



Michigan State Appellate Defender Office
and Criminal Defense Resource Center

2013 Annual Report

The 2013 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.

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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

2013 Highlights & Executive Summary

Infrastructure upgrades implemented

Significant review and revision of SADO's databases and case management system started in 2013, as management reached out to capture data maintained by others, and expanded data gathered in-house. A collaboration with Michigan's Judicial Information Services proved especially helpful, as did access to data maintained in the Judicial Data Warehouse. The effort places SADO in the forefront of work done across the nation by public defender offices to identify cost-effective practices, conduct meaningful systemic research, and use scarce resources to best serve clients.

SADO added online credit card processing to its web site in 2013, facilitating the ordering of numerous publications and services. User fees are intended to capture actual costs only.

SADO staff meetings took place on a regular schedule, to facilitate planning and encourage participation. Increased staffwide training included sessions on MS Powerpoint presentations, federal e-filing, and sexual harassment in the workplace.

A year-long review of SADO's internal operating procedures, conducted by a staff work group, was completed. Comprehensive IOPs were adopted and published to staff in May of 2013.

Holistic defense of clients emphasized

For the first time, SADO incorporated client-centered representation standards into its internal operating procedures for staff, emphasizing that service is to clients who are persons, rather than just cases and files. Somewhat rare in appellate public defender offices, holistic defense represents commitment to a client-centered culture that advocates for life, as well as case, outcomes. Several SADO activities manifest this commitment, including its Social Worker Sentencing Project, and Community Outreach Committee's Family Nights. SADO's director and training manager participated in leadership events of Gideon's Promise, a national group devoted to holistic, and effective, public defense. And, SADO staff members were introduced to extraordinary in-state programs such as Chance for Life, a prison-based program which focuses on readying prisoners for life decisions. Led by Appellate Defender Commission member Tom Adams, the program has led to many successful returns to society after incarceration, and improved life outcomes.

Caseload capacity hit 25% statutory floor

For the first time since 2002, SADO gained by the end of 2013 the staffing capacity to represent at least 25% of those seeking appeal of their felony convictions through appellate assigned counsel. Budget increases in 2012 and 2013 supported the hiring of seven entry-level attorneys. Training of new-hires, maternity leaves among attorneys, and an increase in the total number of appeals in the system during 2013 led to an annualized 19.2% share of the statewide caseload. By year-end, however, six of the new attorneys had completed training and a seventh was nearly done, while two attorneys returned from their leaves. As 2014 begins, SADO is taking assignments at an increased rate, exceeding 25% of the total monthly assignments statewide.

SADO/MAACS operational consolidation continued

The year began with adoption of a plan for operational consolidation of MAACS (Michigan Appellate Assigned Counsel System, which oversees private assigned roster attorneys) and SADO (public defender office handling 25% of statewide caseload) that focused on shared office space in Lansing, shared and upgraded IT services, increased training for appellate assigned counsel with a centralized administration, and an optimized roster of MAACS roster attorneys. Regular reports to the Appellate Defender Commission revealed considerable progress made in 2013:

- Office site surveys and planning continued with an eye to leases ending in 2014, and potential site-sharing with Michigan's new Indigent Defense Commission;
- SADO worked with MAACS to implement computer hardware and phone system upgrades that maximize portability and productivity;
- Meetings began with the current provider of MAACS IT services, the Judicial Information Service (JIS), which has generously provided support since MAACS inception. To facilitate development, a policy decision was made to transfer support and maintenance of the case assignment function to SADO.
- SADO began mapping database needs and sources for data, working with JIS.
- Web development for MAACS began, managed by SADO's IT team, with the goals of making case assignments more user-friendly and responsive, creating a web site and portal for MAACS roster attorneys, automating numerous MAACS paper-based processes; and creating database and case management enhancements.

- Administration of the MCOLES training grant traditionally managed by MAACS was transferred to SADO, in order to maximize training impact among both roster and SADO attorneys.

Client exonerations obtained

The ultimate evidence of appellate value occurs when a client is exonerated: in 2013, SADO attorneys achieved several. In each case, SADO performed extraordinary investigation that led to a decision that the client was innocent of the conviction charges, resulting not only in appellate reversal but dismissal of charges. All four clients have been released from prison or supervision, some after serving decades:

- Thomas Highers served 25 years in prison for a murder he did not commit, vindicated after witnesses stepped forward to testify that the obvious perpetrators were of another race. In 2013, the Michigan Supreme Court denied the prosecution's appeal, and all charges were dismissed.
- James Grissom served 10 years in prison for a sexual assault he did not commit, vindicated after SADO investigation revealed the complainant's history of manufacturing false sexual assault allegations. In 2013, the complainant was convicted of falsely accusing two other men of rape in 2012.
- LeeAnn Thain served jail and probation time for embezzlement and fraudulent use of a financial device convictions, and was vindicated when SADO offered evidence that she had her mother's permission, as her guardian, to spend the money at issue. Trial counsel failed to find, develop or adequately present the theory of defense.
- Carol Wilson served two years of probation for uttering and publishing an apparently forged check, and was vindicated when SADO presented expert testimony that the complainant actually signed it.

While exonerated clients obviously obtained the most benefit, the State of Michigan also saved the cost of further incarceration: for the two imprisoned clients, they were likely to serve at least 32 additional years before release. A modest pricetag for the savings is \$1.1 million. For the waste of a combined 35 years of wrongful imprisonment, the price tag is a conservative \$1.2 million.

Sentencing relief remained 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 2013, reductions in clients' minimum terms amounted to about 184 years, producing taxpayer savings of approximately \$ \$6,311,025.

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.

Social worker sentencing project realized continued success

Feedback from clients, judges and defense attorneys continues to reveal the value of including social worker services in sentencing advocacy. With the support of funding from a State Byrne JAG grant, and a competitive national Byrne grant titled “Answering Gideon’s Call,” the project spent its second year building on practices that resulted in client placements outside prison, reductions in sentence lengths, improved access to social services, grants of parole, and reentry plans designed to reduce recidivism.

