Agency 105

State Board of Indigents' Defense Services

Articles

105-3. Appointed Attorneys.
105-4. Entitlement to Legal Representation.
105-5. Attorney Compensation.
105-7. Investigative, Expert or Other Services.
105-11. Reimbursement From Defendant.

Article 3.—APPOINTED ATTORNEYS

105-3-2. Eligibility to serve. (a) Each licensed attorney engaged in the private practice of law shall be eligible to serve on the panel if the following criteria are met:

(1) Each attorney on the voluntary panel representing an indigent defendant shall have completed 12 hours of continuing legal education in the area of criminal law within three years of appointment or have graduated from an accredited law school during the three years immediately before appointment.

(2) Each attorney assigned to the defense of any felony classified as a non-drug grid offense with severity level of 3 or 4 or any felony classified as a drug grid offense with a severity level of 1, 2, or 3 shall have tried to a verdict, either as defense counsel or prosecutor, five or more felony jury trials.

(3) Each attorney assigned to the defense of any felony classified as an off-grid offense or a non-drug grid offense with a severity level of 1 or 2 shall have tried to verdict, either as defense counsel or prosecutor, five or more jury trials involving the following:

(A) Non-drug offenses of severity levels 1 through 4 or drug grid offenses of severity levels 1 through 3; or

(B) any off-grid offenses.

(4) Each attorney assigned or appointed to the defense of any indigent person accused of a capital murder, as defined by K.S.A. 2011 Supp. 21-5401 and amendments thereto, shall be a prequalified death penalty attorney. Each attorney shall be screened by the board to determine the attorney's qualifications to serve as defense counsel to an indigent person accused of a capital murder, pursuant to "guideline 5.1 qualifications of defense counsel," as published on pages 35 and 36 in the February 2003 edition of the American bar association (ABA) "guidelines for the appointment and performance of defense counsel in death penalty cases" and hereby adopted by reference, except for the history of guideline, related standards, and commentary on page 36. Each attorney who is eligible to serve on the capital appointments panel shall be prequalified by the board as meeting this regulation.

(5) Each attorney assigned or appointed to represent an indigent person who has been convicted of capital murder and who is under a sentence of death in the direct review of the judgment shall be prequalified by the board as meeting this regulation.

(6) Each attorney assigned or appointed to represent an indigent person who has been convicted of capital murder and who is under a sentence of death in postconviction proceedings shall be prequalified by the board as meeting this regulation.

(7) To ensure compliance with these regulations in capital murder or homicide cases, each attorney assigned or appointed to the defense of any indigent person accused of a capital murder or a homicide pursuant to K.S.A. 2011 Supp. 21-5401, 21-5402, 21-5403, or 21-5404, and amendments thereto, shall be appointed from panel lists screened pursuant to these regulations and approved by the board.

(b) Except for appointment of an attorney to provide representation for an indigent person accused of a capital murder or a homicide pursuant to K.S.A 2011 Supp. 21-5401, 21-5402, 21-5403, or 21-5404 and amendments thereto, an indigent person who has been convicted of capital murder and who is under a sentence of death in the direct review of the judgment or an indigent person who has been convicted of capital murder and who is under a sentence of death in postconviction proceedings, the judge may waive any of the require-

ments of this regulation if the judge determines that the attorney selected by the judge has sufficient training, resources, and experience to undertake the case in question. (Authorized by and implementing K.S.A. 22-4501, K.S.A. 22-4522, K.S.A. 22-4505, and K.S.A. 22-4506; effective May 1, 1984; amended, T-105-6-13-88, July 1, 1988; amended Nov. 1, 1988; amended Oct. 30, 1989; amended, T-105-6-15-93, June 15, 1993; amended Aug. 16, 1993; amended Nov. 1, 1996; amended Aug. 20, 1999; amended, T-105-6-28-12, June 28, 2012; amended Nov. 9, 2012.)

