



Michigan State Appellate Defender Office
and Criminal Defense Resource Center

2012 Annual Report

The 2012 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.

2012 Appellate Defender Commission

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2012 State Appellate Defender Office

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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

2012 Highlights & Executive Summary

Agency infrastructure upgrades

2012 continued the process of agency review commenced by Director Dawn Van Hoek in 2011 upon her assumption of leadership, with emphasis on building a strong operational infrastructure. A top-to-bottom review of agency mission, staff motivation, performance metrics, budgeting, and management added the following changes to those accomplished in the preceding year:

- Regular staff meetings took place;
- Internal operating procedures, previously a haphazard thread of e-mail and oral history, were collected and studied by a working group charged with recommending a comprehensive collection to management;
- SADO's web site development project came to fruition with a successful launch that provided staff with a helpful intranet, assembling human resources and other essential information in one place;
- In-depth performance reviews of all staff were completed;
- Hardware and software upgrades were implemented, putting all staff on the same computing platform;
- SADO's Detroit office space in the historic Penobscot Building was renovated to improve functionality and accommodate additional staff; and
- A Prisoner Art Project was launched to place original art from incarcerated individuals throughout the SADO office space.

Web site overhaul

Leadership change in 2011 included the promotion of staff attorney Marla McCowan to the position of Criminal Defense Resource Center (CDRC) Manager. Ms. McCowan managed a grant-funded rebuilding project for SADO's web site, www.sado.org, including new web content, navigation, and design for the tools that many Michigan criminal defense attorneys consider essential to their practices. Her web development team included Eric Buchanan, Bill Moy, and Heather Waara.

The new web site delivered not only a secure and useful staff intranet, but resources for the criminal defense bar and the general public. A more graphically-interesting and easy-to-navigate home page served as the portal to many collections, and several functional elements:

- Existing collections were highlighted and full-text searchable, including SADO's four Defender Books (covering pre-trial motions, trials, pleas and sentencing, and habeas practice), the SADO-published Criminal Defense Newsletter, summaries of criminal appellate opinions, and pleadings written by SADO attorneys;
- New collections were added to the site, including expert witness testimony, and police misconduct information;
- SADO's web-based message exchange for criminal defense attorneys, the Forum, launched delivery of messages through a web site, with users empowered to search and follow message threads, and upload their own useful materials;
- A "Community" segment of SADO's web site facilitated the exchange of information about each judicial circuit, including attorneys practicing in the area, recent local opinions of interest, and attorneys willing to mentor or "second-chair" in the area;
- Training videos from SADO's training partners were optimized and posted for viewing on a 24/7 basis.

Addition of staff attorneys

SADO's capacity was increased in 2012, enabling the agency to come closer to achieving its statutory mandate to provide appellate representation on "no less than 25%" of the annual statewide caseload. With strong support from the Appellate Defender Commission, the Michigan Supreme Court, and Governor Snyder's Office, SADO received additional general fund support from the Michigan Legislature: with the additional funding, retirement of staff, and management downsizing in 2011, SADO was able to hire five new entry-level attorneys. A highly competitive hiring process led to placement of attorneys in both Detroit and Lansing offices.

SADO's training plan for newly-hired attorneys was re-developed and made more robust, including intensive and interactive week-long sessions, pairing with experienced staff attorneys, and frequent feedback. Caseload capacity of the office will increase as these attorneys assume caseloads after training periods end.

New federal grant funding

SADO competed nationally for federal Byrne Grant funding, receiving support for three projects:

- The Wrongful Conviction Project combines SADO's successful Fast Response to Wrongful Conviction Project and SADO's Detroit Crime Lab Project. The Unit will continue the two-year intensive "Fast Response" program that identified and responded to legitimate post-

conviction claims of innocence at SADO. Additionally, the Unit will continue to represent any people whose conviction was based on unreliable evidence from the Detroit Crime Lab.

