



OFFICE OF THE PINAL COUNTY ATTORNEY

Kent Volkmer
Pinal County Attorney

August 16, 2018

Lindsey Perry, Auditor General
Arizona Office of the Auditor General
2910 N. 44th St., Suite 410
Phoenix, AZ. 85018

Dear Ms. Perry,

First, I wish to express my appreciation to the Office of the Auditor General for performing this audit at my request.

It is important to point out that the vast majority of RICO drug and money seizures are the proceeds of drug dealers and their distribution system. Furthermore, the majority of the seized anti-racketeering monies have been directed towards law enforcement investigations and operations with the goal to assist law enforcement in keeping drugs out of our County and to local collaborative efforts to combat the negative impact of drugs on our community.

Next, it should be made clear at the outset that each Finding related to the County Attorney's Office and the bases for each Finding emanate from 2013-2016 internal Pinal County Attorney's Office policies, procedures and guidelines established by previous Pinal County Attorney's Office administrations (as noted in the Auditor General's Report and provided in Appendices "A" and "B" of the Report), and that the Findings did not include any reference to violations of then existing applicable state law or federal guidelines. It should also be clear that the Report's Findings were limited to Community Outreach Expenditures and did not examine the propriety of expenditures for operations or investigations.

These internal Pinal County Attorney's Office policies, procedures and guidelines were created in the absence of specific statutory guidance and requirements. Since that time, 2017 Arizona House Bill 2477¹ has amended Arizona Revised Statutes Section 13-2314.03, prescribing authorized purposes for county anti-racketeering funds, as well as the information and documentation needed to request and award county anti-racketeering funds. In January of 2017, the Pinal County Attorney's Office adopted practices adhering to these statutory requirements.

Starting in January 2017, the current Pinal County Attorney's Office administration took immediate and sustained action to process, account for, and document all requests for anti-racketeering monies in accordance with the requirements embodied in A.R.S. § 13-2314.03,² as amended.

Accordingly, the Pinal County Attorney provides the following responses to the Auditor General's Findings and Recommendations:

¹ <https://www.azleg.gov/legtext/53leg/1R/laws/0149.htm>

² <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/13/02314-03.htm>

Finding 1 – “Former Pinal County Attorney did not always follow procedures or ensure community organizations followed guidelines when awarding monies to them and did not appear to ensure awarded monies were always used for authorized purposes”³

Response – Upon the new County Attorney taking office in January 2017, the Pinal County Attorney’s Office [“PCAO”] began instituting changes to the anti-racketeering fund [“ARF”] request and expenditure process, including: 1) Ensuring that no employee salaries or benefits were dependent on ARF monies; 2) Instituting a temporary moratorium on PCAO ARF expenditures due to negative PCAO ARF account balance, until a sufficient account balance was established; 3) Establishing a documentation system for the committee that reviews each request and makes a recommendation thereon; 4) Applying a \$25,000 annual community outreach expenditure limit, (mirroring federal guidelines), to state ARF monies; 5) Retaining documentation for all ARF requests, regardless of whether the request was ultimately granted or denied; 6) Requiring documentation from ARF recipients reflecting the occurrence of the authorized use(s) and remaining balance of ARF monies received, if any; and 7) Instituting practices and procedures reflecting the requirements of A.R.S. § 13-2314.03(E)—(K);

Recommendation 1.a – “To help ensure an effective internal control system over award of anti-racketeering monies, the County Attorney should develop and consistently follow procedures for all funding requests, including requests from local law enforcement agencies. Specifically, the internal control system should . . . [e]nsure all awards are supported by applications that address requirements, such as those listed in the Community Outreach Guidelines. For example, program goals, expected outcomes, and performance measures should be fully described, and budgets should provide sufficient detail to show how the requested funds will be spent.”

Response – PCAO now requires that all ARF requests be accompanied by an application (Attached as Exhibit “A”) which requests the applicant to identify documentation that clearly demonstrates how the proposed expenditure will satisfy at least one of the authorized purposes pursuant to A.R.S. § 13-2314.03(F) and (K). ARF request documentation must include, at a minimum, a letter explaining the intended use(s) and goal(s) of the expenditure and an itemized list of each specific anticipated cost or expense comprising the expenditure, as appropriate. Each ARF request and subsequent documentation is assigned a unique identification number for tracking and archiving.

