



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 objective is to provide all eligible persons with timely, cost-effective counsel services consistent with the best practices of the legal profession and the independence of the defense function. 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 effective 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 Guidelines for Administering the CJA and Related Statutes ("CJA Guidelines"), Vol. 7 of the Guide to Judiciary Policy.

**II. Definitions.**

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

"Counsel" includes private attorneys appointed to the CJA Panel, attorneys employed by the Federal Defenders of Montana, Inc., and any attorney appointed by a judge under the Act.

"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.

"CJA Judge" means the Judge designated by the Chief Judge to exercise ultimate review and approval authority over requests for and payment of CJA funds.

"CJA Supervising Attorney" means the attorney funded and managed by the Federal Defenders of Montana to administer the CJA Panel and eVoucher as described in Appendix C to this Plan.

### III. Providing Counsel.

#### 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;
  - d. is serving a term of probation or supervised release and:
    - i. faces modification of a condition or term of probation or supervised release; or
    - ii. seeks modification or early termination of probation or supervised release and is eligible to do so,and Federal Rule of Criminal Procedure 32.1 requires a hearing;
  - e. is under arrest, when such representation is required by law;
  - f. remains entitled to appointment of counsel in parole proceedings under any amendment to the Sentencing Reform Act of 1984 or law relevant to that Act;
  - g. is subject to a mental condition hearing under 18 U.S.C. ch. 313;
  - h. is in custody as a material witness;
  - i. is entitled to appointment of counsel in connection with prisoner transfer proceedings under 18 U.S.C. § 4109;
  - j. is seeking relief under 28 U.S.C. §§ 2254 or 2255, provided:
    - i. the person is sentenced to death, or
    - ii. an evidentiary hearing is required;
  - k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or

1. faces loss of liberty in a case and federal law requires the appointment of counsel.
2. Discretionary. Whenever a judge determines that the interests of justice so require, representation may be provided for any financially eligible person who wants counsel and 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, 2254, or 2255 and is not sentenced to death (*see* III.A(1)(j));
  - c. is charged with civil or criminal contempt and faces loss of liberty;
  - d. has been called to testify before a federal authority with the power to compel testimony and, before or during testimony, there is reason to believe the person may be subject to loss of liberty, criminal prosecution, or civil or criminal contempt;
  - e. has been advised by a federal officer or agent that the person is a target of a grand jury investigation;
  - f. is considering a pretrial diversion program proposed by the United States;
  - g. is held for international extradition under 18 U.S.C. ch. 209; or
  - h. has standing to contest the forfeiture of property in a judicial civil forfeiture proceeding as defined in 18 U.S.C. §983(i) and is represented by counsel appointed under the CJA in connection with a related criminal case.
3. Ancillary Matters. Pursuant to 18 U.S.C. § 3006A(c), representation may also be furnished for financially eligible persons in ancillary matters as appropriate to the proceedings. The judge should consider criteria listed in the CJA Guidelines.

B. Time to Appoint Counsel.

1. Counsel must be appointed as soon as the person meets the criteria for mandatory appointment and appears before a judge. Alternatively, a judge may act *sua sponte*, or the person or available counsel may move for appointment.
2. When appointment is discretionary, counsel must be appointed when a judge finds the conditions for appointment are met and appointment is appropriate.

3. 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, regardless of membership on the CJA Panel, if special circumstances support such appointment.

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. In every federal capital prosecution and capital habeas proceeding under 28 U.S.C. §§ 2254 or 2255, the appointing judge:

- a. must be satisfied that each appointed attorney has the time and skill to represent the defendant properly in light of the seriousness of the penalty and the unique and complex nature of the litigation;
- b. must consult with the Federal Defenders of Montana regarding the qualifications, number, and selection of counsel and must give substantial deference to the recommendations;
- c. must follow 18 U.S.C. §§ 3005 and 3599;
- d. must consult, as appropriate, and must direct counsel to consult, the Office of Defender Services Death Penalty Resource Counsel through the Administrative Office of the United States Courts;
- e. must not appoint on collateral review any attorney who represented the defendant/petitioner in the original criminal proceedings or on direct review;
- f. in proceedings under 28 U.S.C. § 2254, must not appoint any attorney who represented the petitioner on collateral review in the state trial court; and
- g. except as otherwise specified here, must follow Chapter 6 of the CJA Guidelines.

- D. Financial Eligibility for Representation. Based on the person's completed Form CJA 23, the applicable CJA Guidelines, and any other information deemed relevant, a judge will determine whether the person qualifies for representation under the Act.

#### **IV. Duties of Appointed Counsel.**

- A. Standards. Counsel must provide high-quality representation consistent with the best practices of the legal profession, commensurate with services rendered by privately retained counsel, and regardless of the race, color, religion, sex, gender identity, age, national origin, or disabling condition of the person represented.
- 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.
  - 5. If trial counsel prefers to withdraw in favor of new counsel on appeal, trial counsel must first file the notice of appeal to preserve the client's right to appeal and then move to withdraw in the Court of Appeals, asking for the appointment of substitute counsel. (Circuit Rule 4.1(c))

#### **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 receive funding under the Act and to furnish attorneys throughout the District. The Chief Federal Defender is responsible for the supervision and

management of the Federal Defenders of Montana and the CJA Supervising Attorney. 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. Resource management and compensation issues are incorporated in Appendix B.
3. CJA Supervising Attorney. The Federal Defenders of Montana will fund and manage a CJA Supervising Attorney who will administer the CJA Panel and eVoucher pursuant to the Memorandum of Understanding between the Court and the Federal Defenders, incorporated into this Plan as Appendix C.

B. Qualifications of All Counsel.

1. Counsel 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. Counsel 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, as soon as possible after starting employment with the Federal Defenders or being appointed to the CJA Panel, the United States Supreme Court;
  - b. possess strong litigation skills;
  - c. 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;
  - d. be attuned to developments in federal criminal defense law, practice, and procedure and consider guidance provided by national resources such as the Federal Adaptation of the National Legal Aid and Defender Association Performance Guidelines for Criminal Defense Representations;
  - e. be a competent and risk-aware user of technology including CM/ECF.
  - f. possess appropriate tools for litigation and discovery/e-discovery management, legal research, and investigation;



- g. comply with all Local Rules governing attorneys and representation and promptly advise the Chief Federal Defender (if employed by the Federal Defenders of Montana) or the CJA Supervising Attorney (if a CJA panel member) of changes in legal employment, such as changing firms or serving as a substitute judge, and;
- h. upon receiving notice from any jurisdiction that a disciplinary authority has found probable cause to believe conduct warranting discipline has occurred notify the Chief Federal Defender (if employed by the Federal Defenders of Montana), or the CJA Supervising Attorney (if a panel member) and provide copies of documents issued in that action.

