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December 13, 1984

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ATTORNEY GENERAL OPINION 84- 119

Ronald E. Miles, Director
Board of Indigents' Defense Services
503 Kansas, Suite 536
Topeka, Kansas 66603

Re: Criminal Procedure -- Aid to Indigent
Defendants -- Entitlement to Compensation

Synopsis: Pursuant to K.S.A. 1983 Supp. 22-4501 et seq.,
the State Board of Indigent Defense Services
has the authority to deny authorization of claims
for compensation in cases where the attorneys
seeking compensation were appointed without
regard to the applicable system for providing
legal services to indigent defendants as
established by the board. Cited herein:
K.S.A. 1983 Supp. 22-4501; 22-4503; 22-4507;
22-4522; 22-4523.

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Dear Mr. Miles:

As Director of the State Board of Indigents' Defense Services Board, you have requested our opinion on the extent of the Board's authority to deny claims for compensation filed by attorneys appointed to represent indigent criminal defendants in districts where the board has established a public defender office to provide legal services to such defendants.

By way of background, we note that your agency is charged with the responsibility of providing, supervising and coordinating, "in the most efficient and economical manner possible," the constitutionally and statutorily required

counsel and related services for indigent persons accused of felonies. K.S.A. 1983 Supp. 25-4522(a). The board is also required by K.S.A. 1983 Supp. 25-4522 to:

"(b) establish, in each county or combination of counties designated by the board, a system of appointed counsel, contractual arrangements for providing contract counsel or public defender offices, or any combination thereof, on a full or part-time basis, for the delivery of legal services for indigent persons accused of felonies;

. . .

"(d) adopt rules and regulations in accordance with K.S.A. 77-415 et seq., and amendments thereto, which are necessary for the operation of the board and the performance of its duties and for the guidance of appointed counsel, contract counsel and public defenders, including but not limited to:

"(1) Standards for entitlement to legal representation at public expense;

"(2) standards and guidelines for compensation of appointed counsel and investigative, expert and other services within the limits of appropriations;

"(3) criteria for employing contract counsel; and

"(4) qualifications, standards and guidelines for public defenders, appointed counsel and contract counsel;

"(e) prepare and submit to the governor and legislature an annual report on the operations of the board; and

"(f) hold a hearing before changing the system for providing legal services for indigent persons accused of felonies in any county or judicial district if such a hearing is requested by two or more members of the board."
(emphasis added.)

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K.S.A. 1983 Supp. 22-4523 specifically grants the board the authority to "appoint public defenders and provide for the establishment and staffing of public defender offices."

We understand that, under the rules and regulations adopted by the board, in districts with public defender offices the staff of the office has the major responsibility for providing defense services to indigent persons entitled to representation. In public defender districts, private attorneys are relieved of the responsibility for defense of indigent defendants except in cases where there is a conflict which precludes the public defender's office from taking the case or where the public defender cannot or will not accept the case. You ask whether in such districts the board may deny claims for compensation from counsel appointed by a judge to cases where the public defender's office would have been available to represent the defendant.

The legislature has prescribed guidelines to facilitate the provision of legal services to indigent defendants. In K.S.A. 1983 Supp. 22-4503(a) it is stated:

"A defendant charged by the state of Kansas in a complaint, information or indictment with any felony is entitled to have the assistance of counsel at every stage of the proceedings against such defendant"

In subsection (1) the statute provides:

"(c) If it is determined that the defendant is not able to employ counsel, as provided in K.S.A. 22-4504 and amendments thereto, the court shall appoint an attorney from the panel for indigents' defense services or otherwise in accordance with the applicable system for providing legal defense services for indigent persons prescribed by the state board of indigents' defense services for the county or judicial district." (Emphasis added.)

Thus, the judges of the district court are charged with the responsibility of appointing counsel for eligible defendants in accordance with the applicable system established by the state board for providing such

services in that particular county or judicial district. The legislature has further provided in K.S.A. 1983 Supp. 22-4501(b) that appointments of attorneys to represent indigent defendants "shall be in accordance with the applicable system for providing legal defense services for indigent persons prescribed by the state board of indigents' defense services for the county or judicial district." It is very clear that the legislature intended the board to establish the system for providing indigent defense services in this state. The legislature has authorized the board to do so by either maintaining a panel for appointments, a public defender office, a system for contract counsel or any combination thereof.

