

INTRODUCTION TO THE CRIMINAL JUSTICE ACT AND THE MONTANA CRIMINAL JUSTICE ACT PANEL

Background

The Sixth Amendment to the United States Constitution guarantees an accused the right to representation by counsel in serious criminal prosecutions. The responsibility for appointing counsel in federal criminal proceedings for those unable to bear the cost of representation has historically rested in the federal judiciary. Before the enactment of the Criminal Justice Act (CJA), however, there was no authority to compensate appointed counsel for their services or litigation expenses, and federal judges depended on the professional obligation of lawyers to provide *pro bono publico* representation to defendants unable to retain counsel.

In 1964, the CJA was enacted to establish a comprehensive system for appointing and compensating lawyers to represent defendants financially unable to retain counsel in federal criminal proceedings. The CJA authorized reimbursement of reasonable out-of-pocket expenses and payment of expert and investigative services necessary for an adequate defense. While it provided for some compensation for appointed counsel (CJA panel attorneys), it did so at rates substantially below that which they would receive from their privately-retained clients.

The CJA was amended in 1970 to authorize districts to establish federal defender organizations as counterparts to federal prosecutors in U.S. Attorneys Offices and an institutional resource for providing defense counsel in those districts (or combinations of adjacent districts) where at least 200 persons annually require appointment of counsel.

Almost fifty years since the CJA was enacted, there are now 81 authorized federal defender organizations. They employ more than 3,100 lawyers, investigators, paralegals, and support personnel and serve 91 of the 94 federal judicial districts. There are two types: federal public defender organizations (FPDOs) and community defender organizations (CDOs). Eighteen (18) of the federal defender organizations follow the CDO model.

The Judges of the District of Montana determined in 1991 that a Community Defender Organization, a nonprofit defense counsel service incorporated under the laws of the State of Montana, would be designated in the CJA plan for the district. Community defender organizations are corporate entities employing salaried defense counsel and support staff, funded by annual grants from the judiciary. The Federal Defenders of Montana, Inc. (FDMO), is the community defender organization for Montana. Established under the Plan and Title 18 United States Code, section 3006A(g)(2)(B), FDMO officially came into existence in September 1992. The Executive Director of the corporation is in addition designated the Federal Defender for the District of Montana. Corporate powers are exercised under the authority of, and the business affairs are guided by, a seven-member, self-perpetuating Board of Directors. The 1992 Plan also indicated that “[t]he community defender shall be responsible for the systematic distribution of cases to and for management of the CJA Panel.”

Defender Services and the CJA in the District of Montana

The current CJA Plan for the United States District Court for the District of Montana was approved by the United States Court of Appeals for the Ninth Circuit and became effective September 2, 2014. [The full plan, and all attachments, may be found on the official U.S. District Court for the District of Montana website – <http://www.mtd.uscourts.gov/cja.html>, then select “District of Montana CJA Plan.”] The Judges of the district, with approval of the Judicial Council of the Ninth Circuit, determined that the Federal Defenders of Montana, Inc., was to remain as the institutional Defender Organization in this District. The Bylaws of the Federal Defenders of Montana, Inc., are a part of the Criminal Justice Act Plan and are available on the Court’s website as well as the official website for the Federal Defenders of Montana – www.fdom.org.

Federal defender organizations, together with the more than 10,000 panel attorneys who accept CJA assignments annually, represent the vast majority of individuals who are prosecuted in our nation’s federal courts. CJA panel attorneys accept appointments in all CJA cases in the remaining districts not served by a federal defender organization. In those districts with a defender organization (91 districts as of November 26, 2014), panel attorneys are typically assigned between 30 percent and 40 percent of the CJA cases, generally those where a conflict of interest or some other factor precludes federal defender representation. Nationwide, federal defenders receive approximately 60 percent of CJA appointments, and the remaining 40 percent are assigned to the CJA panel.

For work performed on or after March 1, 2014, panel attorneys are paid an hourly rate of \$126 in noncapital cases, and, in capital cases, a maximum hourly rate of \$180. These rates reflect a repeal of the temporary emergency reduction (implemented in September 2013) to hourly CJA panel attorney rates and an increase consistent with the 1 percent Employment Cost Index adjustment for federal government employees effective on January 13, 2014. The rates include both attorney compensation and office overhead. In addition, there are case maximums that limit total panel attorney compensation for categories of representation (for example, \$9,800 for felonies, \$2,800 for misdemeanors, and \$7,000 for appeals as of October 1, 2014). These maximums may be exceeded when higher amounts are recommended by the district judge as necessary to provide fair compensation and the chief judge of the circuit approves.

