

# **INDIGENT DEFENSE TRUST FUNDS**

## **Board Meeting**

*2110 State Office Building, Salt Lake City, Utah 84114  
450 North State Street  
Salt Lake City, UT 84114*

Public Meeting Notice and Agenda

January 14, 2020

11:30 a.m.

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

Participant Passcode: **349946**

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1. **Welcome:**
2. **Review and approval of the minutes from the meeting held on October 29, 2019.**
3. **Assignments from the October 29, 2019 meeting.**
  1. Send letters to the County Attorneys about notifying the Board when the death penalty is removed or when there is a change in the charges. (Letters sent on Dec. 3, 2019)
  2. Remove the legal reference about extraordinary expenses from the standard contract and adjust the language to continue to require the courts approval for extraordinary expenses or \$500. (Completed January 7, 2020.)
4. **a. Discuss Legislation about Moving the Indigent Aggravated Murder Fund, the Indigent Inmate Fund, and Indigent Defense Trust Funds Board, out of the Division of Finance.**  
**b. Discuss Division of Finance intent to start billing for employee time for administrative duties for the trust funds.**
5. **Dr. Janice Ophoven Scope of Service. McKenley Yadon case.**
6. **Fund Balances as of January 10, 2020:**
7. **Review of Current Cases:**

Glenn Howard Griffin appeal-Box Elder County, Jennifer Gowans Attorney  
David Drommond appeal-Davis County, Arnold Wiggins Attorney  
Angel Christopher Abreu-Davis County, Kent Morgan Attorney  
Clint Corydon Nokes-Davis County, Jeremy Delicino  
Kyle Taylor Gooch, Cache County, Rudy Bautista Attorney  
Sun Cha Warhola-Davis County, Edward K. Brass, Attorney  
William C. Lawton-Sevier County, Douglas Terry, Attorney  
McKenley Yadon, Uintah County, Rudy Bautista

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

Julio Cesar Garza (Capital Case), Rich Gallegos, Attorney  
Enrique Valentin Gonzalez-Bejarano, David Angerhofer, Attorney  
Taylor Robert Bischoff, Greg Ferbrache, Attorney,  
Joe Comancho, Greg Ferbrache, Attorney  
Christopher Simon Castillo, Greg Ferbrache, Attorney,  
Anthony Carillo-Chacon, Greg Ferbrache, Attorney, Richard Gale will be taking this case.  
Dean Clopton, Greg Ferbrache, Attorney  
Rondall Eddie, Gregory Ferbrache, Attorney, (Trial set for Jan.)  
Chad Rudy Gallegos, David C. Heier, Attorney  
Aldo Gonzales, Richard Gale, Attorney  
Enrique Valentin Gonzalez-Bejarano, David Angerhofer, Attorney  
Miguel Hernandez, Jonathan Nish, Attorney  
Randy Lamar Howry, Jonathan Nish, Attorney  
Jayson Quade Johnson, Richard Gale, Attorney (Trial set for Jan. 10, 2020)  
Edgar Navarro, Douglas Neeley, Attorney  
Colton Richmond, David Angerhofer, Attorney  
Michael Short, Greg Ferbrache, Attorney  
Kade Stanley Pendleton, Jonathan Nish Attorney  
Paul Frank Reyos, David Heier, Attorney  
Victor Manuel Saucedo, Richard Gale, Attorney  
Jesse Anthoney Saenz, Dana Facemyer, Attorney  
Javier Wilford Sickler, David Angerhofer, Attorney  
Michael Short, Gregory Ferbrache, Attorney

### **8. Other Business:**

### **9. Next Meeting:**

Please note that an audio recording of the public portions of this meeting will be posted on the Public Notice website [pn.mn.utah.gov](http://pn.mn.utah.gov). In compliance with the Americans with Disabilities Act, persons needing auxiliary communicative aids or accommodation services for this meeting should contact Barbara Sutherland at the Division of Finance, 801-538-3020, [bsutherland@utah.gov](mailto:bsutherland@utah.gov), or use Relay Utah (toll free in-state 7-1-1 or Spanish-language 888-346-3162) giving at least 48 hrs. notice or the best notice practicable. Every effort will be made to accommodate requests for aid and services for effective communication.

