Board of Supervisors Memorandum

September 19, 2017

Board of Supervisors Policy C6.3
Procedures for Board Approval of Applications for Monies from the County Attorney's Anti-Racketeering Revolving Fund

Background

Under Arizona's civil asset forfeiture statutes, the Board of Supervisors has established the County Attorney Anti-Racketeering Revolving Fund ("the Fund"), which is governed by A.R.S. § 13-2314.03. Sub-accounts of this Fund are maintained for the various law-enforcement agencies, each of which determines its priorities for using monies in its sub-account for purposes authorized by A.R.S. § 13-2314.03, A.R.S. § 13-4315, and/or federal law. Previously, the Board had no statutory role in approving those expenditures. Instead, it has been the duty of the Pima County Attorney to determine whether each requested expenditure is for a purpose authorized by law. The Pima County Attorney maintains a record of each requested expenditure and the supporting documentation.

In its 2017 session, the Arizona State Legislature enacted Laws 2017, Chapter 149, amending Arizona statutes governing civil asset forfeiture. Among the amendments was a change to A.R.S. § 13-2314.03(E), requiring the Board's approval of requests to use monies from the Fund only when the requesting law-enforcement agency is the Pima County Attorney. Under the amended statute, except in emergencies, the Pima County Attorney must submit an application and receive Board approval in order to use monies from the Fund. (In emergency situations, the expenditure is subject to Board ratification within a reasonable time.) The statute further provides that the Board "shall approve the county attorney's use of the monies if the purpose is authorized by [§ 13-2314.03], section 13-4315 or federal law." The statute also permits the Board to "retain outside counsel, if necessary, to approve, review or ratify the county attorney's use of the monies."

Proposed Board of Supervisors Policy C6.3 addresses the statutory change by providing a procedure for the Pima County Attorney to apply for approval to use monies from the Fund for expenses that either (1) directly serve law-enforcement purposes of the Pima County Attorney's Office ("Direct Expenditures") or (2) do so indirectly by funding community-based programs, activities, or events ("Indirect Expenditures"). Direct Expenditures will be incorporated into the annual budget process, with additional documentation provided at the time a request for payment is made. Indirect Expenditures will be presented individually to the Board for approval. In either instance, the Policy requires a certification by the Pima County Attorney or designated Deputy County Attorney expressing a legal opinion that the proposed expenditure is for an authorized law-enforcement purpose. Further, the Pima County Attorney must provide a detailed explanation of the proposed expenditure.

Background documentation for each expenditure will be available from the Pima County Attorney's Office, Finance Department or Procurement Department. Finally, the Policy provides procedures for emergency expenditures and a process in the event the Board concludes it must retain outside counsel to review a proposed use of monies from the Fund.

While the Board does not play a role in approving expenditures by law-enforcement agencies other than the Pima County Attorney's Office, the Pima County Attorney's Office maintains detailed records of each such expenditure for a period of five years. Copies of those records are available upon request.

Recommendation

I recommended the Board of Supervisors adopt Policy C6.3, Procedures for Board Approval of Applications for Monies from the County Attorney's Anti-Racketeering Revolving Fund.

Respectfully submitted,

C.H. Huckelberry
County Administrator

CHH/anc – September 9, 2017

Attachment

c: The Honorable Barbara LaWall, Pima County Attorney
Tom Burke, Deputy County Administrator for Administration
Ellen Wheeler, Assistant County Administrator
Keith Dommer, Director, Finance and Risk Management
Mary Jo Furphy, Director, Procurement Department

PIMA COUNTY, ARIZONA
BOARD OF SUPERVISORS POLICY

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Background and Purpose

Under Arizona's civil asset forfeiture statutes, law enforcement agencies have express authority to determine their priorities to spend monies in their anti-racketeering sub-accounts maintained in the County Attorney's Anti-Racketeering Revolving Fund ("the Fund") for expenditures authorized by A.R.S. § 13-2314.03, A.R.S. § 13-4315, and/or federal law. Each law enforcement agency is responsible for determining its priorities to use monies from the Fund for those authorized purposes. The County Attorney's Office itself is one of the law enforcement agencies that has a sub-account in the Fund, and the County Attorney is responsible for determining priorities for the use of monies from that sub-account in the Fund.

