment opportunity that came about in the last week. The opportunity was too good to pass up and September 19th will be his last day. Bob mentioned that in the short time Peter has been with UPC he has accomplished a lot. And what Peter has done will make the transition for the new SA/DVRP fairly smoothly. Peter mentioned what an outstanding boss and mentor Bob has been and

he thanked the Council for the opportunity to work for UPC. The Council wished Peter well and expressed that Peter will be missed.

X. IT ISSUES

In addition to the in depth report in the Director's Summary, Ronald Weight and Bob Church reviewed comments as outlined in the Director's Summary. Please refer to the Director's Summary and attachment (Tab) H. After some discussion, the following was a result of that exchange.

A. eProsecutor:

1. Ron, Oversight Committee Chair, met twice with the committee including representatives from Journal Technologies. They have set forth a plan to tailor the program for Utah's needs; addressed security and change management. The most common questions with their answers are on our website at: <http://upc.utah.gov/eProsecutor-FAQ.php>. As the committee makes decisions on how things should work and how forms should look, JTI will update the test site so we can see the changes soon after we discuss them. This will help us get ready for deployment.
 - a. We are in the process of developing a change management process that all agencies will need to use to request changes to the system. It will be available from our web site and will be ready once we get closer to deployment.
 - b. The estimated time to get ready for the first go-live deployment is six months to a year.
 - c. There have been 11 agencies (four county and city) that have completed and returned a signed MOA and Joinder agreement as required before eProsecutor can be deployed.
 - d. At the last Council meeting Stephen Foote asked the AG's Office can hold prepayment of user fees. The AG's office cannot hold jurisdiction's prepaid user fees. Journal Technologies will accept prepayment fees and hold them for a jurisdiction. However, any interest accrued on those held funds will accrue to Journal and there is no refund if the jurisdiction decides not to go with Journal.
2. BCI Issues
Grand County raised the issue of eProsecutor and its interaction with BCI.
 - a. Ron spoke with Lisa Ashman from the SL County DA's office about what we need to do to get an OK from BCI for eProsecutor. It seems they need it because they send declination reports to BCI and that requires an approval process from them.
 - b. SL County has gone through the process so as they go through the process it should apply to everyone. Ron recommends that Journal coordinate this with their program manger/ IT folks working with SL County to make sure it's done for all of Utah at the same time so we don't have to repeat it.

F. Cost of video equipment/streaming for UPC Conferences

1. Also at the last meeting Bob reported that POST will now charge for their video recording services. The Council asked him to look at the cost to UPC. Here are rough estimates and/or ranges.
 - a. Video/audio equipment: \$2,500 - 7,000 for basic, no frills' equipment

- b. Editing software: \$50 - 80 per month
- c. Streaming service: \$100 - 500 per month

Since POST already has the equipment and the expertise in Chris Fielding they can provide high quality filming. Even if UPC purchases all the equipment and software we still would lack the quality of filming. Bob asked the Council's guidance where UPC purchase either the equipment or a little better equipment for courses such as Basic realizing recording will be lacking in quality or pay POST to record Spring Conference. **Bob was asked to revisit the subject with POST and include off setting the price via the surcharge reimbursement.**

XI. OTHER BUSINESS

A. UPC's Google Forum

In addition to the in depth report in the Director's Summary, Bob Church reported on and asked for the Council's guidance regarding a recent post on the UPC Google Forum where a Deputy County Attorney (DCA) posted a summary of events involving his interaction with a local law firm and an attorney they hired to handle the appeal reviewed comments. Please refer to the Director's Summary and attachment for details. Bob mentioned that it was a concern that emails were disseminated outside the forum. He explained that the Google Forum is hosted by UPC but is not on the UPC web-page. The Council directed Bob put a disclosure on the form, to respond to the involved parties in a letter or a notice that all attorneys are subject to and are guided by the same rules of ethics and professionalism. And to make clear that UPC does not endorse or has any opinion on the matter or to the parties involved.

B. POST Recording Fees

In addition, as statement above under X.F., POST can no longer record our conferences for free. Going forward POST will charge \$2,975 which is half off their costs.

C. GRAMA Requests

Bob directed the Council's attention to the Directory Summary report. Hearing no comments or questions, the Council moved to the next item.

D. Justice Division Director

Bob informed the Council that Greg Ferbrache, AG's Justice Division Director, has left to go into private practice. Interviews are in process to replace Greg. No announcement has been made as to who will be taking Greg's place.

E. Utah League of Cities and Towns

As directed by the Council, Bob has met with the new Director, Cameron Diehl regarding joining efforts. They are planning on meeting after the first of the year to discuss the possibility of combining training efforts.

F. Catering at future combined meetings (UPC, SWAP, UCDA)

SWAP has agreed to pay for two lunches and UPC pay for two lunches of the four quarterly meetings per year. UPC will provide drinks for all three meetings.

