



Michigan State Appellate Defender Office
and Criminal Defense Resource Center

2011 Annual Report

The 2011 Annual Report of the State Appellate Defender Office is submitted to the Appellate Defender Commission, Michigan Supreme Court, Michigan Legislature, Michigan Governor and Michigan's citizens on behalf of the clients served, and the extraordinary staff of SADO's Detroit and Lansing offices.

2011 Appellate Defender Commission

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SADO Mission Statement

SADO's mission is to seek the best possible outcomes for clients, providing high-quality, holistic, timely, and effective assistance of appellate counsel. As a system stakeholder representing criminal defense, SADO seeks improvement in the administration of criminal justice. As an agency possessing legal expertise, SADO seeks improvement in the quality of defense representation and resources by providing support services and training to assigned criminal defense counsel throughout the State of Michigan.

SADO Goals

1. Handle no less than 25% of assigned indigent criminal appeals, arising from all circuits in Michigan
2. Seek the best possible outcomes for clients, providing high-quality, timely and effective assistance of appellate counsel
3. Provide support services and training to assigned criminal defense counsel, in all circuits of Michigan
4. Provide cost-effective services that represent a good return on investment to Michigan taxpayers
5. Advocate for improvements in the administration of justice

2011 Highlights & Executive Summary

Leadership change & goal-setting

2011 was a year of considerable change for SADO, as longtime Director James Neuhard resigned and Dawn Van Hoek assumed leadership of the agency. As the new Director, Ms. Van Hoek launched a top-to-bottom review of agency mission, staff motivation, performance metrics, budgeting, and management. Among the noteworthy changes to flow from the review were the following:

- Management staffing was downsized from three positions to two, consisting of the Director and Deputy Director Jonathan Sacks, freeing resources for staff development;
- Operations between SADO's Detroit and Lansing offices became increasingly seamless as phone systems and mail intake were merged, and flexible "drop-in" offices were developed;
- Internal staff committees were established on technology, court rules, community outreach, diversity, and law reform;
- A "dashboard" on SADO sentencing advocacy performance was launched on SADO's web site;
- Performance reviews of all staff were reinstated; and
- Goals for SADO were set, including data-driven management, client-centered advocacy, and cost-effective operation.

Leadership change included the promotion of staff attorney Marla McCowan to the position of Criminal Defense Resource Center (CDRC) Manager. Ms. McCowan assumed the role during a grant-funded rebuilding project for SADO's web site, www.sado.org. As manager of that project, she developed new web content, navigation, and design for the tools that many Michigan criminal defense attorneys consider essential to their practices.

Sentencing Advocacy Project

Building on the success and quantifiable results of SADO's sentencing advocacy for clients, the office launched a specialized sentencing project with support from a federal Byrne Justice Assistance Grant. The project was conceived as a multi-year effort to use a holistic approach to client service, seeking not only sentencing relief, but also improved life outcomes, preparation for community reentry, and lower recidivism rates. SADO hired social worker Nicole George to work with staff attorneys who have obtained sentencing relief for clients scored within "straddle" cells on sentencing guideline grids; these low-level offenders may appropriately receive non-prison placements including community service, probation, mental health treatment, jail, work or school release.

SADO dashboard & value of client outcomes

One of the most meaningful measures of effective advocacy for SADO clients is change in sentences that actually impact the length of time in prison. When a SADO attorney obtains appellate relief that provides an earlier release date for a client, savings result. Savings are computed as a function of cumulative reductions in "real" minimum terms for SADO clients, multiplied by the cost of prison incarceration (reported as \$34,547 annually by the Michigan Department of Corrections for this time frame). In 2011, reductions in clients' minimum terms amounted to about 182 years. SADO launched a web-based dashboard to report to the public on these taxpayer savings: in 2011, the total was approximately \$6,287,600.

Most sentencing relief is based on correction of errors in computing sentencing guidelines, and it often is obtained quickly by returning first to the sentencing judge. Corrections result in sentences that are more accurate, and just, based on facts of the case and offender characteristics. Minimum sentences also are reduced when convictions are dismissed outright, as when evidence at trial was legally insufficient. These cases, while small in number, contribute to the substantial savings in the cost of incarceration.

Expansion of client videoconferencing network

SADO extended its videoconferencing network for client communications to court-appointed appellate counsel on the MAACS roster this year. Using a web-based scheduler on SADO's site, MAACS attorneys made 161 virtual visits to clients who often were incarcerated in distant locations.

Progress toward statewide caseload goal

2011 represented the first year of a multi-year initiative to meet or exceed the statutory mandate that SADO handle no less than 25% of the statewide appellate caseload. Capacity in 2011 fell somewhat from the previous year due to departure of experienced attorneys, but a budget initiative to add attorneys is expected to produce significant growth in coming years.

