

# INDIGENT DEFENSE TRUST FUNDS Board Meeting

Division of Finance, 2110 State Office Building, Salt Lake City, Utah 84114

Public Meeting Notice and Agenda

April 7, 2015

11:30 a.m.

To join the meeting by phone, call: **1-877-820-7831**

Participant Pass Code: **349946**

---

## 1. Welcome:

## 2. Review and approval of minutes from the meeting held on December 2, 2014.

## 3. Review and approval of minutes from the Telephonic Meeting on March 3, 2015.

### 3. Assignments from the last meeting.

- a) Follow-up with UAC for board appointments. (UAC has been contacted.)
- b) Add the new language to the standard contract about second chair's right to compensation when the death penalty is no longer sought. (Completed, see handout)
- c) Add the new language that was approved about *exceptional circumstances* to the standard contract. (Completed, see handout)
- d) Denise Porter – Preparation of checklist and expected costs of foreseeable items on cases.

## 4. Fund Balances as of 3/31/2015:

### 5. Review of Current Cases:

Sun Cha Warhola-Davis County, Edward K. Brass Attorney  
Angelo Seth Carrasco-Iron County, Richard Mauro Attorney  
Thad Douglas Robertson-Iron County, Douglas Terry Attorney  
Logan McFarland-Sanpete County, (waiting for appointment of attorney, no contract yet)  
William C. Lawton-Sevier County, James A. Valdez Attorney  
Brandon Perry Smith-Washington County, Gary Pendleton  
Glen Howard Griffin appeal-Box Elder County, Jennifer Gowans Attorney  
David Drommond appeal-Davis County, Arnold Wiggins Attorney  
Robert Cameron Houston appeal, Davis County, John Pace Attorney  
Martin Chris Nelson appeal-Iron County, Liz Hunt Attorney  
Richard Andrew Jones appeal-Washington County, No agreement yet with any attorney.

### Indigent Inmate Fund Cases Sanpete County, (Gunnison Prison):

Andre Bryant, Doug Neeley Attorney  
Steven Crutcher, aggravated murder, Sanpete County, Ed Brass Attorney  
Steven Crutcher, additional charges, Doug Neeley Attorney  
Abel Castillo, Doug Neeley Attorney  
Thomas Bradfield, Doug Neeley Attorney

**6. Other Business:**

**7. Next Meeting:**

(Draft waiting formal approval)

# INDIGENT DEFENSE TRUST FUNDS BOARD

## Meeting Minutes

*Division of Finance, 2110 State Office Building, Salt Lake City, Utah 84114*

December 2, 2014

11:30 a.m.

---

### Public Meeting Minutes

#### Attendance - Board Members:

Brody Keisel, Sanpete County Attorney-Chair  
Scott Garrett, Iron County Attorney  
Kirk Wood, Duchesne County, Commissioner  
James Withers, Millard County, Commissioner (absent)  
Richard Gale, Attorney  
Denise Porter, Attorney (joined meeting via phone)  
John Reidhead, Director, Division of Finance  
Barry Huntington, Garfield County Attorney – Vice Chair  
Richard Schwermer, Administrative Office of the Court

#### Attendance - Staff and Others:

Paul Tonks, Attorney General's Office  
Nicole Alder, Paralegal, Attorney General's Office  
Joey Palmiotti, Accountant, Division of Finance  
Barbara Sutherland, Administrative Assistant, Division of Finance

Note: A copy of meeting materials, and an audio recording of the meeting can be found on the Public Notice Website.

#### **1. Welcome:**

Brody Keisel, the Board chair welcomed everyone to the Indigent Defense Trust Funds Board Meeting, December 2, 2014.

#### **2. Review and approval of minutes from the meeting held on June 24, 2014.**

Kirk Wood suggested a few minor amendments to the draft minutes.

With these changes Kirk Wood moved to approve the minutes from the meeting held on September 16, 2014 as amended. John Reidhead seconded the motion. Motion passed.

#### **3. Assignments from the last meeting.**

Rick Schwermer will contact Judge Westfall about appointing counsel for Brandon Perry Smith. (Rick contacted Judge Shumate, Gary Pendleton was appointed, and a contract has been sent out.)

