



STATE OF NEVADA

ADVISORY COUNCIL FOR PROSECUTING ATTORNEYS

CATHERINE CORTEZ MASTO
Council Chair

5420 Kietzke Lane, Suite 202
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BRETT KANDT
Executive Director

COUNCIL MEMBERS

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MINUTES

ADVISORY COUNCIL for PROSECUTING ATTORNEYS

Minutes of the May 28, 2010, 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 May 28, 2010, meeting of the Advisory Council to order at 10:00 AM.

Members Present:

Catherine Cortez Masto, Chairman
Arthur Mallory, Vice Chairman
Richard Gammick
Doug Gillespie (represented by Charlotte Bible per NRS 241A.050(2))
Elizabeth Quillin (represented by David Mincavage per NRS 241A.050(2))
David Roger
Brett Kandt, Executive Director (recording secretary)

Member Absent:

Brad Jerbic

Other Attendees:

See attached sign-in sheet

II. Approval of Minutes. Upon a motion by Richard Gammick, seconded by Art Mallory, and carried unanimously, the Council approved the January 29, 2010, meeting minutes.

III. Election of Chairman and Vice Chairman pursuant to NRS 241A.040(2). Upon a motion by Richard Gammick, seconded by Arthur Mallory, and carried unanimously, the Council re-elected Catherine Cortez Masto as Council Chairman. Upon a motion by Richard Gammick, seconded by Charlotte Bible, and carried unanimously, the Council re-elected Arthur Mallory as Council Vice Chairman.

IV. Chairperson's Report. Chairman Masto reported that the Governor is forming a new crime commission and will be designating an agency to receive and administer funding received under the John R. Justice Prosecutors and Defenders Incentive Act for the grant program providing loan repayment assistance for eligible state and local prosecutors and public defenders.

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

A. Budget status and expenditures – B/A 1041. Kandt referred to the most recent budget status report and reported that revenues are meeting projections.

B. 2010 NVPAC events calendar. Kandt reported that events currently scheduled include:

- 2010 Nevada Prosecutors Conference - September 22-24, Silverland Inn - Virginia City
- 2010 Nevada Sexual Violence Prevention/Intervention Conference – November 8-9, Location TBD - Reno
- 2011 Nevada Government Civil Attorneys Conference - May 11-13, Harveys Resort - South Lake Tahoe

C. Grant funding for training and technical assistance. Kandt reported that current available grant funding for prosecutor training includes:

- FY09 Nevada Office of Traffic Safety Project No. 29-K8-18-13 - \$7,500.00 (prosecutor training)
- FY07 Violence Against Women STOP Subgrant No. 2009-STOP-41 - \$14,300.00 (cycle of violence video/prosecutor training)
- FY05 Capital Litigation Improvement Initiative Training and Technical Assistance Award #2005-DD-BX-K182 - \$15,597.88 (residual funding from the 2007 Regional Capital Litigation Seminar)

VI. Discussion with Nevada Supreme Court Justice James Hardesty on Access to Justice Commission and public lawyer compliance with RPC 6.1. Justice Hardesty provided an overview of the efforts of the Nevada Supreme Court's Access to Justice Commission to address the critical necessity for statewide strategic planning and coordination of efforts to meet current and future needs for civil legal services for persons of limited means in Nevada. Justice Hardesty stressed the role of public lawyers in providing access to justice and dialogued with the Council members on issues of compliance with RPC 6.1.

VII. Discussion and possible action on the Council's position on bill draft requests submitted for the 2011 Nevada Legislative Session, including without limitation:

A. A BDR to address the ruling of the 4th J.D. District Court in *State v. Hughes* [No. CR-FP-08-2848] that use of the word "minor" in NRS 200.710 is unconstitutionally vague as a result of the absence of a definition of "minor" in NRS 200.310 and NRS 200.710-.725. The Council cautioned that defining "minor" in select statutes could render use of the term in other statutes unconstitutionally vague and instead recommended a general definition in NRS Chapter 193 for Title 15.