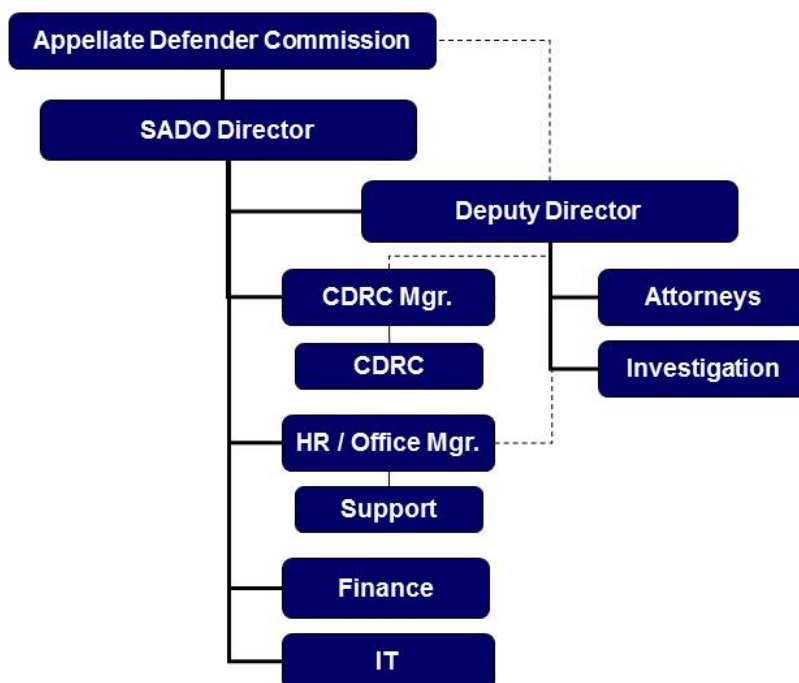
History and Governance

Michigan's State Appellate Defender Office (SADO) was formed in 1969 as a result of a grant submitted by the Michigan Supreme Court to the Law Enforcement Assistance Administration (LEAA), through the Michigan Commission on Law Enforcement and Criminal Justice. After receiving the grant, the Court issued Order 1970-1, formally establishing SADO's governing board, the Appellate Public Defender Commission. The order was a recognition of the need to provide quality, efficient legal representation to indigent criminal defendants in post-conviction matters, on a statewide basis. In 1979, legislation took effect to formally establish the office, which was charged with handling approximately no less than 25% of statewide appellate assignments, and with providing legal resources to the criminal defense bar. The legislation set intake limits, providing that SADO may accept only that number of cases that will allow it to provide quality defense services consistent with the funds appropriated by the Michigan Legislature. The 1979 legislation also ratified the seven-member Appellate Defender Commission, placing it within the State Court Administrator's Office, and charging it with developing and supervising a coordinated system for regulating the assignment of counsel for all indigent criminal appeals in Michigan. MCL 780.711 et seq.

Pursuant to that charge, the Commission held public hearings and determined that a mixed system of full-time defenders and assigned private attorneys would best serve the long-term interests of the entire system. It created the Michigan Appellate Assigned Counsel System (MAACS) in 1985 to provide appellate training and maintain the roster of appointed counsel, and to coordinate case assignments between the private bar and SADO. The Appellate Defender Commission also developed standards for administration of the system and for performance of criminal appellate counsel, which were adopted by the Michigan Supreme Court in 1981. 412 Mich lxv. Administrative Order 1989-3 mandated that all circuit courts comply with Section 3 of the standards regarding appointment of appellate counsel.

In 2011, the State Appellate Defender Office remains under the supervision of the Appellate Defender Commission, a seven-member body appointed by Michigan's Governor.

2011 Organizational Chart



Goal 1: Handle no less than 25% of assigned indigent criminal appeals, arising from all geographic regions of Michigan

a. Intake, type of assignments, geographic spread of assignments

SADO's statutorily-defined workload is "not [be] less than 25% of the total criminal defense appellate cases for indigents." Significantly, the office may "[a]ccept only that number of assignments and maintain a caseload which will insure quality criminal defense appellate services consistent with the funds appropriated by the state." MCL 780.716. Intake of new assignments is adjusted as needed to reflect SADO's capacity, namely the number of cases all attorneys can handle under established case weighting and national caseload standards.

SADO's intake in 2011 was approximately 18% of the total appellate assignments statewide, below the statutory floor of 25%, continuing a trend that began with major budget cuts a decade previously. SADO's percentage of the statewide caseload exceeded 25% in only three of the past eighteen years (27% in 2000, 25.5% in 2001 and 26.8% in 2002). The average caseload percentage handled since 2002 is just 17%, significantly below the statutory mandate. The significant decrease in funding in years following 1999 was in part based on what was a temporary situation: Michigan courts determined not to appoint counsel on guilty plea appeals when the state constitution was amended in 1994 to make those appeals discretionary, but the right to counsel was litigated and ultimately restored by the United States Supreme Court in *Halbert v. Michigan*, 545 US 605 (2005). SADO's funding was not restored, to reflect the restoration of the right to counsel on plea appeals, and the state's stressed economic condition generally made budget increases difficult.

2011 represented the first year of a multi-year initiative to meet or exceed the statutory mandate that SADO handle no less than 25% of the statewide appellate caseload. Capacity in 2011 fell somewhat from the previous year due to departure of experienced attorneys, but a budget initiative to add attorneys is expected to produce significant growth in coming years.

As in previous years, SADO's 2011 caseload consisted of appeals from guilty pleas, trials, and probation violations. While most assignments were made on the basis of a formula applied by the Michigan Appellate Assigned Counsel System (MAACS), tied to SADO capacity, some assignments qualified as "complex" or "special" due to their length or difficulty. Most of these "out-of-rotation" assignments to SADO were made on the basis of a court's request.

Assignments to SADO arose from every county in Michigan, except those reporting no or a very low number of appeals.