Paul Tonks will write new language for the standard contract about second counsel after the death penalty has been removed. He will bring the proposed change to the contract to the next meeting for the board to review. (See agenda item 4.)

Paul Tonks will add additional language to the standard contract to define *unforeseen and exceptional circumstances*. The Board will review the additional language at the next meeting. (See agenda item 5.)

Finance will add language to the standard contract about monthly billings, and add to the contract the board approved 10 cents per copy for internal copies. (This language has been added to the standard contract.)

Barbara will send letter to Denise Porter about her term ending. (Barbara talked with Denise Porter and she is willing to stay on the Board for another term.)

**4. New Language in the standard contract about second counsel after the death penalty has been removed.**

Paul Tonks explained that there was a question if payment for a second counsel was needed if the death penalty has been removed.

He suggested adding to the contract in 2. Compensation (2) a new paragraph (d) that says; *The second chairs right to receive compensation under this contract will terminate at the time the death penalty is no longer sought by the state of Utah, with lead counsel thereafter assuming all duties as sole counsel for Defendant.*

If the death penalty is removed the defendant does not have a right for second counsel. Mr. Tonks feels that it needs to be clear in the contract, that the contract does not give any rights for second counsel once the death penalty is removed.

Scott Garrett moved to adopt the additional language to the contract which is outlined in paragraph 2. subsection d. which terminates second chair's rights to receive compensation if the death penalty is no longer on the table. Kirk Wood seconded the motion. A vote was taken, all present voted, motion passed unanimously.

This language change will be incorporated in all new contracts.

**5. Additional Language added to the standard contract to define "unforeseen and exceptional circumstances."**

Paul Tonks discussed the language in 2. Compensation (C) second paragraph on establishing exceptional circumstances, and suggested adding the following language to the paragraph: *Exceptional circumstances are defined as circumstances related to the case that were not reasonably foreseeable at the time the Parties entered into this Contract. Failure by the DEFENDERS to request additional compensation at the time the Parties enter into this Contract for foreseeable circumstances related to the case is considered a waiver of any future requests for additional compensation related to those foreseeable circumstances, and the DEFENDERS shall be required to work within the presumptive caps in paragraphs 2A and 2B even if the total amount of work within the presumptive cap results in an hourly rate that is less than the hourly rate that is authorized by the Board in paragraph 2A of this Contract.*

Paul explained when an attorney enters into the contract they know that the Board will try and enforce the established caps, and they should have enough knowledge when they enter into the contract if the litigation will be complex, and beyond a regular death penalty case. The language allows for unforeseen circumstances that come up such as; a second victim, that would allow for additional funding.

The added language will help the Board to keep the funding within the cap limits. The Board would be responsible for approval of any additional funding for unforeseen exceptional circumstances that the Defender presents.

The board discussed the proposed new language in the contract.

Scott Garrett questioned the new language "foreseeable circumstances", he feels that language is already part of the contract and the unforeseeable circumstances are what the board is concerned about. He wants to avoid the attorney's asking for more money for both foreseeable circumstances and the unforeseeable circumstances.

Paul Tonks said that with "unforeseen" the attorneys can request more money, but the foreseeable circumstance waives away any right for more funding.

Rick Schwermer thinks the new language may helpful.

Denise Porter agrees that defense counsel needs to be held accountable upfront and feels that there should be discussions about increasing the amount on the initial contract. The board would then avoid the foreseeable and unforeseeable circumstances. She is concerned about running out of funds.

Denise Porter offered to prepare a checklist of what is generally foreseeable and the estimated cost amounts. This would help the Board see what the expected dollar amount looks like. She is part of a national email list and she will ask people who participate on this list what amount they receive to defend these types of cases.

Scott Garrett is in favor of adjusting the base contract amount, if the dollar amount is low, and then be more conservative about the amount of money that is given out after the contract is agreed upon.

The discussion continued about the new proposed language.

Rick Schwermer feels the Board could address the language again if attorneys start wanting to be removed from the Rule 8 qualified list, because the contract is too restrictive.

Scott Garrett feels the language will encourage more funding requests from the Board.

Scott Garrett made a motion to delete the following from the proposed new language; *Failure by the DEFENDERS to request additional compensation at the time the Parties enter into this Contract for foreseeable circumstances related to the case is considered a waiver of any future requests for additional compensation related to those foreseeable circumstances and*, then begin a new sentence.

