

ADVISORY COUNCIL FOR PROSECUTING ATTORNEYS

Minutes of the December 20, 2013, meeting of the
State of Nevada Advisory Council for Prosecuting Attorneys -

held at the Office of the Attorney General - Mock Courtroom
100 N. Carson Street, Carson City, Nevada 89701-4717

with Videoconference access to the Office of the Attorney General
Grant Sawyer Building, 555 East Washington Avenue, Suite 3315
Las Vegas, Nevada 89101

I. Call to Order and Roll Call. Council Chairman Masto called the December 20, 2013, meeting of the Advisory Council to order at 10:05 AM.

Members Present:

- Catherine Cortez Masto, Chair
- Arthur Mallory, Vice Chairman
- Jim Dixon (represented by Charlotte Bible pursuant to NRS 241A.050(2))
- Neil Rombardo
- Josh Reid ((represented by Bob Zentz pursuant to NRS 241A.050(2))
- Brett Kandt, Executive Director (recording secretary)

Members Absent:

- Richard Gammick

Other Attendees: See attached sign-in sheet

II. Public Comment. None.

III. Discussion and possible action on approval of September 26, 2013, meeting minutes. Upon a motion by Neil Rombardo, seconded by Arthur Mallory, and carried unanimously, the Council approved the September 26, 2013, meeting minutes.

IV. Chairperson's Report. No report.

V. Executive Director's Report. Executive Director Brett Kandt reported as follows:

A. Budget status and expenditures – B/A 1041. Kandt reviewed to the budget for the current biennium, and noted that court assessments were not meeting projections.

B. NVPAC events calendar. Kandt reported that events currently scheduled include:

- 2014 Nevada Government Civil Attorneys Conference – May 7-9, Harveys Resort, South Lake Tahoe
- 2014 Nevada Prosecutors Conference – September 10-12, Harveys Resort, South Lake Tahoe

C. Grant funding for training and technical assistance. Kandt reported the Council was recently awarded \$5,000 under VAWA STOP Subgrant No. 2013-VAWA-47 for the training on the investigation and prosecution of sex trafficking.

D. Executive Director's service on state boards and task forces. No report.

VI. Discussion of development and implementation of state regulations and local ordinances regulating the operation of medical marijuana dispensaries as

mandated by NEV. CONST. art. 4, § 38, and Senate Bill 374. Kandt reported that he and Las Vegas City Attorney Brad Jerbic had separately requested an opinion from the State Bar Standing Committee on Professional Responsibility and Ethics on the issue of whether any ethical violations might result if public attorneys, in the course of representing their respective state and local government entities, render advice and draft state regulations or local ordinances regulating the operation of medical marijuana dispensaries as mandated by Nevada law. Kandt also recommended that public attorneys routinely preface any legal advice on the implementation of Senate Bill 374 with a standard advisement that the possession, use, and sale of marijuana remains illegal under the federal Controlled Substances Act.

VII. Discussion and possible action on response to report issued by the International Association of Chiefs of Police and the U.S. Department of Justice entitled “National Summit On Wrongful Convictions: Building a Systemic Approach to Prevent Wrongful Convictions.” The Council discussed concerns with the report, including assumptions, conclusions, and the composition of the group that produced the report. Kandt stated that many studies and reports on the criminal justice system are predicated on an assumption that the criminal justice system is systemically broken and constitutionally deficient, when in fact the system as a whole well exceeds any legitimate performance standard in meeting constitutional requirements when measured by the number of convictions actually reversed. Kandt also warned that prosecutors in many other states are facing increased attacks on prosecutorial immunity, including an increased number of disciplinary complaints filed with state bar entities.

VIII. Discussion of proposals for legislation for the 78th (2015) Nevada Legislative Session. Kandt reported that proposed legislation was being developed as follows:

- Amend NRS 179.045 to authorize electronic warrants.
- Amend NRS 179.460 to authorize the interception of an oral communication in a barricade or hostage situation.
- Amend existing statutory provisions regarding wiretaps, GPS, pen registers, and trap and trace devices to permit the use of modern technology.
- Amend NRS Chapter 484C to conform to the U.S. Supreme Court’s ruling in Missouri v. McNeely.
- Enact synthetic drug laws to ban any substances that have the core molecular structures common to bath salts and synthetic cannabinoids, or make it illegal to manufacture, possess or sell synthetic drugs that mimic the effects of existing illegal drugs.
- Enact a “Good Samaritan 911” law to provide limited immunity for minor drug law violations for persons who summon help at the scene of an overdose.
- Expand mandatory reporting of child "abuse or neglect" as defined by NRS 432B.020(1) to include sex trafficking.
- Enact stronger penalties for solicitation under NRS 201.354.
- Enact safe harbor provisions for minors arrested for prostitution that are victims of sex trafficking.

