

## **2011 ANNUAL REPORT**

### **MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM**

#### **2011 APPELLATE DEFENDER COMMISSION**

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Thomas Harp, Administrator

Lyle N. Marshall, Deputy Administrator

## **MISSION STATEMENT**

### **MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM (MAACS)**

As stated in Regulation Section 1(1): The duty of this office shall be to compile and maintain a statewide roster of attorneys eligible and willing to accept criminal appellate defense assignments and to engage in activities designed to enhance the capacity of the private bar to render effective assistance of appellate counsel to indigent defendants.

### **MAACS GOALS and OBJECTIVES**

MAACS is charged with ensuring that criminal appeal and post-conviction cases are assigned in a systematic way to qualified attorneys, that these attorneys received appropriate training and resource materials to enable them to provide effective representation for their clients, and that the attorneys comply with the MAACS Regulations and the performance standards outlined in the Minimum Standards for Indigent Criminal Appellate Defense Services, and the MAACS Comments thereto, when representing their clients.

### **EXECUTIVE SUMMARY and HIGHLIGHTS**

#### **2011 Appellate Case Assignments**

Appellate counsel was assigned in 3267 cases. This figure represented a reduction from the 3523 cases assigned in 2010; a decrease of 256 cases, or 7.3%.

#### **MAACS Roster**

On January 1, 2011 there were 114 total members, as follows: 48 Level 1 attorneys, 35 Level 2 attorneys, 31 Level 3 attorneys. As of December 31, 2011, there were 105 roster members: 44 Level I attorneys, 31 Level II attorneys and 30 Level III attorneys.

#### **MAACS Attorney Assignments**

MAACS roster attorneys were assigned in 2690 cases; 119 fewer than in 2010.

#### **2011 Roster Performance Complaint Investigation and Resolution Statistics**

MAACS administrative staff investigated and resolved 96 correspondence matters which involved complaints concerning roster representation. After investigation, MAACS administrative staff resolved the matters which involved complaints concerning roster representation as follows:

46 matters were determined to not implicate a violation of the Standards: 48% of the performance complaints investigated.

25 matters involved complaints from clients concerning the nature and sufficiency of attorney-client communication: 26% of the performance complaints investigated. All of these matters were resolved by the attorneys involved.

5 matters involved complaints regarding roster attorneys who no longer represented the complainant because of withdrawal and the appointment of substitute counsel or were resolved by other action by the attorney or client: .05% of the performance complaints investigated.

20 matters resulted in a determination that a violation or violations of the Standards occurred: 20.8% of the performance complaints investigated. The determinations involved 13 either current or former roster attorneys. Implicated violations of all of the Standards except Standard 9 were investigated. 30 individual Standards violations were determined to have been demonstrated. Two roster members resigned from the roster in response to the complaint investigation(s) being conducted. Two lawyers investigated had previously resigned from the roster; one as a result of complaint investigations being conducted at that time.

2011 CLIENT COMPLAINTS AND STANDARDS VIOLATIONS
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Total MAACS Correspondence	246
Total Attorney Performance Complaints Investigated	96
Number of Attorneys Investigated	13
Complaint Determinations Finding a Standard Violation	20
Number of Standard Violations Found	31
Violations Found by Standard	

Minimum Standard 1	2	Minimum Standard 4	0	Minimum Standard 7	4
Minimum Standard 2	5	Minimum Standard 5	7	Minimum Standard 8	3
Minimum Standard 3	1	Minimum Standard 6	9	Minimum Standard 9	0

**Roster Attorney Retention Re-application Review and Resolution Statistics**

Pursuant to Regulations Section 4(1) and (2) and 4(6)(g), each attorney already on the roster, and wishing to remain on the roster, must re-apply for roster retention every three years. 2011 was one of these years.

MAACS sent 113 re-application packets to current roster attorneys. 106 re-applications for retention were returned. Four attorneys resigned rather than re-apply for retention. One attorney did not return an application within the required period and died shortly thereafter. Two attorneys provided with re-application packets did not reapply for roster membership, and one attorney resigned after having re-applied for roster membership, after contact by the administrator. These attorneys had failed to demonstrate compliance

with Regulation 4(6)(b), which requires Level II and III attorneys to submit for decision at least four assigned appeals per year. (The official date of these removals was January 4, 2012.)

As of December 31, 2011, MAACS had reviewed and retained 32 attorneys on the roster. The remaining investigations were concluded in 2012. The final results of all retention investigations will appear in the 2012 Annual Report.

### **Roster Attorney Continuing Legal Education (CLE) Compliance**

At the conclusion of 2011 all but roster attorney was in compliance with MAACS Regulation Section 4(6)(f) requirements regarding CLE. The one attorney who was not in compliance resigned from the roster on January 31, 2012.

### **Staff Reduction and Re-organization**

MAACS staff was reduced from 7 to 5. The Systems/Financial Manager and the Case Assignment Coordinator retired under the State Incentive Retirement Program. MAACS reorganized its staff structure and the responsibilities of retired staff were assigned to remaining staff members, as follows: Administrative Assistant/Office Manager/Systems and Financial Manager; Roster Manager/Legal Secretary; Case Assignment Coordinator /Receptionist.

### **IT Improvement and Case Assignment System**

MAACS and Supreme Court Judicial Information Services continued its joint-project to create an internet-based Case Assignment System for use by all of the Circuit Courts and the agency through the Michigan Courts Application Portal. This project was anticipated to be completed by mid-2012.

### **MAACS Roster Attorney Video-Conferencing**

SADO secured permission to, and expanded the availability of, its video-conferencing capability to MAACS roster attorneys. SADO records reflected that MAACS roster attorneys conducted 106 interviews with imprisoned appellate clients by video.

## **HISTORY AND GENERAL OVERVIEW**

Indigent Michigan felony defendants who submit requests within certain time limits and in certain circumstances are entitled to have publicly funded counsel appointed to represent them on appeal. The overall system for providing indigent appellate felony defense is governed by the seven-member Appellate Defender Commission, pursuant to MCL 780.711 *et seq.*

In Administrative Order 1981-7, the Supreme Court approved the MAACS Regulations (Regulations or Regulation) and the Minimum Standards for Indigent Criminal Appellate

Defense Services (Standards). These were developed by the Appellate Defender Commission for the creation and operation of the Appellate Assigned Counsel System. These Regulations govern the duties of the MAACS administration, the operation of the state-wide appellate case-assignment system and regulatory responsibilities which roster attorneys must meet. The Standards set the representational benchmark for all roster attorneys. MAACS began its administration in 1985.

The system has two components. Indigent appeals are assigned to the State Appellate Defender Office (SADO), the state-funded appellate public defender office established in 1969. The remaining appeals are assigned to members of the MAACS roster of attorneys. These attorneys are private assigned counsel. They are paid through County appropriations to the Circuit Courts and pursuant to fee schedules set by the Circuit Courts.

In 2002, the Appellate Defender Commission amended the Regulations to require a triennial review process for all roster attorneys. Based on a review of a renewal application, the applicant's work on prior felony appeals, and the assessment of any supplementary materials, the Administrator then notifies the re-applicant whether he or she will be retained at Level 1, 2 or 3, or not be retained on the roster. Non-retention may be for specified good cause or administrative reasons. An attorney who is not retained has the right to appeal the Administrator's decision to the Commission.

In 2004, the Supreme Court revised the Standards (Administrative Order 2004-6). The revisions combined some former Standards with one another and slightly modified others. The nine revised Minimum Standards became effective on January 1, 2005. This same date, additions to the Standards and to the MAACS Regulations became effective. The Appellate Defender Commission added Comments to the revised Minimum Standards. These Comments guide MAACS in its evaluation of roster attorney compliance with the revised Standards. The Appellate Defender Commission also added Section 5 to the MAACS Regulations. Section 5 defines the confidentiality policy with regard to MAACS files and records.

On June 15, 2011, the Appellate Defender Commission amended Regulation 1(6) to reflect that the MAACS file retention policy is in compliance with MCL 18.1284-1292.

### **Budget History**

In 2002, reductions to MAACS funding resulted in the layoff of one full time administrative staff member and two half time paralegal/clerk positions.

In 2006-2007, further funding reductions occurred. Furlough days were avoided only because a MAACS employee required a long term medical leave in 2007, which created sufficient savings to meet personnel costs.

In 2007-2008, more funding reductions were imposed. All MAACS employees took 12 furlough days.

In 2008-2009, the legislature restored the funding reductions, allowing MAACS to continue its staffing levels without the need to take furlough days.

In 2009-2010, a funding reduction was addressed by implementing a variety of non-personnel cost reductions.

In FY 2010-2011, MAACS staff was reduced from 7 to 5 when two MAACS employees, the Systems/Financial Manager and the Case Assignment Coordinator, retired under the State Incentive Retirement Program. MAACS reorganized its staff structure and the responsibilities of retired staff were assigned to remaining staff members.

