

Michigan Office of
the Appellate Defender



2016 Annual Report

Excellence in Assigned Appellate Advocacy since 1969

The 2016 Annual Report of the State Appellate Defender Office (SADO) and Michigan Appellate Assigned Counsel System (MAACS) 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 and MAACS.

2016 Appellate Defender Commission

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Table of Contents

History and Governance	5
Mission Statement.....	6
Goals of SADO and MAACS	6
2016 Highlights.....	7
2016 Progress Toward Goals	10
Goal 1: Ensure the prompt assignment of high-quality counsel to all indigent criminal defendants seeking to appeal a felony conviction or sentence, or in authorized post-conviction proceedings, in a manner most efficient to trial courts and protective of appellants' rights, with SADO handling no less than 25% of assignments from all geographic regions of Michigan.....	10
Statutory Framework	10
MAACS Regional Pilot Project	11
MAACS Integrated Case Assignment and Management System.....	14
SADO Workload.....	15
a. Intake, type of assignments, geographic spread of assignments	15
b. Productivity	19
c. Dismissal and withdrawal rates.....	20
Goal 2: Seek the best possible outcomes for clients, providing high-quality, timely and effective assistance of appellate counsel	22
MAACS Revised Regulations	22
MAACS Roster Expansion, Evaluation, and Targeted Retention	23
SADO Relief Rate.....	24
SADO Noteworthy Cases	25
MAACS Noteworthy Cases	27
Goal 3: Provide support services and training to assigned criminal defense counsel, in all circuits of Michigan	29
MAACS Appellate Investigation Project.....	29
SADO Criminal Defense Resource Center.....	29
a. CDRC Trainings: Issue-specific, for all.....	31
b. CDRC Trainings: SADO staff	33
c. CDRC Trainings: MAACS Roster Attorneys	34
d. CDRC Trainings: Partnership with CDAM and CAP	36

SADO/CDRC Print and Web Resources	37
a. Website.....	37
b. SADO Online Forum	37
c. Defender Books.....	37
d. Criminal Defense Newsletter and Summaries	38
e. Subscribers	38
Goal 4: Provide cost-effective services that represent a good return on investment to Michigan taxpayers.....	39
SADO Economics of Sentencing Relief	39
Video visits with clients.....	40
Goal 5: Advocate for improvements in the administration of justice.....	41
MAACS Targeted Litigation	41
SADO/MAACS State Bar Service.....	41
SADO/MAACS Court Rule Proposals	42
SADO Community Outreach.....	42
SADO Law School Clinics	43

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 Administrative Order 2014-18, the Michigan Supreme Court ordered the merger of SADO and MAACS under the management of the Appellate Defender, and oversight of the Appellate Defender Commission.

Mission Statement

SADO and MAACS share the mission of seeking the best possible outcomes for indigent clients who appeal their felony convictions, providing high-quality, holistic, timely, and effective assistance of appellate counsel. As system stakeholders representing criminal defense interests, SADO and MAACS seek improvement in the administration of criminal justice. As agencies possessing legal expertise, SADO and MAACS seek 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.

Managing both SADO and MAACS, the Appellate Defender's mission is to provide equal access to justice, whether a client receives a SADO or MAACS attorney. The Appellate Defender seeks resources for the support of all appellate assigned counsel, to implement state and federal constitutional guarantees of due process, equal protection and effective assistance of counsel.

Goals of SADO and MAACS

1. Ensure the prompt assignment of high-quality counsel to all indigent criminal defendants seeking to appeal a felony conviction or sentence, or in authorized post-conviction proceedings, in a manner most efficient to trial courts and protective of appellants' rights, with SADO handling no less than 25% of assignments from all geographic regions.
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.

2016 SADO/MAACS Highlights

(1) MAACS innovates on case assignments and attorney fees

The 2014 merger of SADO and MAACS for management purposes continues to yield marked improvements, particularly for MAACS operations. SADO's Systems Analyst, Eric Buchanan, remains embedded in development of case management applications for MAACS, which administers the entire criminal appellate assignment system. Legacy systems for assigning cases will soon be left behind, with the 2017 launch of a web-based system that has considerably improved functionality. Modules will be added for use by all system participants, including courts and court reporters, as well as the roster attorneys who will upload payment requests. Work on MAACS case management will apply as well to upgrades of SADO's system for tracking cases.

A MAACS Pilot Project authorized by the Michigan Supreme Court saw great user satisfaction from the fourteen participating courts. Shifting much of the administrative burden for case assignment to MAACS resulted in fewer attorney substitutions and amended orders of appointment, as well as increased time for appellate counsel to work on a case. Courts in the pilot agreed to a standardized fee schedule which produced more predictability, while still retaining the ability of counsel to ask for additional fees when warranted.

(2) Special projects yield good case outcomes

Several grant-funded special projects continued to bear fruit during 2016, based on best practices which will hopefully become embedded in ongoing operations for both SADO and MAACS.

Through dozens of consultations and investigations since its 2015 launch, the **MAACS Appellate Investigation Project** (AIP) has made an impressive showing where it counts: improved outcomes for defendants appealing their convictions. SADO's Katherine Marcuz moved over to the AIP, and was joined by attorney/investigator Andrew Lee in obtaining great results:

- In *People v. Higley-Zuehlke*, the AIP helped MAACS counsel analyze and interpret a newly disclosed DNA report that served as the primary basis for a successful motion for new trial. The assistance included providing counsel with information and insight regarding "touch DNA" and DNA mixtures. The AIP also helped counsel prepare to conduct a direct examination of a state laboratory technician, whose testimony proved vital during the client's hearing on defense's motion for new trial.
- In *People v. Noralee Hope*, MAACS counsel asked the AIP to investigate whether the jury was exposed to extraneous influences that may have influenced its verdict in the case. An interview with a juror resulted in an affidavit revealing non-record knowledge which was shared with other jurors. Ms. Hope's conviction was reversed in an October 2016 Court of Appeals decision which cited the affidavit obtained by the AIP.

SADO's Postconviction DNA Project continued its painstaking review of cases involving untested sexual assault evidence kits discovered in Detroit Police Department facilities since 2009. During the third year of grant-funded operation, 2016, project attorney Amanda Tringl worked on a case where postconviction DNA testing results excluded the defendant as the source of the male

DNA in the kit. As 2016 drew to a close, a significant number of untested kits remained in previously-adjudicated cases; approximately one-tenth of the original 11,300 untested kits involve such cases. Continuation funding will be sought in 2017.

SADO's Wrongful Conviction Project approached the end of federal funding in late 2016, and demonstrated the value of early review of appellate cases for potential forensic issues needing development. Project attorney Mike Waldo assisted SADO attorney Malika Ramsey-Heath and SADO Deputy Director Michael Mittlestat on cases involving cell tower record analysis (*Montgomery*), and expert analysis of the gait of someone with a prosthetic leg (*Ballard*). Early appellate investigation in these cases led to exoneration of Mr. Montgomery, and a new trial for Mr. Ballard.

(3) SADO steps up on Juvenile Lifer cases

As the state with the second-most number of juvenile lifers entitled to resentencing after the decision in *Montgomery v Louisiana*, 136 SCt 718 (2016), Michigan saw local prosecutors select life without parole as the preferred remedy in 65% of the 363 eligible cases. Prosecutors filed motions for life without parole (LWOP) sentences in 145 of SADO's 204 cases, a figure approaching 70%, despite the U.S. Supreme Court's admonishment that life without parole sentences should be "rare." The remainder, or approximately 60 of SADO's clients, became eligible for "term-of-years" (TOY) sentences. By year's end, 43 of the TOY juvenile lifers had been resentenced by local trial courts; 23 of the resentenced TOY juvenile lifers were SADO clients. Disposition of the LWOP cases awaits resolution of appellate litigation over whether there is a heightened standard of review under the juvenile lifer statute (MCL 769.25), or a right to jury determination of whether a person should receive the LWOP sentence. The Michigan Supreme Court will most likely hear arguments in the cases, *Hyatt* and *Skinner*, in late 2017.

With supplemental funding from the Michigan Legislature, SADO's Juvenile Lifer Unit continued the difficult work of record assembly and analysis, client consultation, and mitigation work for both its TOY and LWOP clients. Because *Montgomery* granted retroactive relief, many of the cases were prosecuted decades ago. Final dispositions in these unique cases are not expected for several years.

Of SADO's 23 clients resentenced in 2016, many are eligible for parole because they have reached the minimum of the new sentence. The average number of years served by this group was over 29: by statute, the minimum sentence must be between 25 and 40 years. In four of the cases, the clients served over 40 years in prison. The first of these parole-eligible clients was actually paroled in 2016, with several others notified that they will be paroled during 2017.

(4) Good outcomes include exonerations, system savings

SADO's advocacy for clients again resulted in client exonerations, and significantly reduced sentences. Exonerations included the *Montgomery*, *Ballard* and *Bunkley* cases, detailed below. Savings in prison costs due to resentencing of clients to new minimum terms were at a record high of nearly \$18 million; the sharp increase was largely due to resentencing of numerous juvenile lifer clients.

(5) Staff Changes, Extraordinary Accomplishments

- Kathy Swedlow was hired as MAACS Deputy Administrator, bringing rich experience from her prior positions as Assistant Dean of Students and Professor at Western Michigan University Cooley Law School, co-director of its Innocence Project, and Assistant Federal Defender at the Defender Association of Philadelphia. An accomplished author and advocate, Kathy received the “Justice for All” Award from the Criminal Defense Attorneys of Michigan, in 2006.
- SADO Assistant Defender Christopher Smith was promoted to lead SADO’s Special Unit on Pleas and Sentencing, following the retirement of Anne Yantus, who has been appointed the Director of Clinical Programs at Detroit Mercy Law. Chris came to SADO in 2007 from the Illinois Office of the State Appellate Defender, has taught SADO’s appellate practice clinic at MSU and Wayne Law Schools, and was the 2015 recipient of the Appellate Defender Commission’s Thomas Award for Excellence in Appellate Advocacy.
- MAACS Roster Attorney Alona Sharon was chosen for the 2016 Barbara R. Levine Award for Excellence in Appellate Advocacy. While relatively new to the roster, Alona has established a strong record of success, particularly by developing the record through trial court litigation. She has litigated important issues involving the right to reasonable attorney fees for court-assigned counsel, and the right to publicly-funded expert witnesses.
- The 2016 Norris J. Thomas Award for Excellence in Appellate Advocacy was made to Erin Van Campen, a SADO Assistant Defender. A former clerk for Justice Bridget McCormack who joined SADO in 2013, Erin has achieved great results for clients through investigation and fact development in trial courts. She has become one of the area’s foremost legal experts on abusive head trauma cases, and has trained and consulted with many attorneys.

2016 Progress Toward Goals

Goal 1: **Ensure the prompt assignment of high-quality counsel to all indigent criminal defendants seeking to appeal a felony conviction or sentence, or in authorized post-conviction proceedings, in a manner most efficient to trial courts and protective of appellants' rights, with SADO handling no less than 25% of assignments from all geographic regions of Michigan.**

Statutory Framework

Under Michigan's Appellate Defender Act, indigent defense services in felony appeals are provided by both "the state appellate defender . . . and locally appointed private counsel." MCL 780.712(4). The Act defines SADO's workload as "not less than 25% of the total criminal defense appellate cases for indigents," though 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 is adjusted to reflect SADO's capacity, namely the number of cases all attorneys can handle under established case weighting and national caseload standards. In 2016, SADO accepted approximately 26% of newly assigned criminal appeals.