The Judicial Conference of the United States (JCUS) promulgates policies and guidelines for the administration of the CJA, formulates legislative recommendations to the Congress, and approves funding requests and spending plans for the defender program as a whole and, through its standing Committees on Judicial Resources and Budget, with input from its Committee on Defender Services, sets budgets and grants for each defender organization. The policies and procedures for the CJA are set forth by the JCUS in the “Guidelines for Administering the CJA and Related Statutes.”

In accord with the CJA, all persons charged with federal criminal offenses who are financially unable to obtain counsel are entitled to appointment of counsel to represent them. Under this Court’s CJA plan, the Federal Defenders of Montana is authorized to provide representation as the institutional federal defender organization for the District. The Plan indicates “private attorneys from the CJA

Panel shall be appointed in a substantial proportion” of the cases involving financially eligible defendants in the district. The previously established panel of private attorneys who are eligible and willing to be appointed under the CJA was recognized under the 2014 Plan. The Panel usually consists of about 80 members. Case assignments are made through the Federal Defenders of Montana, with the approval of and ultimate appointment by the United States District Court.

To assure the proper composition, administration, and management of the panel of private attorneys under the Criminal Justice Act, the District’s current CJA Plan established the CJA Panel Selection Committee (“CJA Committee”). [The full CJA Panel Management Plan, and all attachments, may be found on the official Court website, then select “CJA Panel Management Plan Appendix B.”]

The Chief Judge entered an Order on October 6, 2014, appointing members of the CJA Committee:

The Honorable Susan P. Watters, Chair, United States District Judge, *ex officio*
The Honorable Jeremiah C. Lynch, United States Magistrate Judge, *ex officio*
Tony Gallagher, Federal Defender for the District of Montana, *ex officio*
Adina Poitra, Federal Defender CJA Panel Administrator, *ex officio*
Dwight Schulte, CJA Panel Attorney, October 6, 2014 – December 31, 2015
Wendy Holton, CJA Panel Attorney, October 6, 2014 – December 31, 2016
Vern Woodward, CJA Panel Attorney, October 6, 2014 – December 31, 2017

To apply for admission to the CJA Panel – An Application for Membership on the Criminal Justice Act Panel for the United States District Court for the District of Montana, available at www.fdom.org/cja/application or at your local FDOM office, must be completed and submitted for consideration by the CJA Panel Selection Committee. If by mail, send the application to CJA Panel Selection Committee, 104 Second Street South, Suite 301, Great Falls, MT 59401. Alternatively, a *pdf copy may be emailed to: Adina.Poitra@fd.org.

The Mentor Program – The Montana Criminal Justice Act Panel consists of experienced, highly qualified attorneys who specialize in, or who have a demonstrated competence in, federal criminal defense. To assure that new attorneys are well-versed in the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the policies and rules governing Criminal Justice Act Panel attorneys in the United States District Court, the CJA Panel Selection Committee may require participation in the FDOM mentor program. In this program the prospective CJA panel attorney will work with one of FDOM’s attorneys or a senior member of the CJA panel on at least one case.

The prospective CJA panel attorney ‘shadows’ the assigned/appointed attorney from initial appearance through final disposition. This training period occurs before the prospective CJA panel attorney is appointed to represent a client and provides time to become familiar with federal criminal defense practice in this district. Because of the structure and payment restrictions of the Criminal Justice Act, the prospective CJA panel attorney will not be appointed to represent the client, the prospective CJA panel attorney’s work during the mentor program will be uncompensated, and expenses will not be reimbursed.

Eligibility for Appointment of Counsel

Determining financial eligibility for representation under the CJA is a judicial function performed by a federal judge or magistrate judge after appropriate inquiry into a person's financial status. A person seeking appointment of counsel normally completes and executes a CJA Form 23 ("Financial Affidavit") before a judicial officer or employee. Employees of law enforcement agencies or U.S. attorney's offices should not participate in the completion of the CJA Form 23 or seek to obtain information from a person requesting the appointment of counsel concerning his or her eligibility.

The eligibility standard for obtaining CJA representation is whether a person's net financial resources and income are insufficient to enable him or her to obtain qualified counsel, taking into consideration the cost of providing: (1) the defendant and his or her dependents with the necessities of life; and (2) the defendant's release on bond if financial conditions are imposed. The financial status of the person's family should not be considered unless the family indicates a willingness and financial ability to retain counsel promptly. A person may be found partially eligible for CJA representation. If a person's net financial resources and income are in excess of the amount needed to provide the individual and his or her dependents with the necessities of life and provide for the defendant's release on bond, but insufficient to pay fully for retained counsel, the judicial officer will appoint CJA counsel and order the defendant to pay available excess funds to the clerk of court as reimbursement for the cost of representation furnished under the Act.