Recommendation 1.b – “To help ensure an effective internal control system over award of anti-racketeering monies, the County Attorney should develop and consistently follow procedures for all funding requests, including requests from local law enforcement agencies. Specifically, the internal control system should . . . [e]nsure a committee such as the Community Outreach Fund Committee evaluates all community outreach award requests, including requests from local law enforcement agencies.”

Response – The PCAO Executive Committee, composed of PCAO senior most management team, now reviews all ARF requests. The County Attorney then approves/modifies/disapproves all requests and signs the final internal control document. The documentation is then retained for future reference.

³ As mentioned in the opening paragraphs, the ‘procedures’, ‘guidelines’ and ‘authorized purposes’ referenced in this Finding arise from former Pinal County Attorney’s Office internal “Community Outreach Procedures” and “Community Outreach Fund Guidelines.”

Recommendation 1.c – “To help ensure an effective internal control system over award of anti-racketeering monies, the County Attorney should develop and consistently follow procedures for all funding requests, including requests from local law enforcement agencies. Specifically, the internal control system should . . . [e]nsure the County Attorney submits award recommendations for the use of his office’s own anti-racketeering monies to the Board of Supervisors for its approval (this is now required by state law pursuant to A.R.S. § 13-2314.03(E), effective August 9, 2017).”

Response – As clearly stated in the Report, A.R.S. § 13-2314.03(E) requires the County Attorney obtain Board of Supervisor approval for ARF expenditures proposed by PCAO. Accordingly, PCAO follows this statutory requirement.

Recommendation 2.a – “The County Attorney Should develop and implement internal controls to monitor the community organizations’ uses of anti-racketeering awards to ensure that they are permissible and require the organizations to return any unexpended monies or those used for unauthorized purposes. Specifically, the County Attorney should . . . [r]equire community organizations to submit a follow—up report that includes receipts for monies spent and an itemized list of the use of awarded monies compared to the budget submitted with the application.”

Response – PCAO requires that each recipient provide satisfactory documentation (i.e. receipts) reflecting that the ARF monies were used for an authorized purpose and the remaining balance thereof, if any, no later than ninety (90) days after disbursing the ARF award. Should a recipient fail to timely provide such documentation, PCAO will not grant any further ARF awards until the recipient has complied or demonstrated substantial compliance, or provided a satisfactory explanation of why compliance was not practicable under the circumstances.

Recommendation 2.b – “The County Attorney Should develop and implement internal controls to monitor the community organizations’ uses of anti-racketeering awards to ensure that they are permissible and require the organizations to return any unexpended monies or those used for unauthorized purposes. Specifically, the County Attorney should . . . [e]nsure that all supporting documentation for community outreach awards is retained, including applications, budgets, memoranda of understanding, and follow-up reports with associated receipts.”

Response – PCAO retains all documentation comprising: i) each ARF request, application and supporting documentation; ii) each request disposition (i.e. granted, granted in part, denied, and reason(s) therefore); iii) all follow-up documentation following award disbursement; and iv) all email communications between requesting agency and PCAO. PCAO organizes each request and all documentation resulting from the request into a unique numbered and secure digital filing system, as well as physical file, as appropriate.

Recommendation 2.c – “The County Attorney Should develop and implement internal controls to monitor the community organizations’ uses of anti-racketeering awards to ensure that they are permissible and require the organizations to return any unexpended monies or those used for unauthorized purposes. Specifically, the County Attorney should . . . [r]eview follow-up reports and supporting documentation to verify permissible uses of award monies and require the return of any unexpended monies or monies used for unauthorized purposes.”

Response – PCAO requires follow up documentation from all ARF award recipients verifying the authorized use(s) of the monies and remaining balance of ARF monies, if any, within ninety (90) days after the ARF award’s disbursement. PCAO administrative staff sets internal reminders and actively monitors ARF recipient’s ninety (90) day compliance requirement. If an agency fails to comply, PCAO sends a letter requesting the required documentation. Prior to reviewing new requests, PCAO staff checks compliance and reports compliance to PCAO Executive Team. Should a recipient fail to timely provide such documentation, PCAO will not grant any further ARF awards until the recipient has complied or demonstrated substantial compliance.