Total Appellate Assignments			
Year	Total Appeals Statewide	Appointments to SADO	Percent of Appeals* Assigned to SADO
2011	3267	586	17.9%
2010	3576	737	20.6%
2009	3336	570	17.1%
2008	3789	603	15.9%
2007	4212	590	14.0%
2006	4404	763	17.3%
2005	3875	564	14.6%
2004	3420	588	17.2%
2003	3625	696	19.2%
2002	3217	861	26.8%
Total	36721	6558	17.9%

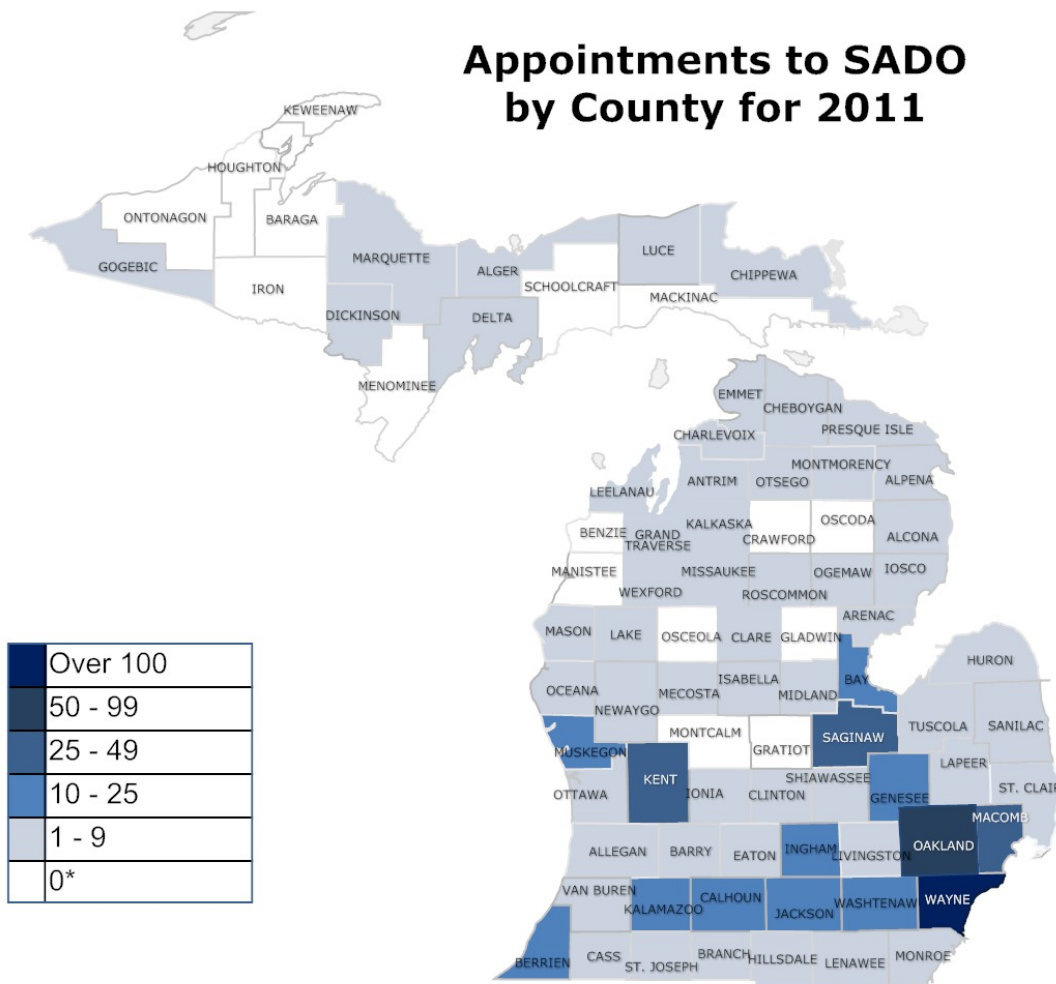
Appellate Assignments by Case Type						
Year	Pleas, PVs, & Resentencings Statewide	SADO's % of Pleas, PV's, & Resentencings	Level 3 Trials* Statewide	SADO's % of Trials	Levels 1 & 2** Trials Statewide	SADO's % of Level 1 & 2 Trials
2011	2382	12.5%	527	33.4%	358	31.6%
2010	2637	16.3%	555	33.3%	384	32.0%
2009	2447	11.6%	471	31.6%	418	32.5%
2008	2772	9.5%	544	32.4%	473	34.7%
2007	3030	9.6%	626	24.6%	556	26.3%
2006	3238	12.2%	569	28.3%	597	34.8%
2005	2777	11.6%	624	18.3%	474	26.8%
2004	2350	15.0%	551	18.1%	519	26.0%
2003	2207	16.8%	755	23.0%	663	22.8%
2002	2031	24.2%	594	35.2%	592	27.2%
Total	25871	13.5%	5816	27.5%	5034	29.1%

* Level 3 trials: appeals from jury-trial-based convictions with statutory maximums over 15 years.

**Level 1 and 2 trials: appeals from bench-tried convictions, and from jury trial-based convictions with maximum sentences up to 15 years.

Complex and Special Appointments to SADO					
Year	Cases With 2,000 or More Transcript Pages	Substitution Appointments	Prosecutor Parole Appeals	Interlocutory Appeals	Michigan Supreme Court Appointments*
2011	5	60	1	2	2
2010	9	85	5	5	6
2009	5	66	1	3	7
2008	12	77	1	2	4
2007	3	72	0	7	4
2006	5	108	0	3	0
2005	2	56	0	4	1
2004	4	70	0	2	1
2003	2	77	0	4	2
2002	5	97	0	10	3

* Only includes cases where SADO was not originally appointed to represent the client in the trial court or Court of Appeals.



* In counties where SADO received zero appointments there were no criminal appellate appointments for that county or the county is part of a multi-county circuit where there were zero or a very low number of appointments.

b. Productivity

SADO monitors its intake to match the workload to its capacity, and uses a weighted caseload model to distribute work to its staff attorneys. The use of differential caseload management allows for more efficient use of resources through assignments of work based on the nature of the expected work and the time it is likely to occur. The use of weighted assignments to staff attorneys significantly increases the office’s capacity.