- The Postconviction DNA Testing Project is a 24-month intensive review of the backlog of untested sexual assault kits from the Detroit Police Department to review possible cases of wrongful conviction, analyze the evidence in these cases, and advocate for these clients.
- The Straddle Cell Sentencing Project will focus on advocacy for a certain segment of Michigan sentencing. The Project is planned as a multi-year effort where a team consisting of an attorney and a social worker will represent clients who are appealing their sentences. It uses a holistic approach to client service, seeking not only sentencing relief, but also improved life outcomes and lower recidivism rates. The social worker/attorney team focus on 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. The project collects data, offering sentencing mitigation, establishing best practices, developing sentencing alternative networks in local communities, and training trial level indigent defenders. The Michigan Council on Crime and Delinquency serves as the local research partner on the project, conducting assessment and evaluation. SADO was one of just four agencies nationwide selected for this funding under a special Department of Justice initiative for “Answering Gideon’s Call.”

Juvenile Lifer Project

In *Miller v Alabama*, 567 US __ (2012), the United States Supreme Court found Michigan’s mandatory life without parole sentencing scheme for youths convicted of first-degree murder unconstitutional. Immediately upon release of the *Miller* decision, SADO determined to advocate not only for current clients (six in number) but also former clients (approximately 100 in number): over 370 youths serve sentences of life without parole in Michigan in 2012. SADO’s Director and Deputy Director testified before the Michigan House Judiciary Committee on the impact of *Miller*, and SADO filed an amicus brief in support of the defendant in *People v Carp*, 298 Mich App 472 (2012). SADO has also been involved in organizing and educating pro bono attorneys to represent these youth at resentencing, and SADO’s Deputy Director serves on a legislative work group that has examined legislative responses to this challenge. In recognition of these efforts, Deputy Director Jonathan Sacks shared the Criminal Defense Attorneys of Michigan 2013 “Justice for All” Award.

Value of client outcomes at new high

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. In 2012, reductions in clients' minimum terms amounted to about 247 years, producing taxpayer savings of approximately \$8,342,919.

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.

Consolidation of operations underway between SADO and MAACS

In December of 2012 the Appellate Defender Commission approved a two-year plan to create and implement a physical and operational merger of SADO and MAACS. The Commission directed that the operational merger begin with IT and attorney training. It also included the gradual expansion of the MAACS roster to qualified applicants, the creation of a marketing and recruitment plan to facilitate roster expansion, a limitation on annual MAACS roster attorney case assignments and the physical merger of MAACS and SADO Lansing office space. Both MAACS and SADO were charged with creating a time line to measure their progress toward the plan's goals and to provide reports to the Commission on that progress at each Commission meeting.

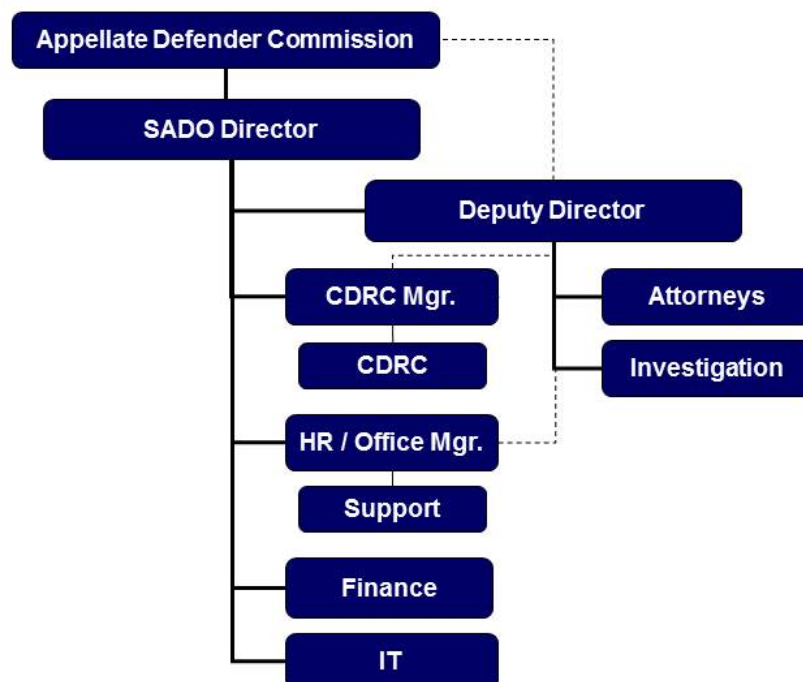
History and Governance

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 2012, the State Appellate Defender Office remains under the supervision of the Appellate Defender Commission, a seven-member body appointed by Michigan's Governor.