Any doubts as to a person's eligibility should be resolved in that person's favor. Erroneous determinations of eligibility may be corrected at any time. ***CJA Counsel is required to advise the Court if his/her client's ability to pay in whole or in part for legal services changes during the course of representation.***

Local CJA Panel Training and Consultation

The Federal Defenders of Montana provides local training to the CJA Panel through periodic events at its offices in Billings, Great Falls, Helena and Missoula. The local panel meetings include topics of interest, as well as offering an opportunity for panel attorney input in the administration and management of the CJA Panel for the District of Montana. These meetings usually offer at least one hour of Montana CLE credit at no cost. Please contact Federal Defender Panel Administrator, Adina Poitra, at 406-727-5328 or by email at Adina_Poitra@fd.org for upcoming meetings and topics.

A two-day criminal defense seminar is presented annually at Chico Hot Springs, Pray, Montana, in cooperation with the Montana Association of Criminal Defense Lawyers. Usually held in mid-March, the seminar is available to all CJA Panel members at reduced cost and provides up to 12 hours of Montana CLE credit.

The attorneys of the Federal Defenders of Montana are always available for case consultation, advice, motion samples, or just to brainstorm. The organization also maintains an informational and research website: www.fdom.org.

National CJA Panel Training

The Defender Services Office (DSO) of the Administrative Office of the U.S. Courts assists in administering the Defender Services Program under the Criminal Justice Act (CJA), the law governing the provision of federal criminal defense services to those unable to afford representation. The Training Division of DSO provides substantial training and other resource support to Federal Defender Organization (FDO) staff and CJA panel attorneys. Go to www.fd.org for a listing of current events and an archive of training materials and publications.

District of Montana CJA Panel Information and Forms

Information pertaining to the function, operation and administration of the Criminal Justice Act in the District of Montana is available on the United States District Court for the District of Montana official website – <http://www.mtd.uscourts.gov/cja.html>. Each CJA Panel Attorney should be familiar with the CJA Information and Forms which can be accessed on the site.

The following informational guides and forms are housed on the site:

- eVoucher Information Page
- Memo from the Administrative Office Re: Rate Change
- Forms –
 - CJA19 Public Disclosure of Attorney Fee Information
 - CJA 21 Form Voucher for Expert & Other Services
 - CJA 23 Financial Affidavit
 - CJA 23 Financial Affidavit Schedule A
 - CJA 24 Form Voucher for Payment of Transcript and Instructions
 - CJA 26 Supplemental Information Statement for Compensation Claim in Excess of Statutory Case Compensation Maximum
- Worksheets – Use only for appointments prior to March 2013
 - Excel CJA Worksheet – Multiple Rates (XLS)
 - CJA 20 Excel Attorney Training Guide

District of Montana References:

- District of Montana's CJA Plan
- CJA Plan Appendix A: Bylaws of the Federal Defenders of Montana, as Amended
- CJA Panel Management Plan Appendix B
- CJA Selection Committee

Other References:

- Authorization and Payment for Investigative, Expert or Other Services
- National CJA Voucher Reference Tool
- Introduction to the CJA Panel (provided by Federal Defenders of Montana)
- Quick Reference Guide (provided by Federal Defenders of Montana)
- Travel Regulations

U.S. District Court CJA Contacts:

- Coleen Hanley (406) 542-7263
- Amanda Goodwin (406) 829-7155

National On-line Reference Tool

The purpose of the On-line Reference Tool (ORT) is to provide quick access to the national policies and procedures related to Criminal Justice Act (CJA) cases, beginning with the appointment of panel attorneys and continuing through the processing of vouchers to the approval of payment for services rendered. It is hosted on the U.S. Courts website, under *Appointment of Counsel, Training, National CJA Voucher Training*: <http://www.uscourts.gov/uscourts/cjaort/index.html>. The ORT provides rapid access to voucher submission and processing procedures and policies. The content is conveniently organized by Topic and by Role. Use the ORT for linking to the *CJA Guidelines* (Volume 7, Part A), also referred to as “*the Guide*.” The ORT has detailed voucher instructions and in-text references to forms.

The Hourly Panel Attorney Rates and Case Compensation Maximums section of the ORT provides the user with the general CJA payment policy and current hourly panel attorney rates and case compensation maximums.

The Reimbursable and Non-Reimbursable Expenses section of the ORT is the most comprehensive source of information concerning reimbursable and non-reimbursable expenses. In addition to listing reimbursable and non-reimbursable expenses, this section provides the policies and procedures for attorneys and other service providers concerning such costs. The portion of the site also provides the newest mileage reimbursement rate(s).

Links to numerous sources of assistance and general information have conveniently been placed under the National Assistance Contact Information and Resource section of the ORT, including: AO/DSO contacts; CJA Payment System Help Desk; CJA Resource Counsel Program; Litigation Support; and national websites, directories, and publications.

Finally, the On-line Reference Tool is maintained and periodically updated by the Administrative Office of the U.S. Courts. ***The ORT is the authoritative source for the most current CJA information.***

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information current as of November 26, 2014
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