

**Michigan** Office of  
the Appellate Defender



## 2017 Annual Report

**Excellence in Assigned Appellate Advocacy since 1969**

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The 2017 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.

## **2017 Appellate Defender Commission**

Thomas W. Cranmer, Chair, Supreme Court Designee  
Thomas G. McNeill, Vice-Chair, Supreme Court Designee  
Thomas J. Adams, Governor's Designee  
Honorable William Caprathe, Michigan Judges Association Designee  
Judith Gracey, State Bar Designee  
Doug Mains, State Bar Designee  
Douglas Messing, Court of Appeals Designee

## **2017 Office of the Appellate Defender**

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## *History and Governance*

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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***

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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***

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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.

## *SADO Says Good-bye to Director Dawn Van Hoek*

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Dawn Van Hoek retired in February, 2018, from her position as Michigan's Appellate Defender, where she managed the State's indigent appellate defense system, consisting of the State Appellate Defender Office (SADO) and the Michigan Appellate Assigned Counsel System (MAACS).

A public defender throughout her 42-year legal career, Ms. Van Hoek contributed to the transformation of the criminal justice system in Michigan, including adoption of the Michigan Indigent Defense Commission (MIDC) Act in 2013. At SADO, she obtained millions of dollars in state funding for direct legal services, as well as federal grant funding for innovative projects. Direct legal services improvements include providing counsel to 200 of Michigan's "Juvenile Lifers" who became eligible for resentencing in 2016, and increasing the annual workload share for SADO. Innovative projects include those to identify wrongful convictions, improve training for assigned criminal defense counsel, improve access to investigation, improve sentencing outcomes through mitigation, improve social outcomes through reentry services, and challenge lab processing of ballistics and sexual assault evidence.

Her activities in professional organizations included service as Chair of the State Bar of Michigan's Representative Assembly, the Bar's highest policy-making body, and Chair of a Hearing Panel of the Attorney Discipline Board. She also served numerous terms on the boards of the Criminal Defense Attorneys of Michigan, and the Wayne County Criminal Advocacy Program. Ms. Van Hoek was recognized for legal accomplishments by the State Bar of Michigan (Champion of Justice, 2014), Criminal Defense Attorneys of Michigan (Right to Counsel Award, 2005), American Civil Liberties Union (Bill of Rights Award, 2013), and Michigan Lawyers Weekly (Leaders in the Law, 2015, Lawyers of the Year, 2005, Most Influential Lawyers, 1990).

Also a leader in Michigan's women's community, Ms. Van Hoek led the Women Lawyers Association of Michigan as President at both local and statewide levels, developing networks for women and advocacy on social issues. As President of the WLAM Foundation from 1997 to 2017, she helped to dramatically increase funds available for scholarships to outstanding women law students. Ms. Van Hoek chaired the State Bar of Michigan's Domestic Violence Committee at its inception in 1993, advocating for more resources for victims. She chaired the State Bar's Task Force on Racial Ethnic and Gender Issues in the Courts and Legal Profession (1997-1998), developing a roadmap for improved diversity and reform of the justice system.

Ms. Van Hoek was recognized for accomplishments benefitting women by the Women Lawyers Association of Michigan (Jean King Award, 2014), Comcast News (Newsmaker Awards, 2014), and Women Lawyers Association of Michigan Foundation (Legacy Award, 2014). The King Award commended Ms. Van Hoek for visionary leadership in the face of opposition and outstanding efforts toward the advancement of women and the legal profession.

"Dawn's lifelong contributions to the Michigan criminal justice system and the organized bar have been nothing short of remarkable," said Thomas W. Cranmer, Chair of the Appellate Defender Commission which oversees SADO and MAACS. Jonathan Sacks, past Executive Director of the MIDC, now serves as the new Appellate Defender.

## *2017 Highlights*

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### **2017 SADO/MAACS Highlights**

#### **(1) Change in leadership**

In June, Dawn Van Hoek announced that she would be retiring at the end of the year. Ms. Van Hoek's 40-year career at SADO took her from staff attorney to Director of the Criminal Defense Resource Center to Deputy Director and, ultimately, to the position of State Appellate Defender in 2011. Among her numerous achievements and accomplishments, Ms. Van Hoek presided over the merger of MAACS and SADO for management purposes in 2014.

After a nationwide search and extensive interview process, the Appellate Defender Commission selected Jonathan Sacks to replace Ms. Van Hoek as the Appellate Defender beginning in 2018. Mr. Sacks headed the Michigan Indigent Defense Commission from 2015 through 2017. He previously served as SADO Deputy Director from 2007 through 2015, and was a SADO Assistant Defender from 2004 through 2007.

#### **(2) MAACS innovates on case assignments and attorney fees**

In 2017, MAACS concluded a two-year Regional Pilot Project authorized by the Michigan Supreme Court to improve the speed, efficiency, and accuracy of the assignment process while fostering the trial courts' voluntary adoption of reasonable uniform attorney fee policies. By regionalizing appellate assignment lists, MAACS was able to assume much of the administrative burden from the trial courts, resulting 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. The pilot was popular with courts and attorneys alike, growing from 14 to 32 courts statewide before the Supreme Court gave permanent approval to its reforms.

Also in 2017, with the support of SADO Systems Analyst Eric Buchanan, MAACS launched an innovative web-based case assignment system that has improved processes for attorneys and courts statewide. The new system automatically pre-screens appellate counsel and provides a more seamless electronic transfer of assignment-related documents and other information. Significantly, this is only the first piece of a comprehensive case management system that will encompass the electronic distribution of the trial court record, reliable online vouchering, and automated data analysis.

#### **(3) Postconviction DNA Project**

SADO's Postconviction DNA Project continued its painstaking review of cases involving untested sexual assault kits ("rape kits") discovered in Detroit Police Department facilities in 2009. During the Project's Fourth year of grant-funded work, attorney Amanda Tringl identified a case where postconviction DNA testing results excluded the defendant as the source of the male DNA in a kit, which led to the man's conviction being vacated. As 2017 drew to a close, a significant number of untested kits connected with previously-adjudicated cases remained; over 300 of the original 11,300 untested kits involve such cases, while over 300 additional kits were discovered in 2017 that must be reviewed.



As the existing grant wound down, continued funding was sought and by the end of 2017, SADO was awarded a National Institute of Justice Bloodsworth grant to fund the Project for an additional two years. New Project Attorney Ayda Razaian-Nojani and Project Assistant Terry Huhn will focus on completing the screening and testing of the remaining rape kits from the City of Detroit, and will shift their focus on the more-than 3000 untested rape kits that have been discovered in other jurisdictions throughout the state.

#### **(4) Juvenile Lifer Unit Continues into phase two of Project**

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 file motions for life without parole again in 65% of the 363 eligible cases. 145 of SADO's nearly 200 juvenile lifer clients were originally designated for life without parole sentences by the state's prosecutors. The remainder, or approximately 60 of SADO's clients, initially became eligible for "term-of-years" (TOY) sentences.

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.

Negotiations during 2016 and 2017 led prosecutors to withdraw their motions for life without parole and agree to terms of years sentences for 14 of SADO's clients. Resentencing hearings began in the Fall of 2016, and by the end of 2017, 72 of SADO's 193 clients had been resentenced to terms of years.

Of the 41 SADO juvenile lifer who were resentenced in 2017, many are eligible for parole or have been paroled because they have reached the minimum of the new sentence. The average number of years served by this group was over 29: 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 and 2017, while several others were notified that they will be paroled and discharged in 2018 and 2019.

