

UTAH PROSECUTION COUNCIL

**Friday, January 10, 2014
Unified Police Shooting Range
Parley's Canyon
Salt Lake County, Utah**

APPROVED MINUTES

UPC : Stephen Foote, Chair, Duchesne County Attorney
Robert Church, Chair-elect, Orem City Prosecutor
Steve Garside, Layton City Prosecutor
Sim Gill, Salt Lake District Attorney
Barry Huntington, Garfield County Attorney
Kelly Sparks, Deputy Director of POST,
designee of Public Safety Commissioner Keith Squires
Scott Reed, Chief, Criminal Justice Division, Attorney General's Office
designee of Attorney General Sean Reyes
Scott Sweat, Wasatch County Attorney
Cecelia Zarbock, UPAA Chair

UPC Mark Nash, Director
STAFF: Marilyn Jaspersen, Training Coordinator
Ronald Weight, IT Director

GUESTS: Paul Boyden, Executive Director, SWAP
Chad Platt, Deputy Salt Lake District Attorney
Ryan Robinson, Chief Prosecutor, West Valley City
James Swink, Cache County Attorney
Tim Taylor, Interim Utah County Attorney
G. Mark Thomas, Uintah County Attorney
Chad Wooley, Daggett County Attorney
David Wilde, Deputy Salt Lake District Attorney
Kelly Wright, Deputy Salt Lake District Attorney

EXCUSED: Jann Farris, Morgan County Attorney
Sean Reyes, Utah Attorney General
Keith Squires, Commissioner, Utah Department of Public Safety
Edward Berkovich, UPC Staff Attorney
Donna Kelly, UPC Staff Attorney

I. WELCOME AND APPROVAL OF THE MINUTES OF THE SEPTEMBER 11, 2013 MEETING

- A. The Council members were welcomed and the meeting convened.
- B. Stephen Foote, acting as Chair-elect, moved to approve the minutes from September 11, 2013, seconded by Steve Garside, Layton City Attorney. The

motion passed unanimously.

II. ELECTION OF UPC CHAIR

- A. Steve Garside moved that Vice-chair Stephen Foote be elected as UPC Chair. The motion was seconded by Sim Gill. There being no other nominations, nominations were closed and Stephen Foote was elected by acclamation.
- B. Steve Garside nominated Robert Church as UPC Vice-chair/Chair-elect. The nomination was seconded by Barry Huntington. There being no other nominations, nominations were closed and Robert Church was elected by acclamation.
- D. Mark informed the Council that David Brickey's four year term as a Council member had ended and that the county attorneys from UPC Region II had met earlier in the day to select a representative from Region II to serve on the Council. By vote of the county attorneys in Region II, Scott Sweat, Wasatch County Attorney, had been selected. During its meeting that just ended, the SWAP Board had appointed Scott to serve a four year term on UPC. Council members welcomed Scott and expressed their appreciation to David Brickey for his service.

III. FINANCIAL REPORT: Mark Nash made the following financial report. Additional information is included in the Director's Agenda Summary.

- A. FY14 year to date:
 - 1. Surcharge Income and Projection Report: Mark Nash referred the Council to the Criminal Fine Surcharge Spreadsheet.
 - a. If surcharge income continues to the end of the fiscal year at the same level as in the first half of the fiscal year, there will be a shortfall of approximately \$24,000 below the budgeted surcharge figure of \$567,000.
 - b. Factors contributing to the decline in surcharge collections were discussed but no cause or causes were specifically identified.
 - 2. Detailed Expenditure Report: Mark Nash distributed detailed expenditure reports for the months of August through December and invited questions regarding any specific expenditures. Hearing none, he moved to the next item.
 - 3. Cost of Conference Reports: Mark referred the Council to the report, which showed the following information.
 - a. UMPA Summer Conference: The gross cost of the UMPA Conference was \$6,007.58, some \$3,000 less than the budgeted \$9,200. After crediting the \$2,580.00 in registration fees, the net cost of the conference was \$3,427.58.
 - b. Basic Prosecutor Course: As in past years, UPC paid lodging expenses for both faculty and students. The gross cost of the conference was \$17,243.32, against a budgeted \$18,000. After crediting the \$1,625.00 in registration fees, the net cost of the conference was \$15,618.32.
 - c. Fall Prosecutors Training Conference: The gross cost of the Fall Conference was \$15,043.81, more than \$3,000 less than the budgeted \$18,500. After crediting the \$8,000 in registration fees,