John Reidhead seconded the motion, a vote was taken. The motion passed unanimously.

Scott Garrett moved to recess for lunch, Barry Huntington seconded the motion. Motion passed.

Scott Garrett moved to go reconvene the meeting, Rick Schwermer seconded the motion. Motion passed.

The meeting reconvened at 12:20 p.m.

**6. Fund Balances as of 12/1/2014:**

Joey Palmiotti reviewed the fund balance in the Capital Defense Trust Fund. There is a balance of \$452,128.35, including pending commitments. There have been a few of the 2015 assessments received. The rest of the county assessments should be received by Jan. 15, 2015.

John Reidhead stated that the fund balances are good for this late in the year. If the expenses continue at this rate, there could be an impact on the assessments next year.

The Indigent Inmate Trust Fund has a balance of \$971,165.48.

**7. Review of Current Cases:**

Stephanie Sloop-Davis County, Mary Corporon Attorney, case is over, waiting on final billings.

Sun Cha Warhola-Davis County, Edward K. Brass Attorney, Competency issue.

Thad Douglas Robertson-Iron County, Douglas Terry Attorney. Scheduled for jury trial February 6-20, 2015.

David Drommond appeal-Davis County, Arnold Wiggins Attorney.

The Board discussed the court order for extraordinary expenses to be paid to specialist, for purpose of review of the 23B remand.

William C. Lawton-Sevier County, James A. Valdez Attorney, There has not been any new billings. Case may be completed soon.

Richard Andrew Jones-Washington County, Stephen McCaughey Attorney, completed, final billings are being submitted.

John Reidhead asked if it is the Fund's responsibility to pay for appeals if there was a plea or the death penalty was removed.

Denise Porter explained that there would not be a mandatory direct appeal if there was a plea.

Richard Gale said with the death penalty off the table, there would not be a need for a second attorney for sentencing hearing. He said there should not be a need for a mitigation expert, or a second chair once the death penalty is removed.

John Reidhead explained, that this is not clarified in the current contract, but the new language that was approved today, that will be added to the standard contract. It explains that a second chair will not be compensated when the death penalty is removed.

Brandon Perry Smith-Washington County, Gary Pendleton Attorney,

Contract in place. Gary Pendleton and Mary Corporon are the attorneys.

Angelo Seth Carrasco-Iron County, Rich Mauro and Scott Williams appointed as defenders. Contract has been prepared and sent out for signatures.

Glen Howard Griffin appeal-Box Elder County, Jennifer Gowans Attorney, Nothing new.

Robert Cameron Houston appeal, Davis County, John Pace Attorney, nothing new.

Martin Chris Nelson appeal-Iron County, Liz Hunt Attorney. Before the Supreme Court, waiting for oral argument, it has been briefed.

**Indigent Inmate Fund Cases Sanpete County, (Gunnison Prison):**

Steven Crutcher, aggravated murder, Sanpete County, Ed Brass Attorney, No billings yet. Trial date set for November 2015.

Steven Crutcher, additional charges, Doug Neeley Attorney, continuing. These charges happened post homicide charge.

Andre Bryant. Doug Neeley Attorney, Not competent. Case is moving ahead, may be moved to mental hospital.

Abel Castillo, Doug Neeley Attorney, Complete.

Jose Willmond, Doug Neeley Attorney, Continuing.

**8. Expiring Board Members Terms, and Information on Member Appointments:**

There was a discussion about the board members whose terms are expiring Dec. 31, 2014. They are as follows:

Brody Keisel, Brody was reappointed for another 3 year term by the Prosecution Council.

Barry Huntington, appointed by the Utah Association of Counties. (The Board would like Barry to be appointed to another term.)

Commissioner Kirk Wood, appointed by the Utah Association of Counties. Retired, this is his last meeting.

Commissioner James Withers, appointed by the Utah Association of Counties. Term expires 12/31/2014.

Denise Porter, appointed by the Indigent Defense Fund Board.

Richard Schwermer, appointed by the Administrative Office of the Court. (Court will reappoint.)

A letter was sent to the Utah Association of Counties for board appointments, but they have not provided new board members yet.

