The Office of the Appellate Defender (OAD) is one of the three independent branches of Montana’s Statewide Public Defender System. The OAD must be located in Helena, and the vast majority of its cases are appeals to the Montana Supreme Court. However, OAD is also assigned petitions for post-conviction relief which are heard in district courts throughout Montana.

OAD in Relation to the Public Defender Commission
The Public Defender Commission (“Commission”) supervises and directs the public defender system, including the OAD. The Commission appoints and supervises the Chief Appellate Defender, who serves at the Commission’s pleasure. The Chief Appellate Defender manages and supervises the OAD. The Commission sets the Chief Appellate Defender’s compensation, which must be commensurate with the position’s duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

The Chief Appellate Defender
The Chief Appellate Defender must be an attorney licensed to practice in Montana and must maintain a client caseload, as determined by the Commission. Additionally, the Chief Appellate Defender directs, manages, and supervises the OAD, including:

1. Budgeting, reporting, and related functions;
2. Hiring and supervising staff;
3. Contracting for services (i.e., court reporters and contract attorneys);
4. Promptly assigning cases to an appropriately experienced appellate attorney who is immediately available to the defendant or petitioner;
5. Ensuring that appellate defender assignments comply with standards for attorneys in capital cases;
6. Keeping a record of OAD’s services and presenting reports to the Commission;
7. Implementing standards and procedures established for the OAD by the Commission;
8. Conferring with the Chief Public Defender on budgetary issues and submitting budgetary requests and reports through the Chief Public Defender; and
9. Performing all other duties assigned by the Commission.

The OAD in Relation to the Office of the Public Defender
Montana law requires the appointment of counsel through direct appeal to the Montana Supreme Court. Accordingly, the OAD receives most of its cases by referral from a trial attorney at the Office of the Public Defender (OPD). The OAD is not supervised by the OPD or its Chief Public Defender.

OAD’s Cases
OAD provides appellate services to clients in criminal and civil cases, some of whom are screened for financial eligibility. First, the OAD provides services in direct appeals to indigent clients in criminal cases involving:

1. A felony with the possibility of incarceration;
2. A misdemeanor with the possibility of incarceration; and
3. A witness in a criminal grand jury proceeding (46-4-304).
Next, the OAD provides appellate services to indigent clients in civil cases involving:

1. A question of parentage;  
2. A parent, guardian, or other person with physical or legal custody of a child subject to a dependent/neglect proceeding;  
3. Sentence review (note, however, no direct appeal from sentence review is possible under present Montana law);  
4. Post-conviction relief;  
5. Habeas corpus (note, however, there is no direct appeal from habeas corpus, but habeas corpus petitions can be filed directly to the Montana Supreme Court);  
6. A parent or guardian of a developmentally disabled person involuntarily committed to a residential facility;  
7. An individual involuntarily committed due to a mental disorder; and  
8. An individual involuntarily committed due to alcoholism.

The OAD also provides appellate services to clients, regardless of their financial ability to retain private counsel, in civil proceedings involving:

1. Any party involved in an abuse or neglect petition;  
2. A juvenile in Youth Court or subject to the Extended Jurisdiction Act;  
3. A juvenile entitled to assigned counsel under the Interstate Compact on Juveniles (note, however, there no direct appeal from this type of proceeding is possible under current Montana law);  
4. A minor petitioning for waiver of parental consent for abortion;  
5. A developmentally disabled individual committed to a residential facility;  
6. A minor voluntarily committed to a mental health facility;  
7. A person subject to a petition for the appointment of a guardian or conservator; and  
8. A ward when the ward’s guardian has filed a petition to require medical attention for the ward’s mental disorder.

Finally, the OAD engages in litigation based on the Montana Supreme Court’s original jurisdiction. The OAD refers to these filings as writs, which occur as a part of litigation in cases to which OPD or OAD was previously appointed.

Initiation of and Resolution of OAD’s Cases
The decision whether to appeal rests solely with the client; not OAD. When OAD files an appeal, the case may then be:

(1) fully briefed and decided by the Montana Supreme Court;  
(2) resolved by agreement (AKA a stipulation);  
(3) dismissed by the client, based on the attorney’s recommendation after review of the record; or  
(4) resolved by an Anders brief and a motion for OAD to withdraw. The OAD files an Anders brief and a motion to withdraw when

the client wishes to continue an appeal, but the OAD attorney believes no valid legal issues exist for the Supreme Court to resolve.

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1 Mont. Code Ann. § 47-1-104 (establishing a statewide system); Mont. Code Ann. § 47-1-105 (establishing a public defender commission); Mont. Code Ann. § 47-1-201 (establishing the office of the public defender); Mont. Code Ann. § 47-1-205 (establishing the office of the appellate defender); Mont. Code Ann. § 47-1-118 (establishing a conflicts office).
2 Mont. Code Ann. § 47-1-205(1)
3 Mont. Code Ann. § 3-2-203
4 Title 46, chapter 21
5 Mont. Code Ann. § 47-1-105
6 Mont. Code Ann. § 47-1-205(2)(a)
7 Mont. Code Ann § 47-1-205(2)(a)
8 Mont. Code Ann. § 47-1-205(2)(a)
9 Mont. Code Ann. § 47-1-205(2)(b)
10 Mont. Code Ann. § 47-1-205(3)(h)
11 Mont. Code Ann § 47-1-205(3)(a)
12 Mont. Code Ann § 47-1-205(3)(d)
13 Mont. Code Ann. § 47-1-205(3)(e)
14 Mont. Code Ann § 47-1-205(3)(b)
15 Mont. Code Ann. § 47-1-205(3)(c)
16 Mont. Code Ann § 47-1-205(3)(f)
17 Mont. Code Ann § 47-1-205(3)(g)
18 Mont. Code Ann § 47-1-205(3)(i)
19 Mont. Code Ann. § 47-1-205(3)(j)
20 Mont. Code Ann. § 46-1-103(1)
23 Mont. Code Ann. § 47-1-111
24 Mont. Code Ann. § 47-1-104(a)(i)
25 Mont. Code Ann. § 47-1-104(a)(i)
26 Mont. Code Ann. § 47-1-104(a)(x)
27 Mont. Code Ann. § 47-1-104(4)(a)(ii)
28 Mont. Code Ann. § 47-1-104(4)(a)(iii)
29 Mont. Code Ann. § 47-1-104(4)(a)(iv)
30 Mont. Code Ann. § 47-1-104(4)(a)(v)
31 Mont. Code Ann. § 47-1-104(4)(a)(vi)
32 Mont. Code Ann. § 47-1-104(4)(a)(vii)
33 Mont. Code Ann. § 47-1-104(4)(a)(viii)
34 Mont. Code Ann. § 47-1-104(4)(a)(ix)
35 Mont. Code Ann. § 47-1-104(4)(b)(i)
36 Mont. Code Ann. § 47-1-104(4)(b)(ii)
37 Mont. Code Ann. § 47-1-104(4)(b)(iii)
38 Mont. Code Ann. § 47-1-104(4)(b)(iv)
39 Mont. Code Ann. § 47-1-104(4)(b)(v)
40 Mont. Code Ann. § 47-1-104(4)(b)(vi)
41 Mont. Code Ann. § 47-1-104(4)(b)(vii)
42 Mont. Code Ann. § 47-1-104(4)(b)(viii)
45 Mont. Code Ann. § 46-8-103(2); Anders v. California, 386 U.S. 738 (1967)