### **MAACS Personnel**

In 2011, MAACS staff consisted of the following people.

Two of the positions are administrative, and must be filled by members of the Bar:

Administrator: **Thomas M. Harp**

Deputy Administrator: **Lyle N. Marshall**

The early-retirement decisions of the Systems/Financial Manager and the Case Assignment Coordinator resulted in the administrative re-organization of the agency, as follows:

Administrative Assistant/Office Manager/Systems and Financial Manager: **MariaRosa Juarez Palmer**

Roster Manager/Legal Secretary: **Mary Lou Emelander**

Case Assignment Coordinator /Receptionist: **Jane Doyle**

### **MAACS REGULATORY STRUCTURE**

The MAACS regulatory structure has four primary components.

First, MAACS maintains the statewide roster of attorneys eligible and willing to receive assignments.

Second, and in conjunction with the trial courts, MAACS oversees the case assignment process. It ensures that cases are appropriately matched to qualified attorneys and that they are correctly distributed between roster attorneys and SADO. It responds to correspondence from a variety of sources regarding the operation of the assigned counsel system: courts, other branches of government, defendants and appellants, and the public.

Third, MAACS engages in roster oversight regarding the quality of representation provided by roster attorneys. It addresses concerns or complaints about the quality of roster performance. It regularly conducts wide-ranging attorney performance

investigations. It also makes specific determinations regarding allegations of roster attorney noncompliance with the Minimum Standards. Triennially, it conducts a “re-application review” of the performance of all roster members. It provides annual training to roster members and insures roster attorney compliance with annual CLE requirements. And it provides responsive assistance to the roster concerning representational, procedural or roster membership questions and concerns brought to MAACS.

Finally, MAACS performs a number of other functions important to its mission to provide high-quality, efficient and effective indigent appellate defense, including activities designed to enhance the capacity of the private bar to render effective assistance of appellate counsel to indigent defendants.

### **Roster Maintenance**

Regulation Section 4(2) classifies roster attorneys into three eligibility levels, depending on their qualifications.

A Level I attorney may only represent a defendant who was convicted at a jury trial of an offense carrying a statutory maximum sentence of 5 years or less, or by plea or at a waiver trial of an offense carrying a statutory maximum of 10 years or less.

A Level II attorney may only represent a defendant who was convicted at a jury trial of an offense carrying a statutory maximum sentence greater than 5 but not greater than 15 years, or by plea or at a waiver trial of an offense carrying a statutory maximum sentence greater than 10 years.

A Level III attorney may represent defendants convicted at trial or by plea of any felony, but may elect to represent only those convicted at trial. (For administrative purposes, “trial-only” Level III attorneys are designated “Level IV” attorneys.)

A Level II or III attorney may be assigned a Level I case only if no Level I attorney is available or when the attorney represents the defendant on a currently pending appeal of another conviction.

Regulation Section 4(6)(f) requires that roster attorneys complete seven hours of relevant continuing legal education (CLE) each year.

Roster attorneys who seek reclassification to a higher level must first meet “experience” requirements outlined by the Regulations. If those requirements have been met, MAACS conducts an in-depth performance review of the attorney’s work. If that review demonstrates eligibility for reclassification, it is implemented. The reclassification review process is discussed, below, at Roster Oversight.

Attorneys advise MAACS when they wish to join or leave local lists, as well as when their postal and e-mail addresses or phone numbers change. This information is then provided to the Circuits.

As noted above, all roster members have been required to reapply for retention on the roster every three years since 2002. 2011 was a “re-application year.” The retention review process is discussed, below, at Roster Oversight.

### **Roster Admission**

Pursuant to Section 2 of the Regulations, the administrator must compile a roster of attorneys eligible under Section 4 and willing to accept appointments to serve as appellate counsel for indigent criminal defendants. In determining the appropriate size of the roster the administrator must consider the total appointments available at each level, the number assigned to SADO and the distribution of cases among roster attorneys.

Pursuant to Section 4 of the Regulations, all attorneys interested in joining the MAACS roster must file an application and a writing sample with MAACS. The application to join the roster must contain information regarding the attorney’s prior criminal appellate experience, the jurisdictions from which the attorney wishes to receive appointments, a writing sample, and such other pertinent matters as the Appellate Defender Commission deems appropriate. The writing sample must consist of a brief or memorandum of law, on any subject, personally prepared by the applicant. A writing sample prepared in law school will suffice if no other is available.

Based on the information contained in the applications, the assessment of any supplementary materials, and review of the applicants’ work on prior felony appeals, attorneys who are also members in good standing of the State Bar of Michigan may be admitted to the roster and classified at Level I, Level II or Level III.

Because applicants admitted as Level I attorneys may have little or no prior appellate defense experience, these applicants must complete an orientation training program.

Applicants admitted at Levels II or III must meet the requirements for admission as a Level I attorney. Applicants admitted at Levels II or III must also meet recent appellate defense experience requirements.

Regulation Section 4(2)(b)(i) requires that a Level II attorney “must have conducted through submission for decision on the merits separate appeals of at least nine felony convictions, at least two of which arose from trials, including one jury trial, in Michigan or federal courts, during the three years immediately preceding the date of application.” Regulation Section 4(2)(c)(i) requires that a Level III attorney “must have conducted through submission for decision on the merits separate appeals of at least eighteen felony convictions, at least six of which arose from trials, including four or more jury trials, in Michigan or federal courts, during the three years immediately preceding the date of application.”

If admitted as a Level II or Level III attorney, an applicant may be required to complete an orientation program.



An additional method for roster admission is also available to Level II or III applicants. In exceptional circumstances, the Appellate Defender Commission may waive the requirements for Level II or III when it determines that an applicant has acquired comparable experience. If admitted as a Level II or Level III attorney on this basis, an applicant may be required to complete an orientation program.

### **2011 Roster Statistics**

As of December 31, 2011, there were 105 roster members: 44 Level I attorneys, 31 Level II attorneys and 30 Level III attorneys; 7 Level III attorneys accepted trial-only appointments.

In 2011 no one was admitted as a Level I roster attorney.

In 2011 the Appellate Defender Commission admitted, at Level II, one attorney based on comparable experience. The attorney was not required to complete an orientation program. Another attorney's request for admission to the roster through determination of comparable experience by the Appellate Defender Commission remained pending at the close of 2011.

In 2011 one roster attorney was reclassified from Level I to Level II, effective April 29, 2011. One attorney's request for reclassification from Level I to Level II was denied on March 23, 2011. This attorney had a fewer number of claim of appeal cases than required by the Regulations.

An attorney's request to be assigned trials-only Level III cases became effective July 11, 2011.

7 attorneys left the roster in 2011 unrelated to representational performance issues. Two left the practice of law (one Level I and one Level II). Two died (Level II and Level III). One indicated that other responsibilities did not allow time for appellate assignments (Level II). Three gave no reason for their resignations (two at Level I and one Level II).

MAACS addressed and resolved 86 correspondence matters regarding the maintenance of the roster in 2011. This correspondence included questions from inmates or the public regarding the roster, questions from prospective roster applicants, questions from roster clients regarding the parameters of roster attorney representation, questions regarding records, manuals and other matters.

### **Assignment Coordination**

The MAACS Regulations permit the circuit courts to determine whether appointed appellate counsel will be selected by the chief judge or by the "local designating authority" (LDA). All Michigan circuit courts use an LDA.

All assignments are made to SADO or MAACS roster attorneys who are members of a circuit's local list. Subject to a few regulatory exceptions, assignments are made on a strictly rotational basis. These exceptions include the appointment of SADO in a way that reflects assignment to it of a percentage of cases set by the Appellate Defender Commission. SADO may also be selected "out-of-sequence" for appointment in unusually long or complex cases.

An eligible attorney at the top of the rotated list may be "passed over" only for specified reasons, such as a conflict of interest or the fact that another eligible attorney is already representing the defendant on an active appeal. The name of the appointed attorney then drops to the bottom of the selection list.

A computerized assignment system has been fully operational since 2002. Trial court LDAs prepare orders of appointment while directly on-line with MAACS. The MAACS assignment coordinator is readily available for consultation with and assistance to the LDAs. Attorney address, telephone, and level changes are accessible to the trial courts through the MAACS database.

Once basic information is entered in response to prompts, the computer rotates the circuit's local list and presents the correct attorney's name for appointment. Once the proper order is generated, the LDA then prints the order at the trial court's end, obtains a judge's signature, and distributes copies of the order as the court rules require.

If the initial information used in preparation of an order of appointment is incorrect, the automated assignment process can be corrected by MAACS.

If an exception to the regular rotational system exists, the exception can be discovered and implemented by MAACS.

If a review of the local list fails to produce an eligible attorney willing to accept a particular appointment, the LDA refers that case to the MAACS administrator. The administrator identifies an attorney on the state-wide roster willing to accept the case and the appointment is then facilitated by MAACS.