2012 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 2012 was approximately 16% of the total appellate assignments statewide, below the statutory floor of 25%, continuing a trend that began with major budget cuts a decade previously. The reduction from the 2011 level of 18% was due to retirement of high-production attorneys, and the need to train newly-hired attorneys before assigning them a caseload. It is expected to be a short-term drop before long-term and significant gains in capacity. 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.

As in previous years, SADO's 2012 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
2012	3185	514	16.1%
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	39906	7072	17.7%

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 to SADO	Levels 1 & 2** Trials Statewide	SADO's % of Level 1 & 2 Trials
2012	2298	12.8%	568	25.2%	319	24.1%
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	28169	13.5%	6384	27.3%	5353	28.8%

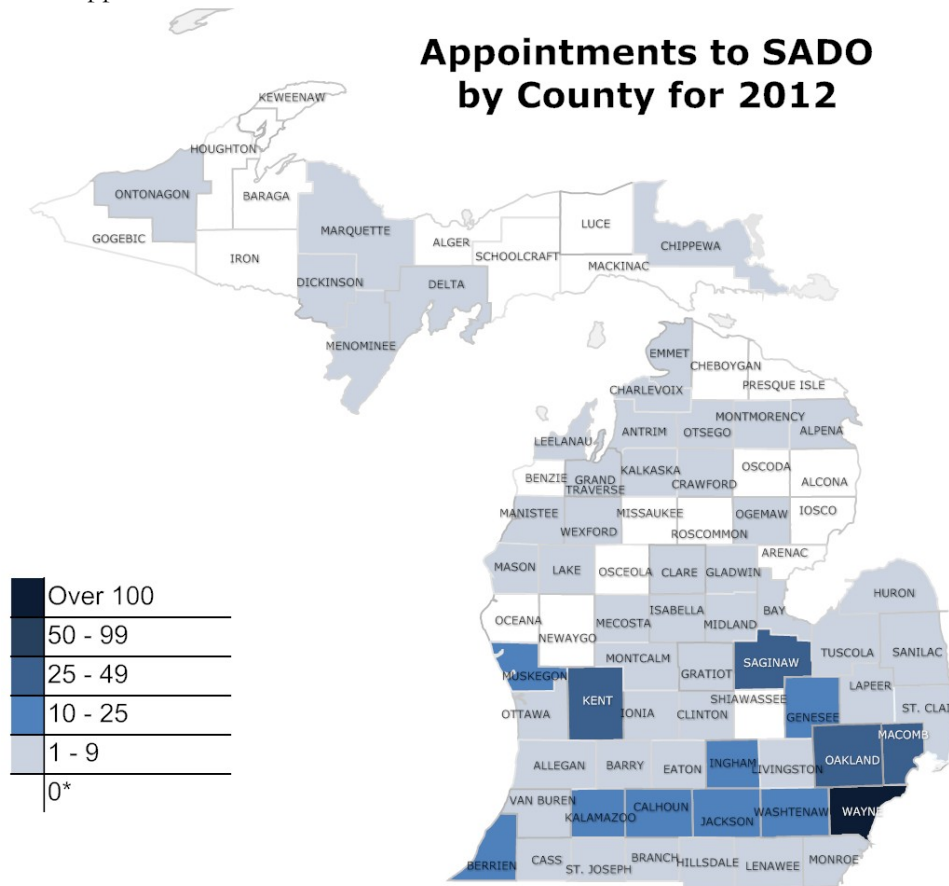
* Level 3 trials: appeals from jury-trial-based convictions with statutory maximums over 15 years.

**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 *
2012	9	82	2	3	0
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 remained a challenge during 2012 due to 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 matched national standards during 2012. Productivity lagged capacity in 2012 due to the need to train new attorneys, before placing them on a full caseload. 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
2012	15	550	37	25
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				
Year	Total Filings	Total Major* Filings	Avg. Filings Per Attorney	Avg. Major* Filings Per Attorney
2012	1605	952	107	63
2011	1569	922	105	61
2010	1447	860	80	48
2009	1419	852	79	47
2008	1767	964	104	57
2007	1793	934	105	55
2006	1795	971	106	57
2005	1430	814	84	48
2004	1872	990	104	55
2003	2060	1035	121	61
2002	1980	1000	102	51