Finally, because the Auditor General’s recommendation to the Pinal County Sheriff, under Finding 2, expressly refers to the Pinal County Attorney’s Office, the County Attorney responds as follows:

Finding 2 – “Former Pinal County Sheriff and county sheriff employees appear to have violated conflict-of-interest policies when they participated in the award of community outreach monies to a community organization and failed to disclose their level of control over that organization’s disbursement of those awarded monies”

Recommendation – “As of May 2018, no county sheriff or county attorney employees were on the Foundation’s board or otherwise involved in foundation activities, but the County Attorney can take actions to help ensure anti-racketeering monies are awarded in compliance with conflict-of-interest policies. Specifically, the County Attorney should consider requiring all employees involved in awarding community outreach monies to sign a statement acknowledging they have complied with the county conflict-of-interest policy and will not participate in an award when they hold a potential conflict. Likewise, county employees should comply with county policy and disclose conflicts of interest when their activities have a personal or business interest or employment with another entity in which the county awards grants and contracts and abstain from any involvement in the award decisions when a conflict of interest exists. Additionally, all potential conflicts should be disclosed by written memorandum from the employee to the employee’s supervisor explaining in detail the potential conflict and confirming the employee will avoid any involvement in related decisions. This memorandum should be submitted to the County Attorney’s Office and county human resources department.”

Response – The Pinal County Attorney’s Office has followed and will continue to follow Pinal County Policy and Procedure No. 3.35⁴ as it provides for the requisite observance of conflicts of interest pursuant to Arizona law and specifically provides for the disclosure of potential conflicts of interest and abstention from conflicted matters when appropriate. Further, each member of PCAO’s Executive Team is required to sign an attestation that they are aware of and will abide by Pinal County Policy and Procedure No. 3.35. Additionally, PCAO’s revised ARF Application (see attached Exhibit “A”) requires the requesting party to attest that they have no conflict of interest in the pending matter.

Please contact me if you have any questions.

Sincerely,

Kent Volkmer
Pinal County Attorney

⁴ <http://www.pinalcountyaaz.gov/HR/PoliciesProceduresRules/pnp3.35.pdf>

Exhibit A

PINAL COUNTY ATTORNEY'S OFFICE
Agency Application for RICO Funds

Agency Name: (Select Agency)

A. Intended use of funds (Check all applicable boxes)

ACJC Title	Amount	ACJC Title	Amount
<input type="checkbox"/> Grant Match		<input type="checkbox"/> Training & Conferences	
<input type="checkbox"/> Community Support		<input type="checkbox"/> Vehicles	
<input type="checkbox"/> Witness Protection		<input type="checkbox"/> Vehicle Maintenance	
<input type="checkbox"/> Investigation Costs		<input type="checkbox"/> Canines, Firearms & Related Equip	
<input type="checkbox"/> Personnel Services		<input type="checkbox"/> Other Capital	
<input type="checkbox"/> Professional/Outside Svc.		<input type="checkbox"/> External Publications	
<input type="checkbox"/> Travel & Meals		<input type="checkbox"/> Other Operating Expense	

B. Funding Source: State Federal

C. Agencies must submit supporting documentation with the Application for RICO Funds. Check all the supporting documents that apply:

- A supplemental memorandum is attached and contains an explanation for each category.
- An itemized list of reimbursements or advances with an explanation for each category.
- A letter of request for funding from a community based program is attached that sets forth the program goals and contains the information necessary to comply with applicable statutes.
- A detailed invoice or quote has been provided for all services, material, items, equipment of other property purchased or to be purchased.