The American Bar Association (1989 and 1992), the National Advisory Commission on Criminal Justice Standards and Goals (1973), and the American Council of Chief Defenders (2007) have consistently determined that appellate attorneys should handle no more than 25 non-capital appellate cases per year. Each case unit represents a trial of average complexity: particularly lengthy or challenging cases may receive an upward adjustment in weight. In Michigan, appellate attorneys are assigned to guilty plea appeals as well: due to their relative brevity in underlying record and smaller number of potential claims, plea cases are weighted below one unit. SADO pioneered use of specially trained plea appeal specialists, creating a “Special Unit on Pleas and Sentencing” that is staffed by attorneys handling up to 72 plea appeals per year. Special Unit attorneys focus on sentencing relief and counseling on the risks of challenging plea-based convictions, often initiating an appeal in the trial court within months of the original sentencing, while memories are fresh. Their practice involves much travel to courts and clients located throughout the state.

Productivity was tested during 2011 by amendment of MCR 7.205(F), which changed the appellate deadline for delayed applications for leave to appeal from 12 months to 6 months. Appeals from guilty pleas were condensed in time, requiring attorneys to perform investigations, conduct visits and prepare pleadings on a much-accelerated pace.

Productivity measured by case assignments per attorney exceeded national standards during 2011. On the output side, average filings per attorney and per case were within historical parameters.

Assignments Per Attorney				
Year	Avg. Attorney Staffing Level	Attorney Assignments	Avg. Assignment Per Attorney Raw	Avg. Assignment Per Attorney Weighted
2011	15	651	43	30
2010	18	628	35	24
2009	18	493	27	20
2008	17	575	34	26
2007	17	609	36	24
2006	17	680	40	27
2005	17	612	36	23
2004	18	618	34	26
2003	17	732	43	31
2002	19.5	809	41	29

Filings Per Attorney and Case						
Year	Total Filings	Total Major* Filings	Avg. Filings Per Attorney	Avg. Major* Filings Per Attorney	Avg. Filings Per Case	Avg. Major* Filings Per Case
2011	1569	922	105	61	2.4	1.4
2010	1447	860	80	48	2.3	1.4
2009	1419	852	79	47	2.9	1.7
2008	1767	964	104	57	3.1	1.7
2007	1793	934	105	55	2.9	1.5
2006	1795	971	106	57	2.6	1.4
2005	1430	814	84	48	2.3	1.3
2004	1872	990	104	55	3.0	1.6
2003	2060	1035	121	61	2.8	1.4
2002	1980	1000	102	51	2.4	1.2

* Major filings include opening pleadings and all non-ministerial pleadings, such as motions to remand, motions to correct sentence or presentence report, motions for credit, and motions for rehearing or consideration.

c. Dismissal and withdrawal rates

Of the cases assigned to staff attorneys, full review of the file and consultation with the client sometimes end in withdrawal from the case or dismissal of the appeal. Withdrawals are usually due to substitution of another attorney, often retained, or a breakdown in the attorney-client relationship. Dismissals usually occur in appeals from guilty pleas, where success on appeal through plea withdrawal would expose a client to original, and often higher charges. Both withdrawals and dismissals generally occur after considerable investment of time and effort on the case, and their rates are fairly consistent over time.

Dismissal & Withdrawal Rates						
Year	Cases with Final Dispositions	Cases Litigated	Dismissals	Withdrawals	Dismissal Rate	Withdrawal Rate
2011	611	478	116	17	19%	3%
2010	541	416	101	24	19%	4%
2009	547	461	67	19	12%	3%
2008	600	496	74	30	12%	5%
2007	601	498	91	12	15%	2%
2006	706	518	161	27	23%	4%
2005	646	504	122	20	19%	3%
2004	686	569	94	23	14%	3%
2003	875	641	196	38	22%	4%
2002	837	561	241	35	29%	4%

Goal 2: Seek the best possible outcomes for clients, providing high-quality, timely and effective assistance of appellate counsel

a. Overall relief rate

SADO's relief rate for 2011 is consistent with prior years, reflecting excellent appellate advocacy for clients.

Relief Rates					
Year	Cases with Final Dispositions	Dismissals and Withdrawals	Litigated Cases	Cases with Relief Granted*	Relief Rate
2011	595	133	462	109	24%
2010	540	125	415	110	27%

*Relief granted includes new trials and resentencings.

New Trials & Dismissed Convictions	
Year	New Trials & Dismissed Convictions
2011	10
2010	8

Prison Sentence Reductions			
Year	Total Years Reduced from Minimum Prison Sentence Terms in SADO Case	Annual Cost* of Incarceration	Estimated Savings** to State of Michigan
2011	182	\$34,547	\$6,287,600
2010	151	\$34,328	\$5,183,566
2009	165	\$33,544	\$5,534,678
2008	189	\$33,295	\$6,292,812

* The cost of prisoner incarceration is supplied by the Michigan Department of Corrections.

** SADO attorneys raise sentencing issues in nearly one-third of filings, on appeals from their clients' trial and guilty plea convictions. Many sentencing claims allege mistakes in scoring of sentencing guidelines, or overly high sentences based on inaccurate information about the defendant or the crime. Often, mistakes are corrected by returning immediately to the trial court to provide another opportunity to impose an accurate and just sentence. Some of the reported reductions are due to dismissal of all convictions in a case. Some savings is attributable to money already spent on needless incarceration, such as where an individual was exonerated.

When a sentence is corrected downward, to produce a lower minimum term, the defendant becomes eligible for parole sooner. Each individual defendant will consume fewer state resources, the cost of prison confinement, through such a reduction in the minimum sentence. SADO conservatively computes such reductions: if a defendant is serving multiple sentences in a SADO case and receives correction of just one, the impact is not computed.

b. Noteworthy cases

During 2011, SADO attorneys represented clients in a wide variety of noteworthy cases, including the following selected examples:

US Supreme Court

Michigan v Bryant. SADO represented Mr. Bryant in this Confrontation Clause case, where the United States Supreme Court allowed admission of statements made to authorities in the course of an ongoing emergency.