Attorney selection errors by the trial courts have been virtually eliminated. This streamlined appointment process has provided substantial efficiencies to the trial courts.

Because MAACS opens manual and computer case files, data is now entered in the database as the orders are created, creating efficiencies for MAACS as well.

In 2011 MAACS continued its efforts to further improve the case assignment process. The current assignment system is "dial-up." In 2011, MAACS received significant assistance from Supreme Court Judicial Information Services to accomplish moving this system completely to the internet. It is projected that this will be accomplished in mid-2012.

In addition to the regular personnel support provided by MAACS to the circuit court assignment system, MAACS addressed and resolved 64 correspondence matters involving the operation of the appellate assigned counsel system in 2011. These matters primarily involved correspondence from inmates regarding pending or delayed requests for the appointment of counsel on appeal. In numerous cases, where, for example, the request for counsel was misfiled or overlooked, MAACS intervention resulted in the appointment of counsel. They also involved questions regarding post-conviction representation or relief, or involving Department of Corrections policies.

## **2011 Case Statistics**

In 2011, appellate counsel was assigned in 3267 cases. This figure represented a reduction from the 3523 cases assigned in 2010; a decrease of 256 cases, or 7.3%. In 2011, SADO was assigned in 586 cases, or 17.9% of the total number of assignments. MAACS roster attorneys were assigned in 2690 cases: 82.1%.

Included with this report are “MAACS Appendices.” The Appendices contain a series of Metrical Reports for 2011, prepared by MAACS, which describe the following:

1. Total Appellate Assignments.
2. Assigned Appeals, by Case Type and Level, by Circuit
3. Changes in Appellate Assignments 2009-2011, by Circuit.
4. Appeals by Jurisdictional Type, by Circuit.
5. SADO Assigned Appeals, by Case Type and Level.
6. Appeals of Resentencings, by Circuit.

## **Roster Performance Oversight**

### **General Roster Performance Oversight**

MAACS employs a variety of methods in oversight regarding the quality of representation provided by roster attorneys and their compliance with the Regulations and Standards.

MAACS investigates all complaints regarding dissatisfaction with roster attorney representation or which involve allegations of implicated noncompliance with the Standards and takes appropriate action.

MAACS reviews all roster attorney representational performance during triennial membership reapplication reviews.

MAACS reviews the work of each attorney seeking to be admitted to the roster, or reclassified, at Levels II or III.

MAACS provides the roster with continuing legal education (CLE). This includes annual CLE programs, reference materials, and legal, or MAACS policy, updates, as well as

one-on-one assistance in individual cases. MAACS monitors roster attorney compliance with CLE requirements.

MAACS regularly reviews court and internal records for evidence of possible non-compliance with the Regulations and Standards.

MAACS reviews pleadings and briefs filed by roster attorneys in the courts and with MAACS.

### **Roster Performance Complaint Investigation and Resolution**

Information concerning general dissatisfaction of roster attorney representation or that implicates violation of the Standards or the Regulations by roster attorneys comes to MAACS's attention from a variety of sources. These include client/defendant correspondence, defendant's family correspondence, court correspondence, other information from judges and court staff, court documents (i.e. register of actions), the Court of Appeals web site, orders involving remand for appointment of substitute counsel, information obtained per MAACS Regulations (i.e. Regulation 3(2)(a)), MAACS review of opinions, orders and pleadings, MAACS vouchers, MAACS roster attorneys, and other state bar members.

Information implicating a violation of the Standards or the Regulations is reviewed by the MAACS administrator, who either keeps it, or refers it to the deputy administrator, for investigation. The information is assigned a MAACS correspondence code.

The allegation is preliminarily investigated by gathering information through correspondence with the MAACS attorney, the client, the courts, and/or other appropriate parties.

If after initial investigation no violation of the Standards is found to be implicated by the complaint or allegations, the matter is closed with one of three correspondence codes, as outlined below. Notice of its resolution is communicated to the appropriate parties.

When a violation of the Standards is implicated by the complaint itself or after initial investigation, a complaint inquiry is issued to the attorney. The lawyer is asked to respond in writing to the allegation that a violation or violations of the Standards has or have been implicated by the complaint. The complainant (usually the attorney's client) is given the opportunity to respond to any answer the attorney provides.

Thereafter, MAACS conducts any independent investigation that may be necessary regarding the allegation(s), or regarding any additional information revealed during the course of this process which may implicate additional concerns, and then determines whether a substantial violation of the Standards has occurred.

Whether formally or informally resolved, where a violation is found to have occurred, the matter is assigned one of two correspondence codes, as outlined below. A complaint

determination is written and sent to the appropriate parties. Whatever its resolution, an electronic record and hard copy of the determination are maintained in MAACS files.

A violation may result in the removal of the attorney from the roster, a notice of contemplation of removal from the roster, the suspension of case assignments, a personal consultation in the MAACS office with the attorney, or an admonition that the finding of a violation is very serious and although standing alone was not sufficient to result in removal from the roster, MAACS will maintain the findings for consideration regarding any future review of the roster member's continued eligibility for membership on the MAACS roster.

Where Standard violations are substantial and removal from the roster is contemplated, the administrator must give the affected attorney 30 days' notice of that contemplated removal. Any response to such notice is reviewed and considered relative to the removal decision. If an attorney is removed from the roster, the attorney has a right, within 30 days, to request a *de novo* appeal by the Appellate Defender Commission of the removal decision.

### **2011 Roster Performance Complaint Investigation and Resolution Statistics**

In 2011 MAACS administrative staff investigated and resolved 96 correspondence matters which involved complaints concerning roster representation. Those 96 matters represented 39% of the total number of correspondence (246) MAACS received and that involved any area of case-related agency responsibility.

After investigation, MAACS administrative staff resolved the matters which involved complaints concerning roster representation as follows:

46 of these matters were determined to not implicate a violation of the Standards: 48% of the performance complaints investigated. These determinations are designated as RA 2 or T findings and maintained in the MAACS correspondence system. ["T" findings involve complaints regarding provision of transcripts prior to the conclusion of the assigned representation; there were 4 of these in 2011.]

25 of these matters involved complaints from clients concerning the nature and sufficiency of attorney-client communication; these are designated as RA3 matters: 26% of the performance complaints investigated. The roster attorneys involved are required by MAACS to address and resolve the communication issues raised by the client. In 2011 all of these RA3 matters were resolved by the attorneys.

Complaints regarding roster attorneys resolved by withdrawal and the appointment of substitute counsel or which were resolved by other action of the attorney or client are designated and as RA5 correspondence. In 2011 there were 5 such matters: .05% of the performance complaints investigated.

Complaints which result in either formal or informal determination that a violation of the Standards has been demonstrated are designated as RA4 (formal) or RA6 (informal). In 2011 there were a combined 20 matters which resulted in a determination that a violation or violations of the Standards occurred: 20.8% of the performance complaints investigated.

The determinations involved 13 either current or former roster attorneys. Implicated violations of all of the Standards except Standards 4 and 9 were investigated. 31 individual Standards violations were determined to have been demonstrated.

No roster members were removed from the roster based on complaint determinations. Two roster members resigned from the roster in response to the complaint investigation(s) being conducted. Two lawyers investigated had previously resigned from the roster; one as a result of complaint investigations being conducted at that time.

2011 CLIENT COMPLAINTS AND STANDARDS VIOLATIONS
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Violations Found by Standard	

Minimum Standard 1	2	Minimum Standard 4	0	Minimum Standard 7	4
Minimum Standard 2	5	Minimum Standard 5	7	Minimum Standard 8	3
Minimum Standard 3	1	Minimum Standard 6	9	Minimum Standard 9	0

**Attorney Triennial Re-application for Roster Retention**

Pursuant to Regulations Section 4(1) and (2) and 4(6)(g), each attorney already on the roster, and wishing to remain on the roster, must re-apply for roster retention every three years. The attorney must file a renewal application similar to the initial application. Each roster re-application is reviewed based on the criteria for continuing eligibility listed in Section 4(6). All roster attorneys wishing to remain on the roster were required to apply for retention between September 1 and October 31, 2011.

**Re-application for Roster Retention Review Process**

The renewal applications and submitted supporting material are first reviewed for completeness by the MAACS roster manager. Thereafter, the roster manager prepares a re-application review sheet and a profile of the attorney’s roster membership. The profile includes information regarding historical performance, any known regulatory compliance issues, pleadings submitted to MAACS, annual fees paid and other information. The

review sheet, profile and renewal application for each attorney are then provided to the administrator for distribution.

The administrator reviews all of this information for evident issues regarding each attorney's compliance with the MAACS Regulations. If such issues are identified the Administrator selectively contacts re-applicants about this information and regarding the appropriateness of the reapplication for renewed roster membership. In some instances this contact results in the attorney's withdrawal of the renewal application and/or resignation from the roster.

The reapplication information is then distributed between the administrator and the deputy administrator.