The legislature has additionally provided that:

"(a) An attorney, other than a public defender or assistant public defender or contract counsel, who performs services for an indigent person, as provided by this act, shall at the conclusion of such service or any part thereof be entitled to compensation for such services and to be reimbursed for expenses reasonably incurred by such person in performing such services. Compensation for services shall be paid in accordance with standards and guidelines contained in rules and regulations adopted by the state board of indigents' defense services under this section.

"(b) Claims for compensation and reimbursement shall be certified by the claimant. In accordance with standards and guidelines adopted by the state board of indigents' defense services under this section, all such claims shall be reviewed and approved by one or more judges of the district court before whom the service was performed, or, in the case of proceedings in the court of appeals, by the chief judge of the court of appeal and in the case of proceedings in the supreme court, by the departmental justice for the department in which the appeal originated. Each claim shall be supported by a written statement, specifying in detail the time expended, the

services rendered, the expenses incurred in connection with the case and any other compensation or reimbursement received. When properly certified and reviewed and approved, each claim for compensation and reimbursement shall be filed in the office of the state board of indigents' defense services. If the claims meet the standards established by the board, the board shall authorize payment of the claim.

. . . .

"(e) The state board of indigents' defense services shall adopt rules and regulation prescribing standards and guidelines governing the filing, processing and payment of claims under this section." K.S.A. 1983 Supp. 22-4507 (emphasis added.)

Although it may be argued that the standards and guidelines referred to in the material quoted above refer only to the procedures for filing and processing the claims, we believe this is an overly-restrictive reading of the statute, particularly in light of the entire statutory scheme discussed above. The board has the authority, and indeed the responsibility, to establish a system for providing legal services to eligible indigent defendants. The board may establish such a system in three different ways, one of which is the creation of a public defenders office with a salaried staff. Appointments of counsel are to be made in accordance with the "applicable system" for providing such services as established by the board. Further, all claims for compensation for services provided to indigent defendants are submitted to the board to be authorized "if the claims meet the standards established by the board" for payment of such claims. It would thus appear that the board functions within its grant of authority if it denies authorization to a claim for compensation from an individual who was appointed without regard to the "applicable system" for providing indigent defense services established by the board.

Although there is no specific authorization for the denial of claims in particular circumstances, that authority is certainly implicit in the board's charge to provide the

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required legal services in the "most efficient and economical manner possible." The Kansas courts have long adhered to the rule that:

"Unless a legislative intent is indicated otherwise an express grant of powers to an officer or governmental board carries with it such implied powers as are necessary for the due and effective exercise of the powers expressly granted and the discharge of the duties imposed."

See Edwards County Comm'rs v. Simmons, 159 Kan. 41, Syl. ¶3 (1944).

Thus, we are of the opinion that the authority to deny authorization to claims for compensation is implicit in the statutes governing the board. This authority exists in cases where the attorneys seeking compensation were appointed without regard to the applicable system for providing legal services to indigent defendants as established by the board.

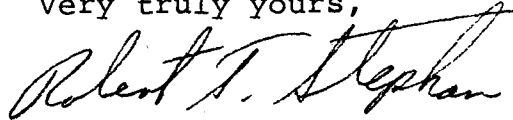
This conclusion finds further support in the fact that the Kansas Supreme Court, in considering the predecessor statutes to K.S.A. 1983 Supp. 22-4501 et seq., has said:

"It is the moral and ethical obligation of the bar to make representation available to the public. (See, Canon 2, Code of Professional Responsibility, 220 Kan. ex.) Quite often, fulfillment of that obligation involves the representation of a client, particularly a criminal defendant, for little or no remuneration. Enactment of K.S.A. 22-4501, et seq., has served to relieve some of the hardships involved in fulfilling an attorney's obligation to provide legal representation to the public; but it has not cancelled the attorney's ethical responsibility to provide representation without compensation if necessary. Court appointed counsel has no constitutional right to be compensated, much less to receive full and adequate compensation which may have been received if the same time had been spent on a fee-paying client's problems." (citations omitted)
State v. Keener, 224 Kan. 100, 102 (1978).

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This reasoning is equally applicable to the present statutes. Thus, K.S.A. 1983 Supp. 22-4501 et seq., provides a vehicle whereby the best representation available may be provided to those entitled, with the least burden upon the state and those required to provide such representation. The Board of Indigent Defense Services was established by the legislature to supervise and coordinate such a program. Under the present legislative scheme, the board may deny claims for compensation which do not comply with the board's plan for the provision of such services.

Very truly yours,



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Mary F. Carson
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