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## Public defender won't disclose cost of homebuilder Kalinowski's defense

By Mark Oswald / Journal Staff Writer

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William Kalinowski, right, sits in court with his attorney Hans Erickson on Nov. 7, the first day of his trial. Kalinowski faces charges of fraud and embezzlement related to building houses at Las Campanas. (Eddie Moore/Albuquerque Journal)

SANTA FE — The state Public Defender Office is declining to disclose information on how much it has spent defending William Kalinowski, a former high-end homebuilder in the Santa Fe area now on trial for fraud and embezzlement.

The office maintains that records of expenses for the Kalinowski case are protected from disclosure as attorney-client privileged information, according to a written response to a Journal request for the records under the state Inspection of Public Records Act.

Public transparency advocates disagree. Susan Boe, executive director of the New Mexico Foundation for Open Government, said the public defender's office is a public agency subject to IPRA.

"The fact that it operates as a law firm does not shield all of its documents from public scrutiny," she said. Boe said the public has often been able to obtain copies of legal bills paid to private law firms by government agencies. "In certain instances, entries may need to be redacted on a bill that falls under the attorney-client privilege," Boe said, "but absolutely withholding all public expenditures does not comply with IPRA."

Charles Peifer, attorney for the Journal, said in a statement, "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."

The cost of defending Kalinowski, accusing of bilking investors, contractors and people he was supposed to build homes for in the swanky Las Campanas subdivision as his business crashed during the recession, has been an issue in his case.

In October 2014, longtime public defender Damian Horne filed an unusual motion saying the public defender's office in Santa Fe had refused to provide enough funding to provide an adequate defense for Kalinowski, and he criticized the lack of funding and resources for the public defender system in New Mexico. After a hearing, District Judge T. Glenn Ellington ordered the public defender's office to provide "whatever resources are necessary" to provide Kalinowski with effective legal assistance. He also took the possibly unprecedented step of appointing a special master to ensure Kalinowski received a constitutionally adequate defense.

Over the past two years, Kalinowski has been working as an Albuquerque Public Schools teacher while awaiting trial, with a salary of about \$50,000, but the Public Defender's Office determined he qualified for a taxpayer-supported defense. His trial continued late in the afternoon Friday, the ninth day of the proceedings.

Judy Gonzales, records custodian for the Public Defender's Office, acknowledged in her letter to the Journal that the office is subject to IPRA and said the office recognizes that "all persons are entitled to the greatest possible information regarding the affairs of government."

But, she said, "The records requested consist solely of information relating to the representation of a client," and "are not subject to disclosure" under IPRA. She cited an exception to IPRA for attorney-client information and said that state Supreme Court rules require lawyers to "not reveal information relating to the representation of (their) clients without the informed consent of each individual client."