

**UTAH PROSECUTION COUNCIL**  
**Friday, January 20, 2017**  
**Utah Association of County's Office**  
**5397 S. Vine Street**  
**Murray, Utah**

**APPROVED MINUTES**

UPC : Steven Garside, Chair, Layton City Attorney  
Haley Christensen, UPAA Chair, Utah County Attorney's Office  
Robert Cosson, St. George City Chief Prosecuting Attorney  
Jann Farris, Morgan County Attorney  
Stephen Foote, Duchesne County Attorney  
Sim Gill, Salt Lake District Attorney  
Barry Huntington, Chair-elect Garfield County Attorney  
Russell Smith, Deputy Utah Attorney General (*attending for Spencer Austin, designee of General Reyes*)  
Scott Stephenson, Deputy Director of P.O.S.T (*designee of Commissioner Keith Squires*)  
Scott Sweat, Wasatch County Attorney

EXCUSED: General Sean Reyes, Utah Attorney General  
Commissioner Keith Squires, Utah Department of Public Safety  
Donna Kelly, Staff Attorney

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

GUESTS:      Jeff Buhman, Utah County Attorney  
                  Paul Boyden, Executive Director, SWAP  
                  Will Carlson, Deputy Salt Lake County District Attorney  
                  Andy Choate, Assistant United States Attorney, District of Utah

**I. WELCOME AND WELCOME TO HALEY CHRISTENSEN**

- A. The Council members were welcomed and the meeting convened.
- B. Welcome to Haley Christensen, new UPAA Chair, from Utah County Attorney's Office. She replaces Christine Stevens.

**II. APPROVAL OF THE OCTOBER 6, 2016 MINUTES**

- A. Barry Huntington made the motion to approve the minutes from October 6, 2016 with the amendment to **page 2, IV. C. from "Reimbursement from SWAP" to read "Reimbursement from SWAP Board and page 2, IV. C.1.a from "Continuing the**

discussion regarding SWAP reimbursing” to read “Continuing the discussion regarding SWAP Board reimbursing” Russell Smith seconded the motion and it passed unanimously.

### III. UPC CONFERENCES

#### A. Completed Conferences

Bob Church gave an in depth report on the following completed conferences. Please refer to the Director’s Summary for details.

##### 1. Government Civil Practice Report:

Overall Civil Conference was a great success. Total budget was \$16,000. The gross cost came in at \$16,220.31. After crediting the registration fee, the net cost of the conference was \$12,453.31 to the good.

##### 2. County Attorney Executive Seminar:

The discussions at the seminar were productive. One major decision was to hold Spring Conference the same time as the judicial conference, April 27-28, 2017. The only venue available from Utah County to Cache County was the Riverwoods Conference Center in Logan. Bob indicated that an announcement will be published well in advance. Total budget for this event was \$1,500.00, net cost was \$1,600.53. Leaving this line item \$100.53 over budget and pending the MCLE Fees yet to be determined and paid by UPC.

#### B. 2017 Conference Schedule

##### 1. Spring Conference:

As stated above, the Spring Conference will be held the same time as the judicial conference on April 27, 28, 2017 at the Riverwoods Conference Center, Logan, UT. Bob reviewed the agenda.

##### 2. Expert Witness in DV and Sexual Assault Cases “Creation” Conference:

UPC has been working with the Salt Lake County District Attorney’s Office to bring this training to Utah on March 28-29, 2017 at the Veridian Center. Presenters will include Donna Kelly and an instructor from Aequitas. The conference is designed to develop expert witnesses in the areas of DV and Sexual Assault. Attending prosecutors will be asked to bring with them individuals who they want to develop as expert witnesses; i.e., officers, victim advocates. It is by invitation only at this point. Funding provided by the Salt Lake County District Attorney’s office.

##### 3. Title 3 Wiretap Conference:

At the request of Rich Hamp, Salt Lake County District Attorney’s Office, Bob inquired if the council would be interested in co-sponsoring, in terms of funding and other resources, such a conference. After a lengthy discussion, it was the consensus of the Council to co-sponsor a Title 3 Wiretap Conference. It was recommended that it be a one to two day, A to Z training. Attendees to include 15 prosecutors and 30 law enforcement. Suggested places to hold the event was either the Veridian Center, the U.S. Attorney’s new facility or at POST where it could be filmed. Bob will reach out to prosecutors for feedback and begin putting a training together.

