

**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. In federal criminal proceedings the responsibility for appointing counsel for those unable to afford 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 established a comprehensive system for appointing and compensating lawyers (CJA panel attorneys) to represent defendants who are financially unable to retain counsel in federal criminal proceedings -- albeit at rates substantially below what they would receive from their private clients. The CJA additionally authorized reimbursement of reasonable out-of-pocket expenses and payment for expert and investigative services necessary for an adequate defense.

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. There are now 81 authorized federal defender organizations. They employ more than 3,700 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.

In 1991 the Judges of the District of Montana determined that a Community Defender Organization would be designated in the CJA plan for the district. CDO's are corporate entities funded by annual grants from the judiciary that employ salaried defense counsel and support staff. The Federal Defenders of Montana, Inc. (FDM) is incorporated under the laws of the State of Montana and 18 U.S.C. § 3006A(g)(2)(B). FDM officially came into existence in September 1992. The Executive Director of the corporation is also 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

Montana's current [CJA Plan](#) (the Plan) was approved by the United States Court of Appeals for the Ninth Circuit and became effective October 18, 2018. It provides that the Federal Defenders of Montana, Inc. are to remain as the institutional Defender Organization in this District. The [Bylaws of the Federal Defenders of Montana, Inc.](#), are a part of the Plan. On November 22, 2019, the District Court adopted [Appendix B to the Plan](#) which outlines CJA Panel Management Protocols. The full plan, and all attachments, are posted in the Criminal Justice Act Section of the official website of the [United States District Court for the District of Montana](#).

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. Through its standing Committees on Judicial Resources and Budget, with input from its Committee on Defender Services, the JCUS sets budgets and grants for each defender organization. The policies and procedures, including provisions for attorney fees and payment for other services, are set forth in the "[Guidelines for Administering the CJA and Related Statutes](#)."

Under the CJA, all persons charged with federal criminal offenses who are financially unable to obtain counsel are entitled to appointed counsel. Federal defender organizations, together with the more than 12,000 panel attorneys throughout the United States who accept CJA assignments annually, represent the vast majority of individuals who are prosecuted in our Nation's federal courts. Panel attorneys accept appointments in all CJA cases in the remaining districts not served by a federal defender organization. In those districts with a federal defender organization 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.

Under Montana's CJA plan, the FDOM provides representation for financially eligible defendants. The Plan indicates "private attorneys from the CJA Panel shall be appointed in a substantial proportion" of the cases. Case assignments are made through the FDOM, with the approval of and ultimate appointment by the United States District Court.

Montana's CJA panel usually consists of about 60 members. To assure the proper composition, administration, and management of the panel, the District's CJA Plan established the CJA Panel Selection Committee ("CJA Committee"). See, "[CJA Panel Management Plan Appendix B](#)." The Chief Judge appoints members of the CJA Committee. Current Committee members are:

The Honorable Susan P. Watters, Chair, United States District Judge, *ex officio*
The Honorable Kathleen DeSoto, United States Magistrate Judge, *ex officio*
Tony Gallagher, Federal Defender for the District of Montana, *ex officio*

Wendy Holton, CJA Supervising Attorney, *ex officio*
Adina Poitra, Federal Defender CJA Panel Administrator, *ex officio*
Dwight Schulte, CJA Panel Attorney, Jan. 1, 2019 – December 31, 2021
Caitlin Boland Aarab, CJA Panel Attorney, May 14, 2020– December 31, 2022
Vern Woodward, CJA Panel Attorney, Jan. 1, 2018 – December 31, 2020

Minimum Qualifications for CJA Panel Membership – Panel applicants must be members in good standing of the State Bar of Montana (with the exception of applicants to the appellate panel who must be members in good standing of the bar of the highest court of a state, the District of Columbia, the Commonwealth of Puerto Rico, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States), admitted to practice in the Ninth Circuit Court of Appeals, possess strong litigation skills and demonstrate proficiency with the federal sentencing guidelines, federal sentencing procedures, the Bail Reform Act, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence. Applicants must demonstrate a commitment to the defense of people who lack the financial means to hire an attorney. Significant experience representing persons charged with serious criminal offenses is desirable but not required.

Application 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, must be completed and submitted for consideration by the CJA Panel Selection Committee. The completed form should be emailed in Adobe Acrobat format to the CJA Supervising Attorney, Wendy Holton, and Panel Administrator, Adina Poitra, at MTX_CJASA@fd.org. If submitting by mail, send the application to: CJA Panel Selection Committee, ATTN CJA Panel Administrator, 104 Second Street South, Suite 301, Great Falls, MT 59401. Applications will be considered at the next meeting of the CJA Committee.

The Mentor Program – The Mentor Program (“Program”) is designed to allow a new or prospective member of the Criminal Justice Act Panel (“Panel”) to become familiar with federal criminal defense practice in the District of Montana, regardless of the attorney’s previous experience in other jurisdictions. The Program provides a structured training platform for attorneys new to federal criminal practice to ensure that they are well-versed in the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the policies and procedures governing Criminal Justice Act Panel attorneys.

The Program is maintained, administered, and operated by the FDOM. Mentors are experienced and respected attorneys who are employed by FDOM or are panel members. No Mentor is assigned more than one Mentee at any one time if there are willing Mentors who have not been assigned a Mentee. Panel members who wish to be considered for mentoring duties must agree to mandatory reporting and attendance at additional yearly training, including possible specialized training, as designated by the CJA Panel Selection Committee.