## **VI. The CJA Panel**

### **A. Size.**

The size of the CJA Panel will be determined by the CJA Panel Committee, based on panel attorney caseloads and activity. The CJA Panel must be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so panel attorneys will each receive an adequate number of appointments to maintain their federal criminal-defense work proficiency, thereby enabling them to provide high-quality representation consistent with the best practices of the legal profession.

### **B. Joining the CJA Panel.**

1. Equal Opportunity. All qualified attorneys are encouraged to apply for CJA Panel membership. The CJA Panel Committee shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, national origin, gender identity, sexual orientation, age, religion, or disability.
2. Qualifications. In addition to the qualifications set forth in section V(B) CJA Panel Members must:
  - a. remain apprised of developments in federal criminal-defense law, practice, and procedure, including electronic-discovery techniques, and courtroom technology;
  - b. complete at least 15 hours of CLE credits in the area of federal criminal defense every three years and attend at least two local panel meetings sponsored by the Federal Defenders each year;
  - c. have the facilities, resources, and technological capabilities to effectively and efficiently manage their cases, including access to office space to meet with clients and the technological resources to receive, review, organize, and otherwise manage electronic discovery, records, and courtroom technology; and

- d. know and comply with the requirements of electronic filing and eVoucher, including how to submit requests for investigative, expert, and other services.
3. Application. Application forms for membership on the CJA Panel are available from the Federal Defenders. Completed applications must be addressed to the CJA Committee and submitted to the administrative coordinator.
4. Appointment to CJA Panel. The Court will approve attorneys for membership on the CJA Panel after receiving recommendations from the CJA Panel Committee.
5. Review. Once appointed, an attorney's membership on the CJA panel is reviewed every five years, unless otherwise determined by the CJA Panel Committee. For member attorneys whose continuation on the Panel has never been reviewed, at least eight attorneys will be reviewed per year until all have been reviewed.
6. Mentor Program. Unless excused, new panel members must complete the District of Montana Mentor Program found at VI(E);

C. Removal from the CJA Panel.

1. Nothing in this Plan creates a property interest in being or remaining on the CJA Panel.
2. Any member of the CJA Panel who is suspended or disbarred from the practice of law by any court will be removed from the CJA panel.
3. A member of the CJA Panel may be removed from the Panel at any time at the discretion of the Court.

D. Appointments of CJA Panel Members.

1. The CJA Supervising Attorney will maintain a current list of all CJA Panel member attorneys, including each member's qualifications, experience, and appointments.
2. The CJA Supervising Attorney is responsible for the systematic distribution of cases to counsel and the day-to-day management of the CJA Panel.

a. Criteria Governing Appointments from the CJA Panel.

- i. Appointments. Panel appointments should be made on a rotational basis subject to exceptions based on, among other things, a panel member's caseload, the nature and complexity of the case, an attorney's experience, and geographical considerations.

- ii. Proportionality. At least 25% of all counsel appointed each year will be Panel members, unless special circumstances support a temporarily lower proportion. The CJA Supervising Attorney will compile statistical data reflecting the division of appointments between the Federal Defenders and the CJA Panel.
- iii. 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, an individual CJA Panel member must be designated by order.

E. CJA Panel Committee.

- 1. Establishment. The CJA Panel Committee will be established by the Court in consultation with the Chief Federal Defender and the CJA Supervising Attorney. Upon approval of the Chief Judge, the CJA Committee is authorized to amend Appendix B.
- 2. Membership. The CJA Panel Committee will be appointed by order of the Chief Judge and will consist of:
  - a. one district judge acting as chair;
  - b. one United States magistrate judge;
  - c. the CJA Judge, who may also be the district or magistrate judge member;
  - d. the Chief Federal Defender;
  - e. at least three attorneys who:
    - i. have been members of the CJA Panel for at least five years;
    - ii. are based in different divisions of the Court;
    - iii. will serve staggered terms of three years each; and
  - f. the CJA Supervising Attorney, ex officio; and
  - g. the CJA Panel Administrator, ex officio, 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.

1. Duties. The CJA Panel Committee will:
  - a. convene at least once each year;
  - b. review applications for membership on the CJA Panel and recommend approval of the applicants it finds qualified to fill existing vacancies.
  - c. consider recommending to the Article III judges removal of any member of the CJA Panel who:
    - i. no longer meets the standards in Part IV.A and B or the qualifications in Part V.B, above;
    - ii. engages in conduct that would render continued panel service inappropriate;
    - iii. unless excused by the CJA Supervising Attorney, has not accepted at least three appointments in the previous year; or
  - d. review the operation and administration of the CJA Panel over the preceding year, including:
    - i. apportionment of cases between the Federal Defenders and the CJA Panel;
    - ii. 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;
    - iii. 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;
    - iv. emergence of persistent issues or difficulties encountered by defendants or counsel;
    - v. assessment of the level of need and appropriate topics or programs for training, refreshing, and updating CJA Panel members' knowledge and skills;
    - vi. payment and processing of vouchers for counsel and other services, considering input of both the CJA Supervising Attorney and counsel; and

- vii. balance between distribution of appointments and compensation among the members of the CJA Panel and quality representation of each CJA defendant.
- e. select one of the attorney members to serve as the CJA Panel Attorney District Representative; and
- f. recommend to the Chief Judge any appropriate changes to the Panel membership, to this Plan, or to Appendices B or C.

F. District of Montana Mentor Program.

1. Purposes. The Mentor Program allows a new or prospective Panel member to become familiar with the culture and expectations of federal criminal defense practice in Montana, regardless of experience in other jurisdictions, and provides a structured training platform for mentees to sharpen and demonstrate qualification for membership on the Panel.
2. Mentors and Mentees.
  - a. The Chief Federal Defender and the CJA Supervising Attorney will select qualified and willing CJA counsel to serve as mentors. Mentors will be assigned one mentee at a time unless all available mentors already have one mentee.
  - b. Mentors must agree to monitor mentees in at least one felony case, to comply with reporting requirements, and to attend additional yearly training designated by the CJA Committee.
3. Program Framework.
  - a. The mentee must serve with a mentor in one case and may be required to attend or participate in other cases or proceedings as required by the Chief Federal Defender and the CJA Supervising Attorney.
  - b. The Chief Federal Defender and the CJA Supervising Attorney will select a mentor case that appears to present a full spectrum of issues including pretrial release or detention, discovery review, guideline calculations, motion practice, plea negotiations and/or trial, and sentencing matters.
  - c. Both the mentor and the mentee will be appointed as counsel in the case.
  - d. The mentor is lead counsel, has primary authority over client communications and legal strategy, and has ultimate responsibility for the client's representation. The mentor will supervise the mentee and determine appropriate tasks and extent of

responsibility with due regard for the needs of the case and the mentee's experience.