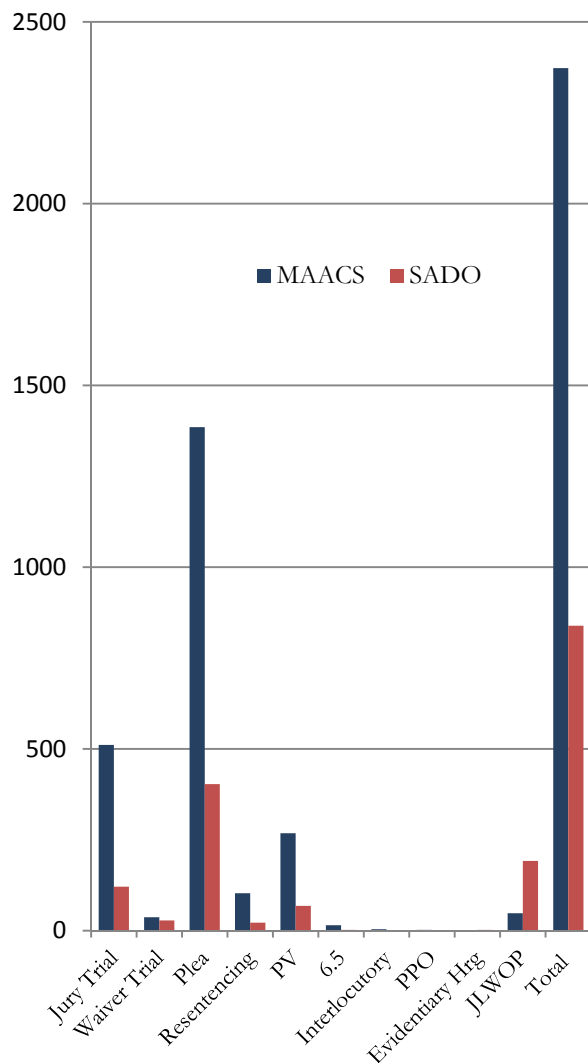
For non-SADO cases, the Act directs the establishment of "a statewide roster of attorneys eligible for and willing" to accept the remainder of assignments. MCL 780.712(6). In 1981, the Michigan Supreme Court established MAACS to "compile and maintain" that roster, AO 1981-7, Section 1(1), and to maintain the system for selecting counsel and preparing appointment orders in all assigned appeals statewide. In 2014, the Court consolidated MAACS with SADO for management purposes. AO 2014-18.

In 2016, MAACS processed appointment orders in 3212 felony appeals, 839 of which were assigned to SADO and 2373 of which were assigned to private attorneys.



Total Appellate Assignments, 2016

	MAACS	SADO	TOTAL
<i>Jury Trial</i>	511 80.9%	121 19.1%	632
<i>Waiver Trial</i>	37 56.9%	28 43.1%	65
<i>Plea</i>	1385 77.5%	403 22.5%	1788
<i>Resentencing</i>	103 82.4%	22 17.6%	125
<i>PV</i>	268 79.8%	68 20.2%	336
<i>6.500</i>	15 88.2%	2 11.8%	17
<i>Interlocutory</i>	4 80%	1 20%	5
<i>PPO</i>	2 100%	0 0%	2
<i>Evidentiary Hrg</i>	0 0%	2 100%	2
<i>JLWOP</i>	48 20%	192 80%	240
<i>Total</i>	2373 73.9%	839 26.1%	3212



MAACS Regional Pilot Project: Reforming the Assignment Process and Standardizing Attorney Fees

One year after the SADO/MAACS consolidation, the Supreme Court approved a regional pilot project “to assess the feasibility, costs, and benefits associated with structural reforms currently under consideration for permanent statewide implementation.” AO 2015-9. These reforms include:

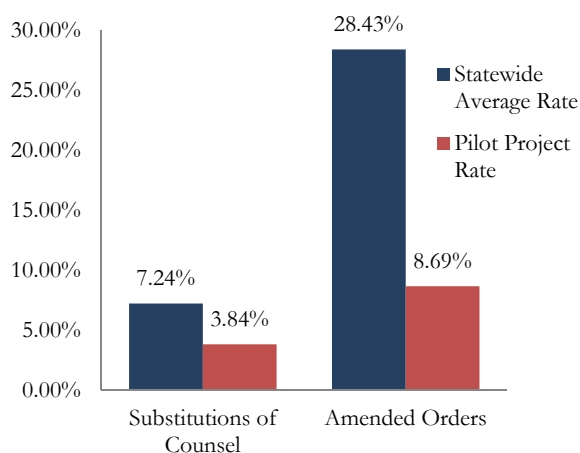
- Consolidation of 57 independent appellate assignment lists into regional lists
- Transfer of administrative responsibilities from the trial courts to MAACS
- Voluntary adoption of uniform attorney fee and expense policy by trial courts

The Supreme Court explained that “[t]he pilot will assess the extent to which this consolidation results in greater speed and efficiency in the assignment process,” as well as “the extent to which uniformity in attorney fee policies allows more meaningful data analysis related to attorney performance and efficiency, as well as the potential financial impact . . . on the circuit courts and their funding units.”

On October 1, 2015, MAACS launched the regional pilot project in partnership with fourteen trial courts in two geographic regions. Through its first year, the pilot has been extraordinarily successful and popular with participating courts.

For instance, by pre-screening counsel and preparing and serving appointment orders on behalf of trial court staff, MAACS has substantially reduced the unnecessary delays, efforts, and costs associated with subsequent orders, whether due to the substitution of counsel (after a lawyer rejects a case) or the need for additional transcripts. First-year data reveal a 47% reduction in substitutions of counsel and a 70% reduction in amended orders for additional transcripts.

Survey results show enthusiastic support from 100% of participating trial courts, which reported that the pilot project has “overall . . . improved the appellate assignment process.” Almost all courts reported noticeable reductions in postage costs and time spent preparing and mailing appointment orders. These improvements extend far beyond the trial courts, as the elimination of unnecessary delays assists the Court of Appeals in adjudicating cases in a timely and efficient manner.



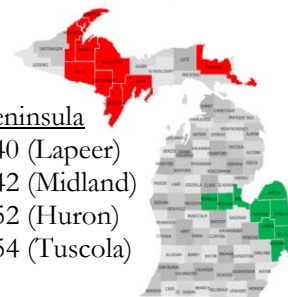
2015-16 Pilot Project Regions

Upper Peninsula

12 (Baraga/Houghton/Keweenaw)
25 (Marquette)
41 (Dickinson/Iron/Menominee)
47 (Delta)
50 (Chippewa)

Eastern Lower Peninsula

16 (Macomb) 40 (Lapeer)
18 (Bay) 42 (Midland)
21 (Isabella) 52 (Huron)
24 (Sanilac) 54 (Tuscola)
31 (St. Clair)



Trial Court Feedback

“Attorneys rejecting assignments was a major nuisance and this new process eliminates a lot of wasted time, effort, and cost.”

“I was not excited about becoming a part of this pilot process but I have to say that I really do find it much more expedient.”

“We have no complaints; this process has been wonderful for our office.”

A more efficient assignment process is only one benefit of the regional pilot project. By tying these administrative reforms to the trial courts’ voluntary adoption of a reasonable and uniform attorney fee policy, MAACS has been able to provide courts and roster attorneys with greater control, predictability, and fairness than ever before. Whereas attorney fee policies have historically been established on a circuit-by-circuit basis with no efforts toward consistency, the new fee policy permits a data-driven approach to reliable cost forecasting and hourly benchmarks based upon case weight and type.

2017 Projections*	<i>Rate (Legal)</i>	<i>Avg Hrs (Legal)</i>	<i>Cap (Legal)</i>	<i>Rate (Travel)</i>	<i>Avg Hrs (Travel)</i>	<i>Projected Avg Fee</i>	<i>Percent of Cases**</i>
Plea Appeals I (Max < Life)	\$50/hr	13.61	15 Hrs (\$750)	\$25/hr	3.73	\$773	58.5%
Plea Appeals II (Max = Life)	\$75/hr	14.73	15 Hrs (\$1125)	\$25/hr	4.38	\$1214	13.7%
Trial Appeals	\$75/hr	34.75	45 Hrs (\$3375)	\$25/hr	3.98	\$2705	25.5%

* Based on 127 pilot vouchers paid from October 2015 - October 2016 (110 plea appeals; 17 trial appeals).

** Based on statewide totals, of which interlocutory appeals and other miscellaneous matters typically account for 1-3%.

In spite of increased costs in most cases, 100% of participating trial courts reported that they are “satisfied with the overall fairness and reasonableness” of the new fee policy through the first year. Even so, MAACS remains amenable to adjusting the policy in a manner that ensures fairness and reasonableness to courts and roster attorneys and does not discourage vigorous representation. Recent examples include the reduction in the travel rate from \$50/hr to \$25/hr and the reclassification of roster levels in a manner that will significantly decrease in the average cost for plea-based appeals (from \$1144 to \$773) while modestly increasing the average cost for trial-based appeals (from \$2654 to \$2705), which will reduce overall costs for participating trial courts while allowing more effective training, supervision, and caseload control over the roster.

MAACS has also assumed significant responsibility in the vouchering process, ensuring greater detail, accuracy, and accountability while allowing meaningful collection and analysis of data. Unlike typical payment vouchers, pilot project vouchers demand precise details about the time and activities related to the representation, and are submitted to MAACS for review and data analysis before submission to the trial courts for payment. 100% of participating trial courts report satisfaction with the new vouchering process.

Trial Court Feedback

“I truly believe this is a great asset to the courts. I also believe having you check vouchers first has definitely been a good thing—I believe there is a cost savings to the courts in this area, i.e. better accountability. We are truly on board with this.”

Finally, and perhaps most importantly, the regional pilot project has improved the quality of representation for indigent criminal defendants on appeal. From an administrative perspective, these reforms ensure the prompt appointment of an appropriate pre-screened attorney with a complete trial court record immediately after sentencing—well before filing deadlines expire and witness memories fade. From a financial perspective, the reasonable and reliable uniform attorney fee policy has aided recruitment and retention efforts while boosting the morale of the MAACS roster, which has been working under disparate and often-inadequate fee policies for far too long. From a caseload perspective, the regionalization of assignment lists has led to greater predictability and control in the flow of assignments. And from a data perspective, MAACS is now able to analyze the quality and efficiency of representation like never before.

MAACS Integrated Case Assignment and Management System: Innovation, Oversight, and Comprehensive Data Analysis

Throughout 2016, MAACS worked with SADO to continue development of an integrated assignment and case management system that will incorporate all aspects of assigned appeals from the request for counsel through voucher payment—all while collecting and analyzing case-related documents and data for a “dashboard” of roster attorney performance metrics. In 2017, MAACS will launch the first phase, which will replace the legacy system currently employed by all 57 circuit courts.

New MAACS Assignment System Features

- ✓ **Electronic Documents**
Trial courts upload case-related documents electronically, making them accessible to the court, MAACS, and the assigned attorney
- ✓ **Defendant Lookup**
Defendants' MDOC information is pulled from OTIS database to populate data entry fields and appointment orders
- ✓ **Court Reporter and Judge Lookup**
Court reporters and judges are selected from pre-populated dropdown lists
- ✓ **Assignment Pre-Check**
Automatic search for prior-assigned counsel and co-defendants to avoid conflicts or re-assign where appropriate
- ✓ **Automated Pre-Screening of Counsel**
Automated system will send an email notice to the next-in-rotation roster attorney, who will have approximately one business day to accept or decline the assignment, repeating until an attorney accepts and is named on an appointment order
- ✓ **E-Signing of Documents**
Allows orders and certificates to be e-signed by judges and court staff
- ✓ **Messages and Email Notifications**
Automated messages to inform court staff, MAACS, and assigned attorneys of developments in the assignment process

The image displays several screenshots of the MAACS web application interface. The top navigation bar includes links for Home, Requests, Orders, Vouchers, Roster, and Maintenance. The main content area shows the 'Submit a New Request' form, which includes fields for Circuit, County, Case Type, Case No./Suffix, Request Received Date, MDOC No., First Name, Middle Name, Last Name, Suffix, Date of Birth, Residence Type, Facility, Address 1, Address 2, City, State, Postal Code, and Phone No. Below this is the 'Assign Counsel' section, which includes a table of court reporters and judges, and a 'Begin Assignment Process' button. The bottom section shows the 'Order Regarding Appointment' form, which includes fields for Case No., Case Title, and a 'Sign' button. The interface is designed to be user-friendly and efficient for managing case assignments.