The majority of cases handled by the social worker produced positive results for clients, including a cumulative total of 49.4 years reduced from minimum sentences originally imposed by sentencing judges, and grants of parole for 8 clients. A modest price tag on the taxpayer savings from reduced prison terms is \$1,656,865.

Systemic reform efforts saw fruition, new ones started

Decades-long work to reform Michigan’s trial-level public defense system culminated in the July 1, 2013 signing into law of the Michigan Indigent Defense Commission Act, PA 93 of 2013. Change at the trial court level is in part modeled on the Appellate Defender Act, adopted in 1978 to reform practice at the appellate level. A statewide commission will oversee and develop statewide standards for local systems, which will continue to bear primary funding responsibility, with some state funding opportunities. Standards within the new statutory scheme track the ABA’s Ten Principles for Effective Defense Services, including independence in selection of assigned attorneys, and representation by the same attorney throughout the case. The effort is expected to raise the level of representation in Michigan’s 83 counties, each of which has its own plan (see <http://www.sado.org/Page/201/Public-Defense-Resources-Michigan-Statistics>)

Systemic reform of sentencing and parole practices began in 2013 with the arrival of the Council for State Governments, engaged by the Michigan Legislature to study state practices and make recommendations to the Michigan Law Revision Commission in 2014. Briefings were provided to CSG staff by SADO’s sentencing work group, which surveyed Michigan law on a variety of sentencing and parole topics.

Staff members recognized for extraordinary achievement

During 2013, SADO staff members were recognized by others for exceptional work, leadership or accomplishments:

- Director Dawn Van Hoek received the ACLU’s Bill of Rights Award, made to six individuals recognized for tireless work to reform Michigan’s broken system for providing attorneys to those that can’t afford them.
- Assistant Defender Michael Mittlestat received the Appellate Defender Commission’s Outstanding SADO Advocate Award for 2013, for his outstanding legal advocacy on behalf of clients Rayfield Clary, Denzel Hardy, Ashanti Locket, Anthony Brooks, DeCarlos Hureskin, and Anthony Little, as well as his inspired writing of a position supporting retroactivity of the U. S. Supreme Court’s *Miller v Alabama* decision.

- Valerie Newman received the State Bar of Michigan’s Champion of Justice Award, one of five lawyers recognized for integrity, superior professional competence, and extraordinary accomplishment that benefits the nation, state, or local community. Ms. Newman represented her client in *Lafler v Cooper*, a groundbreaking U.S. Supreme Court decision applying ineffective assistance of counsel standards to guilty plea representation.
- Deputy Director Jonathan Sacks received the “Justice For All Award” from the Criminal Defense Attorneys of Michigan presented to a team of five lawyers for work on behalf of juvenile offenders serving sentences of life without parole.