- the net cost of the conference was \$7,043.81.
- d. Government Civil Practice Conference: The gross cost of the Civil Conference was \$10,290.47, against a budgeted \$11,000. After crediting the \$4,125.00 in registration fees, the net cost of the conference was \$6,165.47.
 - e. Advanced Trial Skills Course: The gross cost of the Advanced Course was \$2,434.87, against a budgeted \$3,500. After crediting the \$1,125.00 in registration fees, the net cost of the course was \$1,309.87.
4. Comparison Report - Budget vs Actual: Mark Nash reviewed the report with the Council.
- a. Through the first half of the fiscal year UPC has realized approximately 45.9% of budgeted income. That includes 45.9% of budgeted surcharge income.
 - b. UPC has expended 40.3% of budgeted expenses. That includes 60.8% of the training budget and 34.1% of budgeted expenses for data management/PIMS.
 - (1) The only major training event yet to be held in this fiscal year is the Spring Conference, for which \$27,000 is budgeted.
 - (2) The budget includes \$6,000 for Regional Legislative Updates. Mark Nash explained that, because of financial restraints, he will not do regional legislative updates this year. Mark said he will work with POST to produce and present a webinar legislative update for broadcast to law enforcement agencies around the state.
- B. Budget Review and Possible Reopening of Budget: Mark Nash explained the current financial situation with the Council and made his recommendations as follows.
1. The budget outlook, based upon surcharge income was covered in item III.A. above. While the budget appears to be in reasonably good shape, needed expenditures on the PIMS project cannot be made unless additional revenue is realized.
 2. Director's Recommendations:
 - a. Director Mark Nash discussed several possible courses of action. Those recommendations are set out in detail in the Director's Summary of the Agenda.
 - b. After a thorough discussion of the budget, of the projected surcharge deficit and of the Director's recommendations, the Council took the following action:
 - (1) Barry Huntington moved that the Council assess a PIMS User Fee on all PIMS user offices in the amount of \$103.00 per user. "User" was defined as any employee of an office who uses PIMS and any attorney whose work is prepared on PIMS. The \$103 fee is to cover the last six months of FY14. Mark Nash was directed to send out notice of the PIMS User Fee assessment to all PIMS user offices. Steve

Garside seconded the motion, which carried unanimously.

- (2) Ron Weight was directed to provide only emergency support for those offices who decline to pay the user fee.
- (3) No discussion or decision was made on the amount of any PIMS User Fee for FY15 or beyond.

IV. PIMS REPORT: In addition to the in depth report in the Director's Summary, Ron Weight gave the following PIMS report.

A. He continues to work with user requests to install PIMS and upgrade to the current version. There are currently five counties that are successfully electronically filing Informations with the District Courts. Two other counties are configured to e-file. The counties that are currently e-filing are: Cache, Weber, Davis, Tooele, Grand, Summit and Emery. There have been three new PIMS installations since the last meeting, including Naples City, Woods Cross City and the Insurance Fraud division of the AG's office.

B. PIMS Ongoing:

1. Until funding issues are resolved, Ron will only be updating offices to the current version, when requested, and working to get more offices ready for e-filing from PIMS as it currently exists.
2. The Utah County Attorney's Office and the West Valley City Prosecutor's Office have requested an update of PIMS to allow e-filing.
3. There are some impediments to getting e-file installed in more offices. Configuring and installing PIMS for e-filing requires coordination with DTS, which has to do some work on the e-file server. Ron has no access to that server. Every time DTS does any work it charges \$72 - \$95 per hour. Also, Ron has to spend some time on-site to get e-filing working properly. That involves travel expense.
4. Support calls and requests are being handled as needed with most work being done remotely.