SADO Workload: Steady at 26%, but challenged by juvenile lifer cases

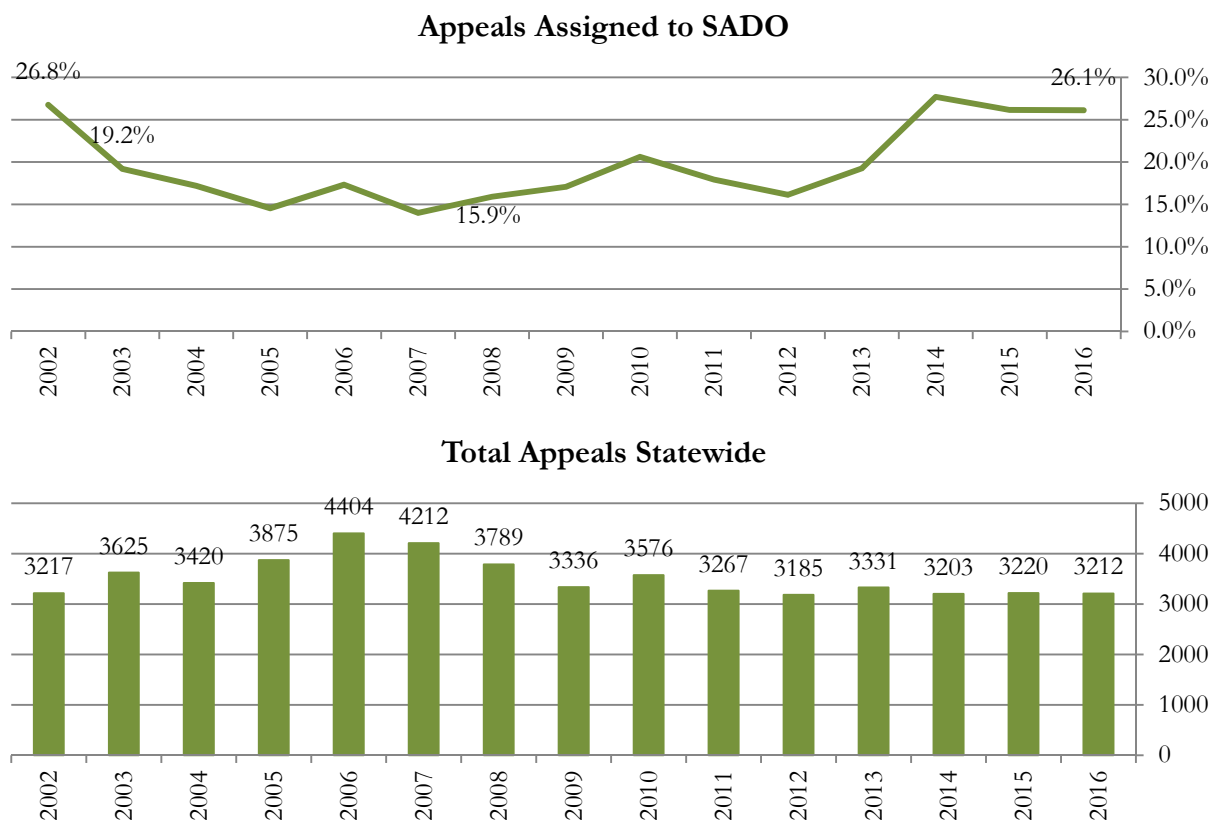
a. Intake, type of assignments, geographic spread of assignments

SADO's intake in 2016 was 26.1% of the total appellate assignments statewide. Prior to 2014, SADO's percentage of the statewide caseload had not exceeded 25% for about twelve years. By 2013 though, funding had been restored for new attorney hiring and an increased caseload.

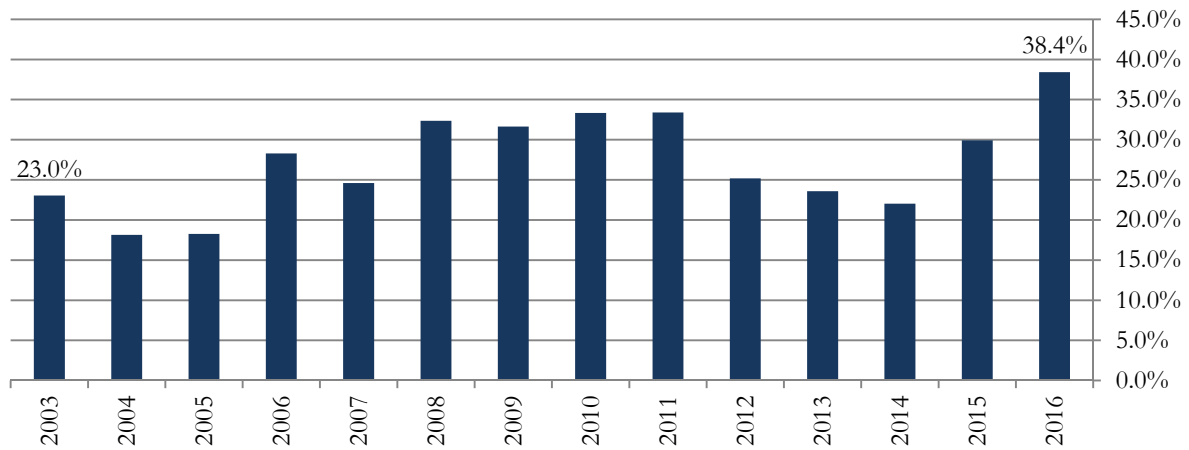
As in previous years, SADO's 2016 caseload included appeals from guilty pleas, trials, and probation violations. While most assignments were made on the basis of a formula applied by the Michigan Appellate Assigned Counsel System (MAACS), tied to SADO capacity, some assignments qualified as "complex" 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.

The complexion of SADO's caseload was drastically transformed over the second half of 2016, after the Supreme Court retroactively banned mandatory life without parole sentences for individuals convicted as juveniles. SADO accepted the appointment of nearly 100 new juvenile lifer clients, added to the 104 existing juvenile lifer clients on its caseload. Now handling nearly 60 percent of Michigan's 363 juvenile lifers, SADO formed a special Juvenile Lifer Unit to handle most of the work.

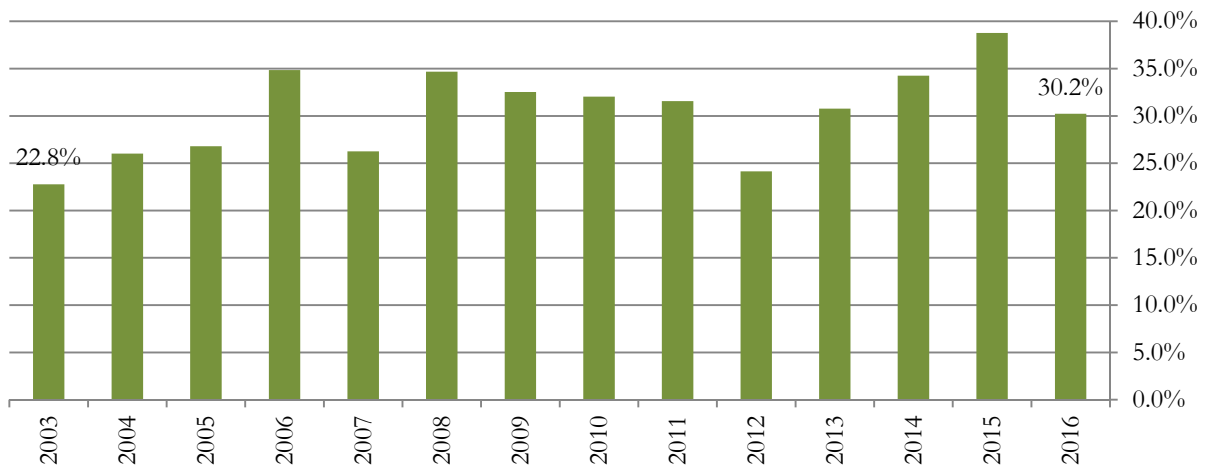
Assignments to SADO arose from every county in Michigan, except those reporting no or a very low number of appeals.



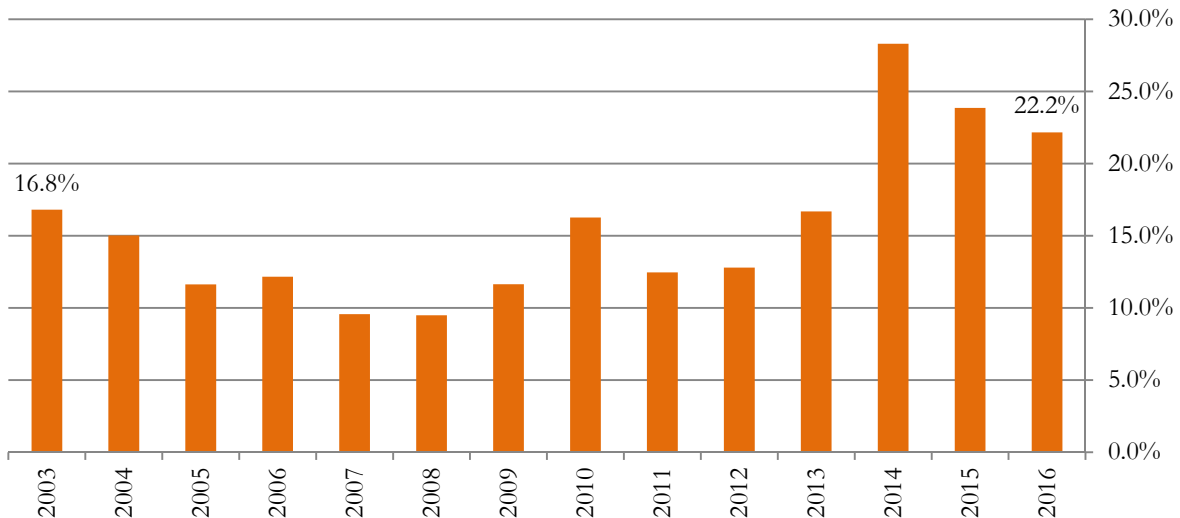
SADO's % of Level 3 Trials
(appeals from jury-trial-based convictions with statutory maximums over 15 years)



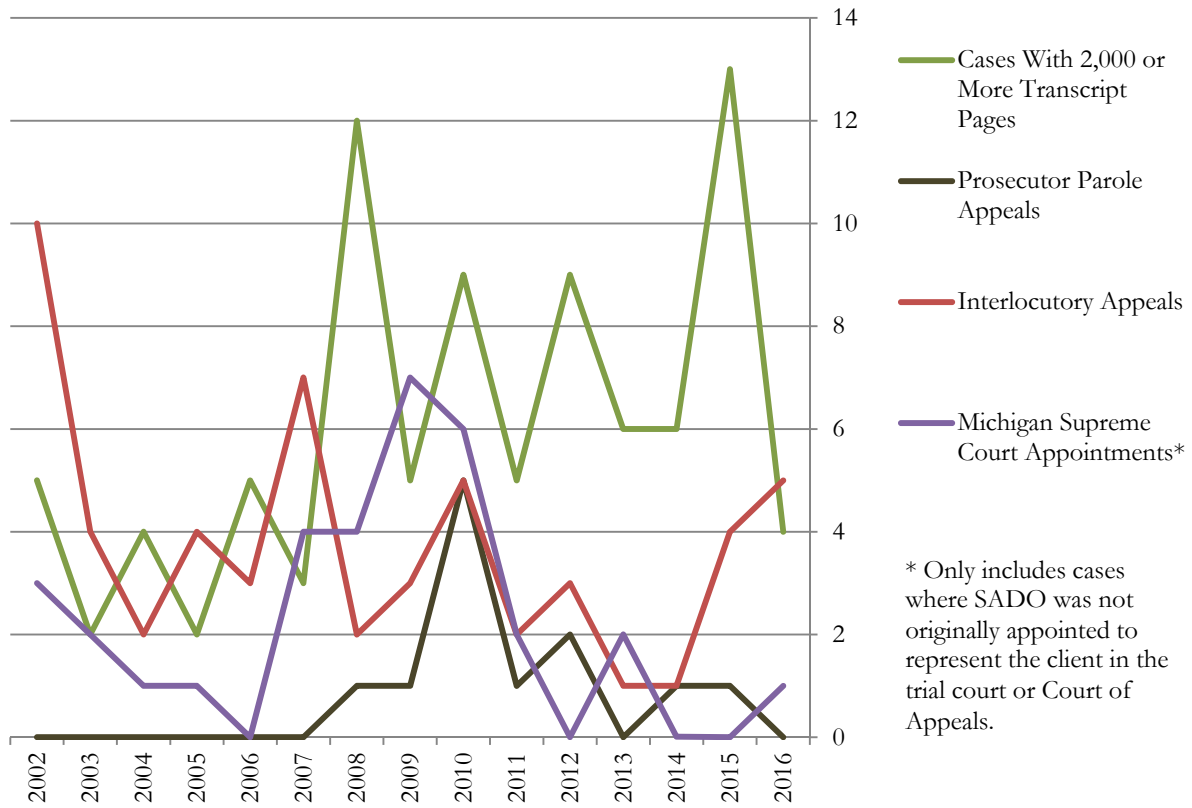
SADO's % of Level 1 & 2 Trials
(appeals from bench-tried convictions, and from jury trial-based convictions with maximum sentences up to 15 years)