* 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, a breakdown in the attorney-client relationship, or a conflict of interest. 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
2012	532	434	84	14	16%	3%
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 2012 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
2012	532	98	434	111	26%
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
2012	13
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
2012	247	\$33,777	\$8,342,919
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
Total	904		\$30,628,285

* 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 2012, SADO attorneys represented clients in a wide variety of noteworthy cases, including the following selected examples:

US Supreme Court

Lafler v Cooper, 132 SCt 1376 (2012). Supreme Court recognizes right to counsel at guilty plea stage in SADO case where trial counsel provided incorrect advice to his client. *New York Times* calls case the most important right to counsel decision since *Gideon v Wainwright*.

United States Court of Appeals for the Sixth Circuit

Foster v Wolfenbarger, #10-2023, for publication. Writ of habeas corpus granted, ineffective assistance of counsel for failure to raise an alibi defense.

Michigan Supreme Court

People v James Grissom, MSC#140147. Actual innocence case involving prior false complaints of sexual assault, Court holds that impeachment evidence may be newly discovered such that a new trial is required. Remanded for a decision by trial court, which granted new trial. Mr. Grissom released after nine years in prison and complainant arrested for other false rape complaints.

People v Shawn Brown, MSC#143733. Guilty plea involuntary if defendant not informed of maximum sentence as habitual offender. Plea withdrawal required.

People v David Cole, MSC#143046. Guilty plea not knowing and understanding where defendant not advised of lifetime electronic monitoring. Opportunity for plea withdrawal required.

In re Parole of Phillip Paquette, MSC# 144347. Prosecutor's application for leave to appeal decision affirming parole denied.

Michigan Court of Appeals

People v Thomas Highers, COA#311875. Actual innocence case, Court of Appeals denies leave on prosecutor's appeal where trial court reversed twenty-five-year old murder conviction based on newly discovered evidence (new witnesses), freed client and his brother on bond. Michigan Supreme Court denied leave and new trial is scheduled.

People v Terrence Sheppard, COA#305240
Attempted murder conviction vacated for insufficient evidence.

People v Michael Chesebro, COA#301807
Insufficient evidence of willful violation of failure to notify authorities of change in residence per Sex Offender Registration Act.

In re Parole Ronald Hill, COA#301364
Court of Appeals finds Circuit Court has discretion to appoint counsel on prosecutor parole appeals where local prosecutor challenged the appointment.

People v Anthony Little, COA#294575
New trial in child support case because client should have ability to raise defense of impossibility to pay.

People v Stephen Hill, COA#300350

Court finds no authority for more than decade late "clerical error" modification by trial court making sentences consecutive.

People v Quinn McClain, COA#301359

Resentencing ordered before a different judge for improper sentencing guidelines departure.

Trial Court

People v Denzel Hardy.

Judge orders new trial based on ineffective assistance of trial counsel for failure to order and play critical 911 call disproving identification evidence at trial.

People v Earl Kranz.

Judge orders new trial for ineffective assistance of counsel in multiple count criminal sexual conduct conviction. The court's findings involved failure to use available evidence including court orders, DHS records, divorce records, and psychiatric evaluations.

People v Quinn McClain.

Resentencing from prison to community placement. Client left court with his family.

People v Anthony Cooper.

Sentence reduced to 5 to 15 years imprisonment from 15 to 30 years. This was resentencing relief that followed from United States Supreme Court victory in *Lafley v Cooper*, 132 SCt 1376 (2012).

People v Amelia Meldan Pittner.

Prosecution agrees to delete restitution of \$2,125.30 for goods that had been stolen but were returned to the store and re-inventoried for sale.

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.

SADO's **Crime Lab Unit** continues to operate in the wake of the Detroit Police Crime Lab closure, supported initially by federal stimulus grant funding and now through the Department of Justice Wrongful Conviction Review Program. One staff attorney reviews files, evaluates and submits Detroit Crime Lab evidence for retesting, and provides appellate legal representation in cases involving potentially unreliable evidence processed by the Crime Lab. In 2012, the Unit had two major accomplishments for our clients.

Jerah Arnold was convicted of second-degree murder where the evidence linked a gun at his home to the crime scene. The Crime Lab Unit requested that the evidence be retested by the Michigan State Police, who found that the shell casings from the scene were likely not fired from the gun recovered from Mr. Arnold's home. In October 2012, the prosecutor's office stipulated to a new trial. Mr. Arnold has since pled guilty for a time served sentence and he has been released from prison.