All requested material is carefully reviewed.

Requested pleadings are reviewed for overall quality, compliance with the Michigan Court Rules, issue identification, issue presentation, and writing quality.

The Court of Appeals website is accessed to review additional pleadings on-line, for timeliness of filings, preservation of oral argument, motions to remand, and other information.

MAACS files are reviewed for demonstrated compliance with the Regulations and Standards. Prior renewal and retention documents are reviewed.

Additional pleadings or other information may be requested from the attorney, the courts or others and also reviewed.

All MAACS decisions regarding renewal applications are in writing. An electronic record and hard copy of the retention determination are maintained in MAACS files.

If the reapplication for roster membership is granted, the attorney receives a letter to that effect. The letter customarily contains positive observations regarding the attorney's work, and retained attorneys are encouraged to continue roster membership.

Retention may be granted with specifically identified conditions. These conditions address identified non-compliance with the Standards or regulatory deficiencies.

Retention may also be granted with the additional and specific condition that the attorney will be retained on the roster at a Level below that which the roster attorney was at the time of the re-application. And in some instances a conditional retention is also accompanied by notice of MAACS's contemplation of the attorney's removal from the roster.

Retention may also be granted without conditions, but may include recommendations regarding identified representational concerns that require improvement.

If retention is granted with any imposed conditions or performance improvement recommendations, the administrator who made this decision regularly reviews the work-product of the affected attorney in regard to those conditions or improvement recommendations.

Where Standards or Regulations violations or deficiencies result in a decision to deny the reapplication for roster membership, the administrator must give the affected attorney 30 days' notice that non-retention on the roster is contemplated. Any response to such notice is reviewed and considered relative to the non-retention decision. If an attorney is not retained on the roster, the attorney has a right, within 30 days, to request a *de novo* appeal by the Appellate Defender Commission of the non-retention decision.

### **2011 Roster Attorney Retention Re-application Review and Resolution Statistics**

MAACS sent 113 re-application packets to current roster attorneys. 106 re-applications for retention were returned. Four attorneys resigned rather than re-apply for retention. One attorney did not return an application within the required period and died shortly thereafter. Two attorneys provided with re-application packets did not reapply for roster membership, and one attorney resigned after having re-applied for roster membership, after contact by the administrator. These attorneys had failed to demonstrate compliance with Regulation 4(6)(b), which requires Level II and III attorneys to submit for decision at least four assigned appeals per year. (The official date of these removals was January 4, 2012.)

As of December 31, 2011, MAACS had reviewed and retained 32 attorneys on the roster. The remaining investigations were concluded in 2012. The final results of all retention investigations will appear in the 2012 Annual Report

### **Admission to the Roster at Levels II or III and Roster Attorney Re-classification**

In exceptional circumstances the Appellate Defender Commission may waive the requirements for Level II or III roster admission, when the applicant has acquired comparable experience. The application and supporting material are first reviewed by MAACS administrative staff; usually by the deputy administrator. Prior experience with criminal defense clients, particularly appellate clients, is analyzed. Additional legal writings are frequently requested for review. Upon completion of the review, MAACS provides the Appellate Defender Commission a memo that summarizes the applicant's submitted information and offers a recommendation.

In 2011 the Appellate Defender Commission admitted one attorney at Level II based on exceptional circumstances and comparable experience.

Roster attorneys seeking reclassification at Level II or III must make this request in writing. The request must specify the cases being relied upon to establish the relevant experience requirement. If that requirement has been met, a thorough analysis of the attorneys' representational performance is conducted. Briefs are reviewed. Issue



analysis, writing skills, and legal knowledge are assessed. Fee vouchers and Court of Appeals records are checked for any indication of problems, such as late or defective filings or an excessive number of motions to withdraw as counsel. Internal MAACS records are reviewed for confirmation of the attorney's compliance with the Regulations and Standards. Whether or not the request is approved, written feedback based on the review is provided to the attorneys. If the request is approved, MAACS and circuit court computer records are immediately changed to reflect the reclassification.

In 2011 one roster attorney was reclassified from Level I to Level II. One attorney's request for reclassification from Level I to Level II was denied. This attorney had a fewer number of claim of appeal cases than required by the MAACS regulations.

### **Continuing Legal Education and Other Educational Activities**

The Regulations require MAACS to provide continuing legal education programs for all roster members. MAACS provides CLE annually.

Historically, these programs have been funded through grants from the Michigan Commission on Law Enforcement Standards (MCOLES). In October, 2011, MAACS provided MCOLES-funded CLE programs at the Thomas M. Cooley Law School (Cooley) campuses in Grand Rapids, Lansing and Auburn Hills.

In 2011, the program was entitled: *Anatomy of Appeal Assignments, Recent Right to Counsel Jurisprudence, Department of Corrections Policy, Technology Integrated Law Office, and, Developments in Criminal Appellate Practice.*

The 2011 Training involved the following speakers:

Lyle Marshall, MAACS Deputy Administrator, served throughout the programs as the Moderator, introducing the speakers and topics and facilitating questions from the attendees posed to the speakers.

Two MAACS roster attorneys, Mitchell T. Foster and Mary Owens, presented hour-long programs devoted to representing a client on appeal from assignment by the circuit court to closing the file upon completion of the appellate process. The training also included a particular focus on meeting or exceeding the Standards in the course of appellate representation. Mr. Foster discussed plea-based appeals and Ms. Owens trial-based appeals.

Cooley Professor Ron Bretz presented another hour devoted to recent developments in right-to-counsel jurisprudence, beginning with *Miranda v Arizona* through *Michigan v Jackson* and concluding with the recently decided cases of *Montejo v Louisiana* and *Berghuis v Thompkins*. He discussed these cases and others to demonstrate the changes in Fifth and Sixth Amendment law. Professor Bretz also discussed his personal experience in the United States

Supreme Court preparing the legal brief and eventually arguing the case of *Michigan v Jackson*.

Mr. Richard Stapleton presented an hour-long training session devoted to Michigan Department of Corrections policy that affects criminal appellate practitioners and their clients. Mr. Stapleton is the just-retired and long-serving Administrator of the Office of Legal Affairs for the Department of Corrections.

Mr. Stuart Friedman presented an hour session on the technology integrated law office. Mr. Friedman has been a criminal appellate attorney and solo practitioner since 1992; he is a former MAACS roster attorney. He is also a former computer consultant and is a frequent speaker on law-office technology subjects. His presentation included training about how to integrate technology into an appellate defense practice to save time, money, and space; and how the use of technology can help create a more prosperous and efficient law office that better serves clients.

Finally, the MAACS Administrator, Thomas Harp, presented his annual survey of developments in criminal appellate practice. He discussed new and amended court rules, application of the Standards and MAACS Regulations and information regarding MAACS policy and procedure, new and significant case law, and other new developments in the law that could bear on criminal appellate practice.

The MCOLES grant also provided for the video-taping and preparation of video discs of this training. MAACS roster attorneys may demonstrate their compliance with the CLE Regulation requirement by viewing these electronically-preserved lectures.

In addition to the CLE programs, MAACS maintains copies of training manuals and electronically recorded materials for availability to the roster and provides updates to the roster on developments in appellate law and policy.

MAACS administrators also regularly consult with roster attorneys, by telephone and email, regarding specific and general questions about MAACS client representation or MAACS policy or regulatory requirements.

### **CLE Compliance Monitoring**

Regulation Section 4(6)(f) requires each roster attorney to annually complete seven hours of CLE in subjects relevant to criminal appellate advocacy. Attendance by roster attorneys at MAACS CLE programs automatically satisfies this requirement. So too can proof of attendance at a comparable training program.

In 2011, eighty-one roster attorneys attended the live version of the MAACS CLE Training. An additional twelve attorneys viewed the DVD version of the full program. Eleven attorneys received CLE credit in 2011 by attending approved non-MAACS

training programs. One attorney failed to demonstrate CLE requirement by the end of 2011; this attorney resigned from the roster on January 31, 2012. As of that date, all roster attorneys were in CLE compliance.

### **Additional Oversight Methods**

MAACS provides responsive assistance to the roster concerning representational, procedural or roster membership questions and concerns. MAACS administrators field questions and provide advice to roster attorneys by telephone, electronic mail and in person.

MAACS regularly reviews Court and internal records for evidence of possible non-compliance by roster attorneys with the Regulations and Standards.

MAACS reviews pleadings and briefs filed in the courts and with MAACS by roster attorneys.

### **MAACS Roster Attorney Case Highlights**

During 2011, MAACS roster attorneys represented clients in these selected and noteworthy cases:

#### Michigan Supreme Court

*People v Williams*, MSC No. 141161; COA No. 284585, March 23, 2011

The Court granted leave to appeal and ordered the parties to include among the issues to be briefed whether a larceny needs to be completed before a defendant may be convicted of armed robbery.