Article 4.—ENTITLEMENT TO LEGAL REPRESENTATION

105-4-1. Determination of eligibility. (a) At the commencement of proceedings against any defendant, the defendant may apply for legal representation at state expense by submitting, to the court, an affidavit of indigency on a form provided by the board. The court shall determine if the defendant is indigent, based upon consideration of the following factors, as defined in K.A.R. 105-4-2:

(1) The defendant's liquid assets;

(2) the defendant's household income;

(3) either the defendant's actual, reasonable, and necessary expenses incurred to support the defendant's household or the most current federal poverty guidelines, as published by the U.S. department of health and human services, for the defendant's family unit;

(4) the anticipated cost of private legal representation; and

(5) any transfer of property by the defendant without adequate monetary consideration after the date of the alleged commission of the offense.

(b) An eligible indigent defendant shall mean a person whose combined household income and liquid assets equal less than the most current federal poverty guidelines, as published by the U.S. department of health and human services, for the defendant's family unit.

(c) The court may also consider any special circumstances affecting the defendant's eligibility for legal representation at state expense.

(d) If the court determines that the defendant is financially able to employ counsel after counsel has been appointed, the court shall require the defendant to reimburse the board in accordance with the provisions of K.S.A. 22-4510, and amendments thereto, for all or part of the expenditures made on the defendant's behalf. (Authorized by K.S.A. 22-4504 and K.S.A. 22-4522; implementing K.S.A. 22-4504 and K.S.A. 22-4510; effective May 1, 1984; amended, T-105-10-3-05, Oct. 3, 2005; amended Feb. 17, 2006; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010.)

105-4-2. Definition of terms. Terms used to determine eligibility for indigents' defense services shall have the following meanings: (a) Household income. The defendant's household income shall be defined as the defendant's income and the income of all other persons related by birth, marriage, or adoption who reside with the defendant. Income shall include the total cash receipts before taxes from all resources, including money, wages, and the net receipts from nonfarm or farm self-employment. Income shall include regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, annuities, and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts.

(b) Liquid assets. The defendant's liquid assets shall be defined as cash in hand, stocks and bonds, accounts at financial institutions, real property or homestead having a net value greater than $50,000, a car, and any other property that can be readily converted to cash, with the following exceptions:

(1) The defendant's clothing, household furnishings, and any personal property that is exempt from attachment or levy of execution by K.S.A. 60-2304, and amendments thereto; and

(2) any other property, except a homestead having a net value greater than $50,000, that is exempt from attachment or levy of execution by K.S.A. 60-2301 et seq., and amendments thereto.

The net value of the homestead shall be the fair market value less the mortgage, other encumbrances, and the reasonable cost of sale. The net value of any property transferred after the date of the alleged commission of the offense shall be included in the determination of the defendant's liquid assets.

(c) Transfer of property.

(1) If the defendant has transferred property after the alleged commission of the offense, the court shall determine the reason for the transfer of property and whether adequate monetary consideration was received. If adequate monetary consideration was not received, the court shall presume that the transfer was made for the pur-

pose of establishing eligibility unless the defendant furnishes clear and convincing evidence that the transfer was made exclusively for another purpose.

(2) If a transfer was made either for the purpose of establishing eligibility or without adequate monetary consideration and the property is reconveyed to the defendant or an adjustment is made by which the defendant receives full value, the defendant shall, if otherwise qualified, be eligible to receive legal representation at state expense. (Authorized by K.S.A. 22-4504 and 22-4522; implementing K.S.A. 22-4504; effective May 1, 1984; amended Nov. 1, 1996; amended, T-105-7-22-11, July 22, 2011; amended Nov. 14, 2011.)

105-4-3. Affidavit of indigency. A standard format for an affidavit of indigency shall include the following information: (a) The defendant's liquid assets and household income;

(b) the defendant's household expenses;

(c) any extraordinary financial obligations of the defendant;

(d) the size of the defendant's household; and

(e) any transfer of property by the defendant after the date of the alleged commission of the offense.