Karecio Eatmon pled “no contest” in part on reliance of evidence that a firearm recovered from his house matched a bullet in complainant's car. Retesting by the Michigan State Police showed that the gun did not actually match the bullet. The prosecution stipulated to withdrawal of his plea and ultimately, Mr. Eatmon received a time served sentence.

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 2012, the Unit allowed SADO attorneys to hold hearings and conduct investigations with experts on eyewitness identifications, child abuse, and handwriting. In the case of one client convicted of forging a check, a handwriting expert demonstrated that she did not actually sign the check. The project also played a significant role in the adoption of Michigan Court Rule 6.005(H), which requires trial attorneys to provide appellate attorneys access to the contents of their files, including pre-trial discovery. *Michigan Lawyer’s Weekly* named this new rule one of the most significant legal accomplishments in the State of Michigan during 2012.

SADO’s **Straddle Cell Sentencing Project** teams up an attorney and social worker to focus on new sentencing hearings where guidelines allow a potential release from prison and community reentry sentence. A State Byrne Grant funded the project for FY 2012 and funding has been renewed through April 2014 through the Department of Justice “Answering Gideon’s Call” Grant. Since the start of the program in October, 2011, SADO’s social worker has had 67 different clients. In total, SADO’s social worker and her attorney partners have been responsible for 42.1 years in sentencing reductions for clients and multiple releases of clients from prison to a community corrections setting.

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

a. Overview of year

The year 2012¹ marked the thirty-sixth year the Criminal Defense Resource Center (CDRC) has served Michigan's criminal defense community with services essential to the competent practice of criminal law in Michigan. This was the first full year under the direction of new CDRC Manager Marla R. McCowan. This was also the year that CDRC launched SADO's new website with grant funding².

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 \$169,498, a decrease of \$17,046 from 2011. 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.

The most significant developments in CDRC involved the launch of the new website, the hiring of a new administrative support person, and the implementation of a precise method of tracking subscriptions and orders that all department employees can easily access. A snapshot of our year marking the numbers achieved toward our objectives and goals follows this portion of our report.

¹ Due to reporting methods based on a subscription year, the time period covered by this report is October 1, 2011 to September 30, 2012.

² The project was funded by the Byrne JAG grant #2010-DJ-BX-0003, awarded by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice (DOJ), and administered by the Michigan state Police (MSP).

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 450 online subscribers. While most access is online, 280 sets were printed on demand for distribution to criminal defense attorneys, judges, prosecutors, inmates, law libraries and other criminal justice system participants. 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 2012 Defender Trial Book is 1086 pages, The 2012 Defender Plea, Sentencing and Post-Conviction Book is 584 pages, The 2012 Defender Motion Book 586 pages, and the 2012 Defender Habeas Book is 486 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 2012 flash drive contains a popular electronic index for searching content in all four Defender Books simultaneously and was purchased by 123 users. Flashdrives are also widely distributed at legal technology training events and to all public defender offices in Michigan.

Sentencing Training

Five live CDRC training events complimented the training book updates during the reporting year. 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.



*Anne Yantus,
Manager of
SADO's
Special Unit
on Pleas &
Sentencing*

The first event was on October 7, 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 training along with SADO Sentencing Expert Anne Yantus. The trainees were largely probation agents, along with prosecutors and defense attorneys. Over 80 people attended this multi-campus training session.

The second training event was on December 29, 2011, live in Gaylord. Approximately 15 people attended this session called “Advanced Michigan Felony Sentencing Guidelines,” with SADO instructor Jacqueline McCann. Evaluations were provided to MCOLES pursuant to the grant award requirements, and the feedback from all trainings was overwhelmingly positive.

The third event was the “Michigan Felony Sentencing Seminar” held on June 1, 2012, live in Marquette, Michigan and trained by Anne Yantus, Marquette County Prosecutor Matthew Wiese and Northern Michigan Probation Agent Kevin Ayotte. Approximately 35 trainees attended this session in the Marquette County Circuit Court, including defense attorneys, prosecutors, probation agents and local judges.