*People v Franklin*, MSC No. 142323; COA No. 292469, March 23, 2011

The Court granted leave to appeal and the parties were ordered to brief whether the trial court was required to give defendant the opportunity to affirm his plea when the court indicated it was unable to impose the sentence stated by the court at the plea proceeding, whether the issue should be evaluated under MCR 6.310(B)(2)(a) or MCR 310(B)(2)(b), whether the decision in *People v Grove*, 455 Mich 439 (1997) has been superseded by MCR 6.310(B), and whether defendant waived any right to affirm his guilty plea by failing to object when the trial court vacated his plea.

*People v Turner*, MSC No. 141745; COA No. 298839, May 13, 2011

In lieu of granting leave to appeal, the Court remanded to the Wayne Circuit Court for further proceedings consistent with MCR 6.310(C) (defendant entitled to withdraw plea after sentencing).

*People v Jobson*, MSC No. 143035; COA No. 302124, October 5, 2011

In lieu of granting leave to appeal, the Court vacated Defendant's sentence and remanded for resentencing. The Court found that zero points should have been scored for Prior Record Variable 7, resulting in a lower guidelines range.

*People v. Childress*, MSC No. 143606; COA No. 288657, December 28, 2011

The Court directed the prosecutor to answer the waiver of counsel issue presented in Defendant's application for leave to appeal, and further directed the prosecutor to determine whether there were other court proceedings involving this case where the waiver of counsel was discussed with Defendant.

#### Michigan Court of Appeals

*People v Fonville*, COA No. 294554, January 25, 2011, For Publication

Reversed trial court order denying motion for relief from judgment. Defendant was entitled to withdraw his plea because his attorney failed to inform him that he would be required to register as a sex offender.

*People v Maxey*, COA No. 294418, February 24, 2011

Reduced sentence from 10 to 15 years to 7 years 11 months to 15 years.

*People v Maxey*, COA No. 296542, April 14, 2011

Consecutive sentence changed to be concurrent with COA No. 294418.

*People v Jamison*, COA No. 297154, April 26, 2011, For Publication

Vacated sentence of 1 to 10 years where the trial court erred in scoring 10 points under OV 10.

*People v Wilson*, COA No. 296693, May 10, 2011

Vacated Defendant's convictions of first-degree murder, second-degree murder, assault with intent to do great bodily harm less than murder, felony firearm, and unlawful imprisonment where the trial court erred in denying defendant's unequivocal request to represent himself at trial.

*People v Scott*, COA No. 298902, August 16, 2011

Vacated convictions and sentences of 4 to 25 years and remanded for a new trial where the right to counsel was denied.

*People v Williams*, COA No. 299809, September 15, 2011

Vacated judgment of sentence and remanded for the circuit court to impose concurrent sentences and grant credit.

*People v Floyd*, COA No. 297393, September 20, 2011

Vacated lifetime monitoring portion of Defendant's sentence.

*People v Johnson*, COA No. 301541, September 22, 2011

Vacated sentence of 17 to 60 months in prison and remanded for resentencing where the trial court did not articulate any substantial and compelling reasons for its departure from the sentencing guidelines range of 0 to 17 months which requires an intermediate sanction absent a substantial and compelling reason for an upward departure.

*People v Graham*, COA No. 297830, October 11, 2011

Vacated Defendant's 25 year minimum sentences and remanded for resentencing where the mandatory minimum sentences were inapplicable and the court was required to proceed under the applicable minimum sentencing guidelines range.

*People v Daughenbaugh*, COA No. 299173, October 18, 2011

Vacated sentence of 35 years to 60 years plus 2 years and remanded for resentencing. Resentenced on December 7, 2011 to 20 to 40 years plus 2 years.

*People v Gibson*, COA No. 299125, October 18, 2011

Vacated Defendant's sentence and remanded for resentencing where the trial court erred by scoring 50 points for OV 7.

*People v McClavey*, COA No. 299299, October 18, 2011

Vacated sentence of 1 to 4 years in prison and remanded for resentencing where the trial court erred in imposing a prison sentence without stating a reason for departing from an intermediate sanction cell.

*People v Hollowell*, COA No. 298900, November 22, 2011

Vacated conviction of carrying a dangerous weapon with unlawful intent where the evidence was insufficient to support the conviction.

*People v Raynes*, COA No. 299926, November 3, 2011

Reversed and remanded Defendant's conviction of unlawfully driving away a motor vehicle where the Court found egregious evidentiary errors that were not harmless in the context of a pure credibility contest

#### Circuit Court

*People v Hedges*, Macomb Circuit Court No. 10-108-FH, April 5, 2011

Reduced sentence from 46 months to 20 years down to 24 months to 20 years.

*People v Cyrocki*, Jackson Circuit Court No. 10-5020-FC, 2011

Reduced sentence from 8 to 30 years down to 4 to 20 years.

#### **Additional Agency Activities**

MAACS performs a number of other functions important to its mission to provide high-quality, effective and efficient indigent appellate defense.

MAACS collects, analyzes and disseminates annual data regarding the number and type of appellate assignments and their distribution to roster attorneys and SADO.

MAACS compiles information about appellate assigned counsel fees.

MAACS promotes the payment of reasonable fees to roster members and alternative methods for the adequate funding of indigent appellate defense.

MAACS requests, where appropriate, that circuit courts appoint substitute counsel on behalf of indigents who received ineffective representation by former MAACS appellate counsel.

MAACS provides form pleading packets to defendants who wish to appeal a court's denial of a request for the appointment of appellate counsel.

MAACS provides form pleading packets to defendants who wish to seek available post-conviction relief, after appeal.

MAACS responds to numerous inquiries per year from defendants and their families involving issues outside the regulatory purview of MAACS.

MAACS responds to questions and concerns raised by other governmental entities and the general public involving indigent appellate defense, Department of Corrections matters, and others.

MAACS works with clients, the courts and others in order to address representational issues arising from roster attorney health-related problems.

MAACS works with clients, the courts, the survivors and their representatives and others in order to address representational issues arising from the death of a roster attorney.

MAACS has provided comments on proposed court rules and testify at Supreme Court public hearings regarding such proposals.

Administrators may also serve on committees, commissions, boards, or task forces devoted to the improvement of appellate representation specifically and/or criminal defense representation generally.

MAACS performs other duties in connection with the administration of the assigned counsel system as directed by the Appellate Defender Commission.

### **MAACS APPENDICES 2011**

- 1. Total Appellate Assignments.**
- 2. Assigned Appeals, by Case Type and Level, by Circuit.**
- 3. Changes in Appellate Assignments 2009-2011, by Circuit.**
- 4. Appeals by Jurisdictional Type, by Circuit.**
- 5. SADO Assigned Appeals, by Case Type and Level.**
- 6. Appeals of Resentencings, by Circuit**

**MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM  
APPELLATE ASSIGNMENTS  
JANUARY 1, 2011 TO DECEMBER 31, 2011**

	Total No. --- Percent of ---	SADO No. --- Percent of <u>SADO Total</u>	<u>SADO Percent of Total Case Type</u>
<b><u>Level I</u></b>			
Plea/PV/Resentencing	1041 31.9%	152 25.9%	14.6%
Waiver Trial/INT/6.5/PPO Evidentiary Hearing	35 1.1%	9 1.5%	25.7%
Jury Trial	96 2.9%	34 5.8%	35.4%
<b>Level I Total</b>	<b>1172 35.9%</b>	<b>195 33.3%</b>	<b>16.6%</b>
<b><u>Level II</u></b>			
Plea/PV/Resentencing	1341 41.0%	145 24.7%	10.8%
Waiver Trial/INT/6.5/PPO Evidentiary Hearing	91 2.8%	30 5.1%	33.0%
Jury Trial	136 4.2%	40 6.8%	29.4%
<b>Level II Total</b>	<b>1568 48.0%</b>	<b>215 36.7%</b>	<b>13.7%</b>
<b><u>Level III</u></b>			
Jury Trial	527 16.1%	176 30.0%	33.4%
<b>Level III Total</b>	<b>527 16.1%</b>	<b>176 30.0%</b>	<b>33.4%</b>
Motions for Relief	0 0.0%	0 0.0%	0.0%
Prosecution Appeals of Dismissals	0 0.0%	0 0.0%	0.0%
Miscellaneous	0 0.0%	0 0.0%	0.0%



**GRAND TOTAL**

**3267**

**586**

**17.9%**

**MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM  
ASSIGNED APPEALS BY CASE TYPE AND LEVEL  
JANUARY 1, 2011 TO DECEMBER 31, 2011**