Disposition of cases designated for LWOP awaited resolution of appellate litigation in *People v Hyatt* and *People v Skinner* 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. *Skinner* and *Hyatt* were decided in 2018 and, unless further appeals are taken to federal court, the resentencing of individuals designated for LWOP will begin in the second half of 2018.

**(5) Project Reentry continues serving returning citizens**

SADO hosted four Family Informational Sessions in 2017 in Detroit and Lansing. SADO attorneys informed family and friends of the incarcerated about the appellate process, how to navigate various policies and procedures of the MDOC, how to stay in contact with incarcerated loved ones, and provided information on how to access various resources.

In 2017, SADO's volunteer-based Project Reentry served approximately 50 juvenile lifer clients at various stages of litigation. Seven MSW students from the University of Michigan School of Social Work fulfilled their field placements serving Project Reentry. The Project Reentry team assisted clients with building comprehensive reentry plans, assisting with parole preparation, and providing post-release support. SADO's Project Reentry launched the publication of a monthly newsletter (The Drum) and post-release workshops for returning citizens on topics such as technology, finances, and life-mapping.

**(6) SADO's Criminal Defense Resource Center offers resources and training to attorneys throughout Michigan**

SADO's Criminal Defense Resource Center continued to offer resources, support, publications, and trainings to nearly 500 subscribers throughout the state. CDRC hosted over 70 hours of training for the state's trial and appellate defense attorneys and over 20 hours of in-house training for staff. In partnership with MAACS, CDRC launched a two-day Ineffective Assistance of Counsel training, which focused on skill and strategy development, and hosted the third annual SADO/MAACS Appellate Writing Workshop. CDRC also hosted monthly virtual case rounds, which allowed MAACS roster attorneys to brainstorm with colleagues. CDRC also partnered with CDAM, the Wayne County Advocacy Program, and other local bar associations for their annual training events. CDRC published eleven issues of the Criminal Defense Newsletter, each containing up-to-date information on case law and legislative developments and relevant news. With grant assistance from the Michigan Commission on Law Enforcement Standards, CDRC produced a new Defender Appellate Manual, which will be published in 2018.

**(7) Excellent outcomes include exonerations, sentencing relief, new trials, and system savings**

SADO's advocacy for clients again resulted in client exonerations, and significantly reduced sentences. Exonerations included the cases of Ryan Keith Lewis and Anthony Dyer, described in more detail below. Savings in prison costs due to resentencing of clients to new minimum terms were at a record high of nearly \$25 million; the sharp increase was largely due to resentencing of numerous juvenile lifer clients.

**(8) Staff Changes, Extraordinary Accomplishments**

- As 2017 wound down, SADO bade farewell to two Assistant Defenders. Christopher Smith, leader of the Special Unit on Pleas and Sentencing, accepted a position as Commissioner with the Michigan Supreme Court. Valerie Newman, departed SADO to establish and head the Conviction Integrity Unit at the Wayne County Prosecutor's Office. Smith and Newman were replaced by Lindsay Ponce, who previously served two years in the SADO Juvenile Lifer Unit, and Michael Waldo, who previously worked in SADO's successful Wrongful Conviction Unit.

- MAACS Roster Attorney Kristina Dunne was chosen for the 2017 Barbara R. Levine Award for Excellence in Appellate Advocacy. Kristina is highly-experienced appellate advocate attorney who devotes considerable time and energy to her appointed cases, particularly those where the need is greatest. Kristina is also a valued trainer and mentor who takes pride in teaching best practices to newer MAACS roster attorneys.
- Long time SADO Assistant Defender Peter Van Hoek was the recipient of the 2017 Norris J. Thomas Award for Excellence in Appellate Advocacy. A 1976 graduate of Wayne State University Law School, Peter joined SADO in 1978 after clerking in both the Michigan Court of Appeals and the Supreme Court. He has been an institution at SADO for over four decades. Peter had an enormous influence on generations of attorneys both at SADO and the criminal defense community as a whole. He stood at the forefront of the cultural shift in criminal appeals, proving that intensive appellate investigation and trial court litigation was effective in developing the record necessary for appellate relief. He also taught criminal law and procedure at Cooley and Wayne State law schools, and co-directed the Criminal Appellate Practice Clinic at the University of Michigan Law School for over two decades.

## *2017 Progress Toward Goals*

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**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.**

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### *The Statutory Framework, SADO Workload, and MAACS Role*

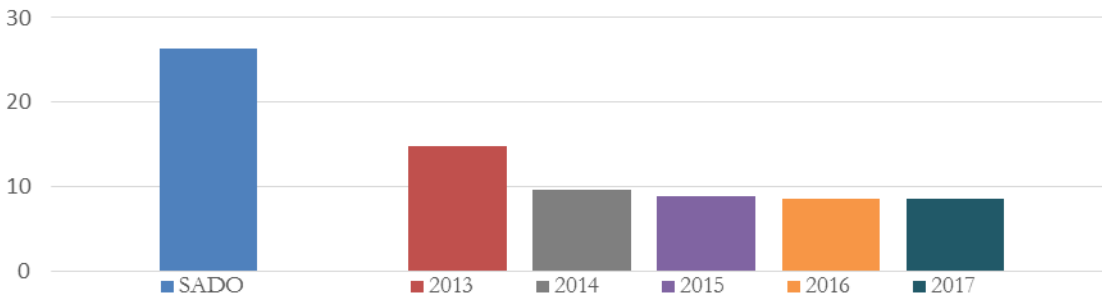
Under Michigan’s Appellate Defender Act, indigent defense services in felony appeals are provided by both “the state appellate defender . . . and locally appointed private counsel.” MCL 780.712(4). The Act defines SADO’s workload as “not less than 25% of the total criminal defense appellate cases for 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.

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. In 2014, the Court consolidated MAACS with SADO for management purposes. AO 2014-18.

MAACS is located in Lansing, Michigan, and consists of an Administrator, a Deputy Administrator, and a small administrative staff. In 2017, MAACS processed appointment orders in 3030 felony appeals, 715 of which were assigned to SADO and 2315 of which were assigned to private attorneys. As to the latter, MAACS oversees a roster of approximately 150 lawyers—ensuring high-quality appellate representation and adherence to the Minimum Standards for Indigent Criminal Appellate Defense Services. See AO 2004-6.

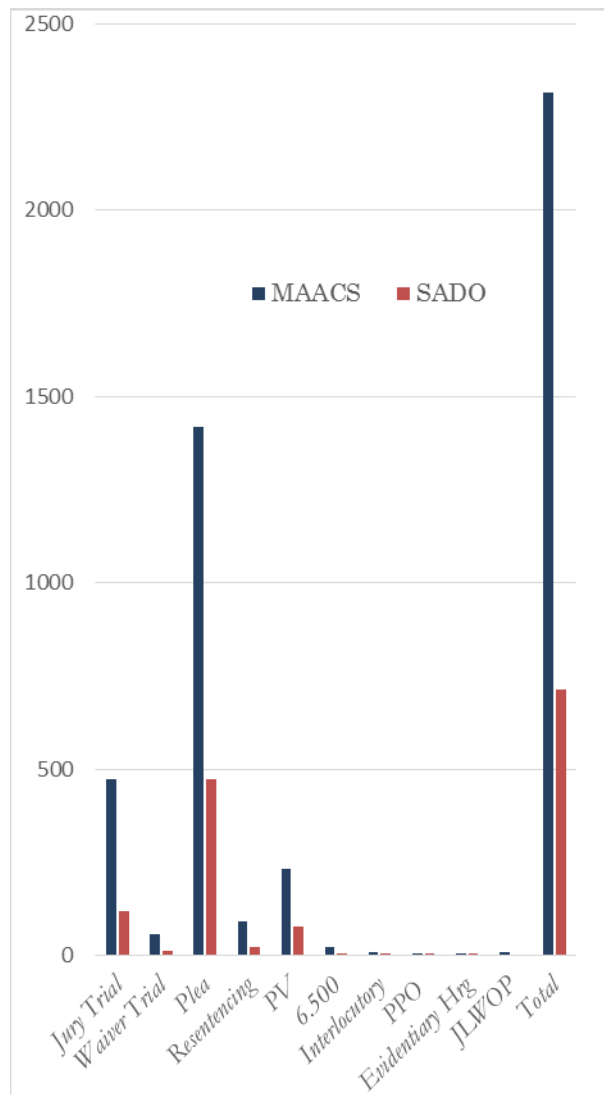
MAACS Staff:  
Bradley R. Hall, Administrator  
Kathryn R. Swedlow, Deputy Administrator  
Jane Doyle, Assignment Coordinator  
MariaRosa Palmer, Office Manager  
Sabrina Schneider, Roster Coordinator