The fourth event was on August 3, 2012, called “Michigan 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 instructor was Jacqueline McCann, SADO Assistant Defender and author of the 2012 Defender Sentencing Book. Approximately 97 people registered for this multi-campus training session.

By popular demand, the August 3rd boot camp/introductory session was followed up the very next week with the fifth sentencing training event on August 10, 2012, called “Advanced Michigan Sentencing Seminar”, live in Auburn Hills at Cooley Law School, and simulcast to Cooley Campuses in Grand Rapids, Ann Arbor and Lansing. The instructors were Anne Yantus and Oakland County Assistant Prosecutor Danielle Walton. Almost 150 people registered for this multi-campus training session.

Evaluations were provided to MCOLES pursuant to the grant award requirements, and the feedback from all trainings was overwhelmingly positive- with an average overall rating of 4.25 (with “4” being “very good” and “5” being excellent).

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 was completely relaunched in 2012 and continues to be 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 *grant funded* presentations totaling 12 hours of training took place during CDAM conferences between November 3-5, 2011 in Traverse City (“Fall Conference”) and on March 15-17, 2012 in Novi (“Spring Conference.”) MCOLES-approved evaluations were collected and feedback was overwhelmingly positive.

Separately, the Criminal Defense Resource Center team traveled to almost all public defender offices in the State of Michigan during the 2012 calendar year, including Washtenaw County, Legal Aid and Defender Association in Detroit (Wayne) County, Kent County Public Defender Office and Chippewa County Public Defender Office. Attorneys and staff at each of these offices received training for using the online legal resources, and were supplied with paper copies and flashdrive versions of the Defender Series of Books. The only office that CDRC did not locally train was Bay

County, though the attorneys in that office are regular users of SADO resources and are also supplied books and flashdrives as part of their annual request for SADO resource support.

CDAM Conferences, Trial College, and CAP Seminars

For the eighth 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 2011 CDAM Conference had 210 trainees in Traverse City, Michigan, and the Spring 2011 conference held in Novi, Michigan had 263 registered trainees. Approximately 34 trainees (maximum capacity of 50) attended the CDAM Trial Skills College, held on August 17-22, 2012 at Cooley Law School in Lansing, Michigan. CAP seminars average approximately 300 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.

In-House Training Events

In an effort to surround ourselves in a constant atmosphere of learning, a new training room was made part of the remodeling design and is immediately adjacent to the CDRC central office area. The CDRC welcomed staff and subscribers to attend events on topics such as Canadian border issues and reading medical records.

SADO employees, contractors, and interns were trained as well in extended day programming in this new classroom area, as part of our regular and formal training process for new hires and internships.



Non-CDRC-Sponsored Staff Training

The new training room is used for training on matters for attorneys and support staff, including, for example, WestlawNext – a popular new product that increases efficiency of our legal research needs. Training such as this involved a Westlaw Representative to come in-house, and train staff as needed.

Attorneys and support staff alike were also encouraged to attend non-SADO/CDRC sponsored training events *outside of the office* with the understanding that knowledge gained would be provided in house to staff after such training was complete. Examples include a Kentucky-based train-the-trainer event, attended by CDRC Manager and Training Director Marla McCowan, as well as other aspects of work including grant workshops, financial training, and computer programming, attended by several members of the support team. Multiple inter-office trainings were conducted and

recorded on our new computer resources including Microsoft 2010 using this method of selecting a small group to attend a formal event off site, then self-train or re-train at a subsequent in house staff, thereby maximizing training dollars and allowing for multiple content resources on recurring training needs.

The overwhelming majority of SADO staff (92.5%) attended at least one training event during the reporting year.

c. Support Services

In 2012, the CDRC had approximately 418 subscribers, not including SADO staff, geographically spread across 43 of Michigan's 57 Judicial Circuits. 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 (ten issues published) delivered an average twenty-seven 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 January 2012 edition marked the transition to in-house publishing. The *Criminal Defense Newsletter* was previously printed and distributed through a State Bar of Michigan affiliate. Bringing the production in house saved money as well as time in finalizing the materials provided to our subscribers while also allowing for printing on demand, in line with our other printed material distribution process. The primary method of delivery is via email and web, but in 2012, approximately 150 subscribers preferred the paper edition.

The January 2012 edition also utilizes the remodeled SADO logo, now matching our website look while maintaining the quality of the content and features throughout the newsletter.