In 2017, the Arizona Legislature enacted Laws 2017, Chapter 149, amending Arizona statutes governing civil asset forfeiture. Section 3 of the session law amended A.R.S. § 13-2314.03(E) to implement procedures governing seizing agencies' and county attorneys' requests for monies from the county anti-racketeering revolving fund ("the Fund"). Under the amended statute, except in emergencies, county attorneys who have determined a need to use monies from the Fund "shall submit an application that includes a description of what the requested monies will be used for to the board of supervisors. The board of supervisors shall approve the county attorney's use of the monies if the purpose is authorized by [section 13-2314.03], section 13-4315 or federal law." The purpose of this Policy is to provide a procedure for County Attorney applications and Board of Supervisors approvals under § 13-2314.03.

Definitions

1. "Board" means the Pima County Board of Supervisors.
2. "County Administrator" means the County Administrator or designee.
3. "County Attorney" means the Pima County Attorney. Any action required or permitted to be taken by the County Attorney under this Policy may also be taken by a Deputy County Attorney under authority delegated by the County Attorney.
4. "Direct Expenditure" means an authorized use of monies from the Fund for expenses that directly serve the law-enforcement or prosecution purposes of the Pima County Attorney's Office, including the provision of equipment, services, personnel, training, or other costs directly to the Pima County Attorney's Office.
5. "Fund" means the county anti-racketeering fund established under A.R.S. § 13-2314.03.
6. "Indirect Expenditure" means an authorized expenditure that serves the law-enforcement or prosecution purposes of the Pima County Attorney's Office indirectly, including the provision of equipment, services, personnel, training, education, rehabilitation, or other costs of community-based programs, activities, or events that further the law-enforcement purposes of the Pima County

Attorney's Office or other law-enforcement or prosecution purposes, including but not limited to gang and crime prevention.

7. "Supplement" means enhance or add onto resources of the law enforcement or prosecution agency, as distinguished from supplant or replace.

Policy

Except in an emergency, the County Attorney may not use monies from the Fund unless and until the Board has approved that use of monies in accordance with this Policy. The County Attorney may use monies only to Supplement existing resources, and may not apply to use monies from the Fund for any purpose not authorized by A.R.S. § 13-2314.03, A.R.S. § 13-4315, and/or federal law, or to replace or supplant general fund resources. All County Attorney expenditures of monies from the Fund must also be in accordance with all applicable Pima County Policies and Procedures.

Application Procedures

Direct Expenditures

The County Attorney will apply to use monies from the Fund for Direct Expenditures as part of the County Attorney's annual budget submission. The County Attorney's annual budget submission will include those expenditure accounts provided in the county budget system reflecting the County Attorney's priorities among the authorized categories of uses for which monies from the Fund will be used, along with the budgeted amounts of expenditures for the fiscal year for which the proposed budget is submitted. The expenditure accounts provided in the county budget system will include descriptions with sufficient detail to reflect how the proposed use of monies from the Fund is authorized by law and this Policy. The County Attorney's budget submission must contain a certification, signed by the County Attorney, stating that each proposed category of expenditure is for a use authorized by law and this Policy. The County Administrator will review the budget submission and, unless the County Administrator reasonably believes review by outside counsel is necessary as to any category or categories of expenditure, will recommend Board approval of the fund budget as part of the Tentative and Final Budget adoption. Unless a majority of a quorum of the Board votes to engage and pay for outside counsel to review a request, it shall approve the request without further review.

When the County Attorney requests payment from the Finance Department or uses a PCard for a specific Direct Expenditure within an already approved category of Direct Expenditures, the County Attorney must submit to the Finance Department of Procurement Department, as applicable, a detailed description of the specific expenditure, not merely the category of expenditure. For example:

- If the County Attorney requests payment to purchase goods, the request must detail the specific nature and quantity of the goods to be purchased.
- If the County Attorney requests payment for services, the request must detail the specific nature of the services provided, the operational division(s) or program(s) within the Pima County Attorney's Office where such services will be provided, and the name of the person or entity providing the services.

If the Finance Department or Procurement Department questions whether a specific Direct Expenditure is authorized by law and this Policy, the Finance Department Director or designee of the Procurement Director or designee may request additional information from the County Attorney or designee. If the Finance Department or Procurement Department reasonably believes review by outside counsel is necessary, it will submit a request for review by outside counsel to the County Administrator and the request will proceed under the Outside Counsel provisions of this Policy.