- e. The mentee may act and must be prepared to act for the client in court and out of court under the mentor's direction.

#### 4. Payment.

- a. If a panel member, the mentor will be paid at the standard CJA rate. The mentee will be paid 75% of the standard CJA rate, rounded to the nearest dollar. The mentee must keep contemporaneous time sheets in the form required by eVoucher and must seek payment through eVoucher.
- b. The mentor must review the mentee's work and voucher and file *ex parte* certification in CM/ECF that the mentee performed the work reflected in the mentee's time sheets, that the time expended was reasonably necessary for adequate representation, and that payment in the amount the mentee requests is necessary to provide fair compensation. The mentee may submit a voucher only after the mentor has filed the required certificate.
- c. Other than travel expenses incurred by the mentee, the mentor will seek reimbursement for reasonable expenses incurred in the course of the representation.
- d. The mentee may request reimbursement only for travel expenses.

#### G. Payment of CJA Panel Members.

The Judges of this District recognize that CJA Panel members' expertise, time, and effort is essential to the administration of justice. CJA Panel members will be paid at the hourly rate established by the Administrative Office of the United States Courts for time in court and time reasonably expended out of court and will be reimbursed for reasonable expenses, all in accordance with the Act and the Guidelines. The CJA Judge and the CJA Supervising Attorney will work together to protect the independence of the defense function while ensuring counsel provide cost-effective services consistent with the best practices of the legal profession.

### VII. Supersession and Effective Date.

This Plan supersedes all prior Criminal Justice Act Plans of this District as of June 1, 2020.

#### Appendices:

- A. Current Bylaws of the Federal Defenders of Montana, Inc.

B. CJA Panel Attorney Compensation and Funding for Services

C. Memorandum of Understanding re: CJA Supervising Attorney

IT IS SO ORDERED.

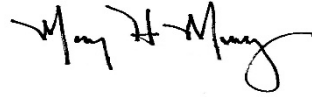
DATED this 9th day of November, 2023.



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Brian Morris, Chief Judge  
United States District Court

APPROVED BY THE JUDICIAL COUNCIL OF THE NINTH CIRCUIT COURT OF  
APPEALS on the 13th day of November, 2023.



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Mary Murguia, Chief Judge  
Ninth Circuit Court of Appeals

BY-LAWS  
OF  
MONTANA FEDERAL DEFENDER PROJECT INC.

ARTICLE I  
Principal Office

The principal office for the transaction of business of the corporation is hereby fixed and located at the administration offices of the State Bar of Montana, Helena, Montana. The Board of Directors may at any time or from time to time change the location of the principal office from one location to another in the said State.

ARTICLE II  
Seal

The corporation shall have a common seal consisting of two concentric circles with the words, "Montana Federal Defender Project, Inc." together with the date of the incorporation of this corporation.

ARTICLE III  
Membership

The corporation shall have no members.

ARTICLE IV  
Board of Directors

Section 1. Number of Directors.

The Board of Directors shall consist of seven (7) Directors. A majority of the Board shall constitute a quorum for the transaction of business. The Board of Directors shall be appointed by the President of the State Bar of Montana, who shall be termed the "Appointing Authority" herein.

Section 2. Powers of Directors.

All corporate powers of the corporation shall be exercised by or under the authority of, and the business and affairs of the corporation shall be controlled by the Board of Directors. Without limiting the generality of the foregoing, the Board of Directors shall have the following powers:



- a) To select and remove all the other officers, agents and employees of the corporation, prescribe such powers and duties for them as may not be inconsistent with law, with the Articles of Incorporation or the By-Laws, fix their compensation and require from them security for faithful service.
- b) To conduct, manage and control the affairs and business of the corporation, and to make such rules and regulations therefor not inconsistent with law, with the Articles of Incorporation or the By-Laws, as they may deem best.
- c) To change the principal office for the transaction of the business of the corporation from one location to another within the same state; to fix and locate from time to time one or more subsidiary offices of the corporation within or without the State of Montana; to designate any place within or without the State of Montana for the holding of any Directors' meetings; and to adopt, make and use a corporate seal and to alter the form thereof from time to time as in their judgment they may deem best, provided such seal shall at all times comply with the provisions of law.
- d) To borrow money and incur indebtedness for the purposes of the corporation, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefor.

### Section 3. Election and Term of Office.

Each director shall serve a term of three (3) years, beginning on October 1 of each year, and in order to provide and insure a continuity of experience, the terms of office of the Directors shall be staggered in the following manner: Of the original seven (7) directors, three (3) shall be elected for a term of three (3) years; two (2) shall be elected for a term of two (2) years and two (2) shall be elected for a term of one (1) year.

### Section 4. Vacancies.

Any vacancy or vacancies in the Board of Directors resulting from death, incapacity, resignation, expiration of term of office, removal, or otherwise, shall be filled by the appointing authority.

### Section 5. Place of Meetings.

The annual organizational meeting and regular meetings of the Board of Directors shall be held at any place within or without the State which has been designated from time to time by resolution of the Board or by written consent of all Directors. In the absence of such designation, regular meetings shall be held at the principal office of the corporation. Special meetings of the Board may be called and held either at a place so designated or at the principal office.

### Section 6. Annual Organizational Meeting.

In September of each year, the Directors shall hold an annual organizational meeting at which officers shall be elected, and such other business as may properly come before the meeting shall be transacted. Notice of the annual organizational meeting shall be given to the Directors in the manner provided for special meetings of the Board of Directors.

### Section 7. Meetings of Directors.

Meetings of the Board of Directors for any purpose or purposes shall be called at any time by the President or by any two Directors. Special meetings of the Board shall be held upon seven (7) days' notice by first-class mail or forty-eight (48) hours' notice delivered personally or electronically.