### MAACS Average Weighted Caseload



### Total Appellate Assignments, 2017

	MAACS	SADO	TOTAL
<i>Jury Trial</i>	474 79.9%	119 20.1%	593
<i>Waiver Trial</i>	58 81.69%	13 18.31%	71
<i>Plea</i>	1417 75.0%	473 25.0%	1890
<i>Resentencing</i>	92 80.7%	22 19.3%	114
<i>PV</i>	231 74.8%	78 25.2%	309
<i>6.500</i>	23 82.1%	5 17.9%	28
<i>Interlocutory</i>	7 70.0%	3 30.0%	10
<i>PPO</i>	1 50.0%	1 50.0%	2
<i>Evidentiary Hrg</i>	2 66.7%	1 33.3%	3
<i>JLWOP</i>	10 100.0%	0 0.0%	10
<i>Total</i>	2315 76.4%	715 23.6%	3030



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

On October 1, 2015, MAACS partnered with 14 trial courts to launch a Regional Pilot Project to “assess the feasibility, costs, and benefits” of possible structural reforms to the appellate counsel assignment process. AO 2015-9. These reforms included:

- Trial courts’ voluntary adoption of a uniform attorney fee and expense policy.
- Transfer of administrative burdens from participating trial courts to MAACS.
- Consolidation of independent trial court assignment lists into regional lists.
- Pre-screening of appellate counsel before entry of appointment orders.
- Electronic service of orders and related documents to MAACS and parties.

Over two years, the Pilot grew to include 32 trial courts from all corners of the state, earning widespread support from trial and appellate courts, trial court administrators, roster attorneys, and other system stakeholders. It enhanced the speed, efficiency, and accuracy of the assignment process, reducing substitutions of counsel by 47% and amended appointment orders by 70%.

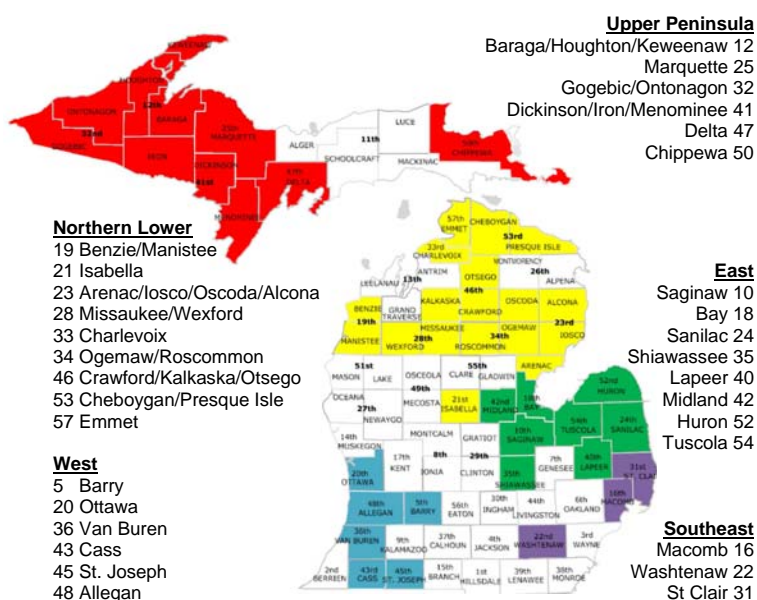
More importantly, it improved the quality of appellate representation. The prompt appointment of pre-screened counsel with a complete record allowed representation to begin immediately—before the expiration of filing deadlines and while witness memories remained fresh. And the standardization of

reasonable and predictable attorney fees boosted attorney morale and aided efforts to recruit and retain quality appellate lawyers, while allowing MAACS to monitor attorney performance and efficiency. Finally, the regional consolidation of assignment lists reduced and regulated caseloads.

The linchpin of these reforms was the trial courts’ voluntary adoption of a uniform attorney fee policy, developed in consultation with attorneys and courts and approved by the Appellate Defender Commission. The policy featured hourly rates of \$75 and \$50, depending on type of appeal and severity of sentence, as well as presumptive hourly maximums of 15 hours for plea appeals and 45 hours for trial appeals, exclusive of travel which was compensated separately at \$25 per hour.

Given the wide disparities in fee policies, the Pilot carried budget implications for most trial courts, the extent of which depended upon a court’s prior fee policy. While some courts reduced overall costs or remained flat, most saw some degree of increase. MAACS was able to reliably forecast

### MAACS Regional Pilot Project 2017 Assignment Lists





## Features of New MAACS Assignment System

- ✓ **Electronic Documents:** Trial courts upload case-related documents electronically, making them easily accessible to the court, MAACS, and the assigned attorney, and reducing the time and cost of mailing paper documents
- ✓ **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, saving time in the process
- ✓ **Assignment Pre-Check:** Automatic search for prior-assigned counsel and co-defendants to avoid conflicts and maintain existing attorney-client relationships 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

Despite initial resistance that typically accompanies any significant system transition, 95% of trial courts and 91% of roster attorneys reported overall satisfaction three months after implementation.

### Raising the Bar: MAACS Roster Oversight, Evaluation, and Retention

MAACS began 2017 with 151 attorneys. Through a competitive application process, MAACS added 22 new attorneys to the roster. MAACS also welcomed back 2 former roster attorneys and added 2 “special assignment” attorneys.

Throughout 2017, MAACS lost 14 attorneys through ordinary attrition, but also removed 6 attorneys for performance reasons, removed 3 attorneys for failing to comply with CLE requirements, and saw 2 attorneys resign while under performance-related scrutiny. At the end of 2017, the roster consisted of 152 attorneys.

MAACS also completed written work product reviews of 59 roster attorneys in 2017, under a comprehensive new review process begun in 2016. These reviews consisted of evaluating and summarizing the attorneys' history at MAACS, critiquing a wide representative sample of pleadings, and surveying case assignments for problems. Each review addressed 3-4 years' worth of work, a level of detail that experience has shown to be necessary to identify and correct individual shortcomings and provide concrete direction for improvement. In addition, comprehensive reviews aid in identifying training priorities.

Through its detailed review process, MAACS identified 8 high-performing Level 1 attorneys and offered each a promotion to Level 2. 5 attorneys accepted this offer. MAACS also notified 14 attorneys of significant problems with their work, and will re-review those attorneys after a suitable interval.

