



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
CRIMINAL JUSTICE ACT PLAN

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DISTRICT OF MONTANA
CRIMINAL JUSTICE ACT PLAN

I. Authority and Objectives.

This Plan is adopted to attain the ideal of equality before the law by providing quality representation in federal court for persons unable to afford a lawyer's services. The Court, the Federal Defenders of Montana, private attorneys appointed under the Act, and visiting judges must comply with this Plan and must construe and administer it to provide any element of representation necessary to an adequate defense. In accordance with the needs of this District, this Plan implements the Criminal Justice Act of 1964, as amended, 18 U.S.C. § 3006A ("CJA" or "the Act"); 18 U.S.C. §§ 3005 and 3599; and the Administrative Office's Guidelines for Administering the CJA and Related Statutes ("CJA Guidelines").

II. Definitions.

"Representation" includes counsel and investigative, expert, and other services.

"Counsel" includes private attorneys appointed to the CJA Panel or appointed *pro hac vice* and attorneys employed by the Federal Defenders of Montana, Inc.

"Judge" includes district and magistrate judges and judges designated to sit in the District of Montana.

"Chief Federal Defender" means the Executive Director of the Federal Defenders of Montana, Inc.

III. Providing Representation.

A. Circumstances Supporting Appointment.

1. Mandatory. Representation must be provided for any financially eligible person who:
 - a. is charged with a felony or Class A misdemeanor;
 - b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
 - c. is charged with a violation of probation or supervised release or faces modification of a term or condition of probation or supervision (compare II.A.2(c), below), unless the modification

sought is favorable to the person and the government does not object to modification;

- d. is under arrest, when such representation is required by law;
- e. is entitled to appointment of counsel in parole proceedings, *see* CJA Guidelines § 210.20.10(a)(5);
- f. is subject to a mental condition hearing under 18 U.S.C. ch. 313;
- g. is in custody as a material witness;
- h. is seeking relief under 28 U.S.C. §§ 2254 or 2255, provided:
 - (i) the underlying matter is a capital offense, or
 - (ii) an evidentiary hearing is required;
- i. is entitled to appointment of counsel in verification of consent proceedings in connection with the person's transfer to or from the United States for execution of a penal sentence under section 18 U.S.C. § 4109;
- j. is entitled to appointment of counsel under the Sixth Amendment to the Constitution, *see* CJA Guidelines § 210.20.10(a)(9); or
- k. faces loss of liberty in a case and federal law requires the appointment of counsel, *see* CJA Guidelines § 210.20.10(a)(9).

2. Discretionary. Whenever a judge determines that the interests of justice so require, representation may be provided for any financially eligible person who:

- a. is charged with an offense less than a Class A misdemeanor for which a sentence to confinement is authorized;
- b. is seeking relief under 28 U.S.C. § 2241 or in a non-capital matter under 28 U.S.C. §§ 2254 or 2255;
- c. seeks modification of a condition or early termination of a term of probation or supervised release;
- d. is charged with civil or criminal contempt and faces loss of liberty;
- e. (i) has been called as a witness before a grand jury, a

federal court, the Congress, or a federal agency or commission which has the power to compel testimony, and

(ii) there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution or to a civil or criminal contempt proceeding or could face loss of liberty;

f. is proposed by the United States attorney for processing under a pretrial diversion program;

g. is held for international extradition under 18 U.S.C. ch. 209.

3. Ancillary Matters. Pursuant to 18 U.S.C. § 3006A(c) and CJA Guidelines § 210.20.30, representation may also be furnished for financially eligible persons in ancillary matters as appropriate to the proceedings.

B. Time to Appoint Counsel.

1. Counsel must be provided at the earliest of the following times:

a. as soon as feasible after the person is taken into custody;

b. when the person is notified that a formal charge has been filed;

c. when the person appears before a judge;

d. when a judge is satisfied that a formal federal charge is imminent;
or

e. when a judge considers appointment of counsel appropriate under the Act.

2. If counsel provided representation before being appointed, a judge may make an appointment retroactive.

C. Special Cases.

1. A judge may appoint any qualified attorney.

2. Non-Capital Cases. More than one attorney may be appointed only if:

a. the judge finds the case to be so difficult that one attorney cannot provide adequate representation; or