XII. CLOSED DOOR MEETING

Stephen Foote made the motion to go into an Executive Session. Steve Garside seconded the motion and the motion passed unanimously. The Council went into a closed door session. At the conclusion of their session, the Council reconvened.

XIII. PENDING EXECUTIVE SESSION MINUTES

The minutes of the Executive Session were kept by Marilyn Jasperson

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UPC Bob Church, Director
STAFF: Marilyn Jasperson, Training Coordinator

- I. Upon convening in an executive session the Council addressed the following:
 - A. SA/DVRP Position:
 1. Peter leaving: Bob reiterated that recently Peter had accepted another employment opportunity which was too good to pass up. September 19th will be his last day. According to HR, Bob is not required to reopen or re-interview for the position. Bob has, therefore, extended an offer to Marlesse Jones who was the second candidate in that process. Marlesse was very interested and said this was a long term position and considers this her dream job.
 2. Salary offer: In discussing salary, Marlesse anticipated a 5% raise from Layton and was asking an additional 5% from UPC. Bob stated that he would like to offer the following:
 - Asking for 5% above that would be \$41.87/hr. = \$87,089.60. This is easily within the amount of dedicated funds UPC is receiving from HB 200. This is close to what Peter was making, but Peter had a few more years of experience and was making \$90,000.
 3. Salary Equity: Bob mentioned his concern of salary equity between Tyson and Marleese. Bob recommended increasing Tyson's salary to exceed that of Marlesse's proposed salary \$87,360.00 (\$42/hr) or whatever the Council approves. He explained that Tyson has been licensed almost two years more than Marlesse and Tyson has been with UPC for two years. Tyson's current salary is \$80,620.00 (\$38.76 /hr.) Keeping in mind that if the Council approved the proposed amounts, both of them would be making more than an Assistant Attorney General. Other than the cost of living, salary increases will remain fixed for quite sometime.

4. Salary for Law Clerk: Further, Bob mentioned that he hasn't rehired a law clerk since Keegan Rank left because of lack of office space. Based upon feedback from Keegan, UPC could possibly find better use with an extern. So, some of the \$16,493 salary for a law clerk could be diverted to offset the increased salaries.
5. Salary / Revised Budget: Included in the Addenda to the Agenda was a revised budget which reflected the proposed salaries and showed that the budget would be in a good position to handle the proposed salaries. In the revised budget, Bob added in \$91,400 which is half of what we will get for this position, deleted the funds for the law clerk, and put in the numbers for SA/DVRP and the TSRP as stated in the memo. Bob indicated that he is not sure what Marlesse is willing to accept, but if she turns down the job the other candidates made substantially more money - well over \$100,000 and we would be back in this position again.

In talking with UPC staff, all agree Marlesse has excellent qualifications including two years of dispatching, 15 years as a victim advocate, 11 years as a prosecutor with Layton City, and she is a known entity to UPC. Even though, she has no felony prosecution experience that is not required for this position.

Stephen Foote stated he preferred not diverting the law clerk's salary but would rather use Peter's over salary to bring the staff attorney's salary in line. Stephen said Peter's salary was already approved and coming in around \$85K for each, but with a slight increase for Tyson would work and it would still be an attractive offer for Marlesse.

Scott Sweat preferred more around \$82K which he based upon what his prosecutors are paid who prosecute felonies.

After a lengthy discussion on salary, Jann Farris made the motion to offer the position to Marlesse, the second candidate from the original interviews, and negotiate a salary (approximately \$85,500) and then find a way to compensate Tyson for his additional years of service.

After today's meeting, Bob will contact Marlesse via conference with Barry and Stephen and make the offer.

At 12:37 p.m., Steve Garside made the motion to close the Executive Session. Stephen Foote seconded the motion and the motion passed unanimously. At the conclusion of their session, the Council reconvened into an open door Council meeting.

XIV. OPEN DOOR MEETING

Jann Farris made the motion to reconvene into an open door session. Barry Huntington seconded the motion and the motion passed unanimously. The Council went into an open door session.

- A. Personnel: Barry Huntington entertained a motion regarding personnel. Jann Farris made the motion that UPC make an offer for the SA/DVRP position that was formerly held by Peter Leavitt, to Marlesse Jones who was next in line from the original interview process a few months ago. The Council directed Bob Church to negotiate a salary with Marlesse and after that negotiation that he takes into consideration the other staff attorney, Tyson Skeen, and make him a fair salary adjustment. Stephen Foote made an amendment to the motion to authorize Bob to

first offer a salary in the amount \$85,500 to Ms. Jones up to \$86,000 and adjust Tyson's salary \$500 above whatever Ms. Jones ends up with. Jann Farris stated his motion stands with that of Stephen's Foote amendment to the motion. Barry Huntington seconded the motion with the added comment that Tyson's salary adjustment be based upon years of experience as well. The motion carried with one abstention from Steve Garside.

XV. NEXT UPC MEETING:

Wednesday, April 25, 2018

(This date is pending Bob's military schedule)

XVI. ADJOURN