The review process also led to the identification of 155 violations of the Minimum Standards for Indigent Criminal Appellate Defense Services, the overwhelming majority of which were associated with conduct occurring prior to 2017. Fully half of the violations were attributable to attorneys who were removed from the roster or whose work has been slated for additional review. This demonstrates success in identifying under-performing attorneys and taking remedial action.



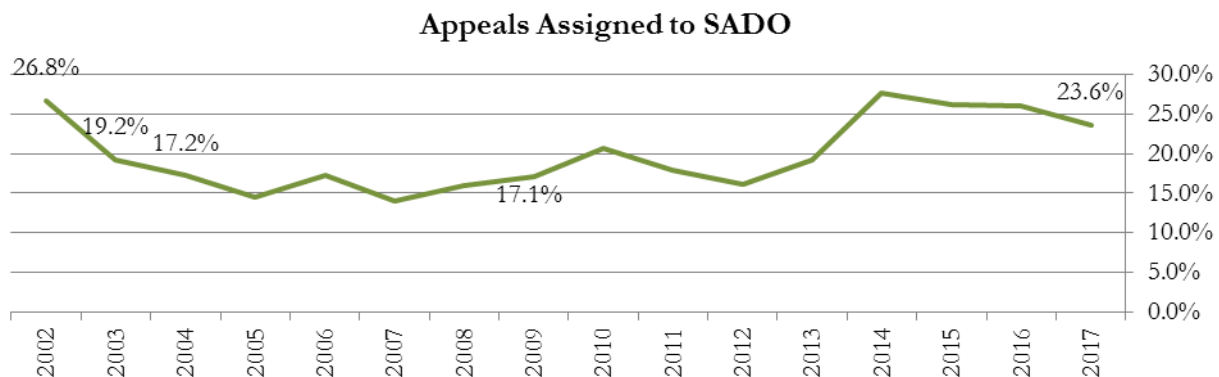
Moreover, all of the 2017 violations were committed by less than one-quarter of roster attorneys, meaning that most roster attorneys do not violate the Minimum Standards, and MAACS is able to keep watch on the relatively small number who do.

## SADO Workload: Percentage of appeals affected by juvenile lifer cases

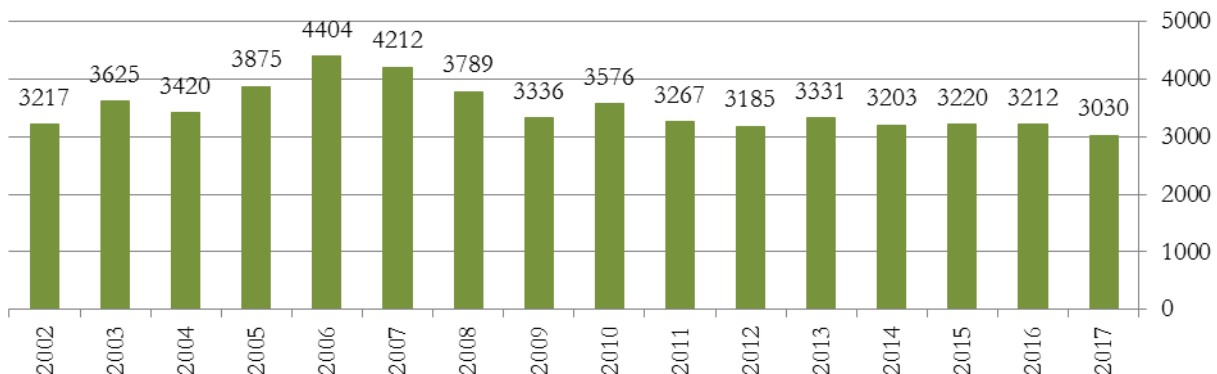
### *a. Intake, type of assignments, geographic spread of assignments*

SADO's intake in 2017 was 23% of the total appellate assignments statewide. Although SADO had met or exceeded 25% of the appeals in recent years, the dearth of willing and able counsel to handle the state's 363 juvenile lifer cases prompted SADO to accept the appointment of approximately 100 new clients who were convicted of murder as juveniles and were serving life in prison without parole. This brought its total number of juvenile lifer clients to nearly 200 and prompted SADO to form the Juvenile Lifer Unit (JLU) in late 2016 to handle these complex and lengthy cases. Although special funding allowed SADO to add staff for the JLU, five regular-caseload attorneys and one investigator were shifted to the JLU to handle exclusively juvenile lifer resentencing caseloads. Staff attorneys handling those caseloads were not able to take new appellate assignments in 2017. Therefore, SADO's intake was slightly less than 25% for new appellate assignments. When the juvenile lifer case work is completed, SADO will have the capacity to handle far more than 25% of the state's appeals.

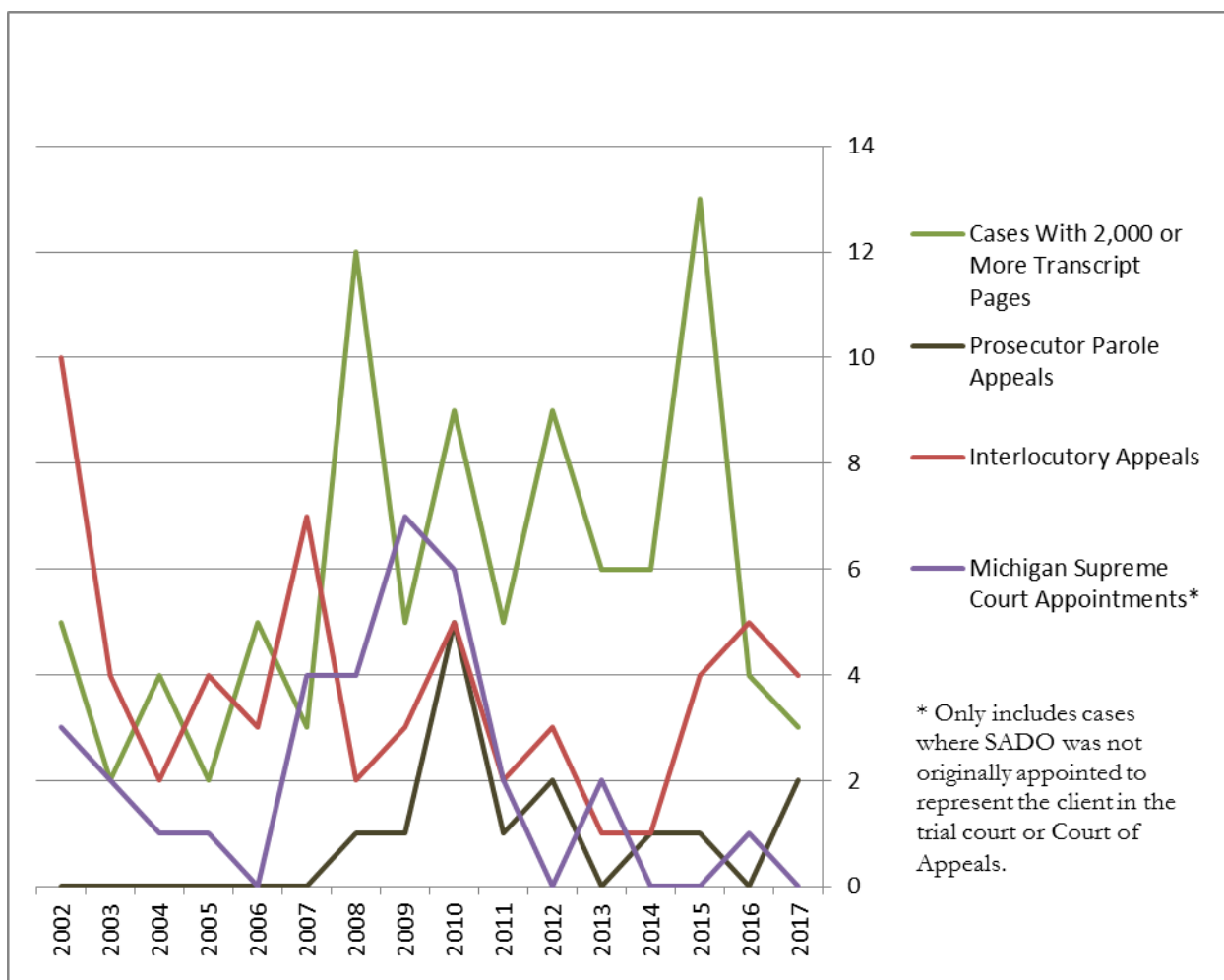
As in previous years, SADO's 2017 caseload included appeals from guilty pleas, trials, and probation violations. While most assignments were made on the basis of a formula applied by the Michigan Appellate Assigned Counsel System (MAACS), tied to SADO capacity, some assignments qualified as "complex" 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.



### Total Appeals Statewide



### Complex and Special Appointments to SADO

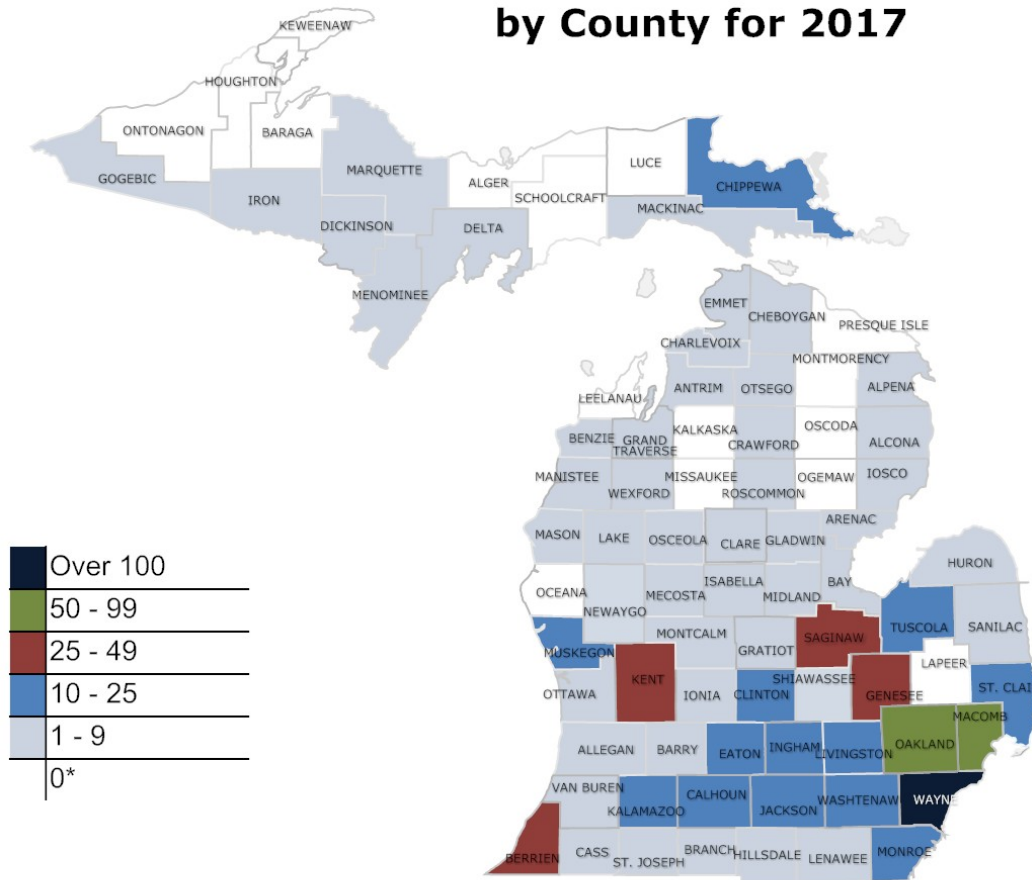


The number of cases assigned substitution appointments dropped significant from previous years. This was likely attributable to the new MAACS assignment system while created more stability and consistency in the manner and speed with which assignments were offered and accepted by MAACS roster attorneys.

### Substitution Appointments



### Appointments to SADO by County for 2017



\* 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*

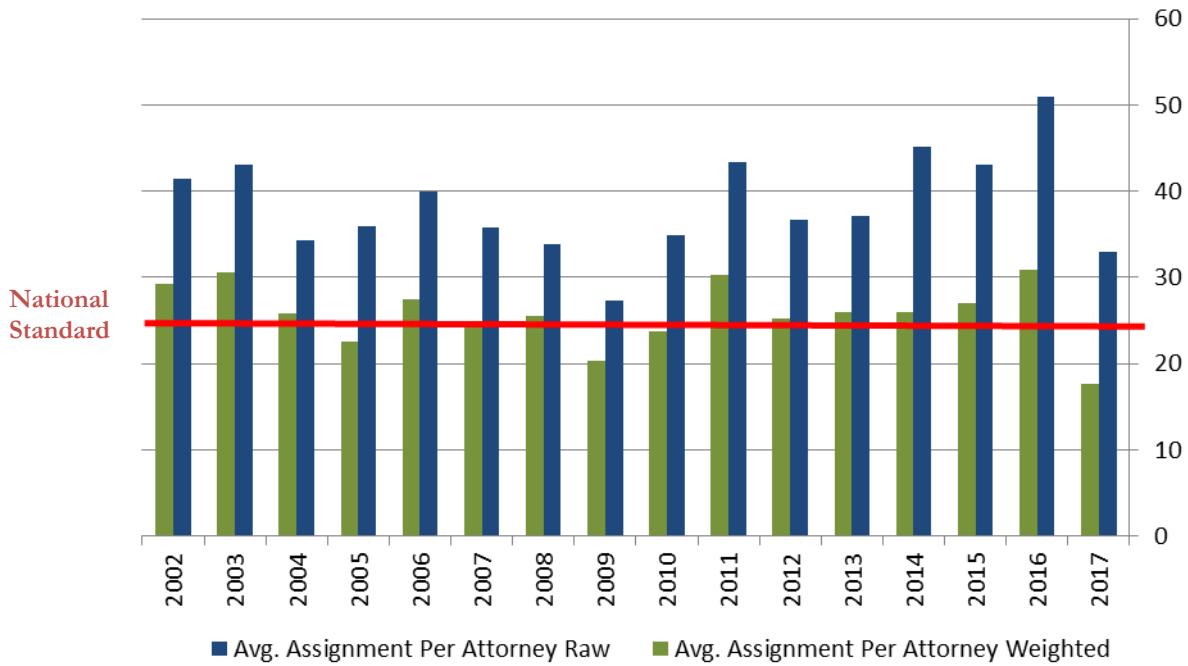
SADO monitors its intake to match the workload to its capacity, and uses a weighted caseload model to distribute work to its staff attorneys. The use of differential caseload management allows for more efficient use of resources through assignments of work based on the nature of the expected work and 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.

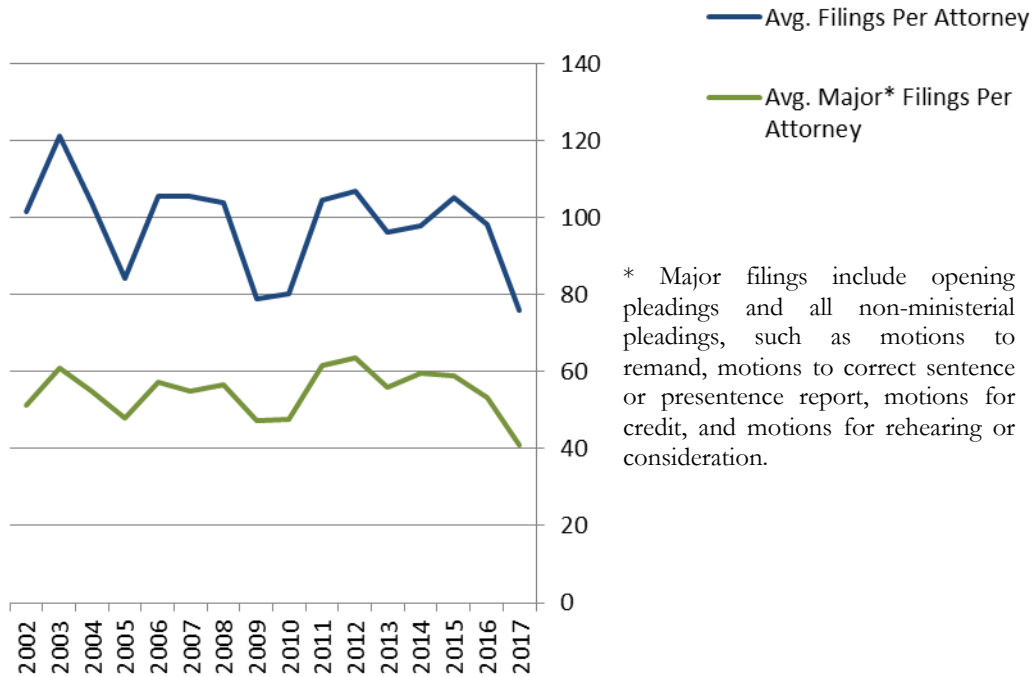
In 2017, SADO's Juvenile Lifer Unit (JLU) continued the work on handling approximately 200 clients in need of resentencing under MCL 769.25 and *Miller v Alabama*. JLU members conducted 41 "Term of Years" resentencings for these clients in 2017, yielding excellent results as detailed elsewhere.

Productivity measured by the raw number of assignments per attorney exceeded national standards in 2017. Weighted assignments per attorney dipped in 2017 due largely to the fact that five regular SADO attorneys who were placed in the Juvenile Lifer Unit took no new assignments in 2017, having carried over their juvenile lifer cases on which they began working before 2017.

### Assignments Per Attorney



### Filings Per Attorney



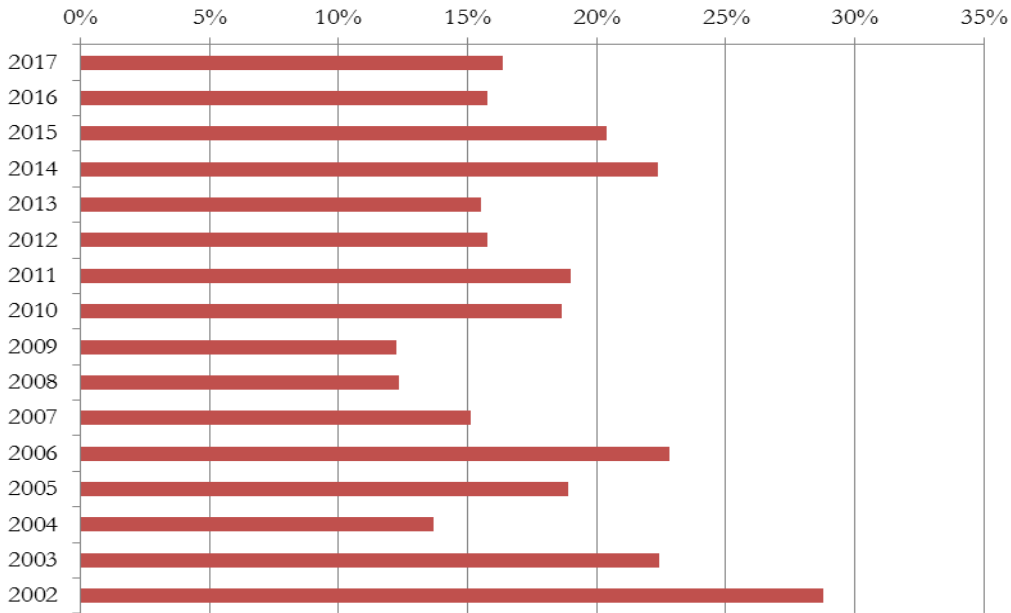
### c. Dismissal and withdrawal rates

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

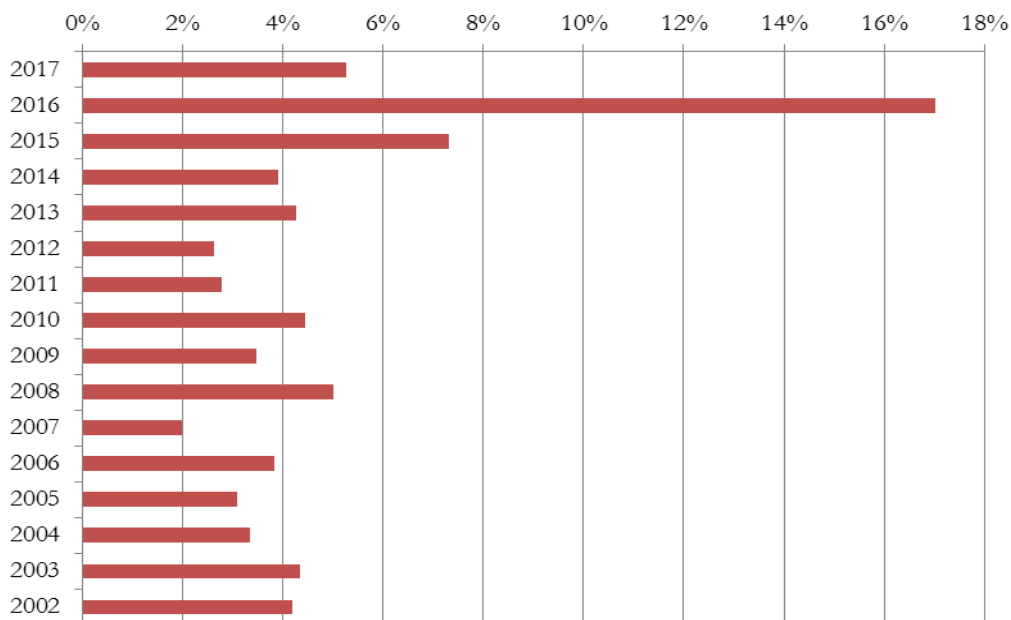
appeal through plea withdrawal would expose a client to original, and often higher charges. Both withdrawals and dismissals generally occur after considerable investment of time and effort on the case. With regard to trial and plea appeals, the rates of withdrawal and dismissals are fairly consistent over time.

After a significant but spike due to the large influx of “conditional” or “provisional” juvenile lifer appointments during the previous year, 2017 saw a return to withdrawal levels that were consistent with recent, longer-term trends.

### Dismissal Rate



### Withdrawal Rate



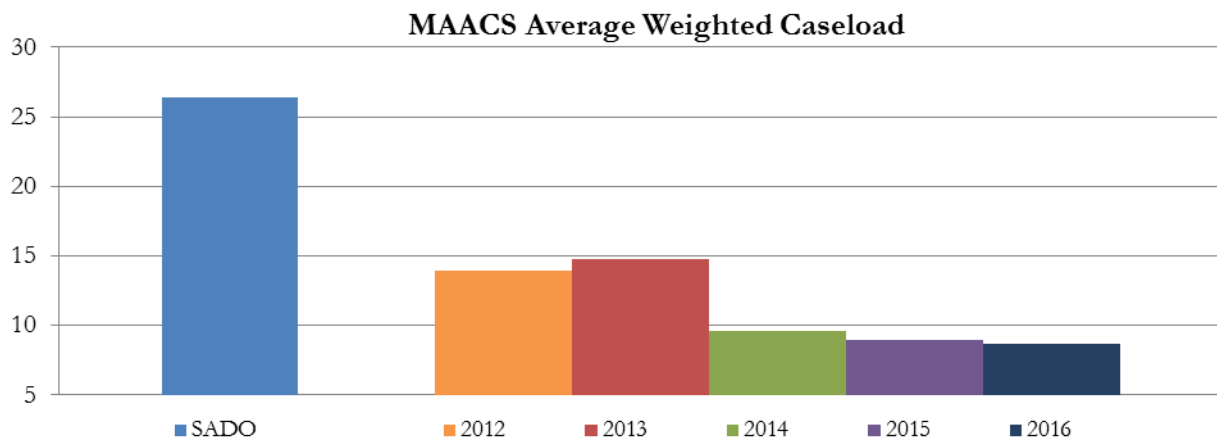
**Goal 2: Seek the best possible outcomes for clients, providing high-quality, timely and effective assistance of appellate counsel**

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**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:

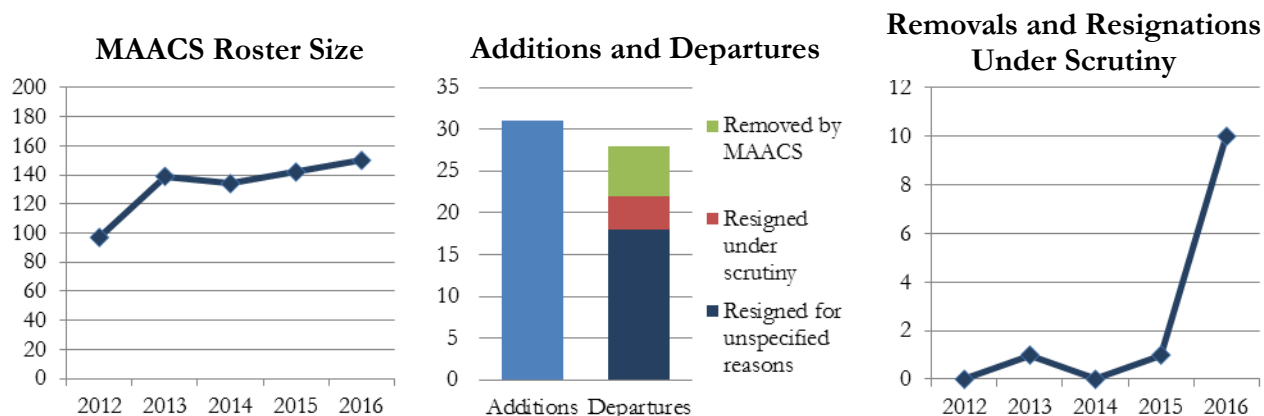
- *Reclassification of attorneys:* Roster attorneys were reclassified from four levels into three: less-than-life plea appeals (Level 1); life plea and trial appeals (Level 2); and trial appeals only (Level 3). This simplifies roster administration, evens attorney caseloads, incentivizes good performance 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.

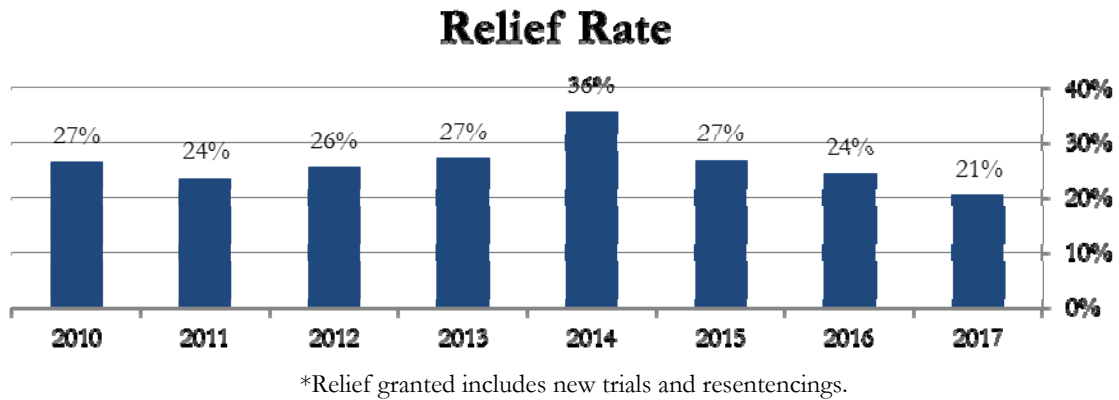
Through the retention review process as well as client correspondence, MAACS regularly identifies situations that implicate the Minimum Standards for Indigent Criminal Appellate Defense Services. Among these, MAACS formally found 93 violations in 2016. Some of these findings were concentrated among a 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.

<i>Minimum Standards Violations, 2016</i>	<i>Violations</i>
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

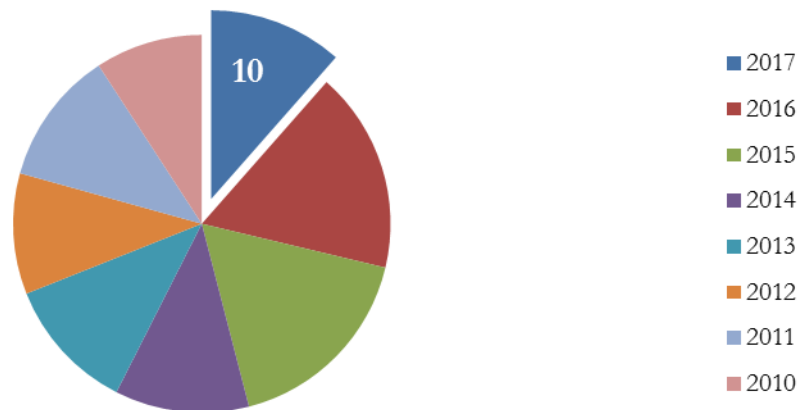


## SADO Relief Rate

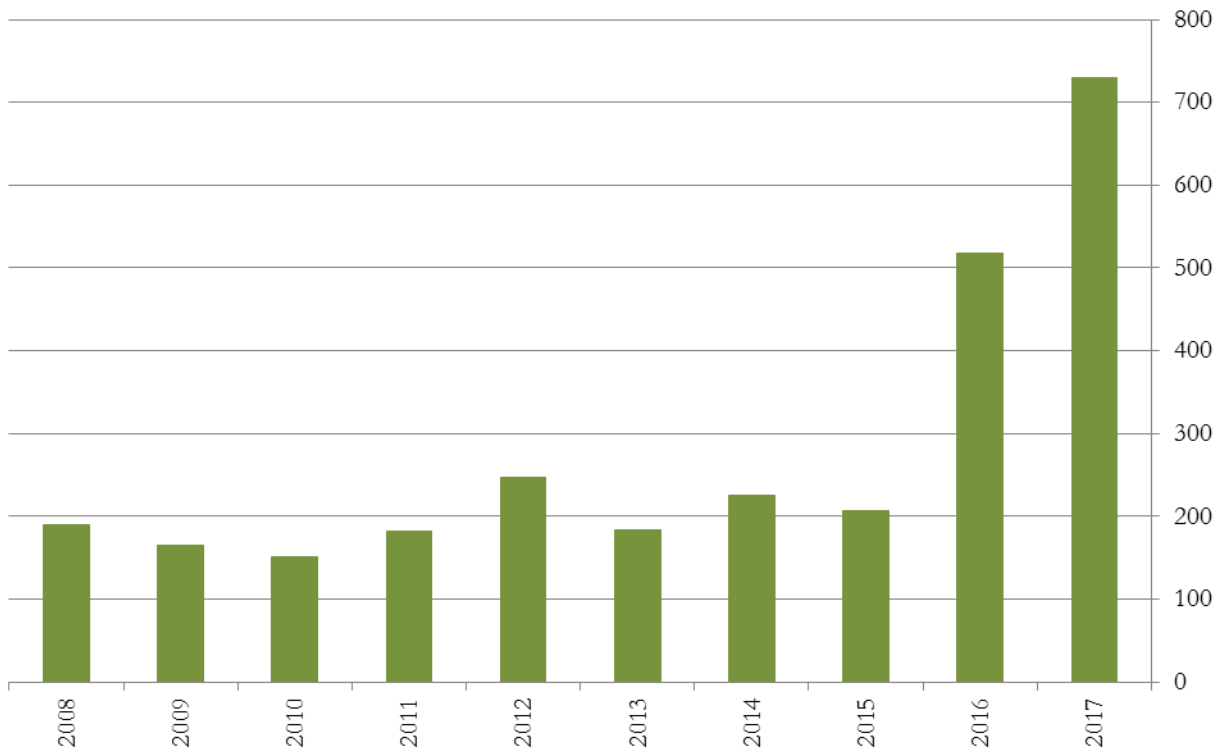
SADO continued its record of achieving excellent results for its clients in 2017, reflecting consistent, quality appellate advocacy. In addition, 41 juvenile lifer resentencing hearings were held, and the conversion of those sentences from life without parole to terms of years pushed the total sentence reduction numbers to an unprecedented level. Collectively, the minimum sentences of SADO's clients are over 600 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.



## New Trials and Dismissed Convictions



## Total Years Reduced from Minimum Prison Sentence Terms



### Project Reentry

SADO launched Project Reentry (PR) in 2016 in response to the unique and immediate needs of Michigan’s juvenile lifers. Reentry back into the community for any formerly incarcerated person can be difficult, but it is especially difficult for individuals who entered prison as children and leave as adults. Reentering juvenile lifers need assistance with identifying community support, learning how to use technology, developing skills to manage finances, finding reliable transportation or obtaining a driver’s license, applying for public benefits, finding employment and housing, and much more. Because of the amount of time that has passed during their incarceration, many individuals are without family or friends to assist with these substantial needs.

PR is volunteer-based and was staffed by one part-time contractor, a dedicated group of 7 graduate student interns from the University of Michigan School of Social Work, and undergraduate interns from various universities. In 2017, PR served approximately 50 juvenile lifer clients at various stages of litigation.

In 2017, PR used three primary tools to help achieve positive outcomes for clients: the development of Comprehensive Reentry Plans (CRPs), the facilitation of monthly Reentry Workshops, and the publication of a monthly Reentry Newsletter (The Drum).

- CRPs prepare and assist clients for their return to the community. They are also used at various stages of litigation: in negotiations with prosecutors, at resentencing hearings before judges,

at parole board hearings, and post-release. Each CRP contains personalized and individual information on support networks, detailed housing and resource investigation reports, resumes, employment and/or schooling prospects, and more. When preparing CRPs, PR works closely with clients to tailor plans to each client's needs and to help clients create a plan to ensure their success. PR follows up on each client's support network, often preparing housing investigation reports, researching community reentry service providers, and obtaining verbal and/or written agreements of support. In 2017, SADO developed nearly 30 CRPs for clients awaiting resentencing.

- Reentry Workshops are focused on teaching necessary real-world life skills on topics not covered by traditional MDOC reentry programming, such as building credit, applying for jobs and preparing for interviews, building healthy relationships, and how to use a smart phone or computer. These workshops are open to all returning citizens, regardless of whether they were SADO clients. In 2017, SADO hosted 6 workshops for returning citizens and developed a monthly plan for workshops continuing into 2018.
- The Reentry Newsletter (The Drum) is prepared with the help of returning citizens in an effort to create a sense of community amongst reentering citizens and to encourage pro-social interactions. The newsletter frequently provides returning citizens with information about dealing with the challenges they face, as well as practical information, such as job opportunities. Two volumes of the newsletter were produced in 2017 and monthly production has continued into 2018.

In addition, PR assists clients and other returning citizens with day-to-day challenges. PR is in regular communication with clients and other returning citizens and directs them to available resources when they face challenges with housing, employment, and medical and mental health care. In 2017, PR has assisted approximately 20 clients with their transition home.

## SADO Noteworthy Cases

During 2017, SADO and MAACS attorneys represented clients in a wide variety of significant and noteworthy cases. Highlights of these cases follow:

### Michigan Supreme Court

#### ***People v Phippen, MSC No. 153324***

Held that that defense counsel rendered ineffective assistance in failing to investigate and present several witnesses that were favorable to the defense in a first degree murder trial based on an uninformed strategic decision.

#### ***People v Timothy Horton, MSC No. 150815***

Reversed Court of Appeals and held that post-conviction claim of ineffective assistance of counsel is not waived by entry of plea where counsel's ineffectiveness effects voluntariness of the plea.

#### ***People v Justin Comer, MSC No. 152713***

Vacated requirement of lifetime electronic monitoring for CSC sentence, holding that trial court was without authority to sua sponte add the requirement to the sentence 19 months after sentencing.

***People v David Roark, MSC No. 152562***

Upheld Court of Appeals' ruling granting plea withdrawal based on trial court's failure to advise defendant of lifetime electronic monitoring requirement.

***People v Romano Luke, MSC No. 152759***

Summarily reversed two consecutive 18-240 month sentences for controlled substance offenses, hold that the trial court lacked the authority to amend the judgment of sentences after sentencing to order consecutive sentences.

***People v Brian Thompson, MSC No. 150010***

Summarily reversed sentence, holding the trial court lacked authority to amend the judgment of sentence to add lifetime electronic monitoring requirement.

**Michigan Court of Appeals**

***People v Carver, COA No. 328157***

Affirmed trial court's grant of new trial, agreeing that trial counsel was ineffective in failing to retain and present expert testimony regarding false memories and the impact of non-forensic questioning on the reliability of child sexual assault complainants made by children.

***People v Frederick Biles, COA No. 3299916***

Reversed convictions for second degree murder, assault with intent to murder, and felony firearm based on improper questioning of witnesses by judge, which pierced the veil of judicial impartiality.

***People v Roberts, COA No. 327296***

Reversed first degree murder conviction, holding that trial counsel rendered ineffective assistance in failing to consult with present an expert witness on Abusive Head Trauma, to rebut the prosecution's theory as to an infant child's cause of death.

***People v Steven Neuman, COA No. 331400***

Reversed conviction for assault with intent to murder based on trial court's error in refusing to give jury instruction on the lesser included offense of assault with intent to do great bodily harm less than murder.

**Trial Court**

***People v Ryan Keith Lewis, Wayne County No. 14-09641***

Convictions for first degree home invasion and larceny vacated and dismissed based on newly discovered evidence showing the complainant had lied about relationship with the client and had given the client permission