IX. Report from Solicitor General on cases pending before Nevada Supreme Court of possible interest and discussion of recent federal and state court rulings. Solicitor General Wayne Howle and Senior Deputy Attorney General Bob Wieland reported on the following cases:

- The State has filed a petition for writ of certiorari to the U.S. Supreme Court in Honeycutt, Todd M. v. Bill Donat, __ Fed.Appx. __, No. 09-16758, 2013 WL 3943148 (9th Cir. 2013), in which the Ninth Circuit held that the State impermissibly used Honeycutt's deliberately elicited statements to incriminate him on charges to which his right of counsel had already attached.
- The federal district court's ruling in Sevcik v. Sandoval, 911 F.Supp.2d 996 (Nev. 2012), upholding the constitutionality of NEV. CONST. art. 1, § 21, banning same-sex marriage, is on appeal to the Ninth Circuit (Case No. 12-17668).

X. Discussion of the following commissions:

A. Nevada Supreme Court Indigent Defense Commission (ADKT No. 411). Kandt 1) reported that the next meeting of the IDC is scheduled for January 10; 2) referred to the recent unpublished opinion of the Nevada Supreme Court regarding Washoe County's Early Case Resolution (ECR) program; and 3) noted that a study establishing prosecutor caseload standards had been conducted in Tennessee.

B. Nevada Advisory Commission on the Administration of Justice (NRS 176.0123). Chairman Masto reported that the Commission has additional statutory responsibilities and that she will continue chairing the Victims of Crime Subcommittee. Mark Jackson reported that at an organization meeting of the Commission on November 6 Senator Segerblom was elected Chair and Justice Hardesty was elected Vice Chair. The next meeting is scheduled for January 27 and with regard to a sentencing study, Kandt recommended that the Commission consider replacing James Austin with Daryl R. Fischer, Ph.D., who conducted a very credible sentencing study for the State of Arizona. Charlotte Bible recommended a professor at UNLV that LVMPD has used for various studies.

C. Nevada Crime Commission (Executive Order 2011-24). Brett Kandt reported that the Commission held an organizational meeting in November and was next scheduled to meet in February.

XI. Report from the Attorney General on the following boards:

A. Nevada Technological Crime Advisory Board (NRS 205A.040). Kandt reported that he was in the process of reassessing and realigning the Board's priorities and efforts and that a subcommittee was studying and developing technical proposals for protecting the digital privacy rights of individuals.

B. Nevada Substance Abuse Working Group (NRS 228.820). Chairman Masto reported that that the Working Group was working to increase use of the Prescription Monitoring Program (PMP) by doctors. Charlotte Bible indicated that the Board of Medical Examiners should strengthen the regulatory restrictions on doctors prescribing pharmaceuticals. Brian Kunzi expressed concerned that district attorney investigators cannot access the PMP database; Mark Jackson and Neil Rombardo indicated that the database cannot be used for law enforcement purposes without obtaining a warrant.

C. Nevada Domestic Violence Prevention Council (NRS 228.490). Kandt reported that a workshop with key participants from the three domestic violence fatality reviews teams-in Clark County, Washoe County, and the Attorney General's statewide team-would be held with a facilitator to discuss establishing a feedback loop for team findings and implementation of recommendations.

XII. Council comments. Vice Chairman Mallory read written comments from Richard Gammick expressing his thanks for being recognized with the 2013 William J. Raggio Award.

XIII. Discussion and possible action on time and Location of Next Meeting. Kandt will coordinate a meeting date in conjunction with the next meeting of the Nevada District Attorneys Association.

XIV. Public Comment. None.

XV. Discussion and possible action on adjournment. The Council adjourned at 11:45 AM.

CERTIFICATION OF SECRETARY

I, Brett Kandt, the duly appointed secretary of the State of Nevada Advisory Council for Prosecuting Attorneys, do hereby certify that the foregoing is a true and correct copy of the minutes of the December 20, 2013, meeting of the Advisory Council, as approved by the Advisory Council on _____, 2014.

Brett Kandt
Secretary
State of Nevada
Advisory Council for Prosecuting Attorneys