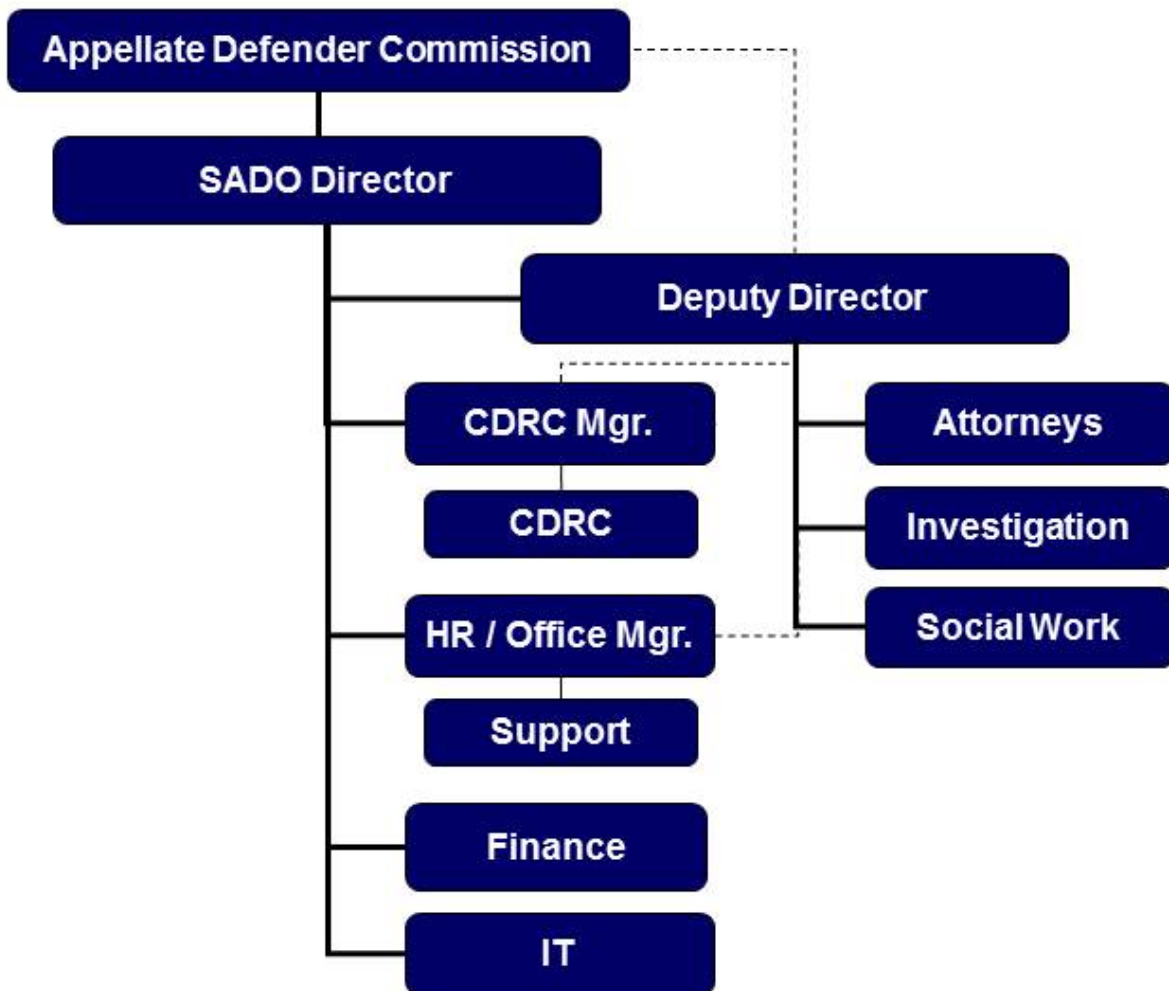
History and Governance

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 2013, the State Appellate Defender Office remains under the supervision of the Appellate Defender Commission, a seven-member body appointed by Michigan's Governor.

2013 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 2013 was approximately 19% of the total appellate assignments statewide, below the statutory floor of 25%, continuing a trend that began with major budget cuts a decade earlier. 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). By 2013 though, funding had been restored for new attorney hiring and an increased caseload, and SADO handled a 3% increase in cases from 2012. At the conclusion of 2013, these attorneys were promoted to independent caseloads, and it is expected that SADO will handle 25% of appeals in 2014.

As in previous years, SADO's 2013 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
2013	3331	641	19.2%
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	43237	7713	17.8%

Appellate Assignments by Case Type						
Year	Pleas, PVs, & Resentencings Statewide	SADO's % of Pleas, PV's, & Resentencings	Level 3 Trials* Statewide	SADO's % of Level 3 Trials	Levels 1 & 2** Trials Statewide	SADO's % of Level 1 & 2 Trials
2013	2421	16.7%	549	24.4%	312	30.8%
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	30590	12.4%	6982	24.9%	5665	27.2%

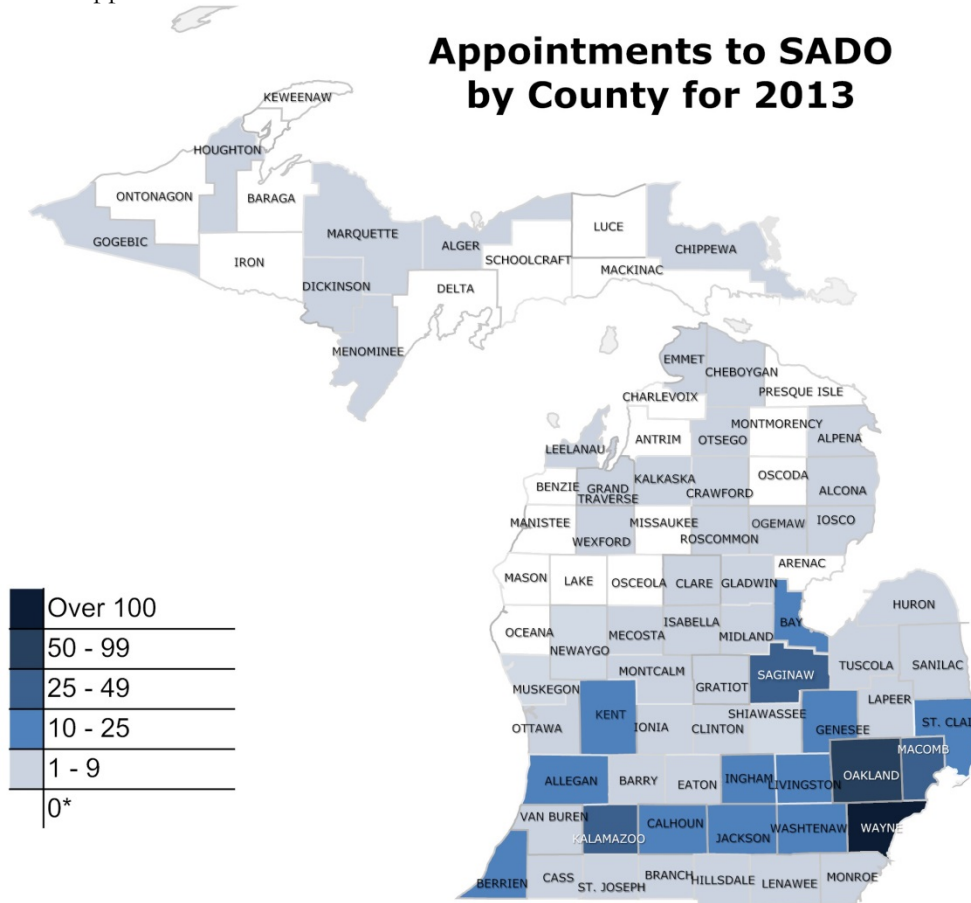
* Level 3 trials: appeals from jury-trial-based convictions with statutory maximums over 15 years.

**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*
2013	6	79	0	1	2
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 2013 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 2013. Productivity lagged capacity in 2013 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
2013	15	558	37	26
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	20	809	41	29

Filings Per Attorney				
Year	Total Filings	Total Major* Filings	Avg. Filings Per Attorney	Avg. Major* Filings Per Attorney
2013	1444	838	96	56
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
2013	444	356	69	19	16%	4%
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 2013 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
2013	444	88	356	97	27%
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
2013	12
2012	13
2011	10
2010	8

Prison Sentence Reductions			
Year	Total Years Reduced from Minimum Prison Sentence Terms	Annual Cost of Incarceration	Estimated Savings** to State of Michigan
2013	184	\$34,299	\$6,311,025
2012	247	\$34,423	\$8,502,518
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	1118		\$38,112,198

*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 are 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 2013, SADO attorneys represented clients in a wide variety of significant and noteworthy cases. In particular, SADO exhibited a superior level of Michigan Supreme Court practice. The Court issued opinions ordering new trials for two SADO clients, Rayfield Clary and David Burns; granted leave to appeal or ordered arguments on nine applications on behalf of SADO clients; and issued a specific order for SADO appointment or involvement in two other cases.