C. *Ad Hoc* PIMS Governance Committee:

1. In addition to the in depth report in the Director's Summary, Governance Committee Chair Blake Nakamura reported:
 - a. The committee met December 19th to review responses from commercial vendors to the RFI sent out by UPC. Only four responding firms proposed to provide case management software that would meet the needs of prosecution offices in Utah.
 - b. Personnel from the Utah State Division of Purchasing briefed the committee on the Request for Proposals (RFP) process. The representatives from Purchasing told the committee that, should UPC determine to proceed with an RFP for prosecution case management software, it would probably be 9 months to a year before such software could be installed and working in prosecution offices.
 - c. The committee voted to recommend to UPC that it could proceed with an RFP for prosecution case management software.
2. After a lengthy discussion, the Council determined that a state RFP would not be a viable option because of the e-filing deadline that has been imposed by the State Courts. Further, at least two offices represented at

the meeting said they could not wait 9 months to a year to get new case management software.

- a. Sim Gill announced that his office will pursuing its own RFP for case management software. Sim indicated that, to the extent legally and financially possible, Salt Lake County would formulate its RFP in such a manner as to allow other county and city offices to take advantage of the terms of any purchase agreement resulting from the RFP.
 - b. The Cache County Attorney's office has already signed a contract with New Dawn to purchase the case management software offered by that vendor.
 - c. The Council agreed that there is a viable market for PIMS to remain and serve those county and city attorney offices who are happy with PIMS, but not without a user fee as discussed in III.B.2 above.
 - d. The council also agreed that Ron Weight's expertise in case management will be valuable in providing administrative and conversion support for those offices who will not be PIMS users. The possibility of including the cost of Ron's services in a future user fee was discussed but no decision was made.
3. Blake asked the Council for further guidance as to whether the *Ad Hoc* PIMS Governance Committee had completed its work and should be disbanded. The council determined to put the Governance Committee on an inactive, standby status for now, subject to recall to deal with other case management related issues in the future. The Council expressed appreciation for the excellent work done by the committee.

V. TRAINING COMMITTEE REPORT:

- A. In addition to the in depth report in the Director's Summary, Steve Garside, Training Committee Chair, made the following report.
 1. The Training Committee met on October 14-15. Three long time committee members were not present; Bill McGuire, Committee Chair, due to his imminent retirement, Bill Daines due to his sudden and unexpected death, and Pat Nolan due to his retirement.
 2. The Committee welcomed three new members who had been appointed to the committee by UPC Chair Barry Huntington. Those new members are Letitia Toombs of the Weber County Attorney's Office, David Cole of the Davis County Attorney's Office and Scott Reed of the AG's Criminal Justice Division.
 3. The first order of business was election of a new committee chair. With Mark Nash acting as temporary chair, nominations were opened for Training Committee Chair. Steve Garside was nominated and, there being no other nominations, was elected by acclamation. Steve then assumed the chair and Mariane O'Bryant was nominated as Committee Vice-chair. There being no other nominations, Mariane was elected by acclamation.
- B. The committee set the agendas for the 2014 Spring and Fall Conferences. The

committee also set the 2014 training schedule. It reviewed the training done by Ed Berkovich and Donna Kelly. Of major interest was the possibility of using distance learning techniques, such as webinars, to expand the UPC training effort. The committee discussed training ideas of 2015.

