

HOUSE JUDICIARY
FEBRUARY 15, 2021

HOUSE BILL 2363
TESTIMONY OF KANSAS ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
PROPONENT

Dear Chairman Patton and Members of the Committee:

My name is Kate Zigtema. I am an attorney in private solo practice in Johnson County, Kansas. I also serve as secretary of the Kansas Association for Criminal Defense Lawyers. Until 2019, I accepted criminal felony appointments through the Board of Indigents' Defense Services since being admitted to the bar in 2007. In 2019, I stopped taking such State appointments due to the financial burden it imposed on my practice. I remain a member of the Federal Criminal Justice Act Panel (CJA) and still accept appointments from the Federal Courts of the District of Kansas.

I am a specialist in criminal defense, but also appellate and post conviction matters. All of these areas are entitled to appointed representation as a right for defendants charged in these matters. *See eg* 6th Amendment; §10 of the Kansas Bill of Rights; KSA § 22-4522; KSA §60-1507; *see also Brown v. State*, 278 Kan. 481 (2004). Appointed cases make up the vast bulk of the criminal dockets. They also present the most challenging cases for attorneys, both from a legal subject matter perspective and a client management perspective. It is my understanding that the local court has struggled to fill the necessary appointments for appeals and post conviction cases since I began to refuse to accept appointments. I did not stop taking criminal appointments because the work was not challenging, rewarding, or interesting. It was an untenable expense for my business as the BIDS rates do not support the practice.

That is not to say that anyone is “getting rich” off court appointed matters. Accepting Court appointments is a service to the community, a service to the bar, and a service to the Court. It is undertaken not simply for a living, but to serve the community and fulfill a constitutional obligation. Nevertheless, a fair wage should be expected in exchange for this service.

Let's examine what an attorney in a solo private practice would expect from a full time case load for the Board of Indigents' Defense Services.

First, the BIDS rates are billable at an hourly rate. The rules of ethics do not permit billing the same amount of time to two clients, so there is no double-dipping on the same hour increment. There are approximately 2,080 working hours in a year, assuming 40 hours per week 52 weeks per year, no vacation or sick time. The American Bar Association estimates that only 1/3 of an attorney's day consists of billable work hours. *Tracking Time to Save Time, American Bar Association, May 1, 2019*, available at https://www.americanbar.org/groups/law_practice/publications/law_practice_magazine/2019/MJ2019/MJ19Keeler/#:~:text=According%20to%20the%202018%20Clio,is%20spent%20on%20bi

[lible%20hours](#). Let's double that and add some to the percentage to account for the nature of a District Court criminal practice, which includes multiple court hearings per day, jail visits only permissible at certain times, and court operating hours. Let's assume that an extraordinarily hyper vigilant attorney tracking and submitting all of their time can bill for 70% of that 2,080 hours a year. Those calculations at an \$80.00 per hour rate would equate to a gross revenue for the firm of \$116,480.00. This of course assumes that there was no cap to a case or that all exceptional circumstances vouchers were granted.¹ That is a large number. However, those fees do not equate to the salary of the attorney.

Next, as most criminal attorneys are small practitioners, they are self employed and subject to self employment tax. As such, around 30% comes off the top and goes to self employment taxes. So the after tax revenue is approximately \$80,000.00. Then we start adding the expenses of running a small business that is a law practice.

Typically, a criminal defense attorney is not going to want to utilize their home address as a business address for personal safety reasons. With a District Court practice, proximity to the Courthouse becomes a priority to negate large amounts of travel time, particularly because unless traveling out of county or more than a set number of miles, travel time and miles are not reimbursable expenses. So rent in downtown areas near the courthouse is a premium, and we'll assume about \$750/month for a full service lease that includes utilities such as power and water.