B. A BDR to address *Stephens Media v. Dist. Ct.*, 125 Nev. Adv. Op. No. 63 (December 24, 2009), to amend the jury examination statutes to provide that the responses in any questionnaires filled out by veniermen are confidential by law. The Council discussed limitations or a prohibition on jury questionnaires, with the objective of protecting personal identifying information. The question of consistent use of questionnaires was raised and what position the Nevada Judges Association would take. Justice Hardesty encouraged the Council to review the opinion in question and submitted that 1) the analysis concerns the presumed openness of the entire jury selection process and 2) under the U.S. Supreme Court's *Press-Enterprise II* balancing test [478 U.S. 1, 14 (1986)] the presumption of openness may be overcome only if the district court identifies a countervailing interest to public access and demonstrates, by specific findings that closure is necessary and narrowly tailored to serve a higher interest; the Council agreed to further review the opinion in question.

C. A BDR to address *Abbott v. State* [122 Nev. 715, 138 P.3d 462 (2006)], which subjects sexual assault victims to forced psychological testing by the defense. The Council indicated support for this proposal; Kandt reported that this proposal was recommended by the Victims of Crime subcommittee to the Advisory Commission on the Administration of Justice.

D. A BDR to address *State v. Second Judicial Dist. Court ex rel. County of Washoe* [120 Nev. 254, 89 P.3d 663 (2004)], requiring the State, as a matter of due process, to provide child pornography materials (videotape) to defense counsel; this conflicts with the Adam Walsh Act's amendment of 18 U.S.C. § 3509 adding subpart (m). The Council indicated support for this proposal; Kandt reported that this proposal could be referred to the Advisory Committee to Study Laws Concerning Sex Offender Registration.

E. A BDR to require registration as a sex offender for any conviction under NRS 200.603 or NRS 200.604. The Council indicated support for this proposal; Kandt reported that this proposal could be referred to the Advisory Committee to Study Laws Concerning Sex Offender Registration.

The Council also discussed developing a proposal on sexting (disseminating indecent material via electronic communication device) and recent legislation from other states, which could reduce the penalty for a first offense by minors to a misdemeanor with no requirement for registration as a sex offender. Kandt reported that this proposal could be referred to the Technological Crime Advisory Board and carried by Senator Weiner, but only if it had substantial support by law enforcement. Mark Jackson reported that he was interested in a BDR to address synthetic THC, which may or may not fall within NRS 454.346 and/or be within the jurisdiction of the State Board of Pharmacy.

VIII. Discussion of recent court rulings, including, without limitation:

A. *Connick v. Thompson*, U.S. Supreme Court No. 09-571, cert. granted on whether a district attorney's office liability under §1983 for a failure to provide *Brady* training contravenes the culpability and causation standards established by the Court in its post-*Monell* cases. The Council discussed that this case is the next major case in the area of prosecutorial immunity.

B. *City of Las Vegas v. Bluewaters Family Ltd. Partnership*, Case No. A579965, Eighth J.D. (Dept. VI), ruling the City's utilization of patent deed

easements is a taking (pending appeal before Nevada Supreme Court). No further discussion.

The Council also discussed *Graham v. Florida*, No. 08-7412, 560 U.S. __ (May 17, 2010), in which the U.S. Supreme Court held that the Eighth Amendment's ban on cruel and unusual punishments categorically prohibits the government from sentencing a juvenile to life without the possibility of parole as punishment for the juvenile's commission of a non-homicide; Kantt reported that this may require amendments to Nevada law. The Council also discussed *Greene v. Camreta*, No. 06-35333_ F.3d __ (9th Cir. 2009), in which the Ninth Circuit considered whether an in-school seizure and interrogation of a suspected child abuse victim is always permissible under the Fourth Amendment without probable cause and a warrant or the equivalent of a warrant, ruling that government officials investigating allegations of child abuse should cease operating on the assumption that a "special need" automatically justifies dispensing with traditional Fourth Amendment protections in this context.