Selected highlights:

US Supreme Court

Burt v Tilton, Supreme Court # 12-414

In SADO's fourth U.S. Supreme Court case in five years, the Court reversed a grant of habeas, finding that the Sixth Circuit applied the incorrect standard of review for habeas in evaluating a silent record.

United States Court of Appeals for the Sixth Circuit

Walker v Hofner, No. 10-1198

The Sixth Circuit granted habeas following remand by United States Supreme Court and reversal of original habeas grant. The Court found trial counsel's failure to raise an insanity defense in a murder trial an unreasonable application of *Strickland v Washington*, 466 U.S. 668 (1984). The United States Supreme Court has since denied the state's petition for writ of certiorari.

Michigan Supreme Court

People v David Burns, MSC#145604

The Court granted a new trial in a criminal sexual conduct case, where the trial court wrongly admitted complainant's hearsay testimony under the forfeiture by wrongdoing doctrine.

People v Rayfield Clary, MSC#144696

The Michigan Supreme Court granted a new trial granted where the prosecutor improperly referenced client's post-arrest, post-*Miranda* decision to remain silent.

Michigan Court of Appeals

People v Michael Garrison, COA#310260

The Court of Appeals granted a new trial in an unarmed robbery conviction for the improper admission of preliminary examination testimony where a witness was not unavailable at trial. The court found hearsay and Confrontation Clause violations. Mr. Garrison has since pled guilty to a lesser offense for time served. Initially serving nine to twenty years, he has now been released from prison.

People v Lorenzo Relerford, COA#310488

The Court of Appeals granted a new trial in a felony murder conviction for the improper use of visible shackles during a jury trial, in violation of due process rights.

People v Terrence Jose, COA#317688, 311478

The Oakland County Circuit Court had ordered a new trial in child sexual assault case for ineffective assistance of counsel for failure to properly admit evidence of impeachment from cell phone text

messages. The Court of Appeals granted SADO's motion to dismiss the appeal and denied the prosecutor's leave application.

People v David Allan, COA#305283

The Court of Appeals ordered a new trial after finding structural error for the trial court's failure to swear in the jury.

People v Denzel Hardy, COA#304809

The Court of Appeals affirmed a new trial grant based on ineffective assistance of counsel, where counsel failed to request and present 911 tape that contradicted eyewitness identification testimony.

People v Devon Abney, COA#311030, 314871

The Court of Appeals vacated the conviction, sentence, and probation violation where client convicted of carrying a concealed weapon for possession of a machete. The Court found the machete was not a dangerous weapon per se, and no evidence showed the intent to use as a weapon.

People v Mantease Smart, COA#307511

The Court of Appeals ordered a new trial, where defendant was not permitted to testify in his own defense.

Trial Court

People v Jerab Arnold, Wayne County Circuit Court

The Wayne County Prosecutor's Office stipulated to Mr. Arnold's Motion for Relief from Judgment and for a new trial, where the now discredited Detroit Crime Lab presented incorrect evidence that the shell casings at the murder scene matched a gun found in Mr. Arnold's home. On March 18, 2013, Mr. Arnold was sentenced to time served for a lesser offense and released from custody after serving over 10 years in prison.

People v Terrell Thornton, Wayne County Circuit Court

The trial court granted a new trial for ineffective assistance of counsel for the failure to investigate alibi witnesses in an attempted murder and arson conviction.

People v Dedrick McCauley, Wayne County Circuit Court

The court found counsel ineffective at the plea bargaining stage for failing to properly explain the concept of aiding and abetting first degree murder. Client's first degree murder conviction and life without parole sentence was replaced with a second degree murder plea and eighteen year minimum sentence.

People v Morgan Howlett, Calhoun County Circuit Court

The court imposed a 35 year sentencing reduction. Client initially had been serving 40 to 60 years for assault with intent to murder. The prosecutor had withdrawn a favorable plea bargain for the alleged failure to comply with the agreement. After a remand to trial court for a hearing on specific performance of the plea, the prosecution offered and client accepted a five to eight year plea agreement to accessory after the fact.

c. Exonerations

SADO achieved several exonerations and other success for actually innocent clients in 2013:

Thomas and Raymond Highers: In these high profile cases of two innocent brothers who spent 25 years in prison for a murder they did not commit, the trial court ordered a new trial based on newly discovered evidence in 2012. In 2013, the Michigan Supreme Court rejected the prosecutor's appeal, and the prosecution ultimately dismissed all charges. Thomas Highers, represented by SADO, and his brother have been completely exonerated.

James Grissom: Mr. Grissom was exonerated in 2012 of a sexual assault conviction after spending over ten years in prison. The Michigan Supreme Court remanded to the trial judge, who ordered a new trial based on newly discovered evidence that the complainant had a history of manufacturing false sexual assault allegations. In December 2013, Sarah Ylen, the complainant was convicted in Port Huron, Michigan of falsely accusing two other men of rape in 2012. She was sentenced to five to 10 years in prison.



LeeAnn Thain: In a conviction for embezzlement and fraudulent use of a financial device, the Court of Appeals ordered a new trial for ineffective assistance of counsel, for failing to offer evidence supporting client's testimony that she had permission to spend her mother's money. Client, her mother's guardian had been convicted for misuse of the money. The prosecution dismissed all charges and client was exonerated.

Carol Wilson: The Court of Appeals ordered a new trial for ineffective assistance of counsel for failing to present and investigate the use of handwriting expert at trial. In a conviction for uttering and publishing based on an apparently forged check, the expert showed that the complainant rather than Ms. Wilson signed the check. The prosecution dismissed all charges.

d. Special and grant-funded projects for clients

A number of special projects operating in 2013 have significantly enhanced SADO's ability to effectively represent indigent criminal appellants and serve the criminal defense bar.