# INDIGENT DEFENSE TRUST FUNDS BOARD

## Meeting Minutes

*Division of Finance, 4112 State Office Building, Salt Lake City, Utah 84114*

October 29, 2019

11:30 a.m.

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### Public Meeting Minutes

#### Attendance - Board Members

Neal Hamilton, Chair, Criminal Defense Attorney, Board Chair  
Randy B. Elliott, Davis County Commissioner  
Mike Bleak, Iron County Commissioner (absent)  
Kevin Daniels, Sanpete County Attorney (absent)  
Craig Butters, Cache County Executive (joined by phone)  
Richard Gale, Criminal Defense Attorney  
John Reidhead, Director, Division of Finance  
Mary T. Noonan, Administrative Office of the Court (absent)

#### Attendance - Staff and Others:

Paul Tonks, Attorney General's Office, Legal Counsel for DAS  
Joanna Landau, Director of the Indigent Defense Commission  
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. The minutes may refer to the recording found on the Public Notice Website with the number where an issue is being discussed.

1. **Welcome:** Neal Hamilton welcomed everyone to the meeting, and asked the attendees to introduce themselves.
2. **Review and approval of the minutes from the meetings held on June 25, 2019, and September 13, 2019 Telephone Meeting.**

Richard Gale made a motion to approve the minutes from the June 25, 2019 meeting and the September 13, 2019 meeting. Randy Elliott seconded the motion. The minutes were approved by all present.

#### 3. **Assignments from the June 25, 2019 meeting:**

1. Update Contract to include new rates and soft caps.
  - a) Add language about death penalty being taken off pre-preliminary hearing.
  - b) Add language about the second chair to be paid through soft cap.

This has been completed. John Reidhead shared the standard contract with the board. On page five of the contract John Reidhead added language about the defense counsel notifying the Board through the Division of Finance, if the death penalty is being sought and when, or if, it is no longer sought.

Richard Gale made a motion to send letters notifying the County Attorneys when there is a change whether the death penalty is sought or is not sought, or if the charges are amended from aggravated murder to murder, the attorneys need to notify the Indigent Defense Trust Funds Board, so the Board is

aware of their obligations going forward. Randy Elliott seconded the motion. A vote was taken and the motion passed unanimously.

2. Send letter with the new rates and soft caps to the list of Rule 8 Qualified Attorneys, and all people working on current cases. (Completed, sent August 9, 2019.)
3. Review Statute on appeals funded by the Indigent Inmate Fund. (See agenda item .4)
4. **Discuss Indigent Inmate Appeals (either interlocutory appeal or direct appeal). Current attorney obligation if an appeal is filed. Is there an indigent inmate panel, or how does a defendant in the Gunnison prison file for an appeal? (Tabled at the last meeting)**

The Indigent Inmate Fund has not funded appeals for inmates convicted of crimes in the Gunnison Prison, but there is a case in the prison where the inmate has requested an appeal. The Board discussed the large amount of cases that are in the Gunnison Prison now and the fact that there will most likely be more appeals.

Joanna Landau explained that Utah Supreme Court and Public Roster rule went into effect a year ago. To represent any appointed case on appeal, the attorney has to be on the appellate roster. If the Inmate Fund pays for the appeals it will not be the same lawyers that were on the trial level cases. The Board will have to separately contract with those attorneys qualified to take appeals.

Paul Tonks said the statute Section 78B-22-602 (2)(a) does not speak to directly about appeals, but does say that the money deposited in this trust fund shall only be used for defense of an indigent inmate who commits a crime in a state prison, who will require indigent defense services. That most likely would include appeals.

Joanna Landau referred to Section 78B-22-102, she said it defines indigent defense services. Everyone is entitled to the appointment of counsel.