#### C. CLE Fee

Bob indicated that UPC was notified that the Bar would be increasing the cost of

processing CLE fees from \$15 to \$20. Currently, as required by State of Utah Supreme Court - Board of Continuing Legal Education. Rule 14-417 Miscellaneous Fees and Expenses requires that all Utah CLE sponsors who offer any course for a fee shall pay to the Board, within 60 days of presenting the course, a fee of \$1.50 per credit hour per attendee. The \$1.50 per credit hour fee with a cap at \$15.00 per attendee. UPC staff proposed raising all conference registration fees by \$5 to cover this additional cost. In other words, the MCLE cost is per attendee who attends a particular UPC conference. For example, 2016 Spring Conference MCLE Fees paid to the Bar was \$3,262.00 and 2016 Fall conference was \$1,328.00. After a lengthy discussion, Russell Smith made the motion to increase the cost of UPC's registration fees from \$75 for public attorneys, law enforcement to \$80 and from \$300 to \$305 for private attorneys. Sim Gill seconded the motion and the motion passed unanimously.

#### IV. FINANCIAL REPORT

Bob Church made the following financial report. Additional information is included in the Director's Summary.

- A. Surcharge FY16/17 Report:
  1. December 2016 surcharge receipts ended at \$36,657.76 as compared to the 2015 December surcharge receipts that end at \$40,811.85. **Bob noted that the October number was a typo and would be corrected at the next meeting.**
- B. FY17 Budget/Comparison Report:
  1. Bob Church indicated that the budget has remained relatively the same as reported and adopted at the October 2016 UPC meeting. However, there are a couple of changes.
    - a. Donna's salary under the SV grant was approved by CCJJ and with an additional 5% salary increase through the end of FY17. Also, because Donna has reached the 5-year mark, she was awarded a \$500 annual pay increase as part of the AG attorney compensation plan.
    - b. Bob's request to be reimbursed by the SWAP Board for the net cost of the Government Civil Practice Conference was approved. Accordingly, Bob will submit an invoice in the amount \$12,545.31.
    - c. Donation to Utah Journal of Criminal Law?

Bob inquired if the Council would be willing to authorize a donation to the Journal. He explained that the Journal's printing costs were erroneously covered by Utah's law school up to this point and now is without a funding source. The price to print one edition is approximately \$5,000 for 1,200 issues. Issues are sent to all prosecutors, public defenders and judges. The Council responded that given the Journal's dissemination history, as some prosecutors have never received the Journal and that there was a subscription fee paid by some prosecutors in the past, they suggested that the Journal consider other cost effective methods such as an online journal. UPC would be willing to make the Journal available through a link on the UPC website.

## **V. TRAINING COMMITTEE REPORT**

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

- A. The committee set the agendas for the 2017 Spring and Fall Conferences. The committee discussed possible replacements for Laura Dupaix and Matt Bates. Suggested individuals included John Nielsen, Assistant AG; Peter Leavitt, SLDA's Office; Marlesse Jones, Chief Prosecutor, Layton City Attorney's office and Richard Larsen, Deputy Davis County Attorney. It also set the 2017 training schedule which was reviewed with the Council. A continued discussion and consideration for using distance learning techniques, such as webinars, to expand the UPC training effort. The committee discussed training ideas for 2018.
- B. In addition to the training events mentioned above, the Council suggested a training on active shooter training/threats to prosecutors. Layton City and SLDA's office has held an active shooter training for their office and found it beneficial.
- C. The Training Committee will next meet on Friday, March 17<sup>th</sup>.

## **VI. UPAA**

Haley Christensen, UPAA Chair and Marilyn Jasperson gave the following report.

- A. The UPAA conference will be held June 21-23, 2017 at the Uintah Conference Center in Vernal, Utah. The Board has met and is drafting its agenda.
- B. New Board members are Janice Evans, Hurricane City and Karyn Walker from Provo City.
- C. At the 2016 November County Attorney Executive Seminar, 12 attorney's took a condensed version of the Certified Utah Prosecutorial Assistants (CUPA) exam. Two of the 12 county attorneys passed. Feedback from the attorney's was very valuable and will help when the Board updates the exam. The exam will be refreshed by retiring some questions and developing new ones. On behalf of the Board, Marilyn expressed appreciation for their participation.

## **VII. RESOURCE PROSECUTORS REPORTS**

- A. Donna Kelly was excused. Please refer to the SA/DVRP report as outlined in the handouts.
- B. Tyson Skeen referred the Council to the TSRP report outlined in the handouts.
  1. Tyson indicated he is willing to provide DUI training anytime and/or assist with any in-house training.
  2. He offered his services as a resource in DRE cases. He would like to see a presentation concerning DRE at the UMPA conference.
  3. It was suggested to include Ambien defense as one area in the DRE cases.

## **VIII. IT ISSUES**

In addition to the in depth report in the Director's Summary, Ronald Weight and Bob Church gave the following PIMS report.

- A. UPC Webpage
  1. Ron presented UPC's Webpage new design and demonstrated some of the new features.