SADO's **Crime Lab Unit** concluded the review of cases and representation of clients in the wake of the Detroit Police Crime Lab closure, supported initially by federal stimulus grant funding and concluding through the Department of Justice Wrongful Conviction Review Program. Staff attorneys reviewed cases, evaluated and submitted Detroit Crime Lab evidence for retesting, and provided appellate legal representation in cases involving potentially unreliable evidence.

In total, since 2008, the Crime Lab Unit has reviewed 1,043 cases. Through this review, SADO sent 25 referrals sent to the Wayne County Prosecutor's Office for new testing of Detroit Crime Lab

evidence by the Michigan State Police. Five of these referrals have resulted in new trials for SADO clients, including one exoneration:

- Jerah Arnold: New trial in murder case where Detroit Crime Lab incorrectly matched shell casings at a murder scene to a weapon in Mr. Arnold's home.
- Orande Thompson: New trial in murder case where Detroit Crime Lab wrongly ruled out an accidental shooting.
- William Lee: Exoneration in sexual assault case where the Detroit Crime Lab failed to test DNA that exonerated Mr. Lee.
- Nathan Jacobs: New trial in a murder case where the Detroit Crime Lab missed evidence of a second murder weapon.
- Karecio Eatmon: Withdrawal of no contest plea to assault with intent to murder where the Detroit Crime Lab incorrectly matched the bullet in a shooting to a weapon in Mr. Eatmon's home.

SADO's **First Response Unit** also concluded with the expiration of Department of Justice Wrongful Conviction Review Program funding. The project provided 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. 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.

SADO's First Response Unit concluded with several important achievements:

- Exonerations of two actually innocent clients – Rayshard Futrell, a seventeen year old serving life without parole for murder, and Carol Wilson, wrongly convicted of forging a check.
- With the processes put in place by a prescreening attorney SADO now receives discovery on approximately 225 out of 300 appeals a year, up from 60 to 90 a year.
- SADO used the program's results to successfully advocate for a court rule amendment, amended MCR 6.005(H)(5), that requires trial attorneys to provide discovery to appellate attorneys. The *Michigan Lawyers Weekly* named the court rule change one of the most significant legal developments of the year in Michigan in 2012.

SADO's **Social Worker 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 FY 2014 through the Department of Justice's "Answering Gideon's Call" Grant and State Byrne Grant Funding.

The social worker has worked with SADO attorneys on 93 cases, providing such services as client counseling, development of treatment and community placement plans, testimony in court, and development of parole plans. Services begin when a client receives a resentencing, when the judge has the opportunity to choose community placement, or when a client faces a parole hearing. Sentencing and parole plans include planning for housing, health care, mental health treatment, employment, and education.

46 of the 93 cases involving social worker services have produced positive results for the client. Those results have included:

- a total of 49.4 years reduced from minimum sentences original imposed by the judge, resulting in effectively earlier release dates;
- a total of 8 clients who were granted parole with the assistance of the social worker; and
- an identification and substitution of federal housing and medical support, where costs were previously borne by the state, for a veteran resentenced to probation.
- The reductions in prison terms amount to taxpayer savings of up to \$1,656,865.

The project team of one social worker and one attorney specialist has conducted three training events for criminal defense attorneys, and the University of Michigan's Curtis Center for Program Evaluation has been engaged as a research partner on the project

SADO's Postconviction DNA testing project features an attorney based at SADO and an analyst based at the Wayne County Prosecutor's Office to review the 12,000 sexual assault kits discovered in an abandoned police warehouse in Detroit. While the Wayne County Prosecutor's Office tests and reviews the sexual assault kits to prosecute cold cases that were never properly investigated, SADO's project reviews the testing backlog for potential DNA evidence that could exonerate prisoners wrongly convicted of sexual assault and other offenses. The analyst sends the project attorney names of defendants previously adjudicated of offenses that match the police reports associated with certain sexual assault kits. The attorney reviews these cases and interviews these defendants to identify candidates for testing of the sexual assault kits. SADO's goal is to discover whether any of the sexual assault kits can exonerate an actually innocent defendant.

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

a. Overview of year

The year 2013¹ marked the thirty-seventh 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. Under the direction of Manager Marla R. McCowan, the CDRC continued development of SADO's website and used the latest technology to identify and meet training needs.

The CDRC's objectives for the year remained to deliver core services to attorneys providing indigent criminal defense representation, expand delivery of services through web-based and electronic 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 \$138,379, a decrease of \$31,119 (approximately 18%) from 2012. The 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) training conferences and seminars including those co-sponsored by our training partners, the Criminal Defense Attorneys of Michigan, and the Wayne County Criminal Advocacy Program, and (c) 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, including Legal Technology Training which is no longer grant funded.

CDRC continued to provide the highest quality services and materials that our criminal defense community depends on. We also incorporated suggestions from subscribers to develop innovative products and services throughout the year. A snapshot of our year marking the numbers achieved toward our objectives and goals follows this portion of our report.

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 exclusively 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.

¹ Due to reporting methods based on a subscription year, the time period covered by this report is October 1, 2012 to September 30, 2013.

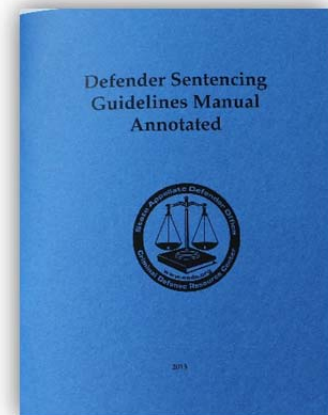
b. Training

The Defender Books

The principal training provided by the CDRC on a statewide basis is 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 – comprised of criminal defense attorneys around the State of Michigan including SADO staff and all full-time public defenders. While most access is online, 148 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 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 CDRC encourages use of the website for electronic versions of the books, not only to save paper and cost but to emphasize the usefulness of key-word or topic searchability. Separately, for a nominal price, users can purchase a flash drive of all four books. Many subscribers enjoy the portability of having all four books on a flash drive without having to rely on an internet connection for research away from the office. The flash drive contains an electronic index for searching content in all four Defender Books simultaneously. Flash drives are widely distributed at legal technology training events and to all public defender offices in Michigan.