United States Court of Appeals for the Sixth Circuit

The Sixth Circuit granted habeas in *Walker v McQuiggan*, finding counsel ineffective for failing to pursue an insanity defense for an obviously mentally ill client in a murder case. The United States Supreme Court has since vacated this decision and remanded back to the Sixth Circuit.

Michigan Supreme Court

In *People v Armstrong*, the Michigan Supreme Court ordered a new trial for ineffective assistance of counsel in a criminal sexual conduct case, where the defense argued fabrication by the teenage complainant. Trial counsel failed to properly offer a foundation to admit evidence that would have shown complainant calling defendant dozens of times after an alleged sexual assault. At trial, she denied any communication with the defendant.

The Michigan Supreme Court also ordered a new trial in *People v Nathan Jacobs* after stipulation between parties. In the Jacobs case, crime lab retesting by the Michigan State Police disproved the prosecution's theory of the case. Mr. Jacobs ultimately pled guilty to a significantly lesser offense.

Michigan Court of Appeals

People v Slater: reversal of conviction for contraband in prison where statute did not actually criminalize cell phone possession.

People v Richards: remand to trial court for findings of whether trial attorney properly advised client of immigration consequences to guilty plea, as required by Padilla v Kentucky.

In re Parole of Michelle Elias: reversal of judge's decision denying parole, reinstating the decision of the parole board to release.

People v Gentile: reversal of Sex Offender Registry requirement.

People v Brooks: new trial for failure to honor right to self-representation; life sentence disproportionate for entering without breaking.

People v Straight: new trial for improper exclusion of civil lawsuit by the complainant.

People v Boles: insufficient evidence for "conducting a criminal enterprise" in multiple larcenies

Trial Court

People v Marks: new trial where trial judge discouraged client from testifying with implied threat of reinstating manslaughter charge, which had been dismissed at directed verdict.

*People v Taylor and
People v Bailey:* trial court ordered sentencing relief and released two middle- aged adults who had originally received life sentences as juveniles.

People v Draughn: new trial and time-served agreement for 1985 murder conviction based on inaccurate forensic pathologist and ballistics evidence.

c. Special and grant-funded projects for clients

A number of special projects in recent years have significantly enhanced SADO's ability to effectively represent indigent criminal appellants and serve the criminal defense bar. Two of these projects have resulted in the release of innocent clients from prison.

SADO's **Crime Lab Unit** continues to operate in the wake of the Detroit Police Crime Lab closure, supported by federal stimulus grant funding. Two staff attorneys review files, evaluate and submit Detroit Crime Lab evidence for retesting, and provide appellate legal representation in cases involving potentially unreliable evidence processed by the Crime Lab. In 2010, SADO obtained a new trial for William Lee, who was convicted of first-degree criminal sexual conduct and sentenced to fifteen to thirty years imprisonment for the rape of his landlord's girlfriend. At trial, the prosecution claimed that not enough material had been collected for DNA testing; Michigan State Police testing at SADO's request revealed that the landlord, and not Mr. Lee, matched the sample. Mr. Lee was acquitted by a jury, on retrial. In 2011, SADO obtained a new trial for Nathan Jacobs when the Wayne County Prosecutor ultimately followed the recommendation of an independent review committee for a new trial due to crime lab retesting which disproved the prosecution's theory in a murder conviction.

SADO's **Early Response Unit** provides staff attorneys with enhanced ability to develop post-conviction claims of innocence due to early screening of cases and compilation of discovery material by a project attorney, supported by federal grant funding. At the earliest possible time after SADO is appointed to a case, the screening identifies potentially unreliable eyewitness identification evidence, false confession evidence, and questionable forensic evidence. In 2010, early investigation and litigation led to a new trial for Rayshard Futrell, convicted as a seventeen-year-old of first-degree murder. Police in the case obtained three videos of the incident, two of which were provided to trial counsel. The withheld video, obtained by SADO on appeal, showed he was not the killer and formed the basis for a motion for new trial; the prosecution agreed and the trial judge ordered a new trial and Mr. Futrell's release. Mr. Futrell, who was wrongly convicted of murder and sentenced to life without parole, pled to an unrelated minor charge and was sentenced to probation; upon successful completion of probation, the charge will be dismissed.

A federal grant also is supporting a major upgrade of **SADO's web site and data warehouse**, located at www.sado.org. Virtually all significant SADO work product and underlying documents are maintained in searchable databases that allow attorneys to find relevant pleadings, research, and transcripts. The improved web site will better organize SADO's resources, allowing faster and more complete access to the tools needed to practice competently. All of the approximately 1500 criminal defense attorneys providing assigned defense services will benefit from the project, a cost-effective sharing of resources.

Goal 3: Provide support services and training to assigned criminal defense counsel, in all circuits of Michigan

a. Overview of year

The year 2011¹ marked the thirty-fifth year the Criminal Defense Resource Center (CDRC, formerly the Legal Resources Project) has served Michigan's criminal defense community with services essential to the competent practice of criminal law in Michigan. Like SADO itself, the CDRC underwent a management change with the promotion of Dawn Van Hoek from Director of CDRC to Director of SADO in March of 2011. On July 5, 2011 Marla R. McCowan was chosen as Manager of the Criminal Defense Resource Center, SADO's training and support division.

Ms. McCowan transitioned from full time caseload duty as an Assistant Defender at SADO (since 1998) to maintaining a part time caseload while integrating her new management responsibilities of the CDRC during the last 3 months of this reporting term.

The CDRC's objectives for the year remained to deliver core services through traditional means, expand their delivery through web-based means, and directly train criminal defense attorneys on the resources available to them.