As an attorney, we must maintain our law license fees, complete CLEs which have costs, pay registration fees, and maintain malpractice insurance. As a private practice we'll have LLC fees as well. Attorneys must have a phone, landline and cell phone usually to accommodate various calling systems used by correctional facilities that limit cell phone connectivity. We need internet and computers, and now webcams and sufficient sound capabilities. Any attorney needs the ability to complete legal research to adequately represent their clients, which is a monthly subscription based service. We need printers and copiers, and we incur postage fees as well. A large number of criminal clients are in custody and therefore legal mail remains the most efficient and secure way to communicate with them on a majority of issues. Then we have plain old pens and papers and file folders, which attorneys can go through at truly remarkable rates. Then we add auto expenses for driving to jail or interviewing witnesses or travelling to other Courts.

After that, we add other costs that are typically covered by employment. Insurance for you and your family. A quick google search describes that cost at \$1,152.00 per month for an average family of four. Then there are retirement savings, which as a solo practitioner become critical so as to avoid dropping dead at the Courthouse because you are still working because you can't afford to retire. The recommended percentage for retirement saving is 15% of pretax income according to fidelity.com, but we'll use \$1,000.00 per month for simplicity's sake.

¹ BIDS Regulations permit attorneys to seek authorization to exceed the reasonable compensation levels cap due to exceptional circumstances including nature of the case, services performed, hours worked, and other reasons presented to the court and authorized by written Court order.

We have no advertising costs, because we are only taking Court Appointments. We have no discovery, records or transcript costs as those costs are not incurred for court appointed counsel.

After all these costs, the take home after tax income for an attorney is approximately \$32,000.00. For working 40 hours a week, every single week, for an entire year.

We have not included costs for student loan payments. We have not included costs for the secondary post traumatic stress that affects many attorneys when dealing with both the offense matter and the client’s personal trauma that we have to understand and present to the Court in the course of the case. We have not included costs for childcare; a critical matter as kids cannot come with you to Court or the jail. Childcare costs in Kansas are ranked the highest in the nation, with it costing approximately \$11,222.00 per year for an infant and \$8,798.00 per year for a four year old. *See eg Economic Policy Institute, www.epi.org.* It is actually cheaper to send the same child to a four year public university on instate tuition.

Below is a Profit and Loss Statement derived from my actual incurred costs in 2019 and the assumptions set forth above.

Proposed rate	80
Yearly Working Hours	2080
Billable Working Hours	1456
Gross Fees Revenue	\$ 116,480.00
Self Employment tax	\$ 34,944.00
	\$ 81,536.00
Expenses	
Advertising and Promotion	0.00
Computer and Internet Expenses	1,080.00
Copies Expenses	1,500.00
Discovery Expenses	0.00
Dues and Subscriptions	520.00
Insurance Expense	1,408.00
LLC Fees	50.00
Office Supplies	800.00
Postage and Delivery	450.00
Professional Fees	1,175.00
Rent Expense	9,000.00
Research Services	3,000.00
Telephone Expense	2,900.00
Transcripts	0.00
Travel	
Automobile Expense	1,439.09
Personal Property Tax	310.35

Total Automobile Expense	\$ 1,749.44	
Parking		20.00
Tolls		101.55
Total Travel	\$ 1,870.99	
Health Insurance	\$ 13,824.00	
Retirement	\$ 12,000.00	
Total Expenses	\$ 49,585.81	
Take Home After Tax	\$ 31,950.18	

Clearly, these costs may differ from attorney to attorney. And as I am not a tax attorney, there may be flaws in my tax amount. However, these numbers are not that far off of what an attorney working only court appointments could expect.

Comparatively, the Attorney General's Office pays its legal assistants, not their attorneys, an average salary of \$41,000.00 per year. *See eg KanView.ks.gov*, Employee Pay Rates, 2020. The attorneys at the Attorney General's Office are paid substantially more for the same work.

Defense attorneys working on court appointed work are somewhat used to being the underdog and the forgotten. However, they do this work to help their community and to uphold their oaths to the constitution. They deserve to be able to earn a reasonable salary for the work they do for the community. For these reasons, I support the increase in the BIDS rates for court appointed work.

Sincerely,

/s/ Kate Zigtema, #23299

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