If the information provided by the defendant on the affidavit is unclear, incomplete, contradictory, or questionable, further inquiry may be conducted by the board, the court, the county or district attorney, or other officer assigned by the court. The affidavit of indigency forms shall be published and distributed annually to the judicial administrator and to the administrative judge of each district. (Authorized by K.S.A. 22-4522; implementing K.S.A. 22-4504; effective May 1, 1984; amended May 1, 1985; amended, T-105-7-22-11, July 22, 2011; amended Nov. 14, 2011.)

Article 5.—ATTORNEY COMPENSATION

105-5-2. Rates of compensation. (a) Each assigned counsel shall be compensated at the rate of $62 per hour.

(b) Contract counsel shall be compensated at the rate or rates specified in the contract between the board and the assigned counsel. (Authorized by and implementing K.S.A. 22-4507 and 22-4522; effective May 1, 1984; amended May 1, 1988; amended, T-105-6-13-88, July 1, 1988; amended Oct. 31, 1988; amended July 1, 1993; amended, T-105-6-15-93, July 1, 1993; amended Aug. 16, 1993; amended March 28, 1994; amended Aug. 20, 1999; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010.)

105-5-3. Appellate courts; compensation. (a) For services performed in appealing a case to the court of appeals or the Kansas supreme court, compensation shall be paid at the rate prescribed in K.A.R. 105-5-2.

(b) Compensation for attorneys' services in cases appealed to the Kansas supreme court or the court of appeals shall not exceed $1,240. However, additional compensation may be approved by the board. (Authorized by and implementing K.S.A. 22-4507 and 22-4522; effective May 1, 1984; amended May 1, 1985; amended Aug. 20, 1999; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010.)

105-5-6. Reasonable compensation; non-tried cases. (a) Each appointed and assigned attorney shall be compensated for time expended in representing indigent defendants and other indigent persons at the hourly rate prescribed in K.A.R. 105-5-2. Except as provided in K.A.R. 105-5-8, reasonable compensation shall not exceed $1,240 in the following cases:

(1) Those felony cases in the trial court that are classified as non-drug offenses of severity levels 1 through 5 that are not submitted to a judge or jury, including services at a preliminary hearing and sentencing, if applicable; and

(2) those felony cases in the trial court that are classified as drug offenses, that have not been submitted to a judge or jury, and in which there have been six hours or more spent in court in defense of the indigent defendant, including services at a preliminary hearing and sentencing, if applicable.

(b) Except as provided in K.A.R. 105-5-8 and K.A.R. 105-5-6(a), reasonable compensation shall not exceed $930 in the following cases:

(1) Those felony cases in the trial court that are not submitted to a judge or jury, including services at a preliminary hearing and sentencing, if applicable, and are classified as severity levels 6 through 10 non-drug offenses; and

(2) those felony cases in the trial court that are not submitted to a judge or jury, that are classified as drug offenses, and in which there have been fewer than six hours spent in court in defense of the indigent defendant, including services

at a preliminary hearing and sentencing, if applicable.

(c) Except as provided in K.A.R. 105-5-8, K.A.R. 105-5-6(a), and K.A.R. 105-5-6(b), reasonable compensation shall not exceed $620 in the following types of cases:

(1) Habeas corpus cases as authorized by K.S.A. 22-4503 and K.S.A. 22-4506 and amendments thereto;

(2) cases filed pursuant to K.S.A. 60-1507 and K.S.A. 22-4506 and amendments thereto;

(3) habeas corpus cases as authorized by K.S.A. 22-2710 and amendments thereto;

(4) habeas corpus cases as authorized by K.S.A. 22-3428 and K.S.A. 22-3428a and amendments thereto; and

(5) habeas corpus cases as authorized by K.S.A. 59-2965 and amendments thereto.