CDRC operations were once again funded through a combination of SADO budgetary support, user fees, and grants. User fees supported a portion of the costs of books, newsletters, copying, and operation of the SADO web site. The principal grants were from the Michigan Commission on Law Enforcement Standards, earmarked for training projects, in the amount of \$186,544, a decrease of \$59,310 from 2010. This MCOLES award supported (a) the publication of the Defender Trial, Sentencing, Habeas and Motions Books, and appellate summaries distributed regularly throughout the year that in part form the basis for the updates to the books, (b) legal technology training, providing hands-on workshops for assigned counsel, covering computerized research, writing and presentations, (c) training conferences and seminars co-sponsored by our training partners, the Criminal Defense Attorneys of Michigan, and the Wayne County Criminal Advocacy Program, and (d) scholarships for assigned counsel to attend CDAM's Trial College. The CDRC also continued to manage the month-by-month grant for the Attorney-to-Attorney Project in Wayne Circuit Court, awarded by the Wayne Criminal Defense Attorneys Association, along with other support services for customer subscribers and community partners.

b. Training

The Defender Books

The principal training provided by the CDRC on a statewide basis are SADO's "Defender Series" of books: The Defender Trial Book, The Defender Plea, Sentencing and Post-Conviction Book, The Defender Motions Book, and the Defender Habeas Book. These books reside on SADO's website, www.sado.org, and are available at any time to SADO's approximately 500 online subscribers. While most access is online, dozens of sets were printed on demand for distribution to criminal defense attorneys, judges, prosecutors, inmates, law libraries and other criminal justice system participants.

¹ Due to reporting methods based on a subscription year, the time period covered by this report is October 1, 2010 to September 30, 2011.

These four annually-updated books contain well-organized summaries of the law on all aspects of criminal law and procedure, from arrest through appeal. In addition, the Defender Motions and the Defender Habeas Books contain model pleadings that can be adapted for use in any case, as well as consulted as writing models. Summaries and analysis of case law, statutes, court rules and legal practice are also included.

The books themselves are substantial. The 2011 Defender Trial Book is 1110 pages, The 2011 Defender Plea, Sentencing and Post-Conviction Book is 596 pages, The 2011 Defender Motion Book 590 pages, and the 2011 Defender Habeas Book is 454 pages. One goal was to move away from printing in the traditional loose-leaf format, not simply to save paper and cost but to emphasize the usefulness of electronic searchability. The books can be searched by keyword by website subscribers. Separately, for a nominal cost, users can purchase a flash drive of all four books. The 2011 flash drive contains a new feature: an electronic index for searching content in all four Defender Books simultaneously.

Sentencing Training

Two live CDRC training events complimented the training book updates during this reporting period. The focus of the live events involved half-day training on sentencing law, one of the most actively changing areas of law and a tremendously popular training event attended by defense attorneys, prosecutors, probation agents and judges.

The first event was the “Michigan Felony Sentencing Seminar” held on June 24, 2011, live in Macomb County (66 trainees) and trained by SADO Sentencing Expert Anne Yantus.

The second event was on September 9, 2011, called “Michigan Felony Sentencing Guidelines Boot Camp,” live in Lansing at Cooley Law School, and simulcast to Cooley Campuses in Grand Rapids, Ann Arbor and Auburn Hills. The instructors were two prosecutors and one criminal defense attorney; the trainees were largely probation agents, along with prosecutors and defense attorneys. More than 100 people attended this multi-campus training session.

Legal Technology Training

With funding support from the Michigan Council on Law Enforcement Standards (MCOLES), the CDRC presented live demonstrations to defense counsel on the use of a variety of online research tools, including the Defender Books, other web-based legal research, word processing skills, caseload management, electronic filing, and trial presentation skills. Training largely focused on SADO’s website, which continued to grow in 2011 and was increasingly used as the state’s main portal for criminal defense attorneys, containing its own large research databases of unique material. No other Michigan-focused web site contains both trial and appellate pleadings, full text of practice manuals (the Defender Books), collections of witness testimony, and videos from actual training events; all CDRC databases are searchable and downloading of useful material is facilitated.

Four presentations totaling 12 hours of training took place during CDAM conferences between November 11-13, 2010 in Traverse City (“Fall Conference”) and on March 17 and 18, 2011 in Novi (“Spring Conference.”) MCOLES-approved evaluations were collected and feedback was overwhelmingly positive.

CDAM Conferences, Trial College, and CAP Seminars

For the seventh year running, the CDRC included in its MCOLES grant application funding for conferences planned with training partners, the Criminal Defense Attorneys of Michigan (CDAM) and the Criminal Advocacy Programs of Wayne County Circuit Court (CAP). Funding was obtained for ten trainee scholarships to attend the summer CDAM Trial College, and also for the operational expenses of the ten CAP seminars conducted each fall.

These conferences and training events are well-attended and widely-praised. The Fall 2010 CDAM Conference had 230 trainees in Traverse City, Michigan, and the Spring 2011 conference held in Novi, Michigan had 257 registered trainees. Approximately 35 trainees attended the CDAM Trial Skills College, held on August 19-24, 2011 at Cooley Law School in Lansing, Michigan. CAP seminars average approximately 275 people per session.

At seminars and conferences, topics range widely from legal updates to practical tips and strategies for success, with lecture-based presentations and some interactive sessions as well. At the trial college, trainees received intensive trial skills training, with each training day providing at least eight hours of lectures, demonstrations and small group workshops. Trainees worked on exercises each night as well, often practicing skills to be tested on the following day. Training topics included communication skills, jury voir dire, opening statements, examination of witnesses and closing arguments. Small group workshops accompanied by demonstrations of trial techniques and skills occurred throughout the session.

c. Support Services

In 2011, the CDRC had approximately 500 subscribers. The CDRC staff regularly provides services, support and information to subscribers through a variety of means including distribution of the Criminal Defense Newsletter, assistance with database searches and customer accounts, operation of SADO's "FORUM" (an online community of criminal defense attorneys) and oversight of the Attorney-to-Attorney support project in the Wayne County Circuit Court.