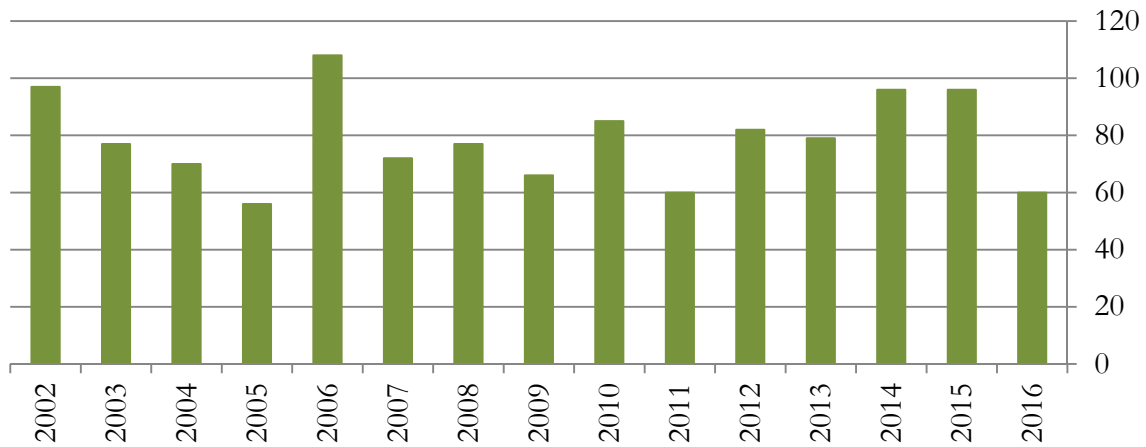
SADO's % of Pleas, PVs, & Resentencings



Complex and Special Appointments to SADO



Substitution Appointments



Appointments to SADO by County for 2016

Color	Range
Dark Blue	Over 100
Medium Blue	50 - 99
Light Blue	25 - 49
Very Light Blue	10 - 25
Lightest Blue	1 - 9
White	0*

Counties shown on map: Keweenaw, Houghton, Ontonagon, Baraga, Marquette, Iron, Dickinson, Delta, Menominee, Alger, Schoolcraft, Luce, Mackinac, Chippewa, Emmet, Cheboygan, Presque Isle, Charlevoix, Montmorency, Antrim, Otsego, Alpena, Leelanau, Benzie, Grand Traverse, Kalkaska, Crawford, Oscoda, Alcona, Manistee, Wexford, Missaukee, Roscommon, Ogemaw, Iosco, Mason, Lake, Osceola, Clare, Gladwin, Arenac, Huron, Oceana, Newaygo, Mecosta, Isabella, Midland, Bay, Muskegon, Montcalm, Saginaw, Tuscola, Sanilac, Kent, Gratiot, Shiawassee, Lapeer, St. Clair, Ottawa, Ionia, Clinton, Genesee, Macomb, Allegan, Barry, Eaton, Ingham, Livingston, Oakland, Wayne, Van Buren, Kalamazoo, Jackson, Washtenaw, Monroe, Berrien, Cass, St. Joseph, Branch, Hillsdale, Lenawee.

18

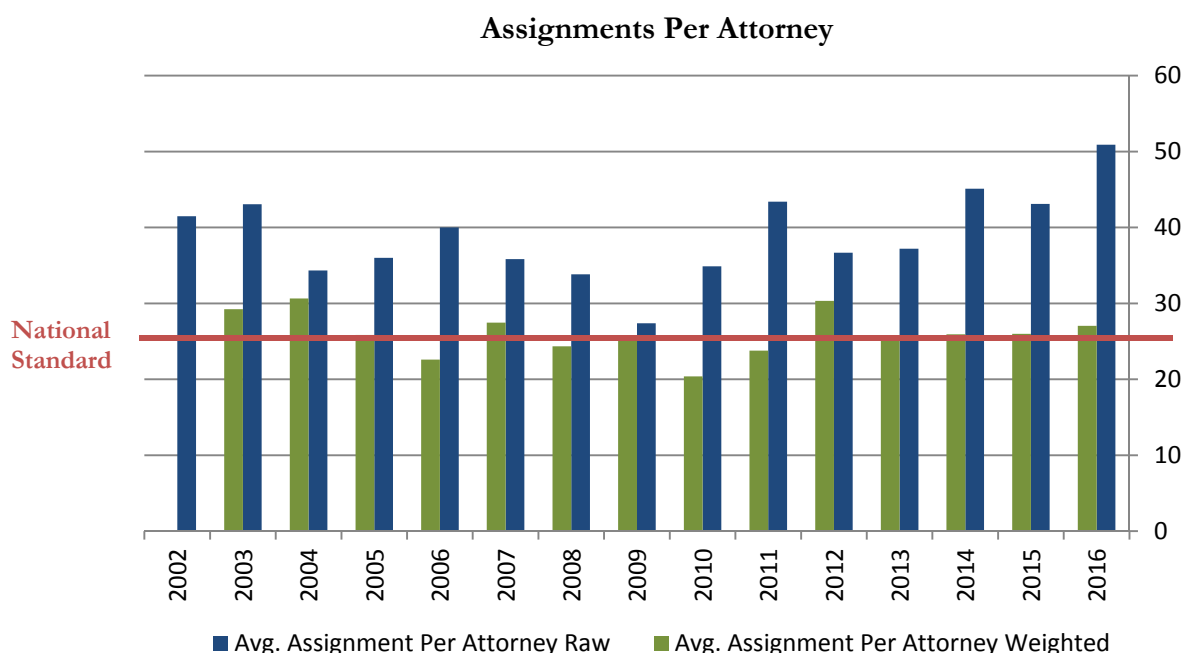
b. Productivity

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.

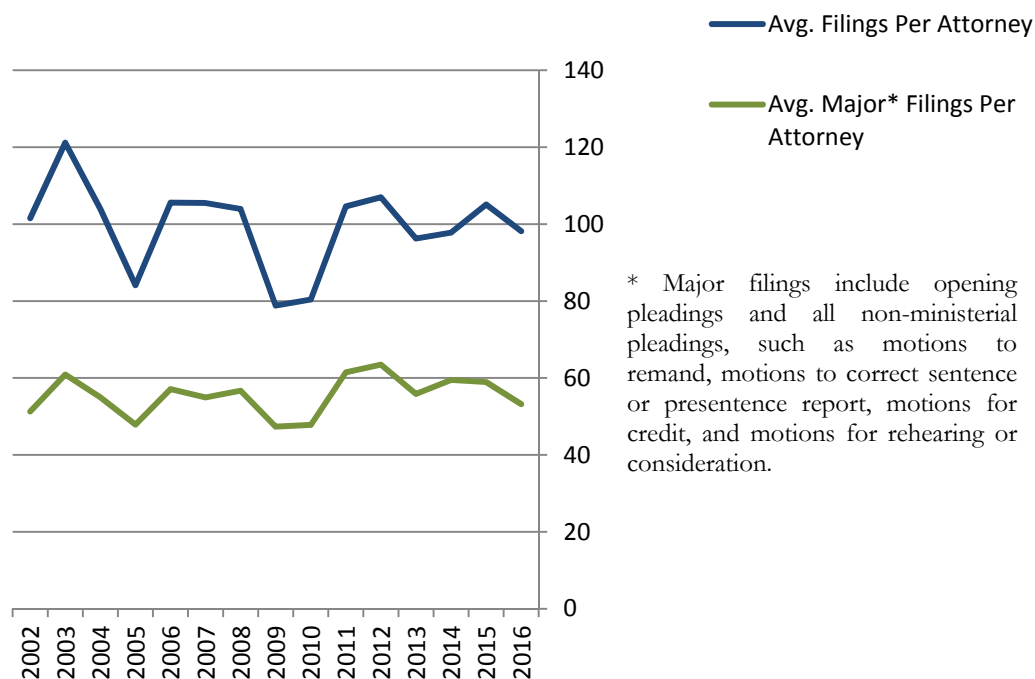
The American Bar Association (1989 and 1992), the National Advisory Commission on Criminal Justice Standards and Goals (1973), and the American Council of Chief Defenders (2007) have consistently determined that appellate attorneys should handle no more than 25 non-capital appellate cases per year. Each 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.

In 2016, the Plea and Sentencing unit served as the model for the formation of SADO's Juvenile Lifer Unit (JLU). Consisting of eight full and part-time attorneys and a staff of eight support persons, the JLU was tasked with representing handle nearly all of the approximately 204 juvenile lifers assigned to SADO. JLU members conducted 24 resentencings for these clients in 2016, yielding excellent results as detailed elsewhere.

Productivity measured by the raw number of assignments per attorney exceeded national standards in 2016, and weighted case assignments per attorney were in line with national standards.



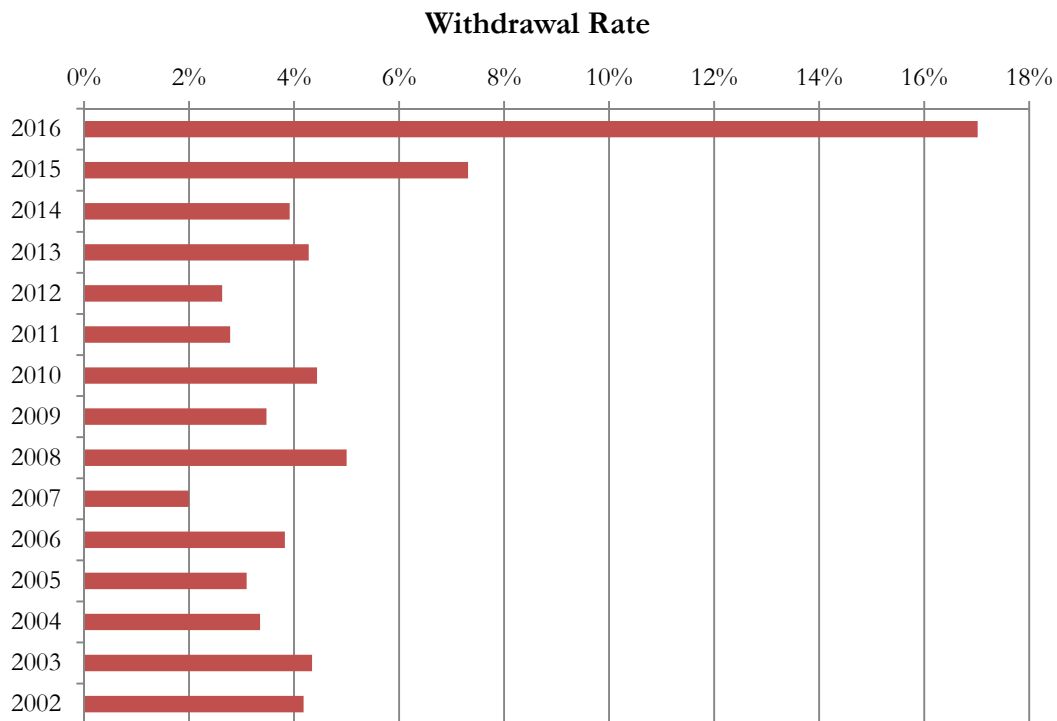
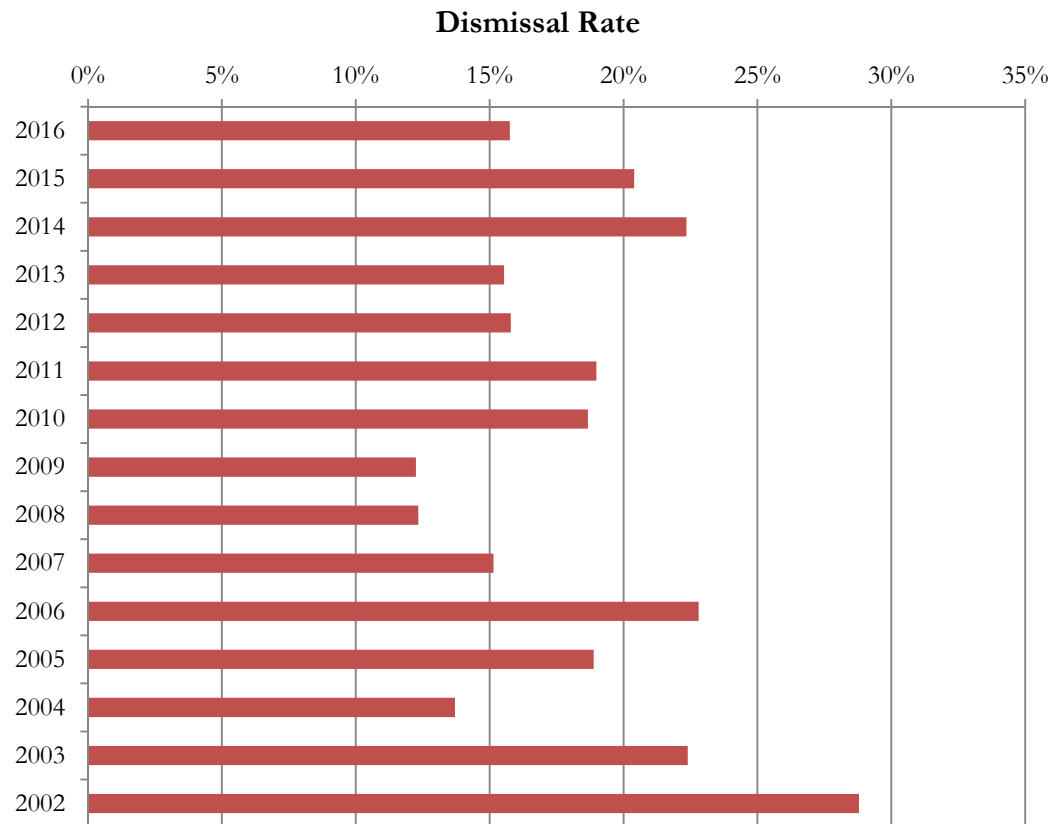
Filings Per Attorney



c. Dismissal and withdrawal rates: Temporarily skewed by juvenile lifer cases

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. With regard to trial and plea appeals, the rates of withdrawal and dismissals are fairly consistent over time.