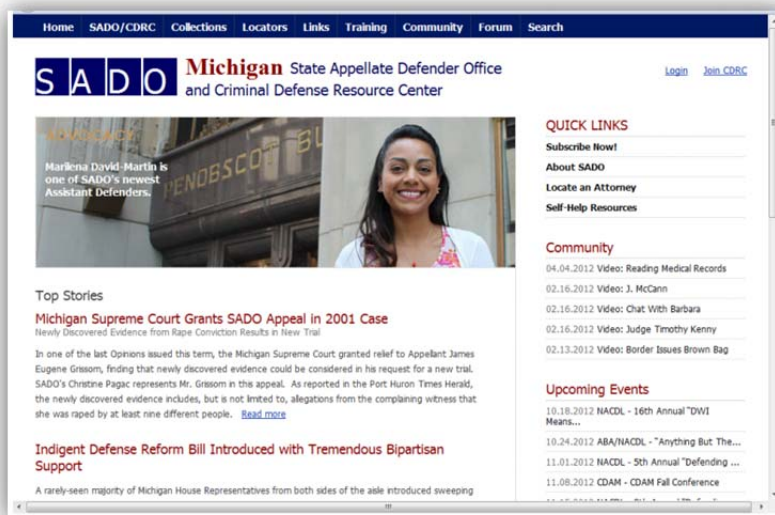
The summaries of appellate decisions in the newsletter are funded through an MCOLES grant and provide regular, concise updates on the law to criminal defense attorneys in an effort to stay-up-to date on legal developments. The summaries cover all criminal decisions of the Michigan Court of Appeals and 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 during the annual updates of the Defender Books themselves. Approximately 378

summaries of appellate decisions were distributed to subscribers through the *Criminal Defense Newsletter* and through electronic communications from CDRC support staff.

Website Contents

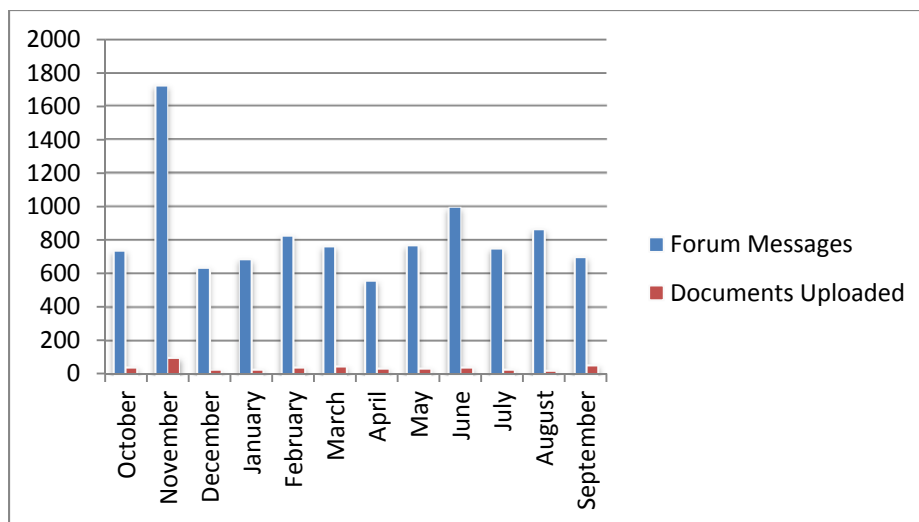
The advantages of web-delivered services are many, including access at all times, from any location, for unlimited lengths of time. Many attorneys find that research needs are well-met by their own “browsing” or “searching” of the CDRC's databases. Such online access is very cost-effective, and serves 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.

Beginning on October 1, 2012 [the first day of this reporting period] a new website was launched at www.sado.org, incorporating many of the features of the older site, including a brand new, unique search page for our brief bank, 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 expert and police witnesses, streaming video content, and much more. Each database was updated, older materials were removed, a process was put in place for regular – including daily, weekly, and monthly – updates to each database, while access to the website remained available 24/7, making research efficient and convenient for the users. Thousands of “hits” to our website are recorded each year and tracked by the CDRC Webmaster.