IX. Discussion and possible action on the Council's position on the Nevada Supreme Court's Order in ADKT No. 410 scheduling a June 3 hearing on access to court records regarding domestic violence and temporary protective orders. Chairman Masto reported that the issue was the confidentiality of these records and that the Administrative Office of the Courts had indicated that that the Commission on Access, Preservation, and Sealing of Court Records may form a subcommittee to study and make recommendations on this subject. Upon a motion by Art Mallory, seconded by Richard Gammick, and carried unanimously, the Council instructed the Executive Director to formally request that the Commission include a prosecutor representative on any subcommittee formed for this purpose.

X. Discussion and possible action on the Council's position on the Nevada Supreme Court ADKT No. 411 regarding indigent defense. The Council discussed the Nevada Supreme Court hearing on ADKT No. 411 the upcoming Indigent Defense Commission meeting scheduled for June 21; Kantt reported that no further data had been developed justifying caseload standards.

XI. Discussion and possible action on the Council's positions on recommendations from the Nevada Advisory Commission on the Administration of Justice or its subcommittees. Chairman Masto reported that the Victims of Crime subcommittee had recommended a proposal to prevent sexual assault victims from being subject to forced psychological testing by the defense. David Roger reported that the Reclassification of Crimes subcommittee had no recommendations, but that 2 major proposals under consideration by the Commission were 1) aggregating minimum sentences for parole eligibility, and 2) reclassifying category B felonies, including possible revision of the burglary statute into levels.

XII. Discussion and possible action on the Council's position on recommendations from the Attorney General's Working Group on the Nevada Open Meeting Law. Chairman Masto reported that this working group was formed to review existing open meeting law opinions for possible codification; after meeting it became apparent that the membership of the working group would have to be broadened to include district attorneys, city attorneys, the Nevada Association of Counties and the Nevada League of Cities.

XIII. Discussion and possible action on the Council's position on Nevadans for Sensible Marijuana Laws ballot initiative petition to establish a regulated market for marijuana. Chairman Masto reported that the state's Community Coalitions are developing a response strategy to the ballot initiative petition.

XIV. Report on Governor's Working Group on Methamphetamine Use. Chairman Masto reported that the Group last met on July 7 is involved with the statewide effort to collect expired prescription drugs and the recruitment of a rural meth coordinator.

XV. Report on Nevada Impaired Driving Advisory Coalition. Chairman Masto reported that she is reviewing the viability of this coalition as a mechanism for statewide education outreach on impaired driving. The Council expressed concern that the coalition lacked clearly-established goals and objectives.

XVI. Report on Nevada Domestic Violence Prevention Council. Chairman Masto reported that the Prevention Council is in the process of establishing a statewide DV fatality review team.

XVII. Council Comments. None.

XVIII. Time and Location of Next Meeting. Upon a motion by Richard Gammick, seconded by Art Mallory, and carried unanimously, Council instructed the Executive Director to coordinate a meeting date in conjunction with the next meeting of the Nevada District Attorneys Association for sometime in July, possibly in conjunction with the Nevada Sheriffs' and Chiefs' Association.

XIX. Public Comment. Lincoln County District Attorney Greg Barlow expressed concern with the Attorney General's policies and procedures for responding to opinion requests; Chairman Masto responded that her office handles all requests in strict compliance with NRS 228.150 and that her staff would follow up to address his concerns.

XX. Adjournment. Upon a motion by Richard Gammick, seconded by Art Mallory, and carried unanimously, the Council adjourned at 12:15 PM.

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 May 28, 2010, meeting of the Advisory Council, as approved by the Advisory Council on _____, 2010.

Brett Kandt
Secretary
State of Nevada
Advisory Council for Prosecuting Attorneys