Circuit	MISC.	MOTION/ RELIEF	PROSEC. APPEALS	PLEA/PV/ RESENTENCING			WT/EVIDENTIARY HEARING/INT/PPO			JURY			Grand Total	
				Level		Total	Level		Total	Level				
				1	2		1	2		1	2	3		
1st Hillsdale				13	4	17			0			5	5	22
2nd Berrien		1		48	48	96		5	5	1	6	13	20	122
3rd Wayne		11		129	289	418	23	47	70	35	33	155	223	722
4th Jackson				24	41	65		2	2	1	5	18	24	91
5th Barry				6	4	10			0				0	10
6th Oakland				73	190	263	1	3	4	15	16	67	98	365
7th Genesee		4		28	49	77		3	3	4	1	23	28	112
8th Ionia/Montcalm		2		12	7	19			0		2	3	5	26
9th Kalamazoo		2		28	46	74		1	1	1	3	15	19	96
10th Saginaw				41	78	119		1	1	4	10	38	52	172
11th Alger/Luce Schoolcraft				2	3	5			0	1	1	1	3	8
12th Baraga/Houghton/ Keweenaw						0			0				0	0
13th Antrim/Grand				24	8	32			0	1	2	3	6	38

**MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM  
ASSIGNED APPEALS BY CASE TYPE AND LEVEL  
JANUARY 1, 2011 TO DECEMBER 31, 2011**

Circuit	MISC.	MOTION/ RELIEF	PROSEC. APPEALS	PLEA/PV/ RESENTENCING			WT/EVIDENTIARY HEARING/INT/PPO			JURY			Grand Total	
				Level		Total	Level		Total	Level				
				1	2		1	2		1	2	3		
Traverse/Leelanau				16	44	60	1	4	5		1	15	16	81
14th Muskegon				5	2	7			0			2	2	9
15th Branch				106	68	174		1	1	5	4	19	28	203
16th Macomb				67	100	167	3		3	5	5	30	40	210
17th Kent				32	23	55			0	4	1	9	14	69
18th Bay				4	1	5			0				0	5
19th Benzie/Manistee				6	6	12			0	1	2	4	7	19
20th Ottawa				26	10	36			0		1		1	37
21st Isabella				35	32	67	1	3	4	2	4	7	13	84
22nd Washtenaw				10	3	13			0	1		1	2	15
23rd Iosco/Oscoda				6	2	8			0			1	1	9
24th Sanilac				9	1	10			0			3	3	13
25th Marquette				2	6	8			0	1	1	3	5	13
26th Alcona/Alpena/ Montmorency/														

**MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM  
ASSIGNED APPEALS BY CASE TYPE AND LEVEL  
JANUARY 1, 2011 TO DECEMBER 31, 2011**

Circuit	MISC.	MOTION/ RELIEF	PROSEC. APPEALS	PLEA/PV/ RESENTENCING			WT/EVIDENTIARY HEARING/INT/PPO			JURY			Grand Total	
				Level		Total	Level		Total	Level				
				1	2		1	2		1	2	3		
Presque Isle														
27th Newaygo/Oceana				9	6	15			0			1	1	16
28th Missaukee/Wexford		1		14	2	16			0	1	1		2	19
29th Clinton/Gratiot				20	7	27			0			1	1	28
30th Ingham				20	25	45			0	4	4	12	20	65
31st St. Clair				9	16	25	1		1		2	14	16	42
32nd Gogebic/Ontonagon						0			0			1	1	1
33rd Charlevoix				3	1	4			0				0	4
34th Arenac/Ogemaw Roscommon				7	4	11			0	1	1		2	13
35th Shiawassee				7	8	15			0			2	2	17
36th Van Buren				5	4	9			0			6	6	15
37th Calhoun				27	20	47			0		4	21	25	72
38th Monroe				15	17	32			0		1	4	5	37
39th Lenawee				36	7	43			0			1	1	44

**MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM  
ASSIGNED APPEALS BY CASE TYPE AND LEVEL  
JANUARY 1, 2011 TO DECEMBER 31, 2011**

Circuit	MISC.	MOTION/ RELIEF	PROSEC. APPEALS	PLEA/PV/ RESENTENCING			WT/EVIDENTIARY HEARING/INT/PPO			JURY			Grand Total	
				Level		Total	Level		Total	Level				
				1	2		1	2		1	2	3		
40th Lapeer				2	1	3			0		1	1	2	5
41st Dickinson/Iron Menominee				3	2	5			0		2		2	7
42nd Midland				3	5	8			0		2	2	4	12
43rd Cass				4	17	21			0		1	5	6	27
44th Livington				16	12	28			0		2	1	3	31
45th St. Joseph		1		7	18	25			0			2	2	28
46th Crawford/Kalkaska Otsego				7	9	16			0	2	3	2	7	23
47th Delta				2		2	2		2		1	1	2	6
48th Allegan				11	12	23			0			2	2	25
49th Mecosta/Osceola				12	11	23			0	1		1	2	25
50th Chippewa/Mackinaw				11	10	21			0	1			1	22
51st Lake/Mason					4	4		2	2			3	3	9
52nd Huron				1	2	3			0		1	2	3	6

**MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM  
ASSIGNED APPEALS BY CASE TYPE AND LEVEL  
JANUARY 1, 2011 TO DECEMBER 31, 2011**

Circuit	MISC.	MOTION/ RELIEF	PROSEC. APPEALS	PLEA/PV/ RESENTENCING			WT/EVIDENTIARY HEARING/INT/PPO			JURY			Grand Total	
				Level		Total	Level		Total	Level				
				1	2		1	2		1	2	3		
53rd Cheboygan				13	6	19			0		2	2	4	23
54th Tuscola				4	7	11			0	1	1	1	3	14
55th Clare/Gladwin				8	10	18			0				0	18
56th Eaton				5	24	29			0	2	3	3	8	37
57th Emmet				8	9	17			0	1	6	1	8	25

ALL CIRCUITS TOTALS                    0                    22                    0                    1041    1341                    2382                    32    72                    104                    96    136    527                    759                    3267

Level 1	1169
Level 2	1549
Level 3	527
<b>Total</b>	<b>3245</b>

**MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM  
APPELLATE ASSIGNMENT CHANGES BY CIRCUIT 2009-2011**

	<b>2009 TOTAL</b>	<b>2010 TOTAL</b>	<b>09-10 % CHANGE #/%</b>	<b>2011 TOTAL</b>	<b>10-11 % CHANGE #/%</b>	<b>09-11 % CHANGE #/%</b>
1st Hillsdale	23	28	5 21.7%	22	-6 -21.4%	-1 -4.3%
2nd Berrien	136	132	-4 -2.9%	122	-10 -7.6%	-14 -10.3%
3rd Wayne	867	772	-95 -11.0%	722	-50 -6.5%	-145 -16.7%
4th Jackson	74	78	4 5.4%	91	13 16.7%	17 23.0%
5th Barry	14	13	-1 -7.1%	10	-3 -23.1%	-4 -28.6%
6th Oakland	296	424	128 43.2%	365	-59 -13.9%	69 23.3%
7th Genesee	137	121	-16 -11.7%	112	-9 -7.4%	-25 -18.2%
8th Ionia/Montcalm	36	42	6 16.7%	26	-16 -38.1%	-10 -27.8%
9th Kalamazoo	111	123	12 10.8%	96	-27 -22.0%	-15 -13.5%
10th Saginaw	140	258	118 84.3%	172	-86 -33.3%	32 22.9%
11th Alger/Luce Schoolcraft	4	15	11 275.0%	8	-7 -46.7%	4 100.0%
12th Baraga/Houghton/ Keweenaw	6	0	-6 -100.0%	0	0 0.0%	-6 -100.0%
13th Antrim/Grand Traverse/Leelanau	39	32	-7 -17.9%	38	6 18.8%	-1 -2.6%
14th	108	117	9	81	-36	-27

**MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM  
APPELLATE ASSIGNMENT CHANGES BY CIRCUIT 2009-2011**

	<b>2009 TOTAL</b>	<b>2010 TOTAL</b>	<b>09-10 % CHANGE #/%</b>	<b>2011 TOTAL</b>	<b>10-11 % CHANGE #/%</b>	<b>09-11 % CHANGE #/%</b>
Muskegon			8.3%		-30.8%	-25.0%
15th Branch	9	13	4 44.4%	9	-4 -30.8%	0 0.0%
16th Macomb	208	201	-7 -3.4%	203	2 1.0%	-5 -2.4%
17th Kent	238	210	-28 -11.8%	210	0 0.0%	-28 -11.8%
18th Bay	37	63	26 70.3%	69	6 9.5%	32 86.5%
19th Benzie/Manistee	7	5	-2 -28.6%	5	0 0.0%	-2 -28.6%
20th Ottawa	24	19	-5 -20.8%	19	0 0.0%	-5 -20.8%
21st Isabella	40	33	-7 -17.5%	37	4 12.1%	-3 -7.5%
22nd Washtenaw	62	69	7 11.3%	84	15 21.7%	22 35.5%
23rd Iosco/Oscoda	13	10	-3 -23.1%	15	5 50.0%	2 15.4%
24th Sanilac	5	3	-2 -40.0%	9	6 200.0%	4 80.0%
25th Marquette	5	10	5 100.0%	13	3 30.0%	8 160.0%
26th Alcona/Alpena/ Montmorency/ Presque Isle	7	13	6 85.7%	13	0 0.0%	6 85.7%
27th Newaygo/Oceana	4	11	7 175.0%	16	5 45.5%	12 300.0%
28th Missaukee/Wexford	18	19	1 5.6%	19	0 0.0%	1 5.6%



**MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM  
APPELLATE ASSIGNMENT CHANGES BY CIRCUIT 2009-2011**

	<b>2009 TOTAL</b>	<b>2010 TOTAL</b>	<b>09-10 % CHANGE #/%</b>	<b>2011 TOTAL</b>	<b>10-11 % CHANGE #/%</b>	<b>09-11 % CHANGE #/%</b>
29th Clinton/Gratiot	33	39	6 18.2%	28	-11 -28.2%	-5 -15.2%
30th Ingham	62	81	19 30.6%	65	-16 -19.8%	3 4.8%
31st St. Clair	47	45	-2 -4.3%	42	-3 -6.7%	-5 -10.6%
32nd Gogebic/Ontonagon	9	6	-3 -33.3%	1	-5 -83.3%	-8 -88.9%
33rd Charlevoix	3	6	3 100.0%	4	-2 -33.3%	1 33.3%
34th Arenac/Ogemaw Roscommon	19	13	-6 -31.6%	13	0 0.0%	-6 -31.6%
35th Shiawassee	7	18	11 157.1%	17	-1 -5.6%	10 142.9%
36th Van Buren	10	15	5 50.0%	15	0 0.0%	5 50.0%
37th Calhoun	72	72	0 0.0%	72	0 0.0%	0 0.0%
38th Monroe	34	31	-3 -8.8%	37	6 19.4%	3 8.8%
39th Lenawee	30	37	7 23.3%	44	7 18.9%	14 46.7%
40th Lapeer	14	10	-4 -28.6%	5	-5 -50.0%	-9 -64.3%
41st Dickinson/Iron Menominee	11	14	3 27.3%	7	-7 -50.0%	-4 -36.4%
42nd Midland	22	13	-9 -40.9%	12	-1 -7.7%	-10 -45.5%
43rd	26	21	-5	27	6	1

**MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM  
APPELLATE ASSIGNMENT CHANGES BY CIRCUIT 2009-2011**

	<b>2009 TOTAL</b>	<b>2010 TOTAL</b>	<b>09-10 % CHANGE #/%</b>	<b>2011 TOTAL</b>	<b>10-11 % CHANGE #/%</b>	<b>09-11 % CHANGE #/%</b>
Cass			-19.2%		28.6%	3.8%
44th Livingston	40	35	-5 -12.5%	31	-4 -11.4%	-9 -22.5%
45th St. Joseph	28	29	1 3.6%	28	-1 -3.4%	0 0.0%
46th Crawford/Kalkaska Otsego	22	34	12 54.5%	23	-11 -32.4%	1 4.5%
47th Delta	9	3	-6 -66.7%	6	3 100.0%	-3 -33.3%
48th Allegan	46	32	-14 -30.4%	25	-7 -21.9%	-21 -45.7%
49th Mecosta/Osceola	17	18	1 5.9%	25	7 38.9%	8 47.1%
50th Chippewa/Mackinaw	12	15	3 25.0%	22	7 46.7%	10 83.3%
51st Lake/Mason	7	6	-1 -14.3%	9	3 50.0%	2 28.6%
52nd Huron	8	5	-3 -37.5%	6	1 20.0%	-2 -25.0%
53rd Cheboygan	10	13	3 30.0%	23	10 76.9%	13 130.0%
54th Tuscola	14	19	5 35.7%	14	-5 -26.3%	0 0.0%
55th Clare/Gladwin	14	21	7 50.0%	18	-3 -14.3%	4 28.6%
56th Eaton	20	24	4 20.0%	37	13 54.2%	17 85.0%
57th Emmet	14	14	0 0.0%	25	11 78.6%	11 78.6%

**MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM  
APPELLATE ASSIGNMENT CHANGES BY CIRCUIT 2009-2011**

	<b>2009 TOTAL</b>	<b>2010 TOTAL</b>	<b>09-10 % CHANGE #/%</b>	<b>2011 TOTAL</b>	<b>10-11 % CHANGE #/%</b>	<b>09-11 % CHANGE #/%</b>
All Circuit Totals	3,328	3,523	195 5.9%	3,267	-256 -7.3%	-61 -1.8%

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**MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM  
ASSIGNED APPEALS BY JURISDICTIONAL TYPE  
JANUARY 1, 2011 TO DECEMBER 31, 2011**

Circuit	CLAIM			APPLICATION			RESPONSE				Grand Total		
	Trials	Pleas	Other	Total	Trials	Pleas	Other	Total	Trials	Pleas		Other	Total
1st Hillsdale	5			5		16	1	17				0	22
2nd Berrien	25	1		26		78	18	96				0	122
3rd Wayne	254		8	262	38	382	40	460				0	722
4th Jackson	25	1		26	1	58	6	65				0	91
5th Barry				0	7	3		10				0	10
6th Oakland	96		3	99	6	209	51	266				0	365
7th Genesee	31	1		32	7	73		80				0	112
8th Ionia/Montcalm	5			5	4	17		21				0	26
9th Kalamazoo	19	1		20	1	61	14	76				0	96
10th Saginaw	52		7	59		97	16	113				0	172
11th Alger/Luce Schoolcraft	3			3		5		5				0	8
12th Baraga/Houghton/Keweenaw				0				0				0	0
13th Antrim/Grand	6			6	8	24		32				0	38

**MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM  
ASSIGNED APPEALS BY JURISDICTIONAL TYPE  
JANUARY 1, 2011 TO DECEMBER 31, 2011**

Circuit	CLAIM			APPLICATION				RESPONSE				Grand Total	
	Trials	Pleas	Other	Total	Trials	Pleas	Other	Total	Trials	Pleas	Other		Total
Traverse/Leelanau													
14th	18	3		21	2	47	11	60				0	81
Muskegon													
15th	2			2		7		7				0	9
Branch													
16th	29			29	33	141		174				0	203
Macomb													
17th	41		2	43	2	143	22	167				0	210
Kent													
18th	12			12	2	41	14	57				0	69
Bay													
19th				0		3	2	5				0	5
Benzie/Manistee													
20th	7			7		11	1	12				0	19
Ottawa													
21st	1			1		25	11	36				0	37
Isabella													
22nd	12			12	5	67		72				0	84
Washtenaw													
23rd	2			2		9	4	13				0	15
Iosco/Oscoda													
24th	1			1	1	7		8				0	9
Sanilac													
25th	3			3		7	3	10				0	13
Marquette													
26th	5			5	1	7		8				0	13
Alcona/Alpena/ Montmorency/													

**MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM  
ASSIGNED APPEALS BY JURISDICTIONAL TYPE  
JANUARY 1, 2011 TO DECEMBER 31, 2011**

Circuit	CLAIM			APPLICATION			RESPONSE				Grand Total		
	Trials	Pleas	Other	Total	Trials	Pleas	Other	Total	Trials	Pleas		Other	Total
Presque Isle													
27th Newaygo/Oceana	1			1		15		15				0	16
28th Missaukee/Wexford	2			2		11	6	17				0	19
29th Clinton/Gratiot	1			1	3	24		27				0	28
30th Ingham	18			18	2	38	7	47				0	65
31st St. Clair	15			15	2	24	1	27				0	42
32nd Gogebic/Ontonagon	1			1				0				0	1
33rd Charlevoix				0		4		4				0	4
34th Arenac/Ogemaw Roscommon	2			2		11		11				0	13
35th Shiawassee	2			2	2	13		15				0	17
36th Van Buren	5			5	1	8	1	10				0	15
37th Calhoun	23		1	24	2	39	7	48				0	72
38th Monroe	5			5		27	5	32				0	37
39th Lenawee	1			1		38	5	43				0	44

**MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM  
ASSIGNED APPEALS BY JURISDICTIONAL TYPE  
JANUARY 1, 2011 TO DECEMBER 31, 2011**

Circuit	CLAIM			APPLICATION				RESPONSE				Grand Total	
	Trials	Pleas	Other	Total	Trials	Pleas	Other	Total	Trials	Pleas	Other		Total
40th Lapeer	2			2		2	1	3				0	5
41st Dickinson/Iron Menominee	2			2		4	1	5				0	7
42nd Midland	4			4		7	1	8				0	12
43rd Cass	6			6		21		21				0	27
44th Livington	3		1	4		19	8	27				0	31
45th St. Joseph	1		2	3	1	19	5	25				0	28
46th Crawford/Kalkaska Otsego	7	1		8	3	12		15				0	23
47th Delta	2		1	3		2	1	3				0	6
48th Allegan	2		1	3		20	2	22				0	25
49th Mecosta/Osceola	2		2	4		16	5	21				0	25
50th Chippewa/Mackinaw	1			1		20	1	21				0	22
51st Lake/Mason	5			5		3	1	4				0	9
52nd Huron	3			3		3		3				0	6

**MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM  
ASSIGNED APPEALS BY JURISDICTIONAL TYPE  
JANUARY 1, 2011 TO DECEMBER 31, 2011**

Circuit	CLAIM				APPLICATION				RESPONSE				Grand Total
	Trials	Pleas	Other	Total	Trials	Pleas	Other	Total	Trials	Pleas	Other	Total	
53rd Cheboygan	4			4		18	1	19				0	23
54th Tuscola	2			2	1	10	1	12				0	14
55th Clare/Gladwin				0	4	14		18				0	18
56th Eaton	8			8	23	6		29				0	37
57th Emmet	6			6	2	15	2	19				0	25
<b>ALL CIRCUITS TOTALS</b>	<b>790</b>	<b>8</b>	<b>28</b>	<b>826</b>	<b>164</b>	<b>2001</b>	<b>276</b>	<b>2441</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3267</b>



**MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM  
SADO ASSIGNED APPEALS BY CASE TYPE AND LEVEL  
JANUARY 1, 2011 TO DECEMBER 31, 2011**

Circuit	MISC.	MOTION/ RELIEF	PROSEC. APPEALS	PLEA/PV/ RESENTENCING			WT/EVIDENTIARY HEARING/INT/PPO			JURY			Grand Total	
				Level			Level			Level				
				1	2	Total	1	2	Total	1	2	3		Total
1st Hillsdale				2		2			0			5	5	7
2nd Berrien				8	6	14		5	5		2	4	6	25
3rd Wayne		5		19	29	48	4	13	17	10	9	44	63	133
4th Jackson				4	4	8			0	1	1	6	8	16
5th Barry				1	1	2			0				0	2
6th Oakland				10	19	29		1	1	5	5	19	29	59
7th Genesee		1		4	7	11			0	1		7	8	20
8th Ionia/Montcalm				1		1			0			1	1	2
9th Kalamazoo		1		4	5	9			0		1	4	5	15
10th Saginaw				6	7	13		1	1	2	3	11	16	30
11th Alger/Luce Schoolcraft				1		1			0	1			1	2
12th Baraga/Houghton/ Keweenaw						0			0				0	0
13th Antrim/Grand				4		4			0			1	1	5

**MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM  
SADO ASSIGNED APPEALS BY CASE TYPE AND LEVEL  
JANUARY 1, 2011 TO DECEMBER 31, 2011**

Circuit	MISC.	MOTION/ RELIEF	PROSEC. APPEALS	PLEA/PV/ RESENTENCING			WT/EVIDENTIARY HEARING/INT/PPO			JURY			Total	Grand Total
				Level			Level			Level				
				1	2	Total	1	2	Total	1	2	3		
Traverse/Leelanau														
14th				2	4	6		2	2		1	7	8	16
Muskegon														
15th				1		1			0			2	2	3
Branch														
16th				16	7	23		1	1	2	1	6	9	33
Macomb														
17th				10	11	21	1		1	1	1	10	12	34
Kent														
18th				6	3	9			0	1		3	4	13
Bay														
19th						0			0				0	0
Benzie/Manistee														
20th				1	1	2			0		1	1	2	4
Ottawa														
21st				3		3		1	1				0	4
Isabella														
22nd				5	3	8			0	1	2	2	5	13
Washtenaw														
23rd				1	1	2			0	1		1	2	4
Iosco/Oscoda														
24th					1	1			0				0	1
Sanilac														
25th				1		1			0			1	1	2
Marquette														
26th				1	1	2			0	1	1	3	5	7
Alcona/Alpena/ Montmorency/														

**MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM  
SADO ASSIGNED APPEALS BY CASE TYPE AND LEVEL  
JANUARY 1, 2011 TO DECEMBER 31, 2011**

Circuit	MISC.	MOTION/ RELIEF	PROSEC. APPEALS	PLEA/PV/ RESENTENCING			WT/EVIDENTIARY HEARING/INT/PPO			JURY			Grand Total	
				Level			Level			Level				
				1	2	Total	1	2	Total	1	2	3		Total
Presque Isle														
27th Newaygo/Oceana				3	1	4			0			1	1	5
28th Missaukee/Wexford				2	1	3			0	1			1	4
29th Clinton/Gratiot				3		3			0				0	3
30th Ingham				3	3	6			0	1	1	4	6	12
31st St. Clair				1	2	3	1		1			4	4	8
32nd Gogebic/Ontonagon						0			0			1	1	1
33rd Charlevoix				1		1			0				0	1
34th Arenac/Ogemaw Roscommon				1		1			0	1	1		2	3
35th Shiawassee				1	1	2			0			1	1	3
36th Van Buren						0			0			2	2	2
37th Calhoun				5	2	7			0		1	9	10	17
38th Monroe				1	2	3			0			1	1	4
39th Lenawee				5		5			0			1	1	6

**MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM  
SADO ASSIGNED APPEALS BY CASE TYPE AND LEVEL  
JANUARY 1, 2011 TO DECEMBER 31, 2011**

Circuit	MISC.	MOTION/ RELIEF	PROSEC. APPEALS	PLEA/PV/ RESENTENCING			WT/EVIDENTIARY HEARING/INT/PPO			JURY			Grand Total	
				Level			Level			Level				
				1	2	Total	1	2	Total	1	2	3		Total
40th Lapeer						0			0			1	1	1
41st Dickinson/Iron Menominee						0			0		1		1	1
42nd Midland					1	1			0			1	1	2
43rd Cass					2	2			0		1	1	2	4
44th Livingston				2	2	4			0				0	4
45th St. Joseph				2	2	4			0			1	1	5
46th Crawford/Kalkaska Otsego				1	1	2			0			1	1	3
47th Delta				1		1	1		1				0	2
48th Allegan				2	1	3			0			1	1	4
49th Mecosta/Osceola				1	2	3			0	1		1	2	5
50th Chippewa/Mackinaw				1	1	2			0	1			1	3
51st Lake/Mason					3	3		2	2			1	1	6
52nd Huron						0		1	1		1	1	2	3

**MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM  
SADO ASSIGNED APPEALS BY CASE TYPE AND LEVEL  
JANUARY 1, 2011 TO DECEMBER 31, 2011**

Circuit	MISC.	MOTION/ RELIEF	PROSEC. APPEALS	PLEA/PV/ RESENTENCING			WT/EVIDENTIARY HEARING/INT/PPO			JURY			Grand Total	
				Level			Level			Level				
				1	2	Total	1	2	Total	1	2	3		Total
53rd Cheboygan				2	1	3			0		1	2	3	6
54th Tuscola				1	1	2			0	1	1	1	3	5
55th Clare/Gladwin				1		1			0				0	1
56th Eaton					3	3			0	1	1	2	4	7
57th Emmet				1	1	2			0		3		3	5

ALL CIRCUITS TOTALS                    0                    7                    0                    152   143   295                    7   27                    34                    34   40   176                    250   586

Level 1	193
Level 2	210
Level 3	176
<b>Total</b>	<b>579</b>

**MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM  
 APPEALS OF RESENTENCINGS, BY CIRCUIT  
 JANUARY 1, 2011 to DECEMBER 31, 2011**

<u>CIRCUIT</u>	<u>TOTAL CASES</u>	<u>LEVEL I</u>					<u>LEVEL II</u>				
		<u>PL</u>	<u>PVP</u>	<u>PVH</u>	<u>JT</u>	<u>WT</u>	<u>PL</u>	<u>PVP</u>	<u>PVH</u>	<u>JT</u>	<u>WT</u>
2	1	1									
3	11	2			1				6	2	
4	2	1							1		
5	1							1			
6	4	1						1	2		
7	2	2									
9	4	2						2			
10	8							3	5		
13	1		1								
14	5				1			3		1	
16	7	3	1					3			
17	3	1							2		
21	1			1							
25	1	1									
30	1							1			
31	1							1			
35	1							1			
37	2			1					1		
40	1							1			
45	3							1	2		
46	1							1			
48	2	1								1	

**MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM  
 APPEALS OF RESENTENCINGS, BY CIRCUIT  
 JANUARY 1, 2011 to DECEMBER 31, 2011**

CIRCUIT	TOTAL CASES	LEVEL I					LEVEL II				
		PL	PVP	PVH	JT	WT	PL	PVP	PVH	JT	WT
50	1						1				
<b>TOTAL</b>	<b>64</b>	<b>15</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>20</b>	<b>0</b>	<b>0</b>	<b>19</b>	<b>4</b>

	TOTAL	LEVEL I	LEVEL II
PLEAS	35	15	20
PVP	2	2	0
PVH	2	2	0
JT	21	2	19
WT	4	0	4