Rick Schwermer moved to approve the reappointment of Denise Porter to the Board for another term. Kirk Wood seconded the motion. A vote was taken and all members present voted to approve Denise for another term. Denise abstained from voting.

**9. Other Business:** Kirk Wood thanked the Board, he is retiring it was his last meeting.

**10. Next Meeting:** April 7, 2015. 11:30 a.m.

Barry Huntington moved to adjourn the meeting, John Reidhead seconded the motion. Motion carried. Meeting adjourned at 12:45 p.m.

Assignments:

1. Follow-up with UAC for board appointment.

(Draft waiting formal approval)

# INDIGENT DEFENSE TRUST FUNDS BOARD

## Telephonic Meeting Minutes

*Division of Finance, 2110 State Office Building, Salt Lake City, Utah 84114*

March 3, 2015

1:00 p.m.

---

### Public Meeting Minutes

#### Attendance - Board Members:

Brody Keisel, Sanpete County Attorney-Chair (absent)  
Scott Garrett, Iron County Attorney (joined meeting via phone)  
Richard Gale, Attorney (joined meeting via phone)  
Denise Porter, Attorney (joined meeting via phone)  
John Reidhead, Director, Division of Finance  
Barry Huntington, Garfield County Attorney – Vice Chair (joined meeting via phone)  
Richard Schwermer, Administrative Office of the Court (joined meeting via phone)

#### Attendance - Staff and Others:

Paul Tonks, Attorney General's Office  
Joey Palmiotti, Accountant, Division of Finance  
Barbara Sutherland, Administrative Assistant, Division of Finance

#### 1. Welcome:

Barry Huntington welcomed and thanked the board members for joining the telephonic meeting.

#### 2. Jennifer Gowans request for additional funding on the Glenn Howard Griffin appeal.

The Board reviewed Jennifer Gowans letter that requested additional funding for the three issues granted for a 23B Remand on the Glenn Howard Griffin appeal.

Jennifer Gowans has been paid a total of \$190,391 so far on this appeal. Richard Gale feels that the 90 hours Ms. Gowans estimates as the maximum amount to finish the 23B Remand issues is reasonable.

There was a discussion about the need for some work from investigator Ron Edwards and if there needs to be funding approved for his work.

Joey Palmiotti explained that there is still \$6,420.00, funding left on Ron Edwards court orders. If he goes over that amount the Board would need to approve more funding for him.

Richard Gale moved to approve the request from Jennifer Gowans to fund an additional 90 hours of work to complete the 23B Remand on the Griffin appeal, but not to exceed the 90 hours unless she gets advance approval from the Board.

Rick Schwermer seconded the motion. A vote was taken and the motion passed unanimously.

**3. Discuss potential attorneys for Richard Andrew Jones appeal.**

John Reidhead explained that the Judge would like to have the Board get an appellate attorney for Richard Andrew Jones. John went over the appeals that the Fund has, or that have been completed and the lawyers that have done appeals for the Fund. He said that Liz Hunt had been asked if she would be willing to take this appeal and she said that she would not be able to do it at this time.

John reviewed the amount that has been paid in attorney fees for appeals in other cases where Liz Hunt was not the attorney.

The Board discussed the attorneys that have done appeals and if there were other lawyers that may be willing to take these appeals.

Rick Schwermer said that there is a list of qualified attorneys for appeals that could be used to find a lawyer for this appeal.

Mr. Reidhead proposed to ask Scott Wiggins, Craig Peterson, and John Pace, in that order to see if one would be willing to take the appeal for Richard Andrew Jones.