### Section 8. Waiver of Notice; Consents and Approvals.

The transactions of any meeting of the Board of Directors, however called and noticed and wherever held, shall be as valid as though had at meeting duly held after regular call and notice, if a quorum be present and if either before or after the meeting each of the Directors not present signs a written waiver of notice or a consent to holding such meeting or an approval of the Minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

### Section 9. Adjournment.

In the absence of a quorum at any meeting of the Board of Directors, the majority of the Directors present may adjourn the meeting to another time and place. If the meeting is adjourned for more than twenty-four hours, notice of any adjournment to another time and place shall be given prior to the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

### Section 10. Removal.

A director may be removed from office with or without cause by the vote of a majority of the Directors then holding office, with the concurrence of the appointing authority.

### Section 11. Compensation.

The Directors shall receive no compensation for their services as such.

## ARTICLE V

### Officers

#### Section 1. Officers.

The officers of this corporation shall be a president, vice president, secretary and treasurer, and such other officers as the Board of Directors may appoint. When the duties do not conflict, one person, other than the president, may hold more than one of the offices. Officers other than the president need not be members of the Board of Directors.

#### Section 2. Election.

The Board of Directors shall elect all officers of the corporation for terms of one (1) year, or until their successors are elected and qualified.

#### Section 3. Vacancies.

A vacancy in any office because of the death, resignation, removal, disqualification or otherwise shall be filled by the Board of Directors.

#### Section 4. President.

Subject to the control of the Board of Directors, the president shall have general supervision, direction and control of the business and affairs of the corporation. He shall preside at all meetings of the Directors, and shall have such other powers and duties as may be prescribed from time to time by the Board of Directors.

#### Section 5. Vice President.

In the absence or disability of the president, the vice president shall perform all the duties of the president, and in so acting shall have all the powers and perform such other duties as may be prescribed from time to time by the Board of Directors.

### Section 6. Secretary.

The secretary shall keep a full and complete record of the proceedings of the Board of Directors, shall keep the seal of the corporation and affix the same to such papers and instruments as may be required in the regular course of business, shall make service of such notices as may be necessary or proper, shall supervise the keeping of the books of the corporation, and shall discharge such other duties as pertain to the office of as prescribed by the Board of Directors. The offices of Secretary and Treasurer may be held by the same person.

### Section 7. Treasurer.

The treasurer shall receive and safely keep all funds of the corporation and deposit the same (other than funds invested or reinvested as otherwise authorized by these By-Laws or by the Board of Directors) in such bank or banks as may be designated by name or class by the Board of Directors. The treasurer shall have such other powers and perform such other duties as may be prescribed from time to time by the Board of Directors. The offices of Secretary and Treasurer may be held by the same person.

## ARTICLE VI Committees

### Section 1. Committees of Directors.

The Board of Directors, by resolution adopted by the majority of the Directors then in office, may designate one or more committees, each of which shall consist of two or more Directors, which committees, to the extent provided in the said resolution, shall have and exercise the authority of the Board of Directors in the management of the corporation; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed by law. Appointments to committees which have the authority of the Board of Directors shall be made by a vote of the majority of Directors then in office.

### Section 2. Other Committees.

Other committees not having and exercising the authority of the Board of Directors in the management of the corporation may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. The president of the corporation shall appoint the members of such committees. Any member thereof may be removed by the person or persons authorized to appoint such member whenever in his, her or their judgment the best interests of the corporation shall be

served by such removal.

### Section 3. Term of Office.

Each member of a committee shall continue as such until the next annual organizational meeting of the Directors and until his successor is appointed, unless the committee shall be sooner terminated, or unless such member shall cease to qualify as a member thereof.

### Section 4. Chairperson.

One member of each committee shall be appointed chairperson by the person or persons authorized to appoint the members thereof.

### Section 5. Vacancies.

Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

### Section 6. Quorum.

Unless otherwise provided in the resolution of the Board of Directors designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

### Section 7. Rules.

Each committee may adopt rules for its own government not inconsistent with these By-Laws or with rules adopted by the Board of Directors.

## ARTICLE VII

### Contracts, Checks, Deposits and Funds

#### Section 1. Contracts.

The Board of Directors may authorize any officer or officers, agent or agents of the corporation, in addition to the officers so authorized by these By-Laws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and any such authority may be general or confined to specific instances.

## Section 2. Checks, Drafts, etc.

All checks, drafts or orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation, shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the treasurer or an assistant treasurer and countersigned by the president or a vice president of the corporation. The organization shall comply with requirements of the Administrative Office of the United States Courts.

## Section 3. Deposits.

All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the Board of Directors may select by name or by class.

## Section 4. Gifts.

The Board of Directors may accept on behalf of the corporation any contribution, gift, bequest, or devise for the general purposes or for any special purposes of the corporation.

## Section 5. Books and Records.

The corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board of Directors and committees having any of the authority of the Board of Directors. All books and records of the corporation may be inspected by any Director, or a Director's agent or attorney, for any proper purpose at any reasonable time. The appointing authority has the right to inspect the books at any time. The corporation shall promptly file all tax returns required by the United States or the State of Montana.

## ARTICLE VIII Amendments of By-Laws

These By-Laws may be amended or repealed and new By-Laws adopted by the vote of a majority of the members of the Board of Directors at any Directors' meeting.

## ARTICLE IX Operating Plan

The corporation shall establish and maintain a staff of attorneys and serve as the

Community Defender Organization for the United States District Court for the District of Montana, in accordance with the Plan adopted by the by the Judges of that court and approved by the Judicial Council of the Ninth Circuit, pursuant to the Criminal Justice Act of 1964, as amended.

ARTICLE X  
Miscellaneous

The president, or any vice president, and the secretary, or any such other officers as the Board of Directors may select for that purpose, are authorized to vote, represent and exercise on behalf of this corporation all rights incident to any and all voting securities of any other corporation or corporations standing in the name of this corporation. The authority herein granted to said officers to vote or represent on behalf of this corporation any and all voting securities held by this corporation in any other corporation or corporations may be exercised either by such officers in person or by any person authorized so to do by proxy or power of attorney duly executed by such officers.

I do hereby certify that I am the Secretary of the Montana Federal Defender Project, Inc., a Montana corporation, and that the foregoing By-Laws were duly adopted at a meeting of the Board of Directors of said corporation held on ~~October-21~~, 1991.  
*September*

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said corporation this 17<sup>th</sup> day of October, 1991.

  
JAMES T. HARRISON, JR.