(d) Except as provided in K.A.R. 105-5-8, reasonable compensation shall not exceed $248 in the following types of cases:

(1) Representation of grand jury witnesses determined to be indigent and called to testify pursuant to K.S.A. 22-3009 and amendments thereto;

(2) representation of indigent persons committed to custody as material witnesses pursuant to K.S.A. 22-2805 and amendments thereto;

(3) probation revocation hearings; and

(4) motions to modify sentence pursuant to K.S.A. 21-4603 and amendments thereto. (Authorized by and implementing K.S.A. 22-4507 and 22-4522; effective May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended, T-105-6-13-88, July 1, 1988; amended Nov. 1, 1988; amended Oct. 30, 1989; amended July 1, 1993; amended, T-105-6-15-93, July 1, 1993; amended Aug. 16, 1993; amended Aug. 20, 1999; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010.)

105-5-7. Reasonable compensation; tried cases. Each appointed and assigned attorney shall be compensated for time expended in representing indigent defendants at the hourly rate prescribed in K.A.R. 105-5-2. Except as provided in K.A.R. 105-5-8, reasonable compensation for felony cases tried on pleas of not guilty and submitted to a judge or jury for adjudication, including compensation for services at the preliminary hearing, sentencing, and motions to modify the sentence, shall not exceed the following:

(a) $1,860 for felonies classified as non-drug offenses of severity levels 5 through 10;

(b) $2,480 for felonies classified as non-drug offenses of severity level 4 and felonies classified as drug offenses of severity levels 2 through 4; and

(c) $6,200 for felonies classified as non-drug offenses of severity levels 1 through 3, off-grid felonies, and felonies classified as drug offenses of severity level 1. (Authorized by and implementing K.S.A. 22-4507 and 22-4522; effective May 1, 1984; amended, T-105-6-13-88, July 1, 1988; amended Nov. 1, 1988; amended Oct. 30, 1989; amended July 1, 1993; amended, T-105-6-15-93, July 1, 1993; amended Aug. 16, 1993; amended Aug. 20, 1999; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010.)

105-5-8. Compensation; exceptional cases. (a) Any compensation for attorneys' services in excess of the amounts set out in K.A.R. 105-5-6 and K.A.R. 105-5-7 may be approved only in exceptional cases. A finding by the court that a case is exceptional shall be subject to final approval by the board. An exceptional case shall mean any of the following:

(1) Any case involving a felony charge in the trial court that is off grid;

(2) any felony case tried on a not guilty plea in which there have been 25 or more hours spent in court in defense of the indigent defendant;

(3) any felony case not submitted to a judge or jury in which there have been 10 hours or more of in-court time spent in defense of the indigent defendant; or

(4) any case that has been declared an exceptional case by the court due to its complexity or other significant characteristics.

(b) Each claim for compensation in an exceptional case shall be accompanied by a specific finding in a court order setting forth the basis for the declaration that the case is exceptional.

(c) Reasonable compensation for attorneys' services in exceptional cases shall not exceed $6,200 per case. However, additional compensation may be approved by the board if warranted by the extreme complexity of the case. (Authorized by and implementing K.S.A. 22-4507 and 22-4522; effective May 1, 1984; amended, T-105-6-13-88, July 1, 1988; amended Nov. 1, 1988; amended Oct. 30, 1989; amended July 1, 1993; amended, T-105-6-15-93, July 1, 1993; amended Aug. 16, 1993; amended Aug. 20, 1999; amended,

T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010.)

Article 7.—INVESTIGATIVE, EXPERT OR OTHER SERVICES

105-7-1. Funding approval; court order authorizing services. (a) Funding for the estimated cost of investigative, expert, and other services shall be approved by the board before any appointed attorney submits the order to the court for authorization of the services. Funding shall not be approved until the board signs a contract with the service provider for the approved cost as specified in the contract. The contract form provided by the board shall be used. Attorney time spent preparing a contract other than that approved by the board shall not be compensable.