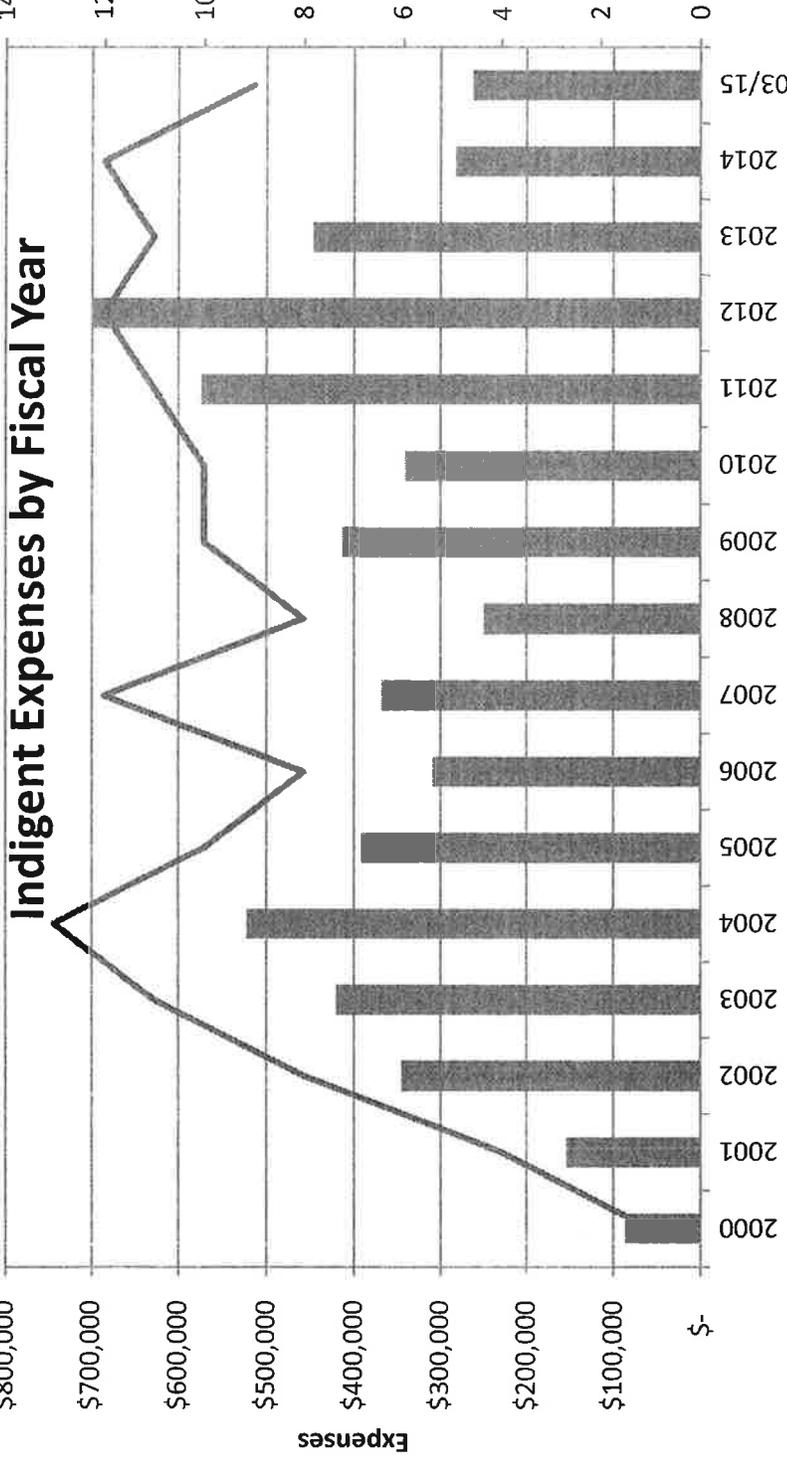
Scott Garrett moved to have John Reidhead contact Scott Wiggins, Craig Peterson, and John Pace in that order to see if one of the three would take the Jones appeal. If one of the three cannot take the appeal, John will work with Rick Schwermer and get the list of qualified attorneys and find someone reasonable to take the Jones appeal. A vote was taken and the motion passed unanimously.

There was no other business discussed. Rick Schwermer moved to adjourn; a vote was taken and passed unanimously.

The meeting was adjourned at 1:15.