(SEAL)

**FILED**

SEP 05 1991

SECRETARY OF STATE

## ARTICLES OF INCORPORATION

T.S.  
RD #200e

1. The name of the corporation is: MONTANA FEDERAL DEFENDER PROJECT, INC.
2. The period of duration is perpetual.
3. (a) The primary and specific purpose for which this corporation is formed is to implement the aims and purposes of the Criminal Justice Act of 1964, 18 U.S.C. §3006A, as amended, and, pursuant thereto, to operate and administer one or more defender assistance offices to provide assistance to the indigent accused in federal trial courts and courts of appeal; to provide assistance, as assigned by a district court judge or magistrate judge of the United States District Court for the District of Montana, to the indigent in death penalty *habeas corpus* proceedings filed pursuant to 28 U.S.C. §2254; and to provide educational programs for law students and qualified attorneys in order to advance the administration of criminal justice.  
  
(b) The general purposes for which this corporation is formed are to operate exclusively for charitable and educational purposes, in accordance with tax-exempt organizations as set forth under the Internal Revenue Code, 26 U.S.C. §501.  
  
(c) This corporation is organized pursuant to the Montana Non-Profit Corporation Act, §§35-2-101, *et seq.*, MCA, and shall have and exercise all rights and powers conferred on corporations organized thereunder, provided, however, that this corporation is not empowered to engage in any activity which in itself is not in furtherance of the purposes as set forth in subparagraphs (a) and (b) of this paragraph.  
  
(d) This corporation shall not, as a substantial part of its activities, carry on propaganda, or otherwise attempt, to influence legislation. This corporation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.
4. No part of the income, properties, or assets of this corporation, on dissolution or otherwise, shall inure to the benefit of any member, officer or director of this corporation, and upon liquidation or dissolution all funds, properties and/or assets of this corporation, remaining after paying or providing for all debts and obligations, derived from sources from, within or under the auspices of the United States shall be distributed and paid over to the Administrative Office of the United States Courts for the benefit and use of the United States of America; and all funds, properties and assets of this corporation, remaining after paying or providing for all debts and obligations, derived from gifts, bequests, endowments, or the like, shall be distributed and paid over to the State Bar of Montana for the benefit and use of the State Bar of Montana.
5. The initial registered office of this corporation shall be at 46 North Last Chance Gulch, P.O. Box 577, Helena, Montana 59624, and its initial registered agent at such address shall be George L. Bousliman.
6. There are seven directors constituting the initial Board of Directors, as set forth below:



Helena Maclay  
Attorney at Law  
P.O. Box 8957  
Missoula, MT 59807-8957

James D. Walen  
Attorney at Law  
P.O. Box 7157  
Billings, MT 59103-7157

Donald E. White  
Attorney at Law  
1800 West Koch, #9  
Bozeman, MT 59715

Leonard J. Haxby  
Attorney at Law  
P.O. Box 3008  
Butte, MT 59702-3008

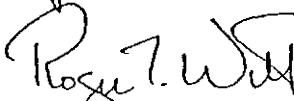
Judith Bartram  
Attorney at Law  
P.O. Box 2269  
Great Falls, MT 59403-2269

James T. Harrison, Jr.  
Attorney at Law  
2225 Eleventh Avenue, #21  
Helena, MT 59601

James W. Johnson  
Attorney at Law  
P.O. Box 3038  
Kalispell, MT 59903

7. The incorporator of this corporation is Roger T. Witt, Ugrin, Alexander, Zadick & Slovak, P.C., #2 Railroad Square, P.O. Box 1746, Great Falls, Montana 59403.

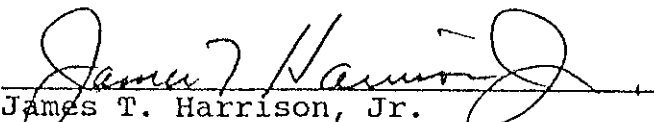
IN WITNESS WHEREOF, for the purposes of forming this non-profit corporation under the laws of the State of Montana, and in accordance with the provisions of the Internal Revenue Code, I, the undersigned, constituting the incorporator of this corporation, have executed these Articles of Incorporation this 4th day of September, 1991.

  
\_\_\_\_\_  
ROGER T. WITT

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify that I am the duly elected and acting Secretary of THE FEDERAL DEFENDERS OF MONTANA, INC., a Montana non-profit corporation, and that the attached is a copy of the Bylaws of the corporation as duly adopted at a meeting of its Board of Directors held on the 21st day of September, 1991.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 9<sup>th</sup> day of October, 1992.

  
James T. Harrison, Jr.

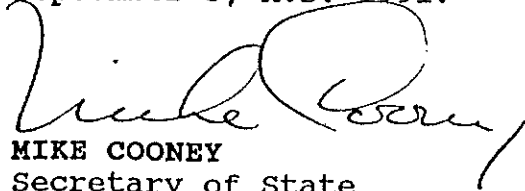
SECRETARY OF STATE  
STATE OF MONTANA

CERTIFICATE OF INCORPORATION

I, MIKE COONEY, Secretary of State of the State of Montana, do hereby certify that the Articles of Incorporation for the incorporation of MONTANA FEDERAL DEFENDER PROJECT, INC., a Montana nonprofit corporation, duly executed pursuant to the provisions of Section 35-2-203, Montana Code Annotated, have been received in my office and conform to law.

NOW, THEREFORE, I, MIKE COONEY, as such Secretary of State, by virtue of the authority vested in me by law, hereby issue this Certificate of Incorporation to MONTANA FEDERAL DEFENDER PROJECT, INC., a Montana nonprofit corporation, and attach hereto a copy of the Articles of Incorporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Montana, at Helena, the Capital, this September 5, A.D. 1991.

  
MIKE COONEY  
Secretary of State



**RECEIVED**

MAR 31 1995

FEDERAL DEFENDERS  
OF MONTANA**AMENDED BY-LAWS**

BE IT RESOLVED that the By-Laws of the Federal Defenders of Montana be modified to read as follows:

**ARTICLE I**  
**Principal Office**

The principal office for the transaction of business of the corporation is hereby fixed and located at the offices of the Federal Defenders of Montana, Great Falls, Montana. The Board of Directors may at any time or from time to time change the location of the principal office from one location to another in the State.

**ARTICLE II**  
**Seal**

The corporation shall have a common seal consisting of two concentric circles with the words "The Federal Defenders of Montana, Inc."

**ARTICLE IV**  
**Board of Directors****Section 1. Number of Directors.**

The Board of Directors shall consist of seven (7) Directors. A majority of the Board shall constitute a quorum for the transaction of business.