2016 saw a significant spike in withdrawals, however. This is largely attributable to the influx of appointments to juvenile life without parole cases on a conditional basis over the second half of the year. Investigation revealed actual and potential conflicts of interest in some of those cases, necessitating SADO's withdrawal as counsel. In other cases, substitute volunteer or retained counsel stepped in to represent the clients. Thus, 2016's withdrawal rates appear to be temporarily skewed by this unique situation.

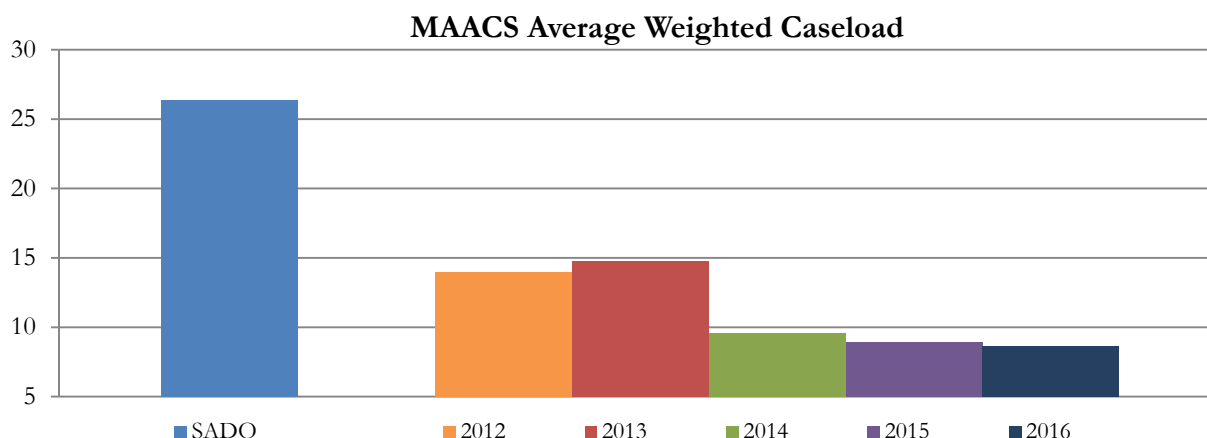


Goal 2: Seek the best possible outcomes for clients, providing high-quality, timely and effective assistance of appellate counsel

**MAACS Revised Regulations:
Improving Clarity, Raising Standards, and Ensuring Quality**

On September 21, 2016, the Appellate Defender Commission approved significant revisions to the MAACS Regulations, effective January 1, 2017. In addition to reforms aimed at organization and clarity, the Commission approved several substantive changes to roster management and review. These include:

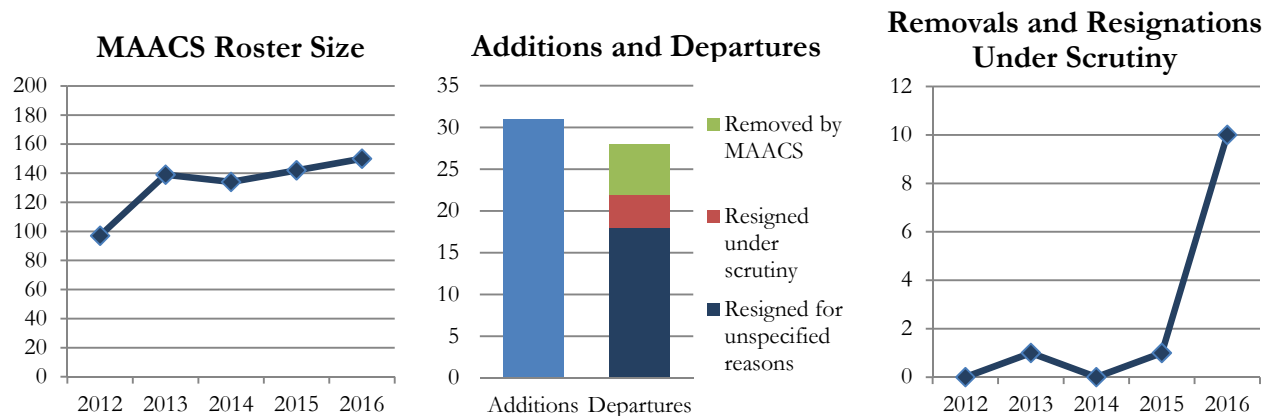
- *Reclassification of attorneys:* Roster attorneys were reclassified from four levels into three: less-than-life plea appeals (Level 1); life plea and trial appeals (Level 2); and trial appeals only (Level 3). This simplifies roster administration, evens attorney caseloads, incentivizes good performance and advancement, and allows targeted training based on attorney needs. Additionally, the reclassification process now depends on measures of quality rather than pure quantity. Levels 2 and 3 require a threshold level of experience, though the Commission maintains a role of assessing “extraordinary circumstances” for exceptions and classification now depends in part upon the overall quality of roster attorney work product.
- *Attorney work product reviews:* The retention review process now proceeds in three different stages. First, MAACS reviews the work of new roster attorneys through a proactive consultation during attorneys’ first two assigned appeals, ensuring the adoption of best practices and identifying areas of concern. Second, MAACS reviews the work of all roster attorneys through performance reviews after completion of the first ten appeals at either level. Third, MAACS engages in similar performance reviews every three years thereafter.
- *Attorney resignation, suspension, and removal:* Suspension is now permitted for a wide variety of circumstances that raise concerns about quality of representation, and there is a process to move from suspension to removal. Rather than looking only to the number of Minimum Standards violations, the new process focuses on the overall quality and integrity of an attorney’s work product.
- *Requirements for continued membership on the roster:* The annual training requirement has increased from 7 to 12 hours, consistent with emerging state and national standards.



MAACS Roster Expansion, Evaluation, and Targeted Retention

Raising the Bar:

Through a competitive application process, MAACS added 31 new attorneys to the roster in 2016, while removing six attorneys and prompting resignations from four others due to performance concerns. An additional 18 roster attorneys resigned for unspecified reasons. Altogether, MAACS continued a trend of expansion, bringing the total size of the roster to 150 attorneys.



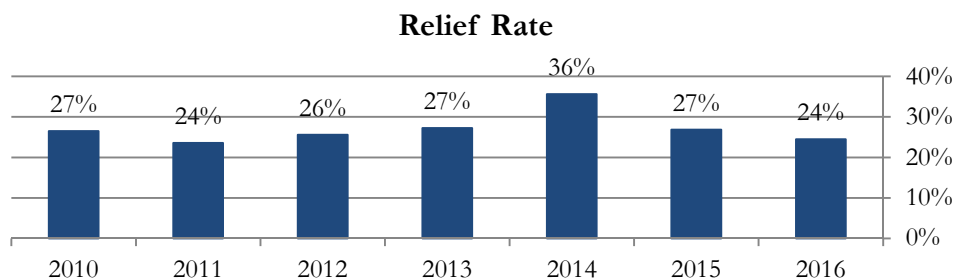
To facilitate retention and removal decisions, MAACS completed written work product reviews of 39 roster attorneys in a manner that is more comprehensive than in past years. Each review consists of evaluating and summarizing the attorney's history at MAACS, reading and critiquing a wide representative sample of the attorney's appellate and trial court pleadings, and surveying the attorney's case assignments for other problems. Experience has shown that detail is necessary to identify and correct individual shortcomings and provide concrete direction for improvement. In addition, comprehensive reviews aid in identifying training priorities.

Through the retention review process as well as client correspondence, MAACS regularly identifies situations that implicate the Minimum Standards for Indigent Criminal Appellate Defense Services. Among these, MAACS formally found 93 violations in 2016. Some of these findings were concentrated among a small number of attorneys, but not all. In particular, the failure to request and preserve oral argument in the Court of Appeals was relatively widespread.

Minimum Standards Violations, 2016	Violations
Standard 2: Absence of proper client consultation	40
Standard 3: Failure to raise claims of arguable merit	21
Standard 5: Abandonment	7
Standard 6: Failure to preserve oral argument by filing timely	23
Standard 7: Failure to communicate with client	1
Standard 8: Failure to advise client of case outcome and further options	1

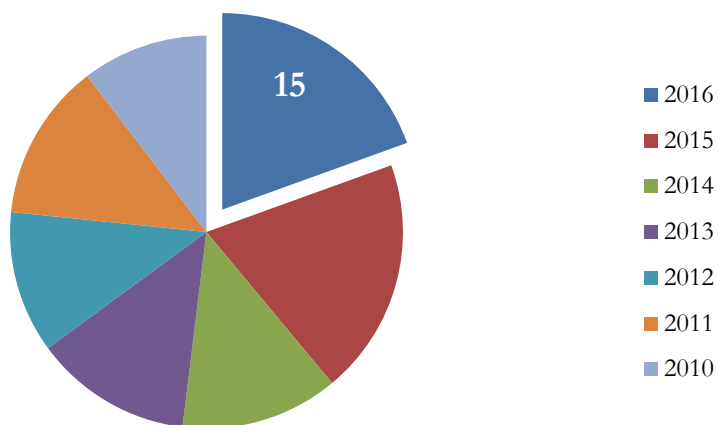
SADO Relief Rate

SADO continued its record of achieving excellent results for its clients in 2016, reflecting consistent, quality appellate advocacy. In addition, 24 juvenile lifer resentencing hearings were held, and the conversion of those sentences from life without parole to terms of years pushed the total sentence reduction numbers to an unprecedented level. Collectively, the minimum sentences of SADO's clients are over 500 years shorter than they were at the beginning of the year. MAACS is developing a case assignment system that will soon allow it to track outcomes that parallel tracking in SADO cases.

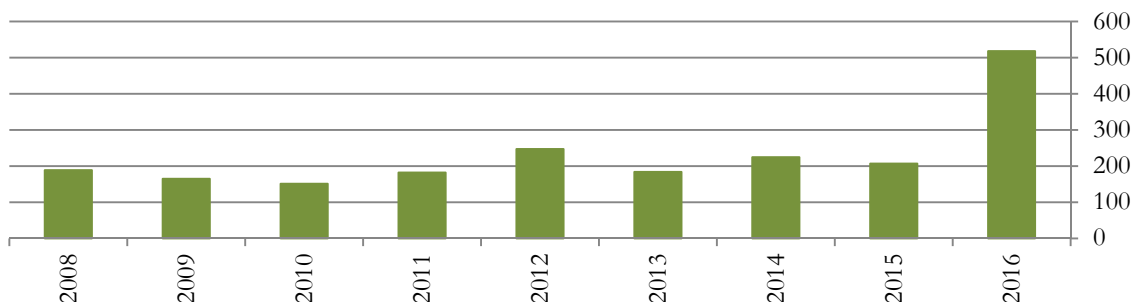


*Relief granted includes new trials and resentencings.

New Trials and Dismissed Convictions



Total Years Reduced from Minimum Prison Sentence Terms



During 2016, SADO and MAACS attorneys represented clients in a wide variety of significant and noteworthy cases. Highlights of these cases follow:

SADO Noteworthy Cases

Michigan Supreme Court

People v Jason Triplett, MSC #151434

Supreme Court reversed client's conviction for carrying a concealed weapon, holding that self-defense applies to that charge, reversing years of contrary caselaw.

People v Antonio Gloster, MSC #151048

Supreme Court held that Offense Variable 10, a guideline sentence enhancer applicable to "predatory conduct," cannot be scored on the basis of the codefendant's conduct.

Michigan Court of Appeals

People v Konrad Montgomery, COA #321155

Court of Appeals reversed armed robbery and AWIM convictions based on prosecutorial misrepresentation of cell phone and cell tower records proven to be false by expert witness. In fact, the cell tower records showed the defendant was not at the location where prosecution placed him at time of the offense.