Indirect Expenditures

For any requested Indirect Expenditure of monies from the Fund, the County Attorney will submit an application to the County Administrator consisting of copies of the Pima County Attorney's Office Memorandum in the form attached as Attachment A and the Community Organization Application in the form attached as Attachment B. The application must include a description of the proposed Indirect Expenditure that is sufficiently detailed to show that the proposed use of monies from the Fund is authorized by law and this Policy. The application must also include a certification, signed by the County Attorney, stating that the proposed Indirect Expenditure is for a use authorized by law and this Policy. The County Administrator will review the request and submit it to the Clerk of the Board for placement on the Agenda for the next Board meeting. Unless the County Administrator reasonably believes review by outside counsel is necessary, the County Administrator will recommend approval of the request. Unless a majority of a quorum of the Board votes to engage and pay for outside counsel to review a request, it shall approve the request.

Emergencies

If the County Attorney uses monies from the Fund without first applying to the Board because of an emergency, the County Attorney must submit an application within a reasonable amount of time after the monies are used in accordance with the procedure for Indirect Expenditures under this Policy. That application must include an explanation of the emergency that led to the use of the monies without first applying for approval, but must not include any information that is confidential by law. The County Administrator will process the request using the same procedure as used for requests for approval of Indirect Expenditures.

Outside Counsel

If the County Administrator, on reviewing any request from the County Attorney under this Policy or any request by the Finance Department for review by outside counsel, reasonably believes that the proposed or emergency use of monies from the Fund is or was not authorized by law and this Policy, the County Administrator may recommend to the Board that the Board retain outside counsel to review the County Attorney's proposed or emergency use of the monies. A majority of a quorum of the Board may vote to engage and pay for outside counsel to review any request, with or without the recommendation of the County Administrator. In the event a majority of a quorum of the Board votes to engage outside counsel, it will identify the specific request or requests that outside counsel is to review. Outside counsel must be engaged to report back as expeditiously as possible to the Board as to whether the requested expenditure is legally authorized. If outside counsel concludes the expenditure is legally authorized, the Board must approve the request. In the event outside counsel is engaged to review a request and finds the request

to be for an authorized purpose, but the time required for outside-counsel review results in the imposition of a late payment penalty, the Board will authorize payment from another County fund to pay the penalty.

Applicability

This Policy applies only to the review by the Board of proposed expenditures of monies from the Fund to be made by the County Attorney from the County Attorney's sub-account. It does not apply to sub-accounts of other law enforcement agencies that are held within the Fund administered by the County Attorney.

Effective: _____, 2017

ATTACHMENT A

Pima County Attorney's Office

MEMORANDUM

TO: David Smutzer, Legal Administrator

FROM: Kevin Krejci, Supervising Prosecutor, Forfeitures Unit

DATE: _____

RE: Approval of purpose/use of distribution of Pima County Attorney anti-racketeering funds under state law

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I have reviewed the attached _____ request for approval of the purpose/use of funds held by the Pima County Attorney in its state sub-account of the Pima County Attorney's Anti-Racketeering Revolving Fund. The request is APPROVED for the reason that the description of the purpose/use appears consistent with the following purpose(s)/use(s) by state law:

___ Funding a gang prevention program. ARS § 13-2314.03(E).

___ Funding a substance abuse education program. ARS § 13-2314.03(E).

___ Funding a program that provides assistance to victims of a criminal offense that is listed in A.R.S. §13-2301. ARS § 13-2314.03(E).

___ Funding for witness protection pursuant to A.R.S. § 11-536. ARS § 13-2314.03(E).

___ Funding the investigation and prosecution of any offense included in the definition of racketeering in A.R.S. §§ 13-2301(D)(4) or 13-2312, including civil enforcement. ARS § 13-2314.03(E).

___ Funding for a purpose permitted by federal law relating to the disposition of any property transferred to a law enforcement agency. ARS § 13-2314.03(E). Reference: USDOJ *Guide to Equitable Sharing for State and Local Law Enforcement Agencies* (2009) (*Guide*) & Interim guidelines section V.B. (July 2014), specifically subsec(s) _____.

___ These monies will provide support of a community-based program (*see* the *Guide*, Interim guidelines sections V.B.1.l. (July 2014)). The *Certification by Community Organization Applicant* and *Community Organization Application for Funding Assistance from Pima County Anti-Racketeering Funds* is attached.