D. Payment Information

Total Request:	
Payee:	
Hold for/Deliver to:	
Address:	

The undersigned, an agent appointed to request a transfer of funds from the agency's RICO account, certifies that: (1) the above information is true and accurate; (2) all funds transferred pursuant to this request will be used for those purposes stated in A.R.S. §§ 13-2314.03(E) and 13-4315(C); (3) all funds transferred pursuant to this request will be deposited, accounted for, and expended consistent with standard accounting requirements and practices employed under state or local law for recipients of federal, state, or local funds. (4) the services, materials, items, equipment of other property purchased or to be purchased by this agency, using funds from account or subaccount of the Pinal County Attorney's Anti-Racketeering Fund have been procured under the applicable state statutes and ordinances or policies of the local government making the request for the purchase or expenditure of funds. The undersigned agrees that the agency will report and/or provide additional supporting documentation on the actual use of these transferred funds upon request from the Pinal County Attorney's Office. (5) The undersigned affirms that he/she has complied with A.R.S. §§ 38-501 et seq. regarding any potential or actual conflict(s) of interest. If the undersigned is a Pinal County employee, the undersigned further affirms that he/she has complied with Pinal County Policy and Procedure 3.35.

Signature

Date

(Typed/Print Name of Agency Representative)

For Pinal County Attorney's Office Use Only

Based upon a review of the above agent's certified request for a transfer of funds from the agency's RICO account, the requested transfer is approved for use in accordance with A.R.S. §§ 13-2314.03(E), 13-4315 (C), and federal law.

Pinal County Attorney's Office Approval

Date

Check #: _____ Date Issued: _____



Pinal County Sheriff's Office

Mark T. Lamb
Sheriff

Matthew J. Thomas
Chief Deputy

August 20, 2018

Lindsey Perry, Auditor General
Arizona Office of the Auditor General
2910 N. 44th St., Suite 410
Phoenix, AZ 85018

Dear Ms. Perry,

I want to express my gratitude for the professional manner in which the Arizona Auditor General's Office conducted this audit.

As the audit report makes clear, the evaluation period and findings involved previous administrations in the Pinal County Sheriff's Office ["PCSO"]. Since taking office in January 2017, the current administration has taken immediate and sustained steps to substantially modify PCSO's management of Anti-Racketeering funds in areas determined to be of immediate importance. These steps have included: separating PCSO from the 'Public Safety Foundation'; instituting a new process for the review of community outreach fund requests; forming a new committee for PCSO's initial review of community outreach fund requests, before forwarding the request to the County Attorney; application of the federal RICO fund guideline annual community outreach expenditure limit; adherence to and reliance on Pinal County's conflict of interest policy; compliance with each of the County Attorney's requirements for ARF funding requests; and working closely with legal counsel to ensure statutory compliance.

Therefore, the Pinal County Sheriff provides the following responses to the Auditor General's findings and recommendations:

Finding 2 – “Former Pinal County Sheriff and county sheriff employees appear to have violated conflict-of-interest policies when they participated in the award of community outreach monies to a community organization and failed to disclose their level of control over that organization's disbursement of those awarded monies”

Recommendation – As of May 2018, no county sheriff or county attorney employees were on the Foundation's board or otherwise involved in foundation activities. To help ensure anti-racketeering monies are awarded in compliance with conflict-of-interest policies, the County Attorney should take the following actions. Specifically:

Recommendation 1.a – Require county employees involved in awarding community outreach monies sign a statement acknowledging they have complied with the county conflict-of-interest policy and will not participate in an award when they hold a potential conflict.

Response – PCSO is currently creating a form to effectuate this recommendation and plans to utilize this form according to the purposes of Recommendation 1.b as soon as operationally possible.

Recommendation 1.b – Ensure county employees involved in community outreach award decisions comply with county policy by submitting a written memorandum from the employee to the employee’s supervisor detailing potential conflicts of interest and confirming the employee will avoid any involvement in related decisions. This memorandum should be submitted to the County Attorney’s Office and county human resources department.

Response – PCSO will adhere to Pinal County Policy and Procedure No. 3.35, which provides appropriate procedures and safeguards under Arizona’s conflict of interest laws. It should be noted here that PCPP 3.35 requires the disclosure of potential conflicts of interest and abstention from conflicted matters when appropriate.

Please feel free to contact me if you have any questions.

Sincerely,

Mark Lamb, Pinal County Sheriff