Criminal Defense Newsletter

This near-monthly newsletter (eleven issues published) delivered an average twenty-four pages of essential information to subscribers in both electronic and hard copies. Each issue contained a lead article providing in-depth analysis of a legal issue, news, announcements, a training calendar, practice notes, summaries of appellate decisions, news of pending and recently-passed legislation, and much more.

The summaries of appellate decisions in the newsletter are funded through an MCOLES grant and provide regular, concise updates on the law to criminal defense attorneys in an effort to stay-up-to-date on legal developments. The summaries cover all criminal decisions of the Michigan Court of Appeals and Michigan Supreme Court, significant orders of those courts, selected unpublished Michigan Court of Appeals decisions, and selected decisions of Michigan's federal district courts, the Sixth Circuit Court of Appeals and the United States Supreme Court. Significant decisions from other states are summarized as well. The summaries also provide, in part, the basis upon which the Defender Books are updated, and serve to bridge the information delivered between the annual updates of the Defender Books themselves. Approximately 320 summaries of appellate decisions were distributed to subscribers through the Criminal Defense Newsletter and through electronic communications from CDRC support staff.

Website Contents

The advantages of web-delivered services are many, including access at all times, from any location, for unlimited lengths of time. Many attorneys find that research needs are well-met by their own “browsing” or “searching” of the CDRC's databases. Such online access is very cost-effective, and serves the CDRC goals of: (1) improving the quality of criminal defense representation, (2) reducing the possibility of errors and need for appeals, and (3) reducing costs for the state and counties by reducing the hours of research for which appointed counsel might otherwise submit a bill.

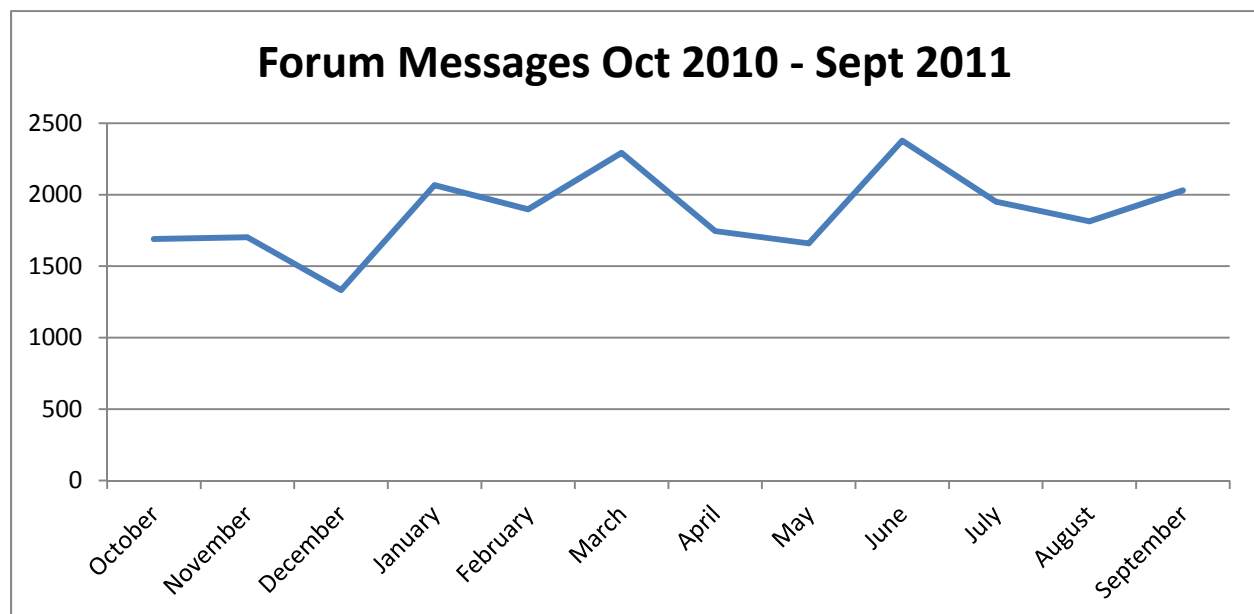
The year 2011 again saw consistent use of the CDRC’s web-based database resources, showing that attorneys have realized the potential of performing online legal research. The databases available at www.sado.org included appellate and trial level pleadings, resumes of expert witnesses, full text of the Defender Books, full text of the Criminal Defense Newsletters, opinion summaries and full text of appellate court decisions, both state and selected federal, testimony of selected expert and police witnesses, and much more. Access to the website is available 24/7, making research efficient and convenient for the users.

During 2011, materials were added in all web site segments, including descriptions of legal processes, training events, legal databases, and summaries of appellate decisions.

The value of the site to users was demonstrated by the number of web site hits and user sessions. The most revealing statistic tracked, user sessions, averaged about 76,236 per month during the report period (an increase from last year's average of about 59,816).

SADO's "Forum"

The Forum, the CDRC’s online discussion group of approximately 500 criminal defense attorneys, remained very active, averaging over 1800 messages per month. Attorneys post messages 24/7, asking questions about practice and procedure, sharing pleadings and suggestions for strategy. Attorneys posed questions on topics ranging from particular judge’s sentencing practices to the most recent grants of leave by the Michigan Supreme Court, often sharing their own pleadings or lending encouragement to a colleague. As the Forum is not actively moderated, messages go out to the entire group as soon as sent by a member, no matter what time of day or night. Members are particularly active at night and on the weekends, reaching each other at times otherwise difficult by phone. Forum members often receive help from several other members.