___ Funding to compromise and pay claims against forfeited property. ARS § 13-4315(A)(5).

___ Funds to pay expenses necessary to seize, detain, appraise inventory, protect, maintain, preserve the availability of, advertise or sell property that is subject to forfeiture; or any other necessary expenses incident to the seizure, detention, preservation or forfeiture of the property. ARS § 13-4315(C)(1).

___ Funding to pay awards for information or assistance which led to a civil or criminal proceeding under the Criminal Code. ARS § 13-4315(C)(2).

Notes/Special Instructions:

ATTACHMENT B

COMMUNITY ORGANIZATION APPLICATION
FOR FUNDING ASSISTANCE FROM PIMA COUNTY ANTI-RACKETEERING FUNDS

Community Organization _____

Executive Director/Agency Head _____

Law Enforcement Agency _____

Date _____ Amount requested _____

The Pima County Anti-Racketeering Revolving Fund has been created by forfeiture of property that constituted the proceeds of crime or that was used or intended to be used to commit crime. **Use of the funds is restricted to law enforcement purposes**, however transfers to community-based programs, whose missions are supportive of and consistent with **a law enforcement** effort, policy, or initiative are permitted.

> NOTE: **A program may benefit the community generally, but still not qualify for Pima County Anti-Racketeering Revolving Fund funds.** To qualify, a program must specifically involve law enforcement personnel or otherwise include specific content which extends or enhances the efforts of law enforcement in the community, such as assisting victims of crime, preventing crime including by providing programs for at-risk youth, deterring crime, rehabilitation of offenders, emergency response by law enforcement, protecting people and property from crime, reducing the effects of crime, etc.

Describe the community-based program for which funds are being sought and how the program benefits the community:

_____
_____
_____
_____
_____
_____
_____
_____

Specifically, what law enforcement effort, policy, and/or initiative of this agency does this program support in this community?

_____
_____
_____
_____
_____
_____

Describe in detail how this program is supportive of and consistent with this law enforcement agency's efforts, policies, and/or initiatives in the community. What elements of the program specifically enhance or extend the efforts of law enforcement in the community, and how does the program do this?

As specifically as possible, please indicate how the funds requested will be used by this program (that is, to purchase supplies, equipment, and/or services; covering costs of participants or attendees; etc. **Direct cash transfers or gifts are not permitted**):

ATTACHMENT B

CERTIFICATION BY COMMUNITY ORGANIZATION APPLICANT

Applicants for funds must certify in writing the following aspects of its background and compliance with Arizona and federal law and Department of Justice guidelines:

I, the undersigned head of the applicant entity, certify that:

		Yes	No
A.	Applicant is a state, county, or local government department or agency; or applicant is a private, non-profit 501(c)(3) or (4) organization. Tax I.D. Number: _____	☐	☐
B.	Applicant is primarily engaged in providing a program that is both community-based and supportive of and consistent with a law enforcement effort, policy, or initiative.	☐	☐
C.	Applicant agrees to account separately for all anti-racketeering funds received.	☐	☐
D.	Applicant agrees to utilize and apply standard accounting requirements and practices employed under state or local law for recipients of federal, state, or local funds and to provide documentation for any audit that may be performed by a governmental entity authorized to audit the use of such funds.	☐	☐
E.	Applicant is in compliance with federal civil rights laws.	☐	☐
F.	Applicant is in compliance with all other Arizona and federal laws that apply to applicant.	☐	☐
G.	No officer, director, trustee, or fiduciary of the applicant has been convicted of a felony offense under federal or state law, or convicted of any drug offense.	☐	☐
H.	Applicant agrees not to use funds for personal or political purposes.	☐	☐
I.	Applicant agrees that funds will not be used for any purpose that would constitute an improper or illegal use under the laws, rules, regulations, or orders of the state or local jurisdiction in which the applicant is located.	☐	☐

_____ Print Name of Requesting Agency Director

_____ Signature of Requesting Agency Director

I have reviewed the foregoing request, and based on the organization's certifications and the information provided by the organization, the recipient of the funds is a qualified entity and the program for which funds are sought is consistent with and supportive of a

law enforcement effort, policy, and/or initiative of this agency. (If the funding is to be from DOJ equitable sharing sources, all additional requirements for use of such funds have also been fulfilled; Treasury funds may not be used for support of community-based programs.)

_____	_____
Print Name of Chief Law Enforcement Officer	Signature of Chief Law Enforcement Officer

Date _____