New this year, the CDRC published in print-only the *Defender Sentencing Guidelines Manual Annotated*, a small companion to our *Defender Plea, Sentencing, and Post-Conviction Book*. The *Defender Sentencing Guidelines Manual Annotated* is a slim (7" x 8.5"), approximately 60 page (double-sided) soft-bound pamphlet, containing basic law about the Michigan Sentencing Guidelines, all applicable grids, and caselaw (published and relevant unpublished caselaw through July, 2013), organized by variable for quick reference. Many users requested this paper edition to keep in a briefcase or bag for easy access at sentencing hearings, and it was incredibly popular – selling over 100 copies within the first two months of production. The manual was priced at \$10, to cover the cost of printing and production. Attorneys remarked that it was "an invaluable resource at a ridiculously low price." It was also described as a "huge time saver and...an absolute steal," and another attorney believed that it prevented a prison sentence from being erroneously imposed, realizing a significant savings to taxpayers. The book will be updated in the next fiscal year, and similar pull-out manuals from the *Defender Trial Book* and *Defender Motions Book* are in development as well.



Live Training

Four live CDRC training events complimented the training book updates during the reporting period. The events were part of the grant funding generously awarded to SADO by MCOLES. Two of the events focused on sentencing, among the most actively changing areas of law, which were tremendously popular and attended by defense attorneys, prosecutors, probation agents and judges. Feedback from users informed the other training topics, including a criminal procedure update and a session devoted to motion practice.

The first event for this reporting period was on December 28, 2012, an “Advanced Felony Sentencing Seminar,” live in Monroe County and in partnership with the local bar association. The trainer was Jacqueline McCann, SADO Assistant Defender and author of the most recent editions of the *Defender Plea, Sentencing, and Post-Conviction Book*. The trainees were mostly criminal defense attorneys; the event was open to all, including probation agents, prosecutors and judges. More than 35 trainees registered for the event. Evaluations were provided to MCOLES pursuant to the grant award requirements, and the feedback from all trainings was overwhelmingly positive.

The second, third and fourth training events were held in the Saginaw County Circuit Court in a partnership with, and at the request of, the local bar association. The target audience of the trainings was attorneys taking appointed cases in Saginaw County, but the events were open to and attended by prosecutors and judges in the courthouse as well.

- On March 1, 2013 Jacqueline McCann trained on the topic of “Felony Sentencing,” a topic of great importance which was well received in this consolidated court;
- On August 23, 2013, SADO Assistant Defender Christine Pagac trained on the topic of “Michigan Criminal Procedure,” which served to update the group on recent Michigan cases and constitutional law – an area that Ms. Pagac specializes in and updates annually for *The Wayne Law Review*;
- On September 20, 2013, SADO Research Attorney Neil Leithauser was the trainer for the session called “Do’s and Don’ts of Motion Practice,” a topic requested at many previous sessions by trainees and of great importance to the criminal defense bar. Mr. Leithauser is the author of the most recent editions of the *Defender Motions Book* and updates the large collection of sample motions contributed by practitioners from around the state.

All of the Saginaw training sessions were well attended, and all were rated highly for content and usefulness in practice. Evaluations were provided to MCOLES pursuant to the grant award requirements, and additional grant funding was sought to continue the partnership with Saginaw County in the next fiscal year.

Legal Technology Training

The CDRC continued² to present 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 re-launched 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.

Two presentations took place during CDAM conferences between November 8-10, 2012 in Traverse City (“Fall Conference”) and on March 14-26, 2013 in Troy (“Spring Conference.”) At each conference, a two-hour hands-on presentation was provided by the CDRC team, largely using live demonstrations of all of the databases on www.sado.org. Separately, at each conference a break out session was offered by the CDRC’s webmaster, Eric Buchanan, providing a working lunch to learn about the latest technology for practicing lawyers.

² SADO continued to offer the training despite a reduction that removed it from the customary award.

The CDRC also presented at a training conference for our sister agency, the Michigan Appellate Assigned Counsel System. Two hours of training was provided at the annual MAACS fall conference in October 2012 to assist MAACS roster attorneys with their knowledge of SADO's website, and to maximize their use of the electronic databases and improve efficiency in their practices.

The Criminal Defense Resource Center team traveled to the Kent County Public Defender Office to update the public defenders on the latest developments on our website. All public defender offices in Michigan were supplied, pursuant to their requests and/or preferences, with paper copies and flash drive versions of the Defender Series of Books. All full time public defenders in Michigan are provided with complimentary access to all SADO resources.

Legal Technology Training was also requested by local bar associations, and the CDRC team traveled to Macomb County Circuit Court on April 22, 2013 and to the Ingham County Circuit Court on August 20, 2013. Trainees were provided with an overview of the resources available on SADO's website.

CDAM Conferences, Trial College, and CAP Seminars

Once again, 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 twelve 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 2012 CDAM Conference had 232 trainees in Traverse City, Michigan, and the Spring 2013 conference held in Troy, Michigan had 271 registered trainees. Approximately 33 trainees (maximum capacity of 50) attended the CDAM Trial Skills College, held on August 21-26, 2013 at Cooley Law School in Lansing, Michigan. CAP seminars average approximately 260 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

Adjacent to the CDRC central office area is a training room where several events are conducted throughout the year in an effort to encourage continuing education for all staff on a variety of topics. SADO's Internal Operating Procedures require training for staff and training needs are surveyed routinely. Eight training events were conducted during the reporting period, covering a variety of topics including new legal issues at sentencing, SADO's social worker and attorney project, follow-up training for SADO's newest assistant defenders, training for interns and all staff on juvenile life without parole sentences and mitigation hearings, federal e-filing training, and a

special two part “train the trainer” series on using the latest Power Point software. In addition to training for staff, the CDRC also provided a demonstration of SADO’s website to members of the Attorney Grievance Commission and Attorney Discipline Board in June of 2013 as part of a future support project for disciplined attorneys.