The original contract signed by the service provider and the board shall be maintained by the board. A fully executed copy of this contract shall be returned to the attorney requesting defense services.

(b) Each court order authorizing investigative, expert, or other services for an indigent defendant shall be made on a form approved by the board and shall include an estimate of the cost of those services. Attorney time spent preparing an order form other than that approved by the board shall not be compensable.

(c) If the district court finds, on the record, that timely procurement of necessary services could not await prior authorization by the court, then funding for those necessary services already provided shall be approved by the board.

A copy of the court order shall be sent to the board promptly, after being signed by the judge. (Authorized by K.S.A. 22-4508, 22-4512a, and 22-4522; implementing K.S.A. 22-4508, 22-4512a; effective May 1, 1984; amended Dec. 14, 2012.)

105-7-2. Claims. (a) Each claim for compensation for investigative, expert, or other services provided to an indigent defendant shall be submitted on a form approved by the board. Each claim shall be signed by the attorney requesting the service and the judge before transmittal to the board. Each claim for investigative, expert, or other services shall include the service provider's time sheet detailing time expended in the performance of these services and any compensation received for the same services from any other source.

(b) Claims for expert services rendered at the request of a public defender office shall be excluded from the provisions of K.A.R. 105-7-1. (Authorized by K.S.A. 22-4512a and 22-4522; implementing K.S.A. 22-4508 and 22-4512a; effective May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended Aug. 20, 1999; amended Dec. 14, 2012.)

105-7-3. Limitations. (a) Each claim for compensation shall be for investigative, expert, or other services performed on or after the date of the order authorizing the services, unless the judge finds that timely procurement of necessary services could not await prior authorization by the court.

(b) A claim shall not exceed the estimated cost and funding approved by the board as specified in the contract and the order authorizing the services. (Authorized by and implementing K.S.A. 22-4522; effective May 1, 1984; amended Dec. 14, 2012.)

105-7-4. Investigators. Each individual performing services as an investigator shall be compensated at a rate not to exceed $35 per hour, unless a higher rate has been approved in advance by the director. (Authorized by K.S.A. 22-4522; implementing K.S.A. 22-4508 and 22-4522; effective May 1, 1984; amended Aug. 20, 1999; amended Dec. 14, 2012.)

105-7-6. Interpreters. Each individual performing services as interpreter for the defense shall be compensated at a rate not to exceed $30 per hour, unless a higher rate has been approved in advance by the director. No more than one interpreter per defendant may be compensated for services performed at the same stage of the proceeding. (Authorized by K.S.A. 22-4522; implementing K.S.A. 22-4508 and 22-4522; effective May 1, 1984; amended May 1, 1987; amended Aug. 20, 1999; amended Dec. 14, 2012.)

105-7-8. (Authorized by K.S.A. 1997 Supp. 22-4522; implementing K.S.A. 22-4508 and K.S.A. 1997 Supp. 22-4522; effective May 1, 1984; amended May 1, 1988; amended Aug. 20, 1999; revoked Dec. 14, 2012.)

Article 11.—REIMBURSEMENT FROM DEFENDANT

105-11-1. Defendant reimbursement of attorney fees. The document titled "attorney

cost reimbursement tables: assigned counsel and public defender," as revised by the state board of indigents' defense services on June 6, 2014, is hereby adopted by reference. (Authorized by K.S.A. 22-4504; implementing K.S.A. 22-4522; effective, T-105-10-3-05, Oct. 3, 2005; effective Feb. 17, 2006; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-7-26-07, July 26, 2007; amended Nov. 26, 2007; amended, T-105-8-12-08, Aug. 12, 2008; amended Dec. 29, 2008; amended, T-105-6-26-09, June 26, 2009; amended Oct. 16, 2009; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010; amended, T-105-7-22-11, July 22, 2011; amended Nov. 14, 2011; amended Dec. 14, 2012; amended Dec. 29, 2014.)