**Section 2. Powers of Directors.**

All corporate powers of the corporation shall be exercised by or under the authority of, and the business and affairs of the corporation shall be controlled by the Board of Directors. Without limiting the generality of the foregoing, the Board of Directors shall have the following powers:

a) To select and remove all the other officers, agents and employees of the corporation, prescribe such powers and duties for them as may not be inconsistent with law, with the Articles of Incorporation or the By-Laws, fix their compensation and require from them security for faithful service.

b) To conduct, manage and control the affairs and business of the corporation, and to make such rules and regulations therefor not inconsistent with law, with the Articles of Incorporation or the By-Laws, as they may deem best.

c) To change the principal office for the transaction of the business of the corporation from one location to another within the same state: to fix and locate from time to time one or more subsidiary officers of the corporation within or without the State

of Montana; to designate any place within or without the State of Montana for the holding of any Directors' meetings; and to adopt, make and use a corporate seal and to alter the form thereof from time to time as in their judgment they may deem best, provided such seal shall at all times comply with the provisions of law.

d) To borrow money and incur indebtedness for the purposes of the corporation, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations and other evidences of debt and securities therefor.

e) To appoint directors as vacancies arise.

#### Section 4. Vacancies.

Any vacancy or vacancies in the Board of Directors resulting from death, incapacity, resignation, expiration of term of office, removal, or otherwise, shall be filled by the remaining directors at any duly noticed meeting of the Board of Directors, even if the number of directors present is not sufficient to constitute a quorum.

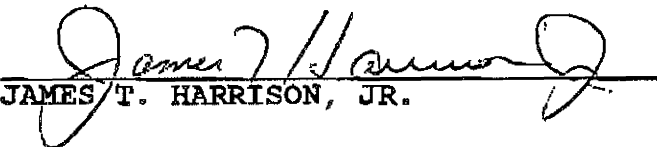
#### Section 10. Removal.

A director may be removed from office with or without cause by the vote of a majority of the directors then holding office.

All references in the By-Laws to "Montana Federal Defender Project, Inc." are hereby changed to refer to The Federal Defenders of Montana, Inc. Except as modified, the By-Laws of the corporation are hereby ratified and approved.

I do hereby certify that I am the Secretary of The Federal Defenders of Montana, Inc., a Montana corporation, and that the foregoing By-Laws and amendments thereto were duly adopted by mail ballot by the Board of Directors of the said corporation effective March 13, 1995.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the corporation this 29<sup>th</sup> day of March, 1995.

  
JAMES T. HARRISON, JR.

**FILED**

NOV - 9 1992

ARTICLES OF AMENDMENT

OF

320872

MONTANA FEDERAL DEFENDER PROJECT, INC.

SECRETARY OF STATE

*fd \$15.00*

The undersigned, being the President and Secretary of the Montana Federal Defender Project, Inc., a Montana non-profit corporation, do hereby adopt, execute and acknowledge the following Articles of Amendment for said corporation:

The name of the corporation is hereby amended from the Montana Federal Defender Project, Inc. to The Federal Defenders of Montana, Inc.

The amendment was adopted effective October 9, 1992, and has been unanimously approved by resolution of the directors of the corporation. The corporation has no members and approval of the amendment by members is not required.

*Helena S. Maclay*  
\_\_\_\_\_  
Helena S. Maclay  
President

ATTEST:

*James T. Harrison, Jr.*  
\_\_\_\_\_  
James T. Harrison, Jr.  
Secretary

# SECRETARY OF STATE


## STATE OF MONTANA

### CERTIFICATE OF AMENDMENT TO THE CERTIFICATE OF INCORPORATION

I, MIKE COONEY, Secretary of State of the State of Montana, do hereby certify that the Articles of Amendment to the Articles of Incorporation of MONTANA FEDERAL DEFENDER PROJECT, INC., a Montana nonprofit corporation, duly executed pursuant to the provisions of Section 35-2-225, Montana Code Annotated, has been received in my office and conforms to law.

NOW, THEREFORE, I, MIKE COONEY, as such Secretary of State, by virtue of the authority vested in me by law, hereby issue this Certificate of Amendment to the Certificate of Incorporation of MONTANA FEDERAL DEFENDER PROJECT, INC. changing its name to THE FEDERAL DEFENDERS OF MONTANA, INC., a Montana nonprofit corporation, and attach hereto a copy of the Articles of Amendment to the Articles of Incorporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Montana, at Helena, the Capital, this November 9, A.D. 1992.



*Mike Cooney*  
MIKE COONEY  
Secretary of State

**UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF MONTANA**

**CRIMINAL JUSTICE ACT PLAN**

**APPENDIX B**

CJA Panel Attorney Compensation and Funding for Services

I. Court Compensation Policies.

A. Providing fair compensation to appointed counsel is a critical component of the administration of justice. Attorneys on the CJA Panel must be compensated for time expended in and out of court and reimbursed for expenses reasonably incurred. In determining the reasonableness of out-of-court time, three factors will be considered:

1. Whether the work was performed;
2. Whether the work performed was a reasonable means of protecting the client's interests in the litigation; and
3. Whether the time spent to accomplish that work was reasonable.

B. Voucher reductions will be limited to mathematical errors, instances in which work billed was not compensable or undertaken, instances in which the hours billed clearly exceed what was reasonably required to complete the task; and instances in which services and expenses incurred are not compensable or reasonable.

C. Vouchers and funding requests for service providers, excess attorney compensation, and other litigation costs will not be delayed or reduced to lessen costs in response to adverse government-funding circumstances.

D. Absent extraordinary circumstances, review of CJA-related requests will be initiated within 30 days of submission.

II. Obtaining Resources and Submitting Compensation Claims.

A. Obtaining Investigative, Expert and Other Services. Counsel may obtain authorization to engage interpreters, investigators, paralegals, and other experts when reasonably necessary for the defense of the case.

1. Requesting Funds. Except for services under the threshold amount, see 18 U.S.C. § 3006A(e)(2)(A) and CJA Guidelines § 310.20.30(a), counsel must



submit an authorization request in eVoucher to obtain services other than counsel. The preauthorized amounts are per case, per defendant, regardless of whether the panel member is the first or subsequently appointed panel member on the case.