Non-CDRC-Sponsored Training

Attorneys and support staff alike are regularly encouraged to attend non-SADO/CDRC sponsored training events *outside of the office* with the understanding that knowledge gained will be provided to staff, after such training. Within the State of Michigan, staff members attended training sessions at the CDAM and CAP sessions, as well as events sponsored by the Criminal Law Section of the State Bar of Michigan and the Michigan Appellate Bench Bar Conference. Staff also participated in events out of state, including but not limited to an investigative training at Faubush in Kentucky; juvenile life sentence training with the Equal Justice Initiative in Atlanta, Georgia; sentencing training in Baltimore, Maryland; grant training in Washington, D.C., and training unique to public defenders with *Gideon’s Promise* in Atlanta, Georgia.

SADO staff members are also routinely called upon to present at training events. During the reporting year, SADO attorneys trained at conferences conducted by the Michigan Judges Association, the State Legislators, the Prosecuting Attorneys Association of Michigan (Appellate Prosecutors Conference), the Institute for Continuing Legal Education, the National Legal Aid and Defender Association, the Michigan Department of Corrections (training for probation agents) and various bar associations including Genesee, Oakland and Macomb counties.

The overwhelming majority of SADO staff (95%) attended at least one training event during the reporting year.

c. Support Services

In 2013, the CDRC had approximately 443 subscribers, not including SADO staff, geographically spread across Michigan. 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-eight 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 *Criminal Defense Newsletter* continued production in-house, saving 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 2013, approximately 60 subscribers preferred the paper edition.

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 490 summaries of appellate orders and 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.

SADO’s website, www.sado.org, re-launched on October 1, 2012, 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, streamed video content, and much more. Each database was updated, older materials were removed, and 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. During the reporting period, feedback from online subscribers was incorporated and refinements to all databases and pages continued.



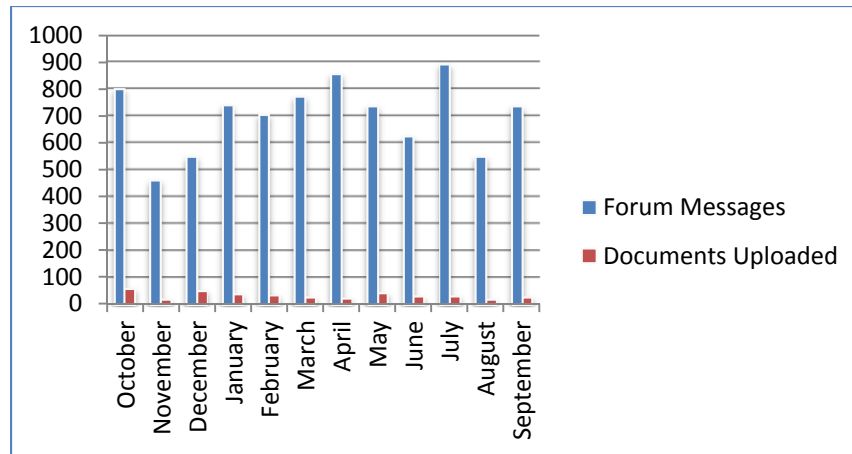
For example, one area that required significant improvement was the training video page. The majority of CDRC training events are video recorded and uploaded to our website, to maximize content exposure and encourage access to training based on trainee availability. However, SADO’s server space is limited and the video files are extremely large and slow to load. The CDRC team researched options and invested in a service through *Vimeo* to house and stream the videos but retain SADO’s ownership of the content. Users appreciate the instantaneous playback

and high capacity of viewership, and the space freed up on SADO’s website allows for expansion of other growing databases.

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 A unique resource, the forum’s “brief bank” allows 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 his or her 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.



Three specific enhancements to the Forum were made during the reporting period by Eric Buchanan, CDRC’s webmaster, with input from the CDRC team and feedback from subscribers.

- A “digest” unique to SADO’s forum was developed, allowing subscribers to customize their desired method of receiving messages from the community of criminal defense attorneys who contribute to our Forum. With SADO’s digest, users can choose to receive a summary of the messages received at one of four pre-selected times during the day (7:00 a.m., 12 noon, 5:00 p.m., or 10:00 p.m.) for reading at the attorney’s convenience.
- In connection with the digest, users also now have the option to have an entire thread of messages sent to them, rather than having to log on to the website and view the series of messages. Subscribers also have the option of having just an attachment to a forum message sent to them, if they simply want to look at the document offered in connection with the message. Such documents typically include pleadings but could be anything from a non-standard jury instruction, to an article or secondary resource on a subject.
- Knowing that attorneys sometimes have to use their smartphones or handheld devices to facilitate legal research, search@sado.org was created to allow attorneys to search through forum posts through any means connected to their e-mail account. Prior to search@sado.org, subscribers had to log on to the website to search forum posts. While attorneys still have that option, they can now also use their tablet or phone to send an email message to search@sado.org by typing the keyword search in the subject line. Within two minutes, the sender/address will be authenticated and the forum will be searched and a list of the most recent twenty-five forum threads will be sent to the recipient, who can choose – similar to the digest features, above – to have the entire thread emailed to the portable device.

³ An abbreviation for “uploaded from our repositied user materials”.

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.

Beginning with the calendar year of 2013, the research attorneys began inputting their daily contacts and requests for research assistance into an online database monitored by the CDRC Manager. Approximately 1,559 sessions were entered by the research attorneys during the year and information was collected about the nature of the research performed. The attorneys captured the type of charge(s) involved, the stage of the proceeding where the question arose, and the general area of research involved (use of character evidence, defenses, instructions, sentencing). The data serves to identify trends and training needs in a representative courthouse, which in turn informs the CAP board about areas of programming for the fall sessions and translates to needs in other counties as well.

