

STATE OF INDIANA)
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)SS
COUNTY OF MARION)

IN THE PROBATE COURT
OF MARION COUNTY

TRUST DOCKET T-62 PAGE 11

IN THE MATTER OF THE)
INDIANAPOLIS HUMANE SOCIETY,)
TRUSTEE UNDER WILL OF)
MARY POWELL CRUME, DECEASED)

FILED

DEC 16 2004

Martha Bodan, Executive Director
Indianapolis Humane Society, Inc.

**PETITION FOR APPROVAL OF PAYMENT OF ATTORNEY FEES AND
ALLOCATION OF SAID ATTORNEY FEES TO TRUST PRINCIPAL**

Martha Bodan, Executive Director of the Humane Society of Indianapolis, Inc., Trustee of the Mary Powell Crume Trust ("Trustee"), affirms under the penalties for perjury that the following representations are true:

1. The Trustee, the Humane Society of Indianapolis, Inc. ("HSI"), has employed the law firm of Hill Fulwider McDowell Funk and Matthews, P.C. ("Hill Fulwider") to assist it in the defense of litigation relating to the annual accounting, the appointment of a new trust investment advisor, a petition to collateralize trust assets, and litigation against HSI for breach of fiduciary duties as Trustee, litigation to remove HSI as trustee, and litigation concerning standing to sue by entities other than Indiana Attorney General (which litigation on standing is pending in the Indiana Court of Appeals) (all collectively referred to herein as the "Trust Litigation").
2. HSI has paid Hill Fulwider the amount of Twenty-Two Thousand One Hundred Fifteen Dollars and Sixty-three Cents (\$22,115.63) in attorney fees, and costs in the amount of Four Hundred Ninety-Five Dollars and Twenty-one Cents (\$495.21), for fees and costs related to Trust Litigation incurred through August, 2004. These payments have significantly burdened HSI's operating budget that otherwise would be used to provide for the care, support, comfort, and adoption of animals in the Indianapolis area.

3. Hill Fulwider has rendered a statement to the Trustee for fees and costs related to Trust Litigation through October 31, 2004, in the amount Twelve Thousand Seven Hundred Forty-four Dollars and Forty Cents (\$12,744.40) which remains unpaid as of the date of this Petition.

4. Hill Fulwider has rendered a statement to the Trustee for fees and costs related to Trust Litigation through November 30, 2004, in the amount of Four Thousand Three Hundred Fifty-five Dollars (\$4,355.00) which remains unpaid as of the date of this Petition.

5. For all of the work reflected in the fees covered by this Petition, Hill Fulwider has billed at a below-market hourly rate of One Hundred Twenty-five dollars (\$125.00) for partners Alan J. Irvin and Peter H. Donahoe. Mr. Donahoe has further written much of his time down by one-half to an effective rate of Sixty-two Dollars and Fifty Cents (\$62.50) per hour, has also simply not billed at all for a significant amounts of his time devoted to this matter. These billing concessions have been in the nature of *pro bono* contributions to the Trust for the benefit of HSI as its sole beneficiary.

6. Pursuant to I.C. 30-2-14-39(a)(4) the Trustee shall allocate to principal "expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust property."

7. Hill Fulwider has established other billing accounts for legal expenses relating to the operational needs of HSI and these legal services related to the operational aspects of HSI have been separately billed to, and paid by HSI, out of its operating revenues. These fees are not the subject of this or any other fee petition in this proceeding.

8. Hill Fulwider has established one other billing account for assistance with the annual accounting and other related routine duties of the Trustee, which are charged to the Trustee, paid by the Trustee, and charged, like Trustee fees, fifty percent (50%) to income and fifty percent (50%) to principal pursuant to I.C. 30-2-14-38.

9. The Trustee has sought and obtained the opinion of independent counsel who has concluded that the fees that are subject of this Petition should be paid by the Trust and allocated to Trust principal pursuant to the Indiana Trust Code.

10. The Indiana Attorney General, through his deputy Jeffrey R. Cox, has notified counsel for the Trustee that he has no objection to the Court granting the relief requested in this petition.

WHEREFORE, the Humane Society of Indianapolis, Inc. prays the Court for an order:

1. Authorizing the Humane Society of Indianapolis, Inc., as Trustee of the Mary Powell Crane Trust (the "Trustee"), to reimburse the Humane Society of Indianapolis, Inc. the amount of Twenty-Two Thousand One Hundred Fifteen Dollars and Sixty-three Cents (\$22,115.63) in attorney fees, and costs in the amount of Four Hundred Ninety-five Dollars and Twenty-one Cents (\$495.21), which it has paid on behalf of the Trust;

2. Authorizing the Trustee to pay the current outstanding invoices of Hill Fulwider in the amount of Twelve Thousand Seven Hundred Forty-four Dollars and Forty Cents (\$12,744.40) and Four Thousand Three Hundred Fifty-five Dollars (\$4,355.00).

3. Authorizing the Trustee to charge the fees that are subject of this Petition to Trust principal, pursuant to I.C. 30-2-14-39(a)(4); and,

4. For all other relief which is proper in the premises.

Humane Society of Indianapolis, Inc.

By: 
Martha Boden, Executive Director