The Board decided that the Indigent Inmate Fund would pay for the appeals in the Gunnison Prison, and will contract with attorneys for the appeals that are on the appellate roster. They will also contract with attorneys on the appellate roster for the Indigent Defense Trust Fund aggravated murder and capital cases that require appeals.

Richard Gale moved to have the Indigent Inmate Fund include payment of first direct appeal for inmates in the Gunnison Prison. Randy Elliott seconded the motion. A vote was taken and passed all voted yes, but John Reidhead, he voted no. He would like Sanpete County to weigh in on the issue.

5. **Discuss updated contract and the language considering extraordinary expenses.**

John Reidhead discussed the language on extraordinary expenses in the standard contract. The subsection of the Utah Code that described an extraordinary expense was removed through legislation at the last Legislative Session.

A proposal was made to remove the language “as defined in Section 77-32-305.5, Utah Code Ann.” from the contract, but leave the language requiring court approval for any extraordinary expense over \$500.

Richard Gale made a motion to amend the contract language. Delete the reference to the statute indicating that if there is an extraordinary expense outside what is already approved including the mitigation and investigation it needs to be approved by the court. Without reference to the statute. Randy Elliott seconded the motion. The motion passed unanimously.

John Reidhead will change the language in the standard contract page 9, B. and have Paul Tonks review the changes.

#### **6. Fund Balances as of October 25, 2019.**

John Reidhead reviewed the fund balances as of October 25, 2019, for both the Indigent Capital Defense Trust Fund and the Indigent Inmate Fund.

The Aggravated Murder Fund has a balance of \$1,827,394.11. There may be some administrative costs that will come out of this fund as well as funding the number of active cases.

The Indigent Inmate Fund balance continues to decrease with the increase in the number of cases in the Gunnison Prison. The balance is \$875,561.00. That includes pending commitments. Sanpete County has been notified about making a payment to the Fund to take the balance up to \$1 million.

#### **7. Discussion of Possible Legislation Related to the Board.** Refer to recorder 20:28

Joanna Landau said there has been movement from Administrative Services to get the Indigent Defense Trust Funds Board along with the Indigent Inmate Fund and the Aggravated Murder Fund moved out of the Division of Finance, and where it should go. There has been talk to move the administration of the Indigent Inmate Fund to the Indigent Defense Commission. The Board and Sanpete County agree that it makes sense to move the Indigent Inmate Fund to the IDC, and have it be state funded rather than funded by Sanpete County. Senator Weiler is working on this legislation.

Ms. Landau said it is currently being discussed to dissolve the Indigent Defense Trust Funds Board and transfer the Aggravated Murder Fund to the IDC, and add staff to the IDC with capital representation experience. She said it is a straight forward transfer, with dissolving the Board.

Neal Hamilton asked if the person who would oversee the Aggravated Murder Fund would be a capital lawyer.

Ms. Landau said the statute would not include that, it would be a staffing decision. There is a consensus that board should not be overseeing these cases because of the public disclosure of case information that the Board is subject to in GRAMA. She would like those who have an opinion on this issue to weigh in it so they can come to a manageable solution.

Neal Hamilton stated that there should be talks with this Board about the plan that is in place, to find out if they are comfortable with the plan. Mr. Hamilton's understanding is that the proposal is to hire two rural representatives to the IDC, and someone hired by the IDC to oversee the aggravated murder fund.

Ms. Landau said that is an option. Ms. Landau said the legislation would transfer the fund and the administration of the fund to the IDC. The statute says the funds can be used for administrative support.

Neal Hamilton thought the consensus was to have rural representation added to IDC and that there would be someone hired to oversee the fund, but not necessarily a capital attorney. That person would be a paralegal or an assistant not an attorney.

Ms. Landau said there is no fiscal note with this legislation because the payment for the added staff would come from the fund.