- B. Management System:  
Bob reported that UAC has applied to CCJJ for a \$500,000 grant for the purchase of a case management system for the benefit of Counties, either LeadProsecutor or JustWare. As a result, Bob will be making a few changes to UPC's RFP and most likely UPC's grant will be used to purchase a case management system for cities. Because UPC has to go through the RFP process, there is a real possibility that it may not be the same system as the counties. Bob suggested that probably there should be more city reps to sit on the evaluation committee than county reps. Jann Farris agreed to give up his seat. Bob will also reach out to other city prosecutors.

**IX. .5% SURCHARGE TO BE USED TO TRAIN STATE AND MUNICIPAL PROSECUTORS IN THE PROSECUTION OF DOMESTIC VIOLENCE**

In addition to the report in the Director's Summary, Bob Church made the following report.

- A. Bob stated that the pass through \$15,000 for the CJC Symposium-DV Conference is included in the \$78,000. He has requested its return to UPC but has yet to receive an answer. Since 2008, the \$15,000 has been going to help with expenses for the CJC Symposium-DV Conference for its DV training. Prior to 2008, it went to UPC for the DV Conference and DV training.
- B. Sim Gill expressed concern over how the \$78,000, or at least \$63,000, has been expended for the last five to six years if there were to be an audit. It could potentially put the AG's office in a bad light. He suggested that the Council reach out to the AG's office. The Council will suggest that if the AG's office is not going to use this funding for DV training then the total \$78,000 ought to come to UPC. UPC will then conduct DV training and/or hire an FTE to conduct the training as required in the statute.
- C. The AG's response has been that they would look at this issue. If the UPC were to get the entire amount then they may have to reevaluate what UPC is being charged for services such as office space and use of AG's Admin/finance services. That amount is currently \$15,000. Sim Gill asked if the AG's office is billing all offices/agencies rent as well. No one knew the answer. As it states in Title 67 – State Officers and Employees Chapter 6a - Utah Prosecution Council, 67-5a-1. 1) “There is created within the Office of the Attorney General the Utah Prosecution Council.” Councilman Gill vehemently stated that UPC should be able to fulfill its mandated purpose and not be treated differently than any other AG office/agency in terms of proper and justified allocation of funding, billing for office overhead and administrative services.
- D. Bob indicated he had two meetings with Spence Austin and Craig Barlow where they discussed the language in the statute concerning the \$78,000. Bob also met with the new Budget Director and made her aware of the issue as well as the AG's Chief of Staff. To date, he has not heard anything back.
- E. In addition, Bob indicated that per the Council's guidance from the October's meeting, he drafted a proposed MOU and gave it to Spence and Craig for their review as well as a copy to UPC Chair Steve Garside.
- E. The Council discussed the current relationship between UPC and the AG's office. It

is recognized that Bob has to balance his relationship with the AG's administration as well as representing the Council and the potential conflict this can create.

- F. Bob was directed to follow up with Spence Austin and Craig Barlow. He will keep the Council apprised as things develop.

**X. MINUTES FROM OCTOBER 21, 2015 EMERGENCY COUNCIL MEETING**

In addition to the in depth report in the Director's Summary, Bob Church gave the following report.

- A. Bob reported that Mr. Berkovich made a request to correct the minutes of October 21, 2015 meeting. Please refer the Director's Summary under X., XI. After discussing the request, the Council agreed not to allow a correction to the October 21, 2015 minutes as the minutes reflect what happened. Steve asked the Council if they would like to add information as an addendum. Councilman Farris stated that it wasn't a good policy to allow someone to rewrite the minutes who was not in attendance. Jann Farris made the motion to not allow any correction to the minutes or add an addendum to the minutes as they should stand on their own. Scott Stephenson seconded the motion and the motion passed unanimously.

- B. As a follow up, Bob referred the Council to item X., D., 2., regarding another email from Mr. Berkovich requesting "At least two more corrections possibly needed to UPC minutes for 11/21/15 [sic] emergency council meeting." This second request pertains to recording the minutes and posting the recording on the UPC webpage. In light of the discussion of the first request, the Council agreed that the previous motion applies to this request and would not change the outcome. Jann Farris made the motion to not allow any correction to the minutes as stated above, XI. A. Russell Smith seconded the motion. The motion passed unanimously.

Bob indicated that as required he has instructed Ron to post council meeting minutes on the UPC webpage. In this particular matter, he did not forward these minutes of the open meeting to be posted because it had to do with personnel issues and he wanted to respect Mr. Berkovich's privacy. Bob asked the Council whether he should post them. The Council directed Bob not to post these particular minutes. Steve informed the Council that his office has received a GRAMA request from Mr. Berkovich and possibly Council members will be receiving one as well.