- b. the case involves a mentor and mentee.
3. Capital Cases. Pursuant to 18 U.S.C. §§ 3005 and 3599:
- a. In every capital proceeding, the appointing judge:
 - (i) must be satisfied that each appointed attorney is capable of representing the defendant properly in light of the seriousness of the penalty and the unique and complex nature of the litigation;
 - (ii) must appoint at least one attorney who has distinguished prior experience in the trial, appeal, or post-conviction review of federal death penalty cases or distinguished prior experience in the trial, appeal, or postconviction review of state death penalty cases that, in combination with co-counsel, will assure the defendant receives high-quality representation;
 - (iii) must appoint at least one attorney who has been a member of the Bar of this District for at least five years and who has at least three years' experience in felony cases; or, if appointment is made after entry of judgment, at least one attorney who has been a member of the Bar of the Ninth Circuit Court of Appeals for at least five years and who has at least three years' experience in felony appeals to that court;
 - (iv) must direct counsel to consult Defender Services Death Penalty Resource Counsel through the Administrative Office of the United States Courts;
 - (v) may, for good cause, appoint another attorney who does not qualify under 18 U.S.C. § 3599(b) or (c) but whose background, knowledge, or experience is substantially equivalent to those of an attorney who meets the criteria set forth in subsection (ii) and/or (iii); and
 - (vi) must not appoint on collateral review any attorney who represented the defendant/petitioner in the original criminal proceedings.
 - b. In a federal capital prosecution:
 - (i) at least two attorneys must be appointed; and

- (ii) the judge must consider the recommendation of the Chief Federal Defender.
- c. In a capital habeas proceeding under 28 U.S.C. §§ 2254 or 2255:
 - (i) the judge must consider appointing two attorneys; and
 - (ii) the judge must consider the recommendation of the Chief Federal Defender as to the number and selection of counsel.
- D. Financial Eligibility for Representation.
 - 1. Factfinding. After appropriate inquiry into the person's financial condition, a judge will determine whether the person qualifies for representation under the Act.
 - 2. Disclosure of Change in Eligibility. If, at any time after appointment, counsel obtains non-privileged information that a client is financially able to pay, in whole or in part, for legal or other services in connection with the representation, counsel must file notice in the record.

IV. Duties of Appointed Counsel.

- A. Standards. The services to be rendered a person represented by appointed counsel will be commensurate with those rendered if counsel were privately retained.
- B. Professional Conduct. Attorneys appointed under the CJA must conform to the highest standards of professional conduct, including but not limited to the American Bar Association's Model Rules of Professional Conduct and the Montana Rules of Professional Conduct. Attorneys employed by the Federal Defenders of Montana must also conform to the Model Community Defender Organization Code of Conduct approved by the Administrative Office of the United States Courts.
- C. No Receipt of Other Payment. Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by a judge.
- D. Continuing Representation. Once counsel is appointed under the CJA, counsel will continue the representation until:
 - 1. retained counsel who has been admitted to the Bar of this Court and who is assuming ongoing responsibility for representation has filed a notice of

appearance;

2. an order has been entered allowing or requiring the person represented to proceed *pro se*;
3. the appointment is terminated by a judge; or
4. the matter, including appeals or review by certiorari, as governed by the Ninth Circuit Court of Appeals' CJA Plan, is closed.

V. Community Defender Organization and Panel of Private Attorneys.

A. CJA Attorneys.

1. Federal Defenders. The Federal Defenders of Montana, Inc., is the Community Defender Organization for the District of Montana and is authorized under 18 U.S.C. § 3006A(g)(2)(B) to furnish attorneys throughout the District and to receive payments under the Act. The Chief Federal Defender is responsible for the supervision and management of the Federal Defenders of Montana and the District of Montana Mentor Program. The by-laws of the Federal Defenders of Montana, Inc., are incorporated into this Plan as Appendix A.
2. CJA Panel. Private attorneys will be selected for membership on the CJA Panel to represent eligible persons. Rules governing the administration and management of the CJA Panel are incorporated into this Plan as Appendix B.

B. Qualifications of All Counsel.

1. All attorneys applying for employment with the Federal Defenders or membership on the CJA Panel should have significant experience representing persons charged with serious criminal offenses and demonstrate a commitment to the defense of people who lack financial means to retain counsel.
2. All attorneys appointed under the authority of the Criminal Justice Act must:
 - a. be members in good standing of the Bar of this Court, the Ninth Circuit Court of Appeals, and, within six years of admission to practice, the United States Supreme Court;
 - b. unless excused by the Chief Federal Defender, complete the District of Montana Mentor Program found at Appendix B;

- c. provide representation without regard to race, color, religion, sex, gender identity, age, national origin, or disabling condition of the person represented;
- d. possess strong litigation skills;
- e. demonstrate proficiency with the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, federal sentencing procedure, the United States Sentencing Guidelines, the Bail Reform Act, and the Local Rules of the District of Montana;
- f. be a competent and risk-aware user of technology including CM/ECF, eVoucher, and appropriate tools for litigation and discovery management, legal research, and investigation;
- g. complete, every three years, 15 hours of CLE credits in the area of federal criminal defense and one hour's attendance at a local panel meeting sponsored by the Federal Defenders; and
- h. promptly advise the Chief Federal Defender of changes in legal employment, such as changing firms or serving as a substitute judge.