Both the Mentor and Mentee will be appointed as counsel of record. The Mentor will receive a regular CJA appointment. The Mentee will be appointed as associate counsel (co-counsel) and will

be expected to participate fully in the representation. A typical Program case should present the full spectrum of representation (e.g., bail and release; discovery review; plea negotiation and/or trial; research and writing; guideline calculation and sentencing factors). The Mentor is the primary attorney and is ultimately responsible for the representation, including final decision-making authority about legal strategy, and communication with the client.

The Mentor is obligated to train and supervise the Mentee during each stage of the case while maintaining discretion regarding the extent of the Mentee's involvement depending on the unique needs of the case and the experience of the attorney. The Mentee may confer, on behalf of the defendant and under the direction of the Mentor; with the government; chambers; the U.S. Probation office and other agencies; as well as the defendant's family, friends, potential witnesses, and interpreters. Under the direction of the Mentor, the Mentee may participate in hearings and trials. The Mentee shall serve in a development capacity through one Program assignment unless the Mentor and/or CJA Panel Selection Committee determines the Mentee needs additional Mentor Program assignments and/or other related training.

Both the Mentor (with the exception of a Mentor employed by the FDOM) and Mentee will submit their billings through eVoucher. The Mentor will receive the current CJA hourly rate. At the conclusion of the representation, the Mentor will review both the Mentee's work and his/her proposed bill. If the Mentor certifies in writing that the Mentee's work meets the high standards required of members of the Montana CJA Panel, the Mentee will submit a voucher requesting compensation at 75% of the current standard CJA hourly rate, rounded to the nearest dollar amount. The only expenses the Mentee may incur are travel related expenses, such as mileage and parking. It is the responsibility of the Mentor to front other out-of-pocket expenses and seek reimbursement when appropriate. (See [Chapter II, Part C – Compensation and Expenses of Appointed Counsel, and Chapter III, Parts A & B – Authorization and Payment for Investigative, Expert or Other Services](#)).

Continuing Legal Education (CLE) and CJA Minimum CLE Requirements -- Attorneys who serve on the CJA Panel must maintain compliance with the continuing education requirements of their licensing state. Additionally, with the exception of the members of the appellate panel, to remain on the CJA Panel, attorneys must: (1) within a three (3) year period complete 15 CLE hours of continuing education programming approved by the State Bar of Montana in the area of federal criminal defense practice, and (2) attend at least two panel meetings each year.

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. Meeting attendance will usually garner at least one hour of Montana CLE credit at no cost. Please contact the CJA Team at MTX_CJASA@fd.org or call CJA Supervising Attorney Wendy Holton at 406-447-5753 or Panel Administrator, Adina Poitra, at 406-727-5328 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. In order to promote networking and collegiality, Panel Attorneys are encouraged to attend the conference, at least once during the three (3) year period.

The CJA Supervising attorney is always available for questions, assistance in obtaining resources and services providers, help with billing, case consultation, advice, motion samples, or just to brainstorm. Absent a legal conflict, attorneys with the Federal Defenders are also available for consultation with CJA Counsel. The organization also maintains an informational and research website: <https://mt.fd.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 CJA. The Training Division of DSO provides substantial training and other resource support to Federal Defender Organization (FDO) staff and CJA panel attorneys. The programs are provided at no cost to counsel and there are some scholarships available to assist with travel. Go to www.fd.org for a listing of current events and an archive of accessible training materials and reference publications.

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.

A person qualifies for CJA representation if his or her 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.***

District of Montana CJA Panel Information and Forms

United States District Court Website. Information pertaining to the function, operation and administration of the Criminal Justice Act in the District of Montana is available on the official website of the [United States District Court for the District of Montana](#). Each CJA Panel Attorney should be familiar with the CJA Information and Forms which can be accessed on the site including the following:

- Joining the CJA Panel

- CJA Plan and Panel Process
 - District of Montana CJA Plan
 - CJA Plan Appendix A: Bylaws of the Federal Defenders of Montana, as Amended
 - CJA Plan Appendix B: Panel Management Protocol
 - CJA Selection Committee
 - Appointment of CJA Reviewing Judge

- CJA Guidelines and Policies
 - Public Disclosure of Attorney Fee Information (CJA 19)
 - CJA Guidelines Ch. 2 (attorney fees)
 - CJA Guidelines Ch. 3 (services other than counsel)
 - CJA Plan Appendix B: Panel Management Protocol

- Using eVoucher
 - FAQs
 - Contacts for Questions
 - Attorney Training Manual

- Forms to Use:
 - CJA 23 Financial Affidavit
 - CJA 23 Financial Affidavit Schedule A
 - CJA New Vendor Registration Form
 - W-9 for New Vendors

Federal Defender of Montana Website. Panel members can access additional information and forms by signing in to the CJA Section of the Federal Defenders of Montana website. These include:

- CJA Billing and Compensability Guide

- Forms

- Service Provider AUTH form (complete and upload to an AUTH in eVoucher to request funding for service providers).
- REC form (complete and upload in the Documents section of the CJA 20 on cases where attorney fees exceed the presumptive maximum).
- A link to the Forms page of the District Court website which includes:
 - ECF User Registration Form
 - Motion for Leave to File Conventionally
 - AUTH 24 and Transcript Designation and Ordering Form
 - FTR Gold Transcript Designation and Ordering Form
 - 2254 Habeas Petition
 - 2255 Motion to Vacate
- A link to the National Federal Court Forms page.

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 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*](#). 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 are found 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 ORT 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.***