2. When Service Provider Funding Requests (AUTHs) Are Required. If expenditures for service providers will exceed the amounts provided by 18 U.S.C. § 3006A(e)(2)(A) and CJA Guidelines § 310.20.30(a), a Service Provider Funding Request—for the entire amount requested—must be submitted and approved in eVoucher prior to exceeding those amounts. Counsel must provide justification establishing the reasonableness of the request for expert services.
3. New Service Provider on Appointment of Second or Subsequent CJA Counsel. CJA counsel appointed after another has withdrawn must utilize the same service providers retained by previous counsel unless new counsel shows compelling reasons to retain a new service provider. Second or subsequent counsel must obtain approval, using the AUTH process, for all services provided during their representation.
4. Multiple Defendants Using One Service Provider. In multi-defendant cases, counsel should consider sharing one expert where possible and consistent with effective and conflict free representation for each defendant.
5. Transcripts. Authorization to order transcripts of court proceedings is obtained using the AUTH 24 process in eVoucher. Such transcripts are ordered using the Transcript Designation and Ordering form filed in CM/ECF. Payment is obtained by filing a CJA 24 in eVoucher. Authorization to obtain transcripts of discovery, or other out of court proceedings, is obtained using the AUTH process for service providers. Payment is obtained by filing a CJA 21 in eVoucher.
6. Presumptive Rates for Service Providers. The District of Montana adopts the Ninth Circuit presumptive rate schedule for service providers available in Appendix 2 of the Ninth Circuit Policy and Procedures Manual. With the exception of interpreters, the low end of the range is the District's presumptive rate. The presumptive rate for interpreters is \$50 per hour. Compensation above this rate is reserved for providers with extraordinary skills or to address unusual difficulties with availability.

B. Expenses.

1. Expenses. Reasonable and necessary expenses will be reimbursed consistent with Appendix 7 of the Ninth Circuit's CJA Policies.

2. Travel Out of District and/or Overnight. Counsel need not seek preapproval for necessary overnight travel in Montana or a bordering state to attend court, to see a client, or to investigate. Otherwise, counsel must consult with the CJA Supervising Attorney before incurring expenses for out-of-district travel.
3. Government Rates and Per Diem. When travel is necessary in an appointed case, counsel is entitled to, and should, request government rates at hotels, etc. Reimbursement is available for travel time and actual expenses reasonably incurred up to the location's per diem rate found on the GSA website.
4. Receipt Requirement. Detailed receipts are required for all meal expenditures, expenditures over \$50.00, and expenditures of less than \$50.00 whenever they are available.
5. Unusual or Large Expenses. Counsel must consult with the CJA Supervising Attorney before incurring unusual expenses and non-travel expenses greater than \$800.00.
6. Non-Reimbursable Expenses.
  - a. Subpoenas and Witness Fees and Expenses. A service provider cannot be compensated for serving subpoenas unless such service is accomplished while the provider performs other services, such as investigating. Otherwise, fees and expenses of fact witnesses and costs of service of process cannot be paid from CJA funds. Expenses related to the testimony of a fact witness are paid by the Department of Justice through the United States Marshals Service.
  - b. Motions to Court. Motions for subpoenas under Fed. R. Crim. P. 17(b) or for fees and expenses for fact witnesses or a defendant under 28 U.S.C. § 1825 must:
    - i. comply with D. Mont. L.R. CR 17;
    - ii. state that fees and expenses of fact witnesses and costs of service of process cannot be paid from CJA funds under CJA Guidelines § 230.66.50;
    - iii. request that the U.S. Marshals Service be ordered to pay witness fees and expenses; and
    - iv. if formal service of subpoenas is required, request that the Marshals Service be ordered to effect or pay for service of process.

- c. Overhead. General office overhead and administrative tasks, regardless of who performs them, are not reimbursable.
- d. Personal Items. Personal items and services for the client are not reimbursable.

C. Submitting Compensation Claims for Payment.

1. Submitting Claims. Panel attorneys' and service providers' claims for payment are submitted in eVoucher.
  - a. Recording Time. Counsel and service providers must record time and service in eVoucher, or by other detailed notation, contemporaneously with performance of services.
  - b. Billing Increment. Counsel and service providers who bill in time increments must bill in tenths of an hour.
  - c. Aggregation. Counsel must aggregate time spent on one type of task that is performed at various times over the course of a day to accurately reflect the total time spent.
2. Time to Submit in eVoucher.
  - a. CJA Panel members must submit vouchers seeking payment for their services and services other than counsel through eVoucher with appropriate documentation, no later than 60 days after judgment or dismissal.
  - b. Interim vouchers for CJA Panel members and service providers may be submitted no more frequently than every 60 days, provided the amount claimed exceeds \$500.00.
3. Claims for Counsel Services Over the Statutory Maximum. Submission of a CJA 20 and Request for Excess Compensation (REC) Form in eVoucher constitutes a request for payment over the statutory maximum. The REC form must provide sufficient detail to justify a finding that the case involves extended or complex representation, and that the amount is necessary to provide fair compensation.
4. Review of Claims. The CJA Supervising Attorney will review all claims for reasonableness, mathematical and technical accuracy, and compliance with CJA Guidelines. The CJA Judge will be consulted on requests that are atypical or high cost.

5. Voucher Adjustments. The FDOM CJA Unit or the CJA Judge may communicate informally with counsel about billing questions. If a determination is made that a claim for compensation should be adjusted, counsel will receive prior notice from the CJA Supervising Attorney of the proposed adjustment with a brief statement of the reason for it and an opportunity to address the matter. No notice is required for adjustments under \$500.
  6. Review of Voucher Reduction. If counsel disagrees with the CJA Supervising Attorney's proposed reduction of a voucher, the CJA Supervising Attorney will notify the CJA Judge in writing. Counsel may submit a statement explaining counsel's disagreement with the reduction and requesting review by the CJA Judge. The CJA Judge will review all relevant materials and make a final decision. This option is not available for voucher reductions based on billing or mathematical errors.
- D. Case Budgeting. CJA Panel members are encouraged to use case-budgeting for representations that will likely exceed 300 attorney hours or if total case costs might exceed \$50,000.00. Counsel should contact the CJA Supervising Attorney or the 9<sup>th</sup> Circuit Case Budgeting Attorney to discuss whether a case may be appropriate for budgeting and the procedures for submitting a case budget.
- E. Record Retention and Production.
1. Record Retention. CJA Panel members must retain all billing records, including those received from service providers for at least three years after final approval or rejection of a voucher.
  2. Confidentiality and Disclosure. Counsel's time sheets and supporting documents will not be filed and are confidential but may be discoverable in a proceeding under 28 U.S.C. § 2255.
- F. Guide to Counsel. A comprehensive CJA Billing and Compensability Guide to submitting claims in eVoucher is available on the website of the Federal Defenders of Montana or by contacting the Federal Defenders' CJA Unit.

IT IS SO ORDERED, effective November 28, 2022.