Richard Gale stated that the Indigent Defense Trust Funds Board is funded by participating counties, but the IDC provides indigent defense for other counties. He asked how they would ensure that the funding is going to the counties that participate in the fund, and does not go to service other counties that are not part of the fund.

Ms. Landau said the funds would be separate and have different funding codes.

John Reidhead said the accounting would be separate for the different funds. If the Board moves to the IDC the administrative costs would then come out of the fund. Finance has not charged the board for these administrative costs which are about three to five hundred hours per year. If the Indigent Defense Trust Funds Board moves over to the IDC they would charge the fund for those costs.

Mr. Hamilton asked if there is not a fiscal note, why not keep the Board intact and move it with the funds to the IDC.

Ms. Landau said that the IDC does have some county representation on their current board. She feels the Indigent Defense Trust Funds Board should weigh in on the decision of moving their board.

Davis County Commissioner Randy Elliott feels that the Board should consist of the current makeup of the existing board. It works well with this Board. There are rural counties, urban counties, county attorneys, prosecutors, and defense attorneys are all represented on the existing board. He would prefer to move the current board that is in place, along with the fund to the IDC. Cache County Executive Craig Buttars agrees with Commissioner Elliott about moving the current board with the fund.

Neal Hamilton said the Board has close to 20 years of successfully overseeing this Fund. He does not know why this should be thrown out without trying to work with the Board to improve it.

Richard Gale asked if it would be possible to take the Gunnison prison cases that are not aggravated murders, and give that to the IDC to administer, and then transfer the aggravated murder cases to the IDC, but have the current board continue as it is. The IDC would then need to hire an administrator to do what Barbara Sutherland has been doing. The fund would cover this position.

Ms. Landau asked if a board or sub-committee could be created under another commission with the authority to take final action on issues.

Paul Tonks responded that he believed the Legislature could create such a board or sub-committee.

Mr. Gale feels that the people who put money into the fund want to have a say or know what is going on with their money.

Randy Elliott said statutorily the Utah Association of Counties appoints different members from the counties to participate on the Board.

Ms. Landau asked if they would be satisfied if they added a commissioner from this board to the IDC board then it would not dissolve the board entirely. Then have one of the defense representatives be rule 8 qualified.

Richard Gale feels that the county commissioners who are paying into the fund should have some representation, and there should be defense representation with rule 8 experience involved in the administering of the Fund.

Neal Hamilton would like the board to still have representation, and have control over the budgeting issues, but hire someone that would supervise the legal side that would help with training and any conflicts of interest. The board would have representation and direct control over the budget. But, there would be someone to handle legal issues where it was not appropriate for the board to handle. He does not want to lose the representation from the counties. Even if the IDC added two county commissioners, the county representation is still low on the board.

Richard Gale asked if the Board would stay intact if it was moved to CCJJ (Utah's Commission on Criminal and Juvenile Justice).

Neal Hamilton said if the board is moved to CCJJ, Kim Cordova would replace John Reidhead on the Board, and the Board would stay the same, and keep the aggravated murder fund under this board.

Joanna Landau stated if that is what the board wants to do, there needs to be some discussions with Kim Cordova, John Reidhead, and Tani Downing.

Craig Buttars would like the board to be the first to review any proposed legislation.

The Board continued to discuss moving the Board to CCJJ. Ms. Landau said if the consensus of the Board is to move to CCJJ for the capital representation, and move the Indigent Inmate Fund to the IDC. There needs to be meeting as soon as possible. A meeting will be scheduled as soon as possible to discuss this move.

#### **8. Review of Current Cases:**

Glenn Howard Griffin appeal-Box Elder County, Jennifer Gowans Attorney (Active)  
David Drommond appeal-Davis County, Arnold Wiggins Attorney (Active)  
Alexander Whipple-Cache County, Shannon Demler Attorney (Complete, final billings)  
Angel Christopher Abreu-Davis County, Kent Morgan Attorney  
Clint Corydon Nokes-Davis County, Jeremy Delicino  
Kyle Taylor Gooch, Cache County, Rudy Bautista Attorney (New)  
Sun Cha Warhola-Davis County, Edward K. Brass, Attorney (Active)  
Mark S. Mair-Iron County, Douglas Terry, Attorney (Sentenced to two consecutive terms of 15 years to life.)  
William C. Lawton-Sevier County, Douglas Terry, Attorney (Active, new contract)  
McKenley Yadon, Uintah County, Rudy Bautista

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

Julio Cesar Garza (Capital Case), Rich Gallegos, Attorney  
Taylor Robert Bischoff, Greg Ferbrache, Attorney, Ongoing  
Christopher Simon Castillo, Greg Ferbrache, Attorney, Ongoing  
Anthony Carillo-Chacon, Greg Ferbrache, Attorney, Ongoing  
Rondall Eddie, Gregory Ferbrache, Attorney, Trial set for Jan.  
Angelo Jesus Escobedo, Richard Gale, Attorney (Complete)  
Chad Rudy Gallegos, David C. Heier, Attorney  
Darren Greuber, Gregory Ferbrache, Attorney, Ongoing  
Talon Hamann, Richard Gale, Attorney (Complete)  
Marco Hernandez, Dana Facemyer, Attorney  
Randy Lamar Howry, Jonathan Nish, Attorney  
Jayson Quade Johnson, Richard Gale, Attorney (Set for Trial)  
Leonires Sigfredo Martinez, Richard Gale, Attorney  
Edgar Navarro, Douglas Neeley, Attorney, Ongoing  
Michael Paul Nelder, Douglas Neeley, Attorney, Ongoing  
Colton Olsen, Dana M. Facemyer, Attorney  
Paul Frank Reyos, David Heier, Attorney  
Victor Manuel Saucedo, Richard Gale, Attorney  
Jesse Anthoney Saenz, Dana Facemyer, Attorney  
Enty Lifam Sinem, Dana M. Facemyer, Attorney



**9. Other Business:**

**10. Next Meeting.**

The next meeting will be held January 14, 2019, at 11:30 a.m.

Richard Gale moved to adjourned until January 14, 2019 at 11:30 a.m. Motion passed. The meeting was adjourned at 12:45 p.m.

**Assignments for the next meeting:**

Send letters to county attorneys about the death penalty. They need to notify the Board when the death penalty is removed or there is a change in the charge. Completed.

Remove the reference on extraordinary expenses from the standard contract and adjust the language to still require the courts approval for extraordinary expenses over \$500.

**Agenda Items:**

preliminary hearing up to trial.

(iii) Maximum of up to \$20,000 from the beginning of trial through completion of the penalty phase.

(2) When the death penalty is not sought or is withdrawn prior to trial:

(a) Mitigation Specialist and Mitigation Investigator fees: \$100 per hour plus reasonable expenses not to exceed \$30,000.

(b) Investigator Fees: \$80 per hour plus reasonable expenses not to exceed \$10,000. Investigator fees may be paid to the mitigation investigator.

(3) Transcription fees;

(4) Witness costs;

(5) Expert witness fees;

(6) Fees for mental and physical examinations and costs associated therewith;

(7) Defense counsel travel costs, at state rates and in accordance with state rules and policies;

(8) Costs for major voluminous copying of documents by an outside provider; and

(9) Internal copies, or copies not made by an outside provider, will be reimbursed at 10 cents per copy.

B. For the purposes of this contract, with the exception of the Subsections 3A.(1), 3A.(2), and 3A.(9), the above expenses shall be deemed to be extraordinary expenses and must have prior Court approval if the expense is \$500 or more.~~as defined in Section 77-32-305.5, Utah Code Ann. and subject to approval in the manner provided in that statute.~~ The caps stated in Subsection (A) are presumptive and any amounts in excess must have prior court approval. The necessity and reasonableness of these and any other extraordinary expenses shall be determined and approved by the Court before the expenses are incurred and before a statement for reimbursement for those extraordinary expenses may be submitted to the Board.