C. Appointments of CJA Panel Members.

- 1. The Federal Defenders of Montana will maintain a current list of all CJA Panel member attorneys, including each member's qualifications, experience, and appointments, along with statistical data reflecting the proportion of appointments between the Federal Defenders and the CJA Panel.
- 2. The Federal Defenders of Montana are responsible for the systematic distribution of cases to counsel and the day-to-day management of the CJA Panel.
- 3. Criteria Governing Appointments from the CJA Panel.
 - a. Rotation. Appointments from the Panel should be made on a rotational basis, subject to exceptions based on the nature and complexity of the case, an attorney's experience, and geographical considerations.
 - b. Proportionality. Panel members will be appointed in a substantial proportion of the cases in which counsel is appointed.

- c. Designation. A judge may appoint any member of the CJA Panel or may direct the Federal Defenders to locate a qualified member at the earliest opportunity. The Federal Defenders may be designated to appear until a panel attorney is available. In each case, a CJA Panel member must be designated by order.
- D. Payment of CJA Panel Members. The Judges of this District recognize the essential contribution of CJA Panel members' expertise, time, and effort. CJA Panel members will be paid for the services they provide and at the hourly rate established by the Administrative Office of the United States Courts. Except for technical or mathematical errors, requested compensation will not be reduced unless an attorney is given a brief explanation of the extent and reason for a proposed reduction and an opportunity to show cause why reduction should not be made. All orders to show cause and attorney responses must be filed ex parte in the record of the case.

VI. CJA Committee.

- A. Authority. The CJA Committee is responsible for oversight of the CJA Panel and the establishment and review of criteria governing selection and removal of Panel members, distribution of cases, and payment for representation. Upon approval of the Chief Judge, the CJA Committee is authorized to amend Appendix B.
- B. Membership. The CJA Committee will be appointed by order of the Chief Judge and will consist of:
 - 1. one district judge acting as chair;
 - 2. one United States magistrate judge;
 - 3. the Chief Federal Defender, and;
 - 4. at least three attorneys who:
 - a. have been members of the CJA Panel for at least five years;
 - b. are based in different divisions of the Court; and
 - c. will serve staggered terms of three years each; and
 - 5. an *ex officio* staff member, who is employed by the Federal Defenders of Montana, to act as administrative coordinator and arrange all meetings, coordinate the Committee's activities, maintain a list of current Panel members and applicants, and keep a record of the Committee's reports and

recommendations.

C. Duties. The CJA Committee will:

1. convene at least once each year;
2. review applications for membership on the CJA Panel and recommend approval of the applicants it finds qualified;
3. consider the renewal of member attorneys whose continuation on the Panel has not been reviewed within the previous five years; or, for member attorneys whose continuation on the Panel has never been reviewed, randomly select at least eight attorneys per year for review until all have been reviewed;
4. consider removal of any member of the CJA Panel who:
 - a. no longer meets the qualifications of counsel in Part IV.B, above;
 - b. has not accepted an appointment for two years; or
 - c. in the opinion of the Committee, no longer meets the standards for membership;
5. review the operation and administration of the CJA Panel over the preceding year, including:
 - a. the apportionment of cases between the Federal Defenders and the CJA Panel;
 - b. recruitment of qualified counsel and identification and proposal of opportunities, such as the Mentor Program, for potential applicants to acquire the expertise and experience required for Panel membership;
 - c. consideration of diversity in race, color, religion, sex, gender identity, age, national origin and disabling condition among Panel members and expansion of the Panel's diversity;
 - d. persistent issues or difficulties encountered by defendants or counsel;
 - e. payment and processing of vouchers for counsel and other services, considering input of both the clerk and counsel; and

- f. the balance between the distribution of appointments and compensation among the members of the CJA Panel and quality representation of each CJA defendant; and
6. recommend to the Chief Judge any appropriate changes to the Panel membership, to this Plan, or to Appendix B.

VII. Supersession and Effective Date.

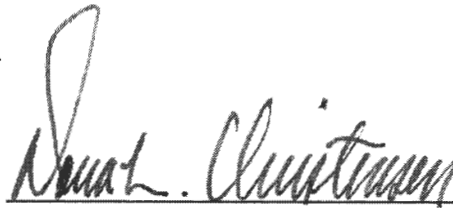
This Plan supersedes all prior Criminal Justice Act Plans of this District and is effective on approval by the Judicial Council of the Ninth Circuit Court of Appeals.

Appendices:

- A. Current Bylaws of the Federal Defenders of Montana, Inc.
- B. Panel Management Protocol.

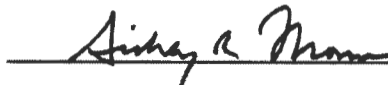
IT IS SO ORDERED.

DATED this 20th day of September, 2018.



Dana L. Christensen, Chief Judge
United States District Court

APPROVED BY THE JUDICIAL COUNCIL OF THE NINTH CIRCUIT COURT OF
APPEALS on the 18th day of October, 2018.



Sidney R. Thomas, Chief Judge
Ninth Circuit Court of Appeals