People v Gandy-Johnson, COA #325110

Court of Appeals reversed multiple criminal sexual conduct convictions, holding that the prosecutor had committed misconduct in closing argument by improperly shifting the burden of proof to the defense.

People v Darrell Ballard, COA #325731

Court of Appeals reversed armed robbery conviction, holding that defendant was denied the effective assistance of counsel where his attorney failed to present evidence that victim had identified someone other than the defendant from a lineup, as well as expert testimony showing defendant's prosthetic leg affected his gait so as to distinguish it from that of the perpetrator.

People v Melissa Jones, COA #332018

In a published opinion, Court of Appeals reversed and vacated conviction for first-degree child abuse, holding that the statute does not apply to pre-natal drug abuse by defendant.

People v Gary Mahdi, COA #327767

In a published opinion, the Court of Appeals reversed convictions for controlled substance offenses, holding that a warrantless search of defendant's apartment and mobile phone violated Fourth Amendment and exceeded scope of mother's consent.

People v Arnold, COA #325407

Court of Appeals reversed 25-70 year sentence for indecent exposure by a sexually delinquent person, holding that sentencing guidelines did not apply to sexual delinquent person proceedings.

People v Daniel Shaw, COA #327970

Court of Appeals reversed 4-10 year sentence for domestic violence assault and interference with telephone communication, holding that trial court erred in scoring 25 points for Offense Variable 3 because interference with a telephone communication was not a crime against a person.

People v Agar, COA # 321243

In a published opinion, Court of Appeals held that trial court violated due process by refusing to provide funds for the defense to hire and consult with an expert witness on computer forensics in prosecution for distributing and possessing child sexually abusive material.

People v Trenity Heller, COA #326821

In a published decision, Court of Appeals vacated sentence for controlled substance offenses and remanded for resentencing, holding that sentencing defendant via videoconference violated MCR 6.006.

People v Blanton, COA #328690

In a published opinion, Court of Appeals held that defendant was entitled to withdraw plea to both felony firearm and armed robbery charges despite the fact that the court's incorrect advice went only to felony firearm penalty.

People v Leonard Wayne Wesson, COA #326389

Court of Appeals reversed conviction for larceny from the person, holding there was insufficient evidence that defendant took a wallet from the victim's "person" when he retrieved the item from the floor near where the victim stood.

Trial Court

People v Marcus Gillespie, Saginaw County #11-035900-FC

Trial court vacated murder conviction, ruling that defendant suffering from fetal alcohol syndrome was not competent to stand trial or to enter plea.

People v Derick Bunkley, Wayne County #14-4438

Multiple convictions for assault with intent to commit murder vacated after investigation and evidence from computer and cell phone expert revealed the accuracy of time stamp on social media photograph of defendant at a location miles away from the crime scene at the time of the offense.

People v Anthony Dimambro, Macomb County #13-14215

After extensive evidentiary hearing involving multiple expert witness, trial court granted new trial on murder charges, holding that defense counsel was ineffective for failing to consult with and call expert witness on abusive head trauma. Court also found that government had violated due process by failing to provide defense with exculpatory autopsy evidence.

People v Michael Carver, Kalamazoo County #14-0448

Trial court granted new trial on multiple criminal sexual conduct convictions, finding that trial counsel was ineffective for failing to present expert testimony on false reporting and memories of child sexual assault complainants.

People v Michael Campbell, Oakland County #13-247456

Following remand from Court of Appeals, defendant's sentence for indecent exposure by a sexually delinquent person reduced from 35-82 years to paroleable life in prison, making him eligible for release after 15 years.

People v Karon Cole, Wayne County #10-6204

Motion for relief from judgment granted and resentencing ordered based on changes to PRV score created by reversal of other convictions on appeal. Armed robbery sentence reduced from 7-30 years to 3½-30 years in prison.

Federal Court

Katherine Dendel v Heidi Washington, 6th Circuit #15-2000

Sixth Circuit reversed denial of habeas corpus petition in second-degree murder case, holding that holding that trial counsel was ineffective for failing to present expert testimony on cause of death. United States Supreme Court denied States' petition for writ of certiorari. See *Heidi Washington v Katherine Dendel*, United States Supreme Court #16-189.

The **Juvenile Lifer Unit** also embarked on the first phase of the juvenile life resentencing litigation in 2016 by representing 23 clients who were resentenced after being designated by prosecutors for "term of years" relief (rather than life without parole). Some of the clients who will be or have been freed as a result of SADO's work include:

William Washington, Wayne County No. 75-4032

Resentenced to 40-60 years. Released on parole on November 17, 2016.

John Hall, Wayne County No. A-134610

Resentenced to 40-60 years. Released on parole on February 2, 2017, after serving nearly 48 years.

Thomas Armstrong, Genesee County No. 89-41695

Resentenced to 28-60 years. Eligible for parole in July, 2017.

James Thomas, Wayne County No. 87-6689

Resentenced to 27-60 years. Released on parole on April 18, 2017.

Devon Watts, Newaygo County No. 95-6006

Resentenced to 28-60 years.

Renard Johnson, Wayne County No. 83-00419

Resentenced to 30-60 years. Immediately eligible for parole.

Amahd Williams, Kent County No. 98-1616

Resentenced to 25-60 years in prison.

Ronald Williams, Wayne County No. 87-4693

Resentenced to 25-60 years. Immediately eligible for parole.

Larone Harris, Wayne County No. 88-3630

Resentenced to 25-60 years. Immediately eligible for parole.

MAACS Noteworthy Cases

Michigan Supreme Court

People v Henry Richard Harper, MSC #152114

Unpublished order of the Supreme Court, entered January 29, 2016, vacating that part of the Court of Appeals opinion holding that "it cannot be concluded that two separate assaults constituted part of the 'same transaction' under MCL 750.520b(3)."

Michigan Court of Appeals

People v Kenneth Wayne Spencer, COA #328254

Unpublished opinion per curiam of the Court of Appeals, issued November 17, 2016, remanding to allow defendant an opportunity to withdraw his plea.

People v Noralee Hope, COA #324703

Unpublished opinion per curiam of the Court of Appeals, issued October 18, 2016, remanding for new trial because of extraneous influences on juror.

People v Lavagas Drain, COA #327601

Unpublished opinion per curiam of the Court of Appeals, issued October 13, 2016, remanding for third resentencing due to trial court's failure to explain upward departure.

People v Terrance Demon-Jordan Thomas, Jr., COA #325530

Unpublished opinion per curiam of the Court of Appeals, issued September 13, 2016, remanding for resentencing because defendant was erroneously sentenced to life without the possibility of parole.

People v Laverie Douglas-Le Bryant, COA #325569

Unpublished opinion per curiam of the Court of Appeals, issued August 23, 2016, vacating convictions due to MRE 403 error; remanding for new trial.

People v Devaun Laroy Lopez, COA #327208

Unpublished opinion per curiam of the Court of Appeals, issued August 18, 2016, vacating convictions due to prosecution's threats to its own witness, which led to the witness's unavailability; remanding for new trial.

People v Carl Duncan Allen, COA #325568

Unpublished opinion per curiam of the Court of Appeals, issued June 14, 2016 remanding for resentencing due to prosecution's failure to give timely notice of *Miller* sentencing hearing after conviction.

People v Jalen Rashaad Conner, COA #323508

Unpublished opinion per curiam of the Court of Appeals, issued February 23, 2016, remanding for resentencing due to error in scoring PRV4 and PRV6, and ineffective assistance of counsel.

People v Gary Michael Traver, 316 Mich App 558; ___ NW2d ___ (2016) (vacating convictions due to trial judge's failure to read charges to the jury and "hopelessly incorrect" written charge; remanding for new trial).

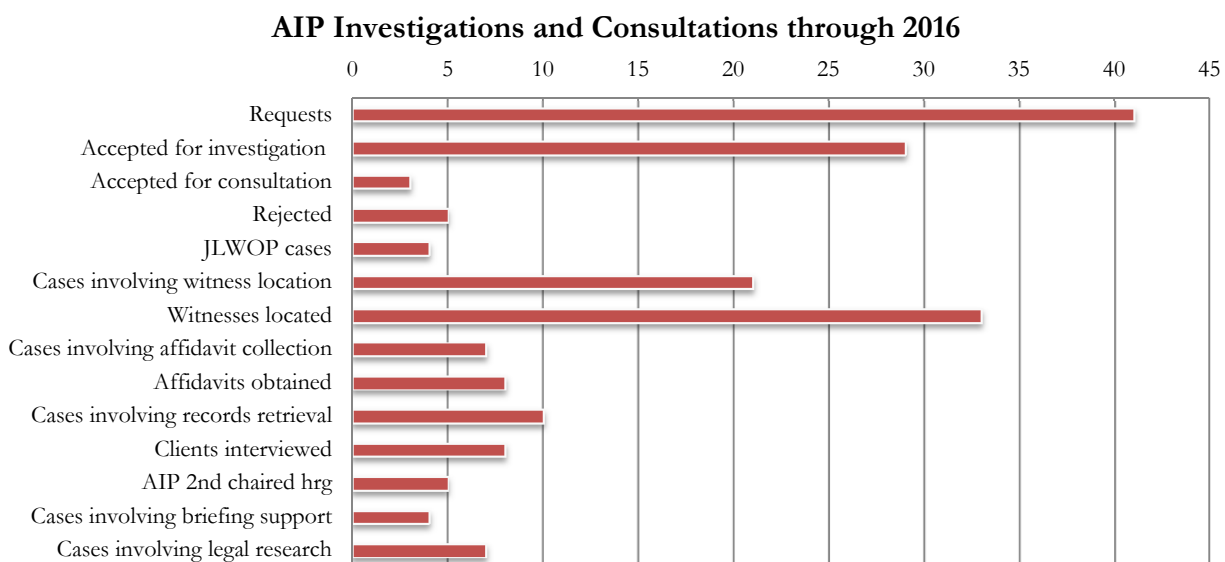
People v Timothy Lee Solloway, 316 Mich App 174; ___ NW2d ___ (2016) (vacating convictions for failure to comply with SORA due to unconstitutional vagueness of SORA statute).

People v Tyrone McKensey Clark, 315 Mich App 219; 888 NW2d 309 (2016) (remanding for resentencing due to error in sentencing defendant to serve his state and federal sentences consecutively).

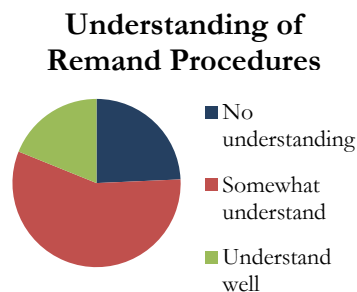
Goal 3: Provide support services and training to assigned criminal defense counsel, in all circuits of Michigan

MAACS Appellate Investigation Project: Grant-Funded Investigation and Consultation Services for the MAACS Roster

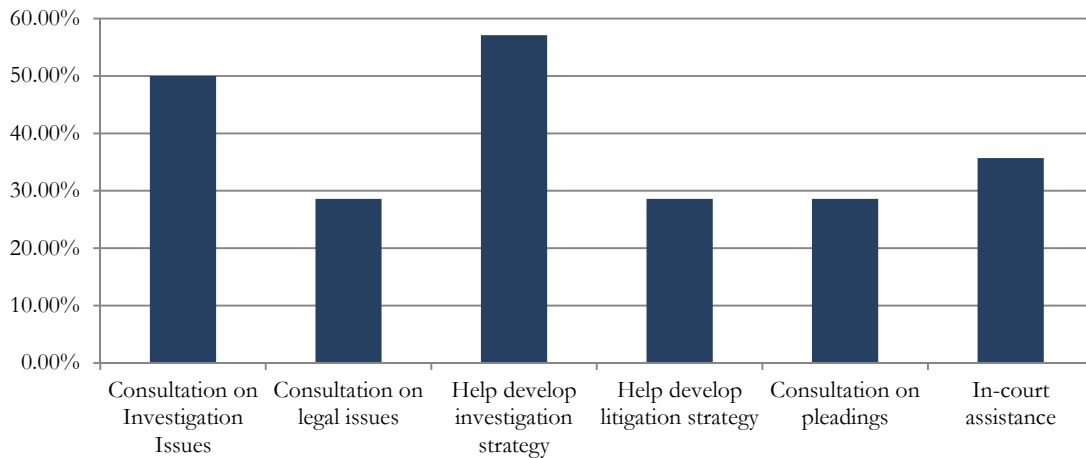
In October 2015, MAACS launched the Appellate Investigation Project (AIP) with funding from a federal Byrne Justice Assistance Grant. Based in SADO's Detroit office and run by Principal Attorney Katherine Marcuz and Investigative Attorney Andrew Lee, the AIP extends investigative assistance to the MAACS roster. This new resource has led to forensic testing of critical evidence, the introduction of expert witness testimony, evidence of jury bias, challenges to the reliability of convictions, and the presentation of new mitigating evidence for resentencing purposes, including in cases involving juveniles unlawfully sentenced to life without parole. In partnership with SADO's CDRC, the AIP has also developed a training strategy including a forensic training series and intense skills-based workshops, as well as individualized case consultation with roster attorneys. While still in its infancy, the AIP has been tremendously successful in helping MAACS roster attorneys deliver better representation to their indigent clients and more just and reliable outcomes in the courts.