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Brian Morris Chief Judge  
United States District Court

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding sets forth the agreement between the United States District Court for the District of Montana (“the Court”) and the Federal Defenders of Montana (“FDOM”) regarding the CJA Supervising Attorney’s duties and interaction with the Court.

### **I. Purpose of the Agreement**

In 2015, Chief Justice Roberts commissioned a comprehensive, impartial review of the Criminal Justice Act, 18 U.S.C. § 3006A (“CJA”). The ad hoc committee, chaired by the Honorable Kathleen Cardone, published a final report in November 2017. The Report concluded that the judiciary can and should give counsel appointed under the Act greater authority and autonomy in representing their clients.

The Court and FDOM endorse the Cardone Report’s conclusion that the Criminal Justice Act panel, 18 U.S.C. § 3006A(a)(3), should be managed principally by a defender organization rather than judicial officers. The Court and FDOM seek to achieve the objectives of high-quality representation by panel attorneys and fiscal accountability. The Court and FDOM intend to enhance the quality of representation provided to indigent clients by providing panel attorneys a greater degree of autonomy and confidentiality while also ensuring professional and fiscal accountability.

To that end, the Court and FDOM agree to the creation and maintenance of a CJA Supervising Attorney position within FDOM. Consistent with the Criminal Justice Act, the Court will retain ultimate authority to evaluate the performance of the panel system and to pay attorneys and service providers.

### **II. Roles of FDOM and the Court**

FDOM will fund and manage the CJA Supervising Attorney. Because FDOM is a Community Defender Organization, *see* D. Mont. Criminal Justice Act Plan App. A, the CJA Supervising Attorney will not be a federal employee.

The Chief District Judge will appoint a Magistrate Judge to serve as the District's CJA Judge with ultimate review and approval authority over requests for and payment of CJA funds. Court staff will provide the CJA Supervising Attorney appropriate access to eVoucher and CM/ECF. The clerk will process payments. The Court reserves the right to perform an annual audit of approved vouchers and such additional audits as circumstances warrant.

### **III. Duties of the CJA Supervising Attorney**

#### **A. Panel Management**

- Manage membership on the Criminal Justice Act panel
- Recruit attorneys for the panel and the mentorship program
- Enter new panel attorneys into eVoucher
- Distribute cases to panel attorneys in accordance with the District's CJA Plan, Part V(C)
- Train panel attorneys in use of eVoucher and policies and procedures under the District's CJA Plan
- Collaborate with FDOM in providing Continuing Legal Education for panel attorneys and their staff

#### **B. Administration of eVoucher**

- Serve as the administrator of eVoucher
- Open and process all new appointments in eVoucher
- Set up accounts and reset passwords for panel attorneys
- Create and monitor workflows
- Answer technical questions from panel attorneys

- Monitor processing of attorneys' requests for CJA funds

#### C. Funding Requests and Voucher Review

- Review and approve panel attorneys' requests for funding for service providers, transcripts, and travel
- Review vouchers submitted by panel attorneys and service providers for reasonableness, mathematical and technical accuracy, and compliance with the CJA Guidelines
- Consult with panel attorneys and the CJA Judge as necessary to resolve disputes about specific vouchers
- Ensure expeditious review, approval, and payment of vouchers
- Consult with a Ninth Circuit Case Budgeting Attorney when fees for one attorney in a case and his or her service providers exceed \$50,000
- As appropriate, manage case budgeting procedures, including working with panel attorneys to prepare, implement, and modify case budgets

#### D. CJA Policies and Procedures

- Consult with the CJA Committee to review and revise policies and procedures for effectiveness and ease of administration
- Remain current on Administrative Office and Ninth Circuit policies and procedures, case law and pending or enacted legislation pertinent to the CJA or criminal defense funding, and practical innovations in other districts or circuits
- Implement and communicate policy changes to panel attorneys and ensure online information is accurate and up-to-date

E. Reporting to the Court

- Provide legal analysis, advice, and assistance on all panel matters as requested by the Court
- Annually, collect and analyze data and prepare a report regarding panel utilization
- Every six months, collect and analyze data and submit, to the Chief Judge and District Executive, in a form acceptable to the Court, a report regarding voucher payments to CJA counsel and to service providers
- Work with the Court to make publicly available a statement of expenditures of CJA funds in a consolidated manner consistent with 18 U.S.C. § 3006A

F. Confidentiality

- Protect credentials conferring access to eVoucher and CM/ECF
- Preserve the confidentiality of sealed documents and sensitive material unless the CJA Judge authorizes disclosure

**IV. Panel Attorneys' Requests for Funds and Payment**

The Judges of the District of Montana delegate to the CJA Judge ultimate approval authority over panel attorneys' requests for CJA funds. The CJA Judge reserves the right to deny, approve, or question payment of any voucher consistent with the CJA Guidelines.

Subject to the CJA Judge's retention of ultimate authority, the CJA Supervising Attorney is responsible for reviewing and approving requests for transcripts, travel, and services other than counsel as well as vouchers seeking payment for panel attorneys and other service providers. The CJA Supervising Attorney must consult with the CJA Judge on requests for atypical or high-cost



services and may consult with the CJA Judge on any request. The CJA Supervising Attorney will then forward vouchers to the clerk of court or designee for certification and payment.

The CJA Supervising Attorney may receive and view information that is accessible to a panel attorney, including sealed documents in CM/ECF and material designated sensitive under D. Mont. L.R. CR 16.4. The CJA Supervising Attorney shall not disclose confidential or sensitive information except, as necessary, to the CJA Judge. Panel attorneys' disclosure of information about a case or client in consultation with the CJA Supervising Attorney shall not be deemed to waive or weaken attorney-client privilege or client confidentiality.

The CJA Supervising Attorney has discretion: 1) to allow interim billing, and 2) to require any case to be budgeted.

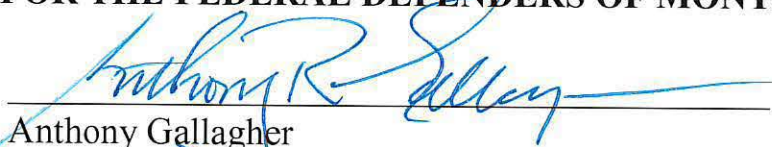
**FOR THE UNITED STATES DISTRICT COURT OF MONTANA**



DATE 4/1/2021

\_\_\_\_\_  
Brian M. Morris, Chief Judge  
United States District Court

**FOR THE FEDERAL DEFENDERS OF MONTANA**



DATE 3/31/21

\_\_\_\_\_  
Anthony Gallagher  
Executive Director  
Federal Defenders of Montana