Attorney-to-Attorney Support Project

The CDRC continued its partnership with the Wayne County Criminal Defense Attorneys Association to provide the Attorney-to-Attorney support in Michigan's busiest criminal venue, Wayne Circuit Court. CDRC research attorneys provided approximately 20 hours of service weekly, directly consulting with other criminal defense attorneys who needed urgent answers to their legal questions. CDRC attorneys provided pleadings, citations, and a sounding board on matters of criminal law and procedure. Dozens of contacts took place each week between CDRC research attorneys and the users of the courthouse service.

The CDRC also continued to offer statewide support to Michigan's criminal defense community through an e-mail help desk, called help@sado.org. Any criminal defense attorney could send a message at any time, and the inquiry was answered typically within 24 hours by a CDRC research attorney. In addition to substantive answers in the body of e-mail messages, pleadings and other useful documents are attached to the replies. During the year, approximately 300 contacts took place between the CDRC Research Attorney and the attorneys using the help@sado.org service.

d. Sharing/partnering with the community

The CDRC continued in 2011 to share its resources and expertise with others. During the year, the CDRC provided major technical support to Michigan's Attorney Discipline Board, helping the agency to organize its resources into databases provided online. SADO continued the hosting of the ADB web site.

The CDRC also continues its partnership with the Wayne County Criminal Advocacy Program and the Wayne County Criminal Defense Attorneys Association to maintain a web site that captures the excellent training offered each fall for assigned criminal defense attorneys in Wayne Circuit Court. Presenters' handouts and the video of their presentations are available at www.capwayne.org. And, CDRC staff provided significant technical assistance to the Criminal Defense Attorneys of Michigan (CDAM). CDAM again reduced its operating budget considerably by publishing training materials on CD-ROM instead of printed pages, during the report period. This significant enhancement makes it possible to obtain training on an as-needed, or as-possible basis, facilitating continuing review of a topic as well.

The CDRC's success in serving the appointed criminal defense bar is largely due to its relationship with a fully-functional law office, the State Appellate Defender Office. CDRC staff interacts constantly with SADO's practicing attorneys, developing expertise on substantive issues. The CDRC's databases, particularly its brief bank, consist primarily of pleadings prepared during the normal course of SADO's business. Administrative support and overhead are shared, as are computer resources. Both SADO and appointed counsel benefit from the symbiosis, as both SADO and outside attorneys draw upon the collective expertise and work product. A freestanding support office would lose the cost-effectiveness of this relationship, which encourages re-use of pleadings and expertise.

Goal 4: Provide cost-effective services that represent a good return on investment to Michigan taxpayers

a. Economics of sentencing relief

SADO's role in the appellate system is to correct errors that occurred at the trial level, obtaining just results for clients whether they pled guilty or were convicted at trial. Staff attorneys are well-trained and well-supervised professionals who practice criminal defense on a full-time basis. They are extremely capable of evaluating how best to proceed with an appeal, opting in many cases for correction in the trial court shortly after conviction, and in a significant number of cases for dismissal of the appeal entirely (in plea appeals presenting risk). Appellate and trial courts agree with claims raised in a large number of cases resulting in sentence correction. Correcting sentencing error in a case produces the sentence that should have been applied in the first place, one that is both accurate and appropriate in light of sentencing guidelines. These sentencing error corrections produce not only just results, but considerable savings to the state in prison costs.

Minimum sentences also are reduced when convictions are dismissed outright, as when evidence at trial was insufficient. These cases, while small in number, contribute to the substantial savings in the cost of incarceration.

Prison Sentence Reductions			
Year	Total Years Reduced from Minimum Prison Sentence Terms in SADO Case	Annual Cost of Incarceration	Estimated Savings to State of Michigan
2011	182	\$34,547	\$6,287,600
2010	151	\$34,328	\$5,183,566
2009	165	\$33,544	\$5,534,678
2008	189	\$33,295	\$6,292,812

b. Video visits with clients

Video-conferences with clients occur routinely, 310 times by SADO attorneys during 2011, saving considerable travel expenses and improving client communication. SADO established the first project connecting staff attorneys with incarcerated clients at nearly every Michigan correctional facility, a successful collaboration by every measure. The project was extended to MAACS attorneys in 2011, and was used for 161 virtual visits.

Goal 5: Advocate for improvements in the administration of justice

As Michigan's only state-funded public defender office, with a statewide appellate practice, SADO is uniquely situated to interact with policy stakeholders in the criminal justice system and with the public.

a. Bar service

SADO staff remained engaged in professional activities benefitting the bar and public, including service on a hearing panel of the Attorney Discipline Board (Director Dawn Van Hoek), the governing Council of the State Bar of Michigan's Criminal Law Section (Deputy Director Jonathan Sacks) and Appellate Practice Section (Marilena David), co-chair of Criminal Issues Initiative and State Bar Task Force on Eyewitness Identification (Valerie Newman), and member of the Criminal Jury Instructions Committee (Chris Smith), Libraries and Legal Research Committee (Randy Davidson), and District Character and Fitness Committee (Randy Davidson).

b. Systemic reform

Advocacy for systemic reform continued in 2011 with participation of the Director in legislative work groups planning a statewide trial-level defense system. New interest in a legislative solution produced alliances and drafts promising to create an oversight commission and office that would improve and coordinate systems that are currently county-funded and operated in a variety of service methods.

SADO also met with the Attorney General's office to implement new procedures for administrative changes to Department of Corrections sentences. These changes ensured that SADO clients and other prisoners would receive due process before the Department of Corrections administratively increased a prison sentence.

c. Court rule proposals

Through a court rules committee, SADO submitted court rule amendments, and commented on court rule proposals involving appellate procedure and timelines, post-conviction motions, guilty plea procedure, and pre-trial discovery. SADO attorneys testified at Supreme Court administrative hearings on these proposals. In the majority of these proposals, the Michigan Supreme Court ultimately adopted SADO recommendations.