The need for investigative assistance is clear. Survey results and first-hand observations demonstrate that many roster attorneys are unfamiliar with how to develop a factual basis in support of extra-record issues. Many attorneys who have sought assistance from the AIP had little or no experience in this area, and require assistance navigating appellate procedure, identifying and developing legal claims, developing a litigation strategy, and conducting an evidentiary hearing. Survey responses also reveal that although trial court evidentiary hearings are explicitly permitted under the appellate rules, the majority of attorneys seek evidentiary hearings in fewer than 10% of their cases, and file motions to remand in fewer than 5% of their cases. Many attorneys do not understand the motion to remand procedures or the logistics of conducting an evidentiary hearing.



Reasons for Seeking AIP Assistance



Roster Attorney Feedback

“I used the AIP when I needed assistance in locating and speaking to a potential witness regarding an appellate issue. The AIP team located and contacted the witness, interviewed her and provided me with a summary of the conversation and their assessment of the information that was provided. Both Andrew Lee and Katherine Marcuz were also willing to brainstorm the appellate issues on the case (and other cases) with me which really helped me to narrow the issues and focus my writing.”

Roster attorney feedback has been overwhelmingly positive. 100% of participating roster attorneys report that the AIP met their expectations, and every attorney reported being “likely” (7.1%) or “very likely” (92.9%) to recommend the AIP to their colleagues or seek support in other cases. Surveys also reveal that the AIP helped 57.1% of participating roster attorneys develop an investigation strategy, and helped 28.6% develop an overall litigation strategy. And, in over 25% of accepted cases, the AIP has either helped identify additional legal issues or shape legal strategy. For example, in one case where the appellate attorney sought assistance investigating a shackling issue and preparing a motion for a psychological expert, the project identified a meritorious sentencing issue that resulted in the client receiving a new sentence making him immediately eligible for parole.

**STATE OF MICHIGAN
COURT OF APPEALS**

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

NORALEE MARIE HOPE,
Defendant-Appellant.

UNPUBLISHED
October 18, 2016

No. 324703
Washtenaw Circuit Court
LC No. 14-000280-FH

Before: RIORDAN, P.J., and METER and OWENS, JJ.

PER CURIAM.

Defendant, Noralee Marie Hope, appeals as of right her conviction of domestic assault, third offense, MCL 750.81(4).¹ She was sentenced to 18 months' probation. We reverse and remand for a new trial.

In *People v Hope*, a MAACS roster attorney sought assistance from the AIP to investigate extraneous influences on the jury in a domestic assault trial. The AIP located and interviewed a juror who claimed in an affidavit that her personal knowledge of Ms. Hope's family history was on her mind “throughout deliberations”—including when she argued in favor of guilt when other jurors expressed ambivalence. Citing the juror's affidavit, the Court of Appeals reversed Ms. Hope's conviction and ordered a new trial.

SADO's Criminal Defense Resource Center Trains Trial and Appellate Assigned Counsel

SADO's Criminal Defense Resource Center (CDRC) provides research services, training, and support to internal staff, MAACS roster attorneys, trial-level criminal defense practitioners, and prisoners. Criminal defense attorneys are served through web and print-based resources, which include a Defender Book Series, Practice Manuals, Brief Bank, Online Forum, Criminal Defense Newsletter, Expert Witness and Misconduct Databases, and much more. Prisoners are provided with many of these resources through their prison libraries.

CDRC is led by Marilena David-Martin, Training Director. Essential members of the CDRC team include: Bill Moy, Production Manager, Heather Waara, Administrative Assistant, and in a part-time role, Eric Buchanan, Programmer.

In 2016, CDRC conducted and administered over 65 hours of training for defense attorneys in four counties. CDRC also administered approximately 15 hours of in-house brown bag trainings on topics such as technology, ineffective assistance of counsel, and juvenile lifer issues. In conjunction with SADO's Juvenile Lifer Unit, SADO also conducted judicial training for the Wayne County Circuit Court following the Supreme Court's decision in *Montgomery v Louisiana*, __ US __ (2016).

CDRC continues to partner with various organizations. This year's training partners included:

- Advance Real Change, Inc. (ARC)
- Berrien County Public Defender Office
- Criminal Defense Attorneys of Michigan (CDAM)
- Genesee County Bar Association
- Michigan Appellate Assigned Counsel System (MAACS)
- MAACS Appellate Investigation Project (AIP)
- Wayne County Circuit Court
- Wayne County Criminal Advocacy Program (CAP)
- Wayne State University Law School (WSU Law)
- Western Michigan University Cooley Law School (WMU Cooley)

a. CDRC Trainings: Issue-specific, for all

All of CDRC's training programs are complimentary for attendees. Video recordings of the trainings and the training materials are made available to subscribers on www.SADO.org. CDRC offered the following issue-specific trainings throughout the year:

1. January 14, 2016 – Identifying, Investigating, and Litigating Cases Involving “Abusive Head Trauma,” SADO Detroit, Erin Van Campen (SADO)

2. February 9 and 10, 2016 – Introduction to Research on WestlawNext, SADO Lansing and Detroit, Paula Maier and Denice Fogle (Westlaw)
3. February 17, 2016 – Building Better Briefs: Technology 101 for Lawyers, SADO Detroit, Randy Davidson and John Powell (SADO)
4. February 26, 2016 – Challenging Bad Science on Appeal: Litigating Ineffective Assistance of Counsel for Failure to Raise a *Daubert* Motion, SADO Detroit, Imran Syed (MAACS AIP)
5. March 29, 2016 – Lawyer Technology 2.0, SADO Detroit, John Powell (SADO)
6. April 13, 2016 – DNA Analysis in Criminal Cases: Understanding the Fundamentals of DNA Testing, SADO Lansing, Amanda Tringl (MAACS AIP)
7. May 13, 2016 – Firearms 101: A Basic Nontechnical Introduction and a Bit More, SADO Detroit, William Schooley (MAACS CAP)
8. September 16, 2016 – Sentencing Law Update, WMU Cooley Lansing, Anne Yantus (Detroit Mercy Law) and Bill Vaillencourt (Livingston County Prosecutor)
9. December 8-9, 2016 – Developing Persuasive Mitigation in Juvenile Lifer Cases, WSU Cooley Auburn Hills (ARC)

“At every SADO and MAACS training I attend, I'm always left with a ton of ideas on how to better represent my clients in both the trial courts and on appeal. Even if you only practice in trial courts, you need to attend these trainings. To put it simply: if you want to be a better criminal defense attorney, you need to be a CDRC member and attend SADO and MAACS trainings.”

– *Dominic Andriacchi, CDRC Subscriber and MAACS Roster Attorney*

In 2016, the MAACS Appellate Investigation Project developed a forensic science training series in partnership with SADO's CDRC. Over the course of the year, the AIP and CDRC offered trainings focused on the unique issues that arise on appeal in cases involving various forensic sciences. The trainings were led by experts in the respective fields, and included sessions on: Litigating Abusive Head Trauma Cases, Challenging Bad Science on Appeal, DNA Analysis in Criminal Cases, and Firearms and Ballistics 101. The forensic trainings were held in SADO's Detroit and Lansing offices and were recorded and are available on the website for future viewing. CDRC and the AIP have also developed a two-part skills-based training program that will take place in early 2017.



b. CDRC Trainings: SADO staff

- May 31 – June 1, 2016 – Training for SADO's summer interns, covering topics including: holistic defense, issue spotting, sentencing, MDOC, appellate investigations, ethics, trial court practice, and more.
- August 15 – 19, 2016 – New Assistant Defender training, covering topics of appellate procedure, issue spotting, caseload management, client relationships, investigations, and more.
- Multiple brown-bag sessions on investigations, technology, juvenile lifer issues, and more.
- Multiple case round discussions, hosted by SADO's Deputy Director, focused on brainstorming and strategizing on individual cases.
- Periodic discussions by SADO's plea unit, designed to address trends and developments in that unique area of law.

- Group viewings of webinars on substantive legal issues hosted by the National Association for Public Defense.



Doug Baker and Eric Buchanan held an in-house brown-bag training for SADO staff in Detroit on March 29, 2016 on technology, social media, and investigations.

c. CDRC Trainings: MAACS Roster Attorneys

CDRC's priority continues to be the production of high-quality appellate-focused training for assigned appellate counsel, and increasing access to resources for MAACS attorneys.

i. MAACS Orientation and Fall Training

In its partnership with MAACS, CDRC produced a mandatory Annual Orientation and Fall Training where MAACS roster attorneys had the opportunity to receive nearly fourteen hours of continuing legal education over the course of two days. MAACS roster attorneys are currently required to complete at least twelve hours of legal training to maintain good standing on the roster.

The orientation was held on September 29, 2016 at SADO Detroit. The Annual Fall Training took place the next day on September 30, 2016 in Auburn Hills and again on October 7, 2016 in Lansing. The orientation and training were largely instructed by SADO and MAACS staff and MAACS roster attorneys and included the following topics: minimum standards, file review, plea appeals, sentencing, the presentence information report, appellate investigations, technology, brief writing, issue preservation, resources for appointed counsel, the Michigan Department of Corrections, and MAACS-specific policies, procedures, and updates.

ii. Three-Day Appellate Writing Workshop

In addition to the orientation and annual training, CDRC and MAACS held its second Appellate Writing Workshop on October 27-29, 2016. Attendees participated in the three day workshop, which focused on writing and storytelling techniques, issue spotting and development, developing

case theory and legal analysis, technical writing skills, appellate procedures, client relationships, and oral advocacy. In small group sessions, participants used a mock transcript or a case from their own caseload to draft a statement of facts, issue headings, and legal analysis with feedback from participants and instructors. The training was free for all attendees, and out of town attendees were awarded scholarships for lodging and meals. The training was planned and instructed by Marilena David-Martin, Brad Hall, Kathy Swedlow, and Jessica Zimbelman.



The second annual Appellate Writing Workshop was held on October 27-29, 2016 at Wayne State University Law School in Detroit.

"As a trial lawyer, I found it refreshing to learn that the same techniques used to persuade a jury, such as storytelling, recency and primacy, and brevity, can and should be applied when writing an appellate brief.

The breakout writing sessions did an excellent job in explaining how to apply those techniques. Overall, the workshop gave me confidence to break away from the traditional appellate writing style and embrace a more conversational and persuasive style of writing."

— Michael Carter, Federal Defender Office Detroit

iii. Westlaw

In October 2015, MAACS attorneys became eligible to receive an unprecedented discount for access to Westlaw. For an annual fee of \$250, MAACS attorneys obtained full web-subscription access to www.SADO.org and received personal Westlaw login credentials for unrestricted access to all state and federal case law, secondary legal sources, and more. In 2016, 72 MAACS roster attorneys signed up for the package, valued at over \$3,000 annually.

iv. The Launch of MAACS Virtual Case Rounds

In December 2016, CDRC launched MAACS Virtual Case Rounds (VCR). VCR allow private practitioners on the MAACS roster to regularly connect online or over the phone with other MAACS roster attorneys to brainstorm cases, ask questions, and offer advice. VCR is hosted by CDRC's Training Director, and each session begins with a short discussion on a pre-determined, appellate-focused topic. All participants of VCR are given the opportunity to discuss general or case-specific issues that arise during their representation of indigent defendants on appeal. The sessions will be offered monthly in 2017.

d. CDRC Trainings: Partnership with CDAM and CAP

CDRC assisted in the production and sponsorship of the spring and fall Criminal Defense Attorneys of Michigan (CDAM) conferences, CDAM's Trial College, and Wayne County's Criminal Advocacy Program (CAP) seminars.

The spring CDAM conference was held in Troy in March 2016 and the fall conference was held in Traverse City in November 2016. Approximately 450 attorneys from all over Michigan attended the two conferences. CDAM's Trial College, held in Lansing in August 2016, had approximately 40 attendees. SADO offered 24 scholarships to attendees based on demonstrated need.



SADO sponsored 24 out of 40 graduates of CDAM's 2016 Trial College held August 18-20, 2016 in Lansing.