**Indigent Capital Defense Trust Fund  
Fund 7261**

Beginning Balance (as of 12/01/14)	469,372.62
Revenue:	
County Assessments	441,940.33
Interest	978.26
Total Revenue	<u>442,918.59</u>
Expenditures:	
Case Expenses	
Angelo Carrasco	(28,906.31)
Richard Jones	(5,666.66)
William Lawton	(1,435.00)
Brandon Smith	(55,042.27)
Stephanie Sloop	(6,027.00)
David Drommond (appeal)	(40,471.00)
Thad Robertson	(589.92)
Total Case Expenditures	<u>(138,138.16)</u>
Other Expenditures	<u>(1,053.56)</u>
Total Expenditures	<u>(139,191.72)</u>
Ending Balance (as of 04/03/2015)	<u>773,099.49</u>
Pending Commitments	(48,219.72)
Revised Ending Balance (as of 04/03/2015)	<u>724,879.77</u>



Expenses  
 No. of Cases

14

12

10

8

6

4

2

0

\$800,000

\$700,000

\$600,000

\$500,000

\$400,000

\$300,000

\$200,000

\$100,000

\$-

Expenses

No. of Cases

2015 thr. 04/03/15

2014

2013

2012

2011

2010

2009

2008

2007

2006

2005

2004

2003

2002

2001

2000

Indigent Expenses by Fiscal Year

**Indigent Inmate Trust Fund  
Fund 7260**

Beginning Balance (as of 12/01/2014) 971,165.48

Revenue:

County Assessments

Interest

1,544.98

Other

Total Revenue

1,544.98

Expenditures:

Case Expenses

Steven Crutcher

(2,357.69)

Abel Castillo

(358.75)

Thomas Bradfield

(973.80)

Andr Bryant

(1,205.95)

Jose Willmond

(704.53)

Total Case Expenditures

(5,600.72)

Other Expenditures

Subtotal Expenditures

(5,600.72)

Ending Balance (as of 04/03/2015)

967,109.74

Pending Commitments

-

Revised Ending Balance (as of 04/03/2015)

967,109.74

- (c) Up to an additional \$40,000.00 after commencement of the trial up to the conclusion of the trial by verdict and completion of the penalty phase, if applicable.

The Board may authorize payments in excess of the maximum amounts only upon a showing of exceptional circumstances in accordance with paragraph 2C.

- (2) If the death penalty is not sought:
  - (a) Up to \$20,000.00 upon completion or waiver of the preliminary hearing.
  - (b) Up to an additional \$20,000.00 after completion or waiver of the preliminary hearing up to commencement of the trial. For the purposes of this contract, the trial shall be deemed to commence upon the first witness being sworn.
  - (c) Up to an additional \$20,000.00 after commencement of the trial up to the conclusion of the trial by verdict and completion of the penalty phase, if applicable.
  - (d) The second chair's right to receive compensation under this contract will terminate at the time the death penalty is no longer sought by the State of Utah, with lead counsel thereafter assuming all duties as sole counsel for Defendant.

- C. The Parties have agreed that the amounts and timing of compensation set forth in this contract are reasonable and adequate. The Parties further agree that the presumptive caps in paragraphs 2A and 2B shall be binding and shall operate to limit the timing and amount of total compensation paid to Defenders and that there shall be no right to receive additional compensation unless prior written approval is obtained from the Board. Defenders may request that the Board

exceed the maximum amounts listed in paragraph 2A and 2B based upon a showing of Exceptional Circumstances.

To establish exceptional circumstances, the DEFENDERS must demonstrate to the Board that compensation provided by paragraphs 2A and 2B is unreasonably inadequate in light of the length and complexity of the litigation which length and or complexity was not reasonably foreseeable at the time the Parties entered into this Contract. Exceptional circumstances are defined as circumstances related to the case that were not reasonably foreseeable at the time the Parties entered into this Contract. The DEFENDERS shall be required to work within the presumptive caps in paragraphs 2A and 2B even if the total amount of work within the presumptive cap results in an hourly rate that is less than the hourly rate that is authorized by the Board in paragraph 2A of this Contract.

- (1) To request additional compensation, Defenders must as soon as is reasonably possible, submit a written request with sufficient and appropriate information and documentation to the BOARD to justify the requested additional fees
- (2) Defenders shall request that the trial court make ex parte findings regarding the length and complexity of the case and shall forward any determinations by trial court regarding that request.
- (3) The Board, in its complete discretion, shall determine whether the additional fees requested are reasonable in light of the circumstances and could not have been reasonably anticipated at the time this contract was approved and signed.
- (4) If the Board decides not to approve a request to exceed a presumptive cap based on a written request, Defenders shall be