**XI. BERKOVICH GRAMA REQUEST: STATUS**

Bob reviewed the brief history of the GRAMA requests from Mr. Berkovich, UPC's response, e-mail traffic and the AG's response. Copies of all documents associated with these requests can be provided to the Council upon request. Hearing no questions. Bob moved to the next item.

**XII. REPORTS FROM UPC REPS ON VARIOUS COMMITTEES**

In addition to the in depth report in the Director's Summary, Bob reviewed the brief summary on the various UPC reps that serve on the following committees: State Advisory Board on Children's Justice-Craig Johnson; Criminal Law Section-Janise Macanas; Indigent Defense Trust Funds Board-Brody Keisel; Justice Court Subcommittee-Ed Montgomery; and Sentencing Commission-Scott Garrett. Bob will make another update at the next meeting.

### **XIII. OTHER BUSINESS**

- A. Developing In-State Experts  
Bob mentioned that after Fall Conference several people mentioned the need to develop or foster a mental health expert that we once had in Creighton Horton. Also, a Title 3/Wiretap expert was suggested. Hearing no comments. Bob moved to the next item.
- B. Representative Romero's Rape Kit Processing Amendment  
Bob indicated that he and Donna recently learned about this bill (later numbered as HB0200) which will require UPC and the Department of Public Safety to develop and offer training in trauma-informed response and investigation of sexual assault and sexual abuse. It states that the training of all officers must be done by July 1, 2018 but that it could include on-line training. It also included an advanced training course for officers who investigate cases of sexual assault or abuse. Ned Searle is planning on asking for funding for a full-time position, such as the one Donna has. If the funding does not come through, UPC would be hard pressed to absorb this additional mandate.
- C. Changes to UPC Statue  
Bob stated that in December UPC staff began working on proposed changes to the UPC statute. Bob will keep the Council apprised of its progress.
- D. Audit of Utah's Monetary Bail System by the Office of the Legislative Auditor General (OLAG)  
In addition to the in depth report in the Director's Summary, Bob informed the Council that on January 17, 2017 Andrea Parrish an Audit Supervisor of OLAG contacted him regarding OLAG had conducted an audit of the two types of monetary bail commonly used in Utah's District Courts. The report is currently protected but will be released in the near future. She called Bob based on one of the recommendations which states "We recommend that the Administrative Office of the Courts provide ongoing training to judges, clerks and prosecution regarding requirements for completing the forfeiture process." The AOC expressed concern that they had no authority to train prosecutors and referred Andrea to Bob. As a result of the meeting, the language was modified to read "We recommend that the Administrative Office of the Courts provide ongoing training to judges, clerks, and coordinate with prosecuting attorneys to receive training regarding statutory requirements for completing the forfeiture process." Potentially, UPC would be willing to do an hour training at a Fall Conference. Bob indicated to Andrea that whatever training the court or clerks plan, they need to include prosecutors so everyone is receiving the same training.
- E. Possible Office Move to College Drive  
Bob was made aware that UPC's offices maybe relocating to College Drive in Murray. Details will be forthcoming.
- F. National Association of Prosecutors Coordinators (NAPC) (Bob's national counterpart organization)  
Bob informed the Council that he is the Chair of its Finance Committee. Bob has been encouraged by the Executive Director to apply for the NAPC's Board of Directors at the July 2017 meeting. Also, UPC will be hosting the NAPC 2017 winter meeting to be held in Springdale, Utah!
- G. Cleaning Up Mail Lists

Bob indicated that a “Survey Monkey” survey will be sent out to everyone on UPC’s mailing lists in an effort to determine what kinds of emails attorneys want and to help clean up those lists.

**XIV. CLOSED DOOR SESSION**

- A. Jann Farris made the motion to move into a closed-door session. Scott Stephenson seconded the motion and it passed unanimously.
- B. The Council reconvened.

**XV. COUNCIL MEETING RECONVENED OPEN DOOR SESSION**

- A. Salary Increase for Donna Kelly  
Bob made a formal request to provide a salary increase for Donna Kelly in the amount of 5.5%. This amount was included in the CCJJ grant. Jann Farris made the motion to grant Bob’s request and increase Donna Kelly’s salary by 5.5%. Scott Stephenson seconded the motion and it passed unanimously.
- B. Review UMAA Appointment of Ed Berkovich  
Regarding Mr. Berkovich’s position with UPC and the UMAA appointment. Jann Farris made the motion to review the UMAA appointment of Ed Berkovich at the next Council meeting. Russell Smith seconded the motion and it passed unanimously.
- C. Leadership Challenge Value Exercise  
Was tabled for another meeting.

**XVI. NEXT MEETING**

Wednesday, April 26, 2017, 10:30 a.m.  
Salt Lake County District Attorney’s Office  
111 East Broadway - 4<sup>th</sup> Floor  
Salt Lake City, Utah

**XVI. ADJOURN**