



Montana Legislative Services Division
Legal Services Office

TO: Task Force on State Public Defender Operations

FROM: Julie Johnson, Legal Services Office

DATE: May 2, 2016

RE: Options for Billing Standards or "Soft Caps" for Contract Attorneys (1, G)

At the February 2016 meeting, I was asked to identify options for the use of billing standards, commonly referred to as "soft caps" for the delivery of public defender services provided by contract attorneys. Currently, contract attorneys are paid \$62 per hour for their time. Contract attorneys are allowed to charge for travel time at the same rate. Contract attorneys also receive a \$25 per month stipend for office supplies.

As noted in earlier meetings, Federal Defenders of Montana, Inc., uses a system whereby its contract attorneys (CJA Panel) can earn a maximum amount for representing an indigent person accused of violating federal law, known as a statutory case compensation maximum. The maximum, however, is "soft," because under special circumstances it will be lifted if the attorney can prove that the case was more complicated.

OPD is not against establishing billing standards and is currently pursuing enhancements to its Customer Relationship Management (CRM) software to collect better data in order to establish what the case maximum for a certain charge should be.

Also, as noted in earlier meetings, CJA Panel attorneys are not allowed to collect a fee for representation until the conclusion of a case, which means the attorney has to essentially "front" the costs. It is unlikely that the majority of OPD contract attorneys would be able to forego payment for services rendered until the conclusion of a case. Instead, the Task Force may want to consider recommending monthly or quarterly payments to OPD contract attorneys up to the case maximum amount.

The Criminal Justice Act (CJA) establishes maximum hourly panel attorney compensation rates for capital and non-capital cases. 18 U.S.C. § 3006A(d)(1)[18 U.S.C. § 3599(g)(1)]. 18 U.S.C. § 3006A(d) and 18 U.S.C. § 3599(g)(1) authorize the Judicial Conference to increase annually these hourly rate maximums by an amount not to exceed the federal pay comparability raises given to federal employees.

Currently, the statutory case compensation maximum for a CJA Panel attorney are approximately:

- Felony Charge \$9,900
- Misdemeanor \$2,800
- Non-Capital Habeas Petition \$9,900