SADO's "Forum"

The Forum, the CDRC's online discussion group of approximately 400 criminal defense attorneys, remained very active, averaging hundreds of messages per month. Attorneys post messages 24/7, asking questions about practice and procedure, sharing pleadings and suggestions for strategy. With the launch of the new website, SADO's Forum moved from being a simple e-mail exchange, to being web-based, allowing for two new databases to be searched by criminal defense attorneys: one contains message content and can be searched by key word, poster, or within a specific date range; the other contains a repository of materials collected on the forum, colloquially referred to as u.F.O.R.U.M.³ or the forum's "brief bank" allowing for quick retrieval of any document exchanged by users on the forum, including briefs, articles, non-standard jury instructions, and more. The efficiency of the web-based forum and related databases has relieved email traffic while allowing for a robust discussion that is never unnecessarily duplicated. Each user can customize their account to allow for email messages of posts to be sent to them, a popular demand from subscribers to maximize control of their own subscription needs.



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, over 400 contacts took place between the CDRC Research Attorney and the attorneys using the help@sado.org service.

³ An abbreviation for "uploaded from our repositied user materials".

d. Sharing/partnering with the community

The CDRC continued in 2012 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.

This year the CDRC also partnered with the University of Michigan's Juvenile Justice Clinic and nationally recognized attorneys to co-sponsor a training event in July 2012 on juvenile sentencing mitigation training in life sentence cases after the United States Supreme Court decision in *Miller v Alabama*, 132 S. Ct. 2455 (2012) which significantly changed the landscape of juvenile sentencing across the country. SADO's CDRC will continue to regularly support efforts statewide to train attorneys on an as-needed and on-demand basis, to the extent our resources allow.

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.

CRIMINAL DEFENSE RESOURCE CENTER - FY 2012

75%

Percent of circuits statewide where our online subscribers' practices are located.

10 *Criminal Defense Newsletters* Published

4 Full time employees of the Criminal Defense Resource Center

The number of online web subscribers at www.sado.org, (not including SADO Staff)

418

6

In-house training sessions



20

External grant-funded training events conducted statewide during the reporting period

3,797

Attendance at the training events during the reporting period

\$169,498.30

Obtained in grant funding for training in the 2012 calendar year

420

Approximate number of questions sent to help@sado.org in 2012, or 1.15 per day

92.5%

Of SADO Staff attended a training event as a trainee, facilitator, and/or trainer.

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 legally insufficient. These cases, while small in number, contribute to the substantial savings in the cost of incarceration. The annual savings regularly amount to more than SADO’s general fund budget.

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
2012	247	\$33,777	\$8,342,919
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, 386 times by SADO attorneys during 2012, 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 502 virtual visits in 2012.

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), Appellate Practice Section (Marilena David), and Prisons and Corrections Sections (Nicole George, Jackie Ouvry, and Jessica Zimbelman), 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), District Character and Fitness Committee (Randy Davidson), and Criminal Jurisprudence and Practice Committee (Deputy Director Jonathan Sacks).

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.

In *Miller v Alabama*, 567 US ___ (2012), the United States Supreme Court found Michigan’s mandatory life without parole sentencing scheme for youths convicted of first degree murder unconstitutional. Over 370 youths serve sentences of life without parole in Michigan. SADO has been involved in organizing and educating *pro bono* attorneys to represent these youth at resentencing and SADO’s Deputy Director serves on a legislative work group that has examined legislative responses to this challenge.

c. Court rule proposals

Through a court rules committee, SADO submitted court rule amendments, and commented on court rule proposals involving appellate procedure, guilty plea procedure, representation of counsel at prosecutor parole appeals, lab analyst testimony, jury procedure, and trial court access. 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.

The Court of Appeals also established a pilot project for a “just-in-time” briefing project to allow additional time for cases demanding extensive investigations.

d. Community outreach

SADO's Client and Public Outreach Committee is comprised of 12 members, including attorneys, support staff, the office investigator and social worker. In August 2012, the Committee launched its first project, "Family Outreach Night." Committee members inform family and friends of incarcerated clients what to expect after a criminal conviction. Topics discussed include: the appellate system, how to visit and communicate with a loved one that is incarcerated in the Michigan Department of Corrections, and basic resources for inmates and their families.

The Committee also created an informational packet covering the topics addressed at the informational sessions and made the informational packet accessible to the public online at SADO's website.