- C. The Training Committee will next meet on March 28th.
- VI. UPAA REPORT: Chairperson Cecilia Zarbock reported that the UPAA Board has begun planning the 2014 UPAA Conference.
- A. The conference will be held at the Homestead in Midway on June 18-20, 2014.
 - B. Cecilia reported that JoEll Rowley and Marcy Duke's four year terms had expired on December 31, 2013. The Board had opened statewide applications for the vacancy. Three applications were received, including from JoEll and Marcy. After reviewing the applications, the Board voted to reappoint JoEll and Marcy for another 4-year term each.
- VII. APPOINTMENT OF A PROSECUTOR TO REPRESENT UPC ON THE CJC BOARD
- Mark Nash informed the Council that, pursuant to §67-5b-106(2)(k), Utah Code, the membership of the Advisory Board on Children's Justice shall include, "one criminal prosecutor, licensed by the Utah State Bar and in good standing, appointed by the Utah Prosecution Council." That appointee serves a four-year term. Deputy Salt Lake District Attorney Matthew Janzen had, pursuant to UPC appointment, been serving in that position but he was recently assigned to the DA's Gang Unit. Because his new assignment does not involve Children's Justice issues, Matt submitted his resignation on September 19, 2013. That was just one week after the last UPC meeting. Because of the four month lag until the next UPC meeting, and at the request of the Children's Justice Board, Barry Huntington had appointed Deputy Uintah County Attorney Michael Drechsel to serve on an interim basis as the UPC appointee to the CJC Advisory Board. Mike had accepted that interim appointment, with the approval and support of Uintah County Attorney G. Mark Thomas. At the time of his interim appointment, Mike Drechsel expressed a desire and willingness to continue as UPC's permanent appointee should the Council so choose during its January meeting. Mark Nash recommended that the Council appoint Mike Drechsel as its representative on the CJC Advisory Board. Sim Gill moved to appoint Michael Drechsel as UPC's representative on the CJC Advisory Board. Barry Huntington seconded the motion and it passed unanimously.
- VIII. STAFF ATTORNEY REPORT: In the absence of Donna Kelly and Ed Berkovich, Mark Nash referred the Council to his in depth TSRP and SA/DVRP reports as outlined in the Director's Summary.
- IX. OTHER BUSINESS: Kelly Sparks, POST, asked the Council's guidance regarding use of force issues. He was referred to SWAP.
- X. EXECUTIVE SESSION: Mark Nash announced to the Council that he planned to retire, effective May 1, 2014. Mark asked the Council to adjourn into executive session to discuss the procedure for selecting a new UPC Director. It was moved and seconded to go into executive session. The vote in favor of the motion was unanimous. All persons other than Council members, or designees of Council members, and Director Mark Nash

were directed to leave the room.

PENDING EXECUTIVE SESSION MINUTES

The minutes of the Executive Session were kept by Mark Nash

Present: Stephen Foote, Chair, Duchesne County Attorney
Sim Gill, Salt Lake District Attorney & Chair of the SWAP Board
Steven Garside, Layton City Prosecutor
Robert Church, Orem City Prosecutor
Jann Ferris, Morgan County Attorney
Scott Sweat, Wasatch County Attorney
Kelly Sparks, Deputy Director of POST,
designee of Public Safety Commissioner Keith Squires
Scott Reed, Chief, Criminal Justice Division, Attorney General's Office,
designee of Attorney General Sean Reyes
Mark Nash, Director, Utah Prosecution Council

Absent: Barry Huntington, Garfield County Attorney
CeCelia Zarbock, Chair, UPAA

Excused: Sean Reyes, Attorney General
Keith Squires, Public Safety Commissioner

- I. Upon convening in executive session the Council:
 - A. Reviewed the calendar until Mark Nash's retirement date of May 1st and decided:
 1. The job notice will be published and posted by January 19, 2014;
 2. The closing date for all applications will be February 14, 2014;
 3. The screening committee will meet on January 22nd to set criteria to be used in reviewing applications and on February 19th to review all qualifying applications. The screening committee is to select 6-10 finalists, who will be sent to the full Council;
 4. The full Council will meet on either February 26, 27 or 28 to interview the finalists selected by the screening committee and to make a final selection;
 5. The new Director will begin work on April 14, 2014, thus allowing two weeks overlap before Director Nash's retirement date.
 - B. Named a screening committee, made up of Paul Boyden, Stephen Foote, Steven Garside and a representative of the Attorney General's Office to review all applications and select 6-10 finalists;
 - C. In addition to the statutory requirements for a UPC Director, determined that applicants should have a minimum of 10 years experience as a lawyer and demonstrable dedication to prosecution; and
 - D. Determined that the full Council will act as the interviewing team for the finalists that are identified by the screening committee;
- II. Mark Nash was directed to prepare a job description and, working with Scott Reed and Vickie Walker, the Attorney General's Human Resources person, to prepare a job notice for publication. The job notice is to be published in the Salt Lake Tribune, the Deseret News and other publications normally used by Vicky Walker. Mark Nash is also to send

the notice to public attorneys throughout the state via e-mail. The job notice is to be e-mailed the all Council members for review before publication.

III. The Executive Session and the Prosecution Council meeting then adjourned.

XI. NEXT UPC MEETING:

Wednesday, April 9, 2014

10:30 a.m.

Salt Lake District Attorney's Office

111 East Broadway - 5th Floor Conference Room

Salt Lake City, Utah