The Wayne County Criminal Advocacy Program (CAP) sessions provide mandatory training for the Wayne County Criminal Defense Bar Association, made up of approximately 500 attorneys taking assignments in criminal cases in Detroit. CDRC records all CAP sessions, coordinates the

presentations, manages training material, and hosts the CAP website, www.capwayne.org. The schedule for each of this year's 12 CAP sessions, including videos and materials for each session can be found on the website. SADO's Director and CDRC Training Director serve as CAP Board members and actively participate in the planning of the CAP program.

Attorney-to-Attorney Support Project: CDRC continued its partnership with the Wayne County Criminal Defense Bar Association to provide the Attorney-to-Attorney support in Michigan's busiest criminal venue, Wayne County Circuit Court. Four CDRC research attorneys provided approximately 20 hours of service weekly, directly consulting with criminal defense attorneys needing assistance with legal and procedural issues. The research attorneys record all Attorney-to-Attorney transactions in a database monitored by the CDRC Training Director. The attorneys captured information about the nature of the research performed, including 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, which in turn informs the CAP Board about areas of programming for the next year's sessions. The research attorneys fielded approximately 1,350 inquiries during the year.

SADO/CDRC Print and Web Resources

a. Website

www.SADO.org contains resources for criminal defense attorneys and the public. The home page contains regularly-updated articles and announcements on criminal law topics. Web-based databases are updated regularly, including those containing sample briefs, appellate summaries, and transcripts. Many of the resources on www.SADO.org are complimentary and available to all; some resources are password-protected and limited to subscribers only. Other resources are limited to defense attorney subscribers only. Below are just some of the resources maintained by CDRC and housed at www.SADO.org:

b. SADO's Online Forum

The Forum, CDRC's online discussion group of hundreds of 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. In 2016, there were 5,583 forum posts from criminal defense practitioners. The forum remains one of the most popular feature of SADO's website.

c. Defender Books

The Defender Trial Book, Defender Plea, Sentencing and Post-Conviction Book, Defender Motions Book, and Defender Habeas Book reside on SADO's website where subscribers have convenient access. Electronic versions of the books are available on a flash drive or in print for an additional fee. These four annually-updated books contain up-to-date summaries of the law on all aspects of criminal law and procedure, from arrest through appeal. The Defender Motions and Habeas Books contain model pleadings that can be adapted for use in any case. Summaries and analyses of case law, statutes, court rules and legal practice tips are also included in the book series. A small companion to the book series is the Defender Sentencing Guidelines Manual Annotated. This annotated manual remains one of CDRC's most popular products.

d. Criminal Defense Newsletter and Summaries

The Criminal Defense Newsletter delivers essential information to subscribers in both electronic and hard copies. Each of the nine issues published in 2016 contained a lead article, news, announcements, a training calendar, practice notes, summaries of appellate decisions, news of pending and recently-passed legislation, and much more. Contract Associate Editor Neil Leithauser is a central contributor of Newsletter content.

Summaries of appellate decisions provide criminal defense attorneys with timely and concise legal updates and developments. The summaries cover all criminal decisions and significant orders of the Michigan Supreme Court, all criminal published Michigan Court of Appeals opinions, selected unpublished Michigan Court of Appeals opinions, and selected decisions of Michigan's federal district courts, the Sixth Circuit Court of Appeals and the United States Supreme Court, and significant decisions from other states. In large part, the summaries provide the foundation upon which the Defender Books are updated and serve to bridge the information delivered between the annual updates of the Defender Books themselves.

In 2016, CDRC distributed approximately 430 summaries of appellate orders and decisions to subscribers through the Criminal Defense Newsletter and via email.

e. Subscribers

Approximately 500 customers subscribed to CDRC's web services in 2016. In addition to web-subscriptions, CDRC sold hundreds of print resources and flash drives. User fees support a portion of the costs of books, newsletters, copying, and operation of the SADO website.

CDRC's Training Director regularly fields phone calls and emails from subscriber and non-subscriber practitioners and the public, who call with questions relating to legal analysis, procedure and strategy.

CDRC also regularly supplies complimentary resources, including Defender Books, Manuals, Newsletters, and flash drives to criminal defense attorneys at various conferences throughout the state. All public defender offices and prisons are provided with complimentary resources. All of CDRC's trainings are free to subscribers and non-subscribers.

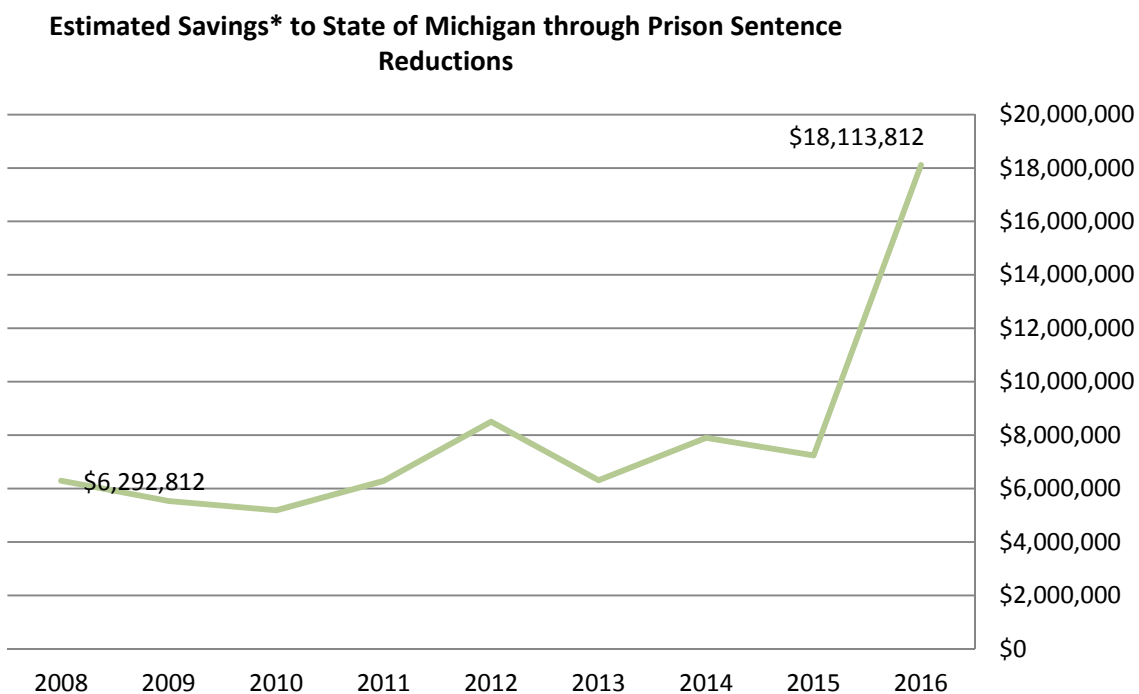
"The CDRC is an invaluable resource that I use whenever I am preparing an appellate brief or trial court motion. The Brief Bank provides up to date case law and arguments that help me frame my own arguments and help identify potential issues. The SADO Defender Books provide an excellent starting point for research. Both the Brief Bank and the Defender Books have saved me countless hours of research."

– Ian Kierpaul, CDRC Subscriber and MAACS Roster Attorney

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

SADO's 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. In 2016, savings increased sharply due to the resentencing of 23 juvenile lifers from mandatory-life to term-of-year sentences.



* The cost of prisoner incarceration is supplied by the Michigan Department of Corrections and was \$35,157 annually in 2016.

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.

Video visits with clients

Video-conferences with clients occur routinely, 1097 times by SADO staff during 2016 as a supplement to in-person visits, 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 945 virtual visits in 2016.



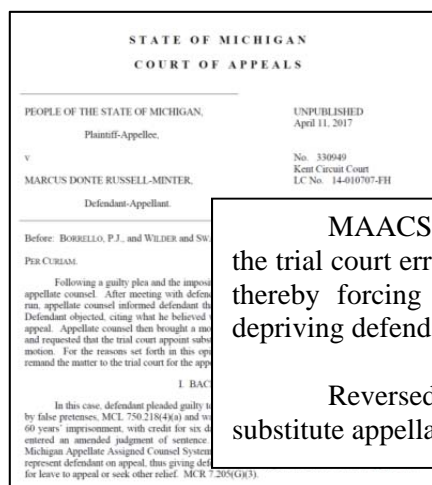
Goal 5: Advocate for improvements in the administration of justice

As statewide agencies, SADO and MAACS are uniquely situated to interact with policy stakeholders in the criminal justice system and with the public.

MAACS Targeted Litigation: Ensuring Fair Access to Counsel and Reasonable Attorney Fees

MAACS successfully intervened in two appeals in 2016. First, in *People v Marcus Russell-Minter*, unpublished opinion per curiam of the Court of Appeals, issued April 11, 2017 (Docket No. 330949), MAACS and SADO became involved as counsel after a client complained about his assigned attorney. After investigation, MAACS learned that the roster attorney had regrettably failed to pursue any remedies on behalf of the client. Although the attorney-client relationship had broken down and counsel had no viable means to pursue relief, the trial court refused to appoint substitute counsel—in spite of repeated requests from MAACS. Fearing that the defendant would otherwise

be deprived of his appellate rights due to the combined errors of his appointed attorney and the trial court, MAACS intervened and sought the appointment of a new lawyer. The Court of Appeals agreed with MAACS and ordered the trial court to appoint substitute counsel.

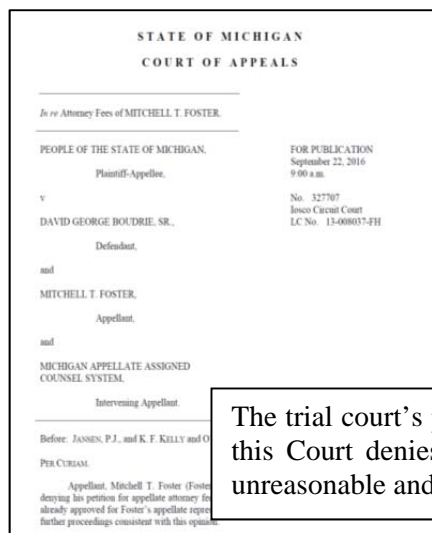


MAACS, acting as defendant's counsel in this matter, argues on appeal that the trial court erred by denying the motion to withdraw and for substituting counsel thereby forcing appellate counsel to operate under a conflict of interest and depriving defendant of his right to seek appellate review. . . .

Reversed and remanded to the trial court with instructions to appoint substitute appellate counsel.

And following a significant attorney fee victory as amicus curiae in support of a roster attorney in *In re Attorney Fees of Ujlaky*, 498 Mich 890; 869 NW2d 624 (2015), MAACS intervened as an appellant in

another attorney fee appeal, *In re Attorney Fees of Foster*, 317 Mich App 372; ___ NW2d ___ (2016). There, the trial court had refused to pay roster attorney Mitch Foster for much of his representation because his application for leave to appeal had been denied, and the “poor county” could “not afford to pay for appellate attorney fees when attorneys ‘file stuff that doesn't have a basis of merit to it.’” Agreeing with Mr. Foster and MAACS in a published opinion, the Court of Appeals reversed and remanded for an appropriate fee determination before a different judge.



The trial court's policy of not paying for work done on behalf of a defendant when this Court denies an application for lack of merit in the grounds presented was unreasonable and an abuse of discretion.

SADO/MAACS State Bar Service

SADO and MAACS 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), Appellate Practice Section Council (Brad Hall), and Prisons and Corrections Sections (Chair Jackie Ouvry and immediate past-chair 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), and District Character and Fitness Committee (Randy Davidson).

SADO/MAACS Court Rule Proposals

Through a court rules committee, SADO and MAACS submitted court rule amendments, and commented on court rule proposals involving indigent defendant minimum standards, habitual offender notice requirements, use of video testimony in court proceedings, and on the standards for assessing ability to pay in imposing sanctions for failing to pay fines, fees, and court costs. SADO attorneys testified at Supreme Court administrative hearings on these and other proposals. In many cases, the Michigan Supreme Court adopted rule changes consistently with SADO recommendations.

SADO 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 2016, the Committee continued to update the Re-entry Database, which was launched in 2014:

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

SADO Law School Clinics

SADO attorneys taught four highly rated and successful legal clinics at Michigan's law schools. The Appellate Practice Clinics at University of Michigan Law School and Wayne State University Law School focused 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 represented clients in guilty plea appeals. The Clinics combined student instruction with client representation in a manner that ensured successful representation of clients and an outstanding training and teaching experience for students. Students tended to be motivated to do as much legal research and factual investigation as possible for SADO clients' appeals. Subject to the provisions of MCR 8.120, Clinic students routinely represented clients in trial court and at oral argument on appeal.