The researchers are highly efficient, more often than not spending about 15 minutes on each request at an enormous time savings for the inquiring attorney.



d. Sharing/partnering with the community

The CDRC continued in 2013 to share its resources and expertise with others. As indicated above, the CDRC partnered with the Wayne County Criminal Advocacy Program and the Wayne County Criminal Defense Attorneys Association to maintain a web site that archives 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 a flash drive instead of printed pages, during the reporting 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 Saginaw County Bar association in an effort to train its roster of court-appointed attorneys on the most relevant areas of criminal law and procedure. This relationship will grow in the next reporting period. The CDRC will also continue to co-sponsor and support training events by other local bar associations and the Criminal Law Section of the State Bar of Michigan. The CDRC's presence at such training events and opportunities allows for maximum feedback from criminal defense attorneys about the products appreciated, and those that require inclusion or improvements to existing services.

SADO will also partner with Michigan's Attorney Discipline Board and Attorney Grievance Commission, to provide support for criminal defense attorneys who face discipline proceedings for conduct arising from a criminal case. Many attorneys handling these challenging cases are in solo practices, receiving modest pay as assigned counsel and lacking access to experienced colleagues. To address the need for resources and a support community, SADO will provide both training and access to online resources for criminal defense attorneys who are referred by either the AGC or ADB panels.

SADO's CDRC will also continue to develop training specifically for public defenders in Michigan by working with *Gideon's Promise*, an Atlanta, Georgia-based non-profit organization exclusively dedicated to the training and support of public defenders in the south and around the Country. *Gideon's Promise* is "committed to reforming public defender systems, one lawyer at a time, by teaching public defenders how to deliver the highest quality, client-centered advocacy possible to their indigent clients."⁴ The CDRC Manager attended their "Trainer Development Conference" in June of 2013, which offered an overview of the core curriculum and relationship to the programmatic values. SADO's relationship with *Gideon's Promise* will grow, and the teaching methodologies will be incorporated by SADO staff wide.

⁴ Taken from the *Gideon's Promise* website. For more information, please visit www.gideonspromise.org.

Fiscal Year 2013



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

443

4

Full time employees of the Criminal Defense Resource Center

95%

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

10

Criminal Defense Newsletters Published

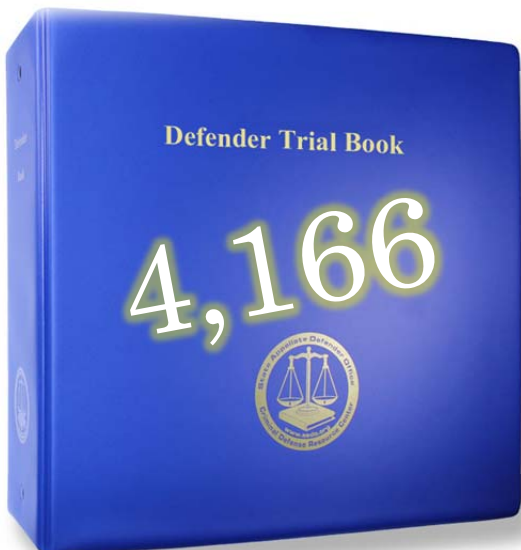


\$138,379

Grant funds obtained for training during the calendar year for 2013

2,606

Attendance at grant funded training events during the reporting period.



Approximate number of cases cited, analyzed and organized by subject area in the *Defender Trial Book* published during this reporting period.



Number of visitors to www.sado.org

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	Annual Cost of Incarceration	Estimated Savings* to State of Michigan
2013	184	\$34,299	\$6,311,025
2012	247	\$34,423	\$8,502,518
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	1118		\$38,112,198

b. Video visits with clients

Video-conferences with clients occur routinely, 481 times by SADO staff during 2013, 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 by them for 594 virtual visits in 2013.

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. State 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 (Chair Jessica Zimbelman, board members Nicole George and Jackie Ouvry), 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 with the participation of the Director in work groups planning a statewide trial-level defense system. In July, 2013, Governor Snyder signed into law PA 93 of 2013. The historic and groundbreaking legislation created the Michigan Indigent Defense Commission. The Commission is tasked with creating and implementing standards to ensure the trial-level public defense services throughout the state meet constitutional obligations.

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 served on a 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, electronic filing of documents, foreign language interpreters, caseflow management in trial court, and video testimony at trial. 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.

d. Community outreach

SADO's Client and Public Outreach Committee is comprised of 12 members, including attorneys, support staff, and 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 typically 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 outreach night now meets once every two months in both Lansing and Detroit Offices. It is a huge success, advertised and promoted by both the Michigan Department of Corrections and advocacy group publications.

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.

In 2013, the Committee expanded with a reentry project, set for launch in 2014:

- In concert with the Social Worker sentencing project, SADO attorneys, social workers, and interns have compiled a directory of support and reentry services for clients entering the community after incarceration.
- Clients set to reenter the community will receive counseling for parole and reentry, including a match to the most appropriate support services.

e. Law School Clinics

SADO attorneys teach four highly rated and successful legal clinics at Michigan law schools. The Appellate Practice Clinics at University of Michigan Law School and Wayne State University Law School focus on appeals from trial-based convictions, while the Plea and Sentencing Clinics at Michigan State University College of Law and University of Detroit Mercy School of Law represent clients in guilty plea appeals. The Clinics combine student instruction with client representation in a manner that ensures successful representation of clients and an outstanding training and teaching experience for students. Students tend to be motivated to do as much legal research and factual investigation as possible for our clients' appeals. Subject to the provisions of MCR 8.120, Clinic students routinely represent clients in trial court and at oral argument on appeal.