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Editorials

Editorial: Public has a right to know Public Defender's expenses

By Albuquerque Journal Editorial Board

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It does seem a bit unusual for taxpayers to foot the bill to defend a former luxury home builder against fraud and embezzlement charges, but, that said, those same taxpayers have a right to know how much that defense is costing them.

However, the state Public Defender's office is withholding that information. And its refusal does not square with the state's Inspection of Public Records Act or a state Supreme Court decision.

William Kalinowski is accused of bilking investors and home-buyers out of hundreds of thousands of dollars by not completing homes in an upscale subdivision near Santa Fe during the housing market crash of 2007 and 2008.

Several contractors also claim they were not paid for work they did.

Kalinowski was indicted in 2013 and his trial resumes Tuesday.

For the past two years, Kalinowski has been working as an English teacher for Albuquerque Public Schools. He made \$42,128 in the 2015-16 school year, according to the APS sunshine portal.

Admittedly, this complex white collar case is not routine and will likely be costly. Taxpayer-paid public defenders are appointed by the court system for people who can't afford to pay for their own defense. Eligibility is determined by several factors, such as household income and assets. There is a sliding scale for those who can pay for some of their own defense.

In Kalinowski's case, he was deemed eligible for a taxpayer-supported defense, and Santa Fe District Judge T. Glenn Ellington in 2014 ordered the office to provide "whatever resources are necessary" for effective legal assistance and even appointed a special master to make sure Kalinowski received a constitutionally adequate defense, to which the real estate developer is entitled.

However, the Public Defender's records custodian has refused to produce information on the cost of whatever resources were necessary for Kalinowski's defense in response to an IPRA request from the Journal. The office, which often complains about a dearth of resources, is trying to hide behind attorney-client privilege in claiming the costs are not public record. That's a stretch.

"The New Mexico Supreme Court has already rejected the Defender's position that attorney billing information is entirely secret under the attorney-client privilege and the Defender appears to ignore this precedent," Charles Peifer, attorney for the Journal, said in a recent statement.

And Susan Boe, executive director of the New Mexico Foundation for Open Government, noted "the fact that (the office) operates as a law firm does not shield all of its documents from public scrutiny."

In past cases, some information has been redacted from billing statements if it is deemed to fall under the lawyer-client privilege, but there is no reason to withhold entire statements or not to reveal the costs to date if an IPRA request is made.

And it makes it much harder for the office to make the case that it is vastly underfunded when it won't tell the public what it costs to do its job.

The Public Defender's office needs a dose of sunshine, especially as it campaigns for more taxpayer resources.

This editorial first appeared in the Albuquerque Journal. It was written by members of the editorial board and is unsigned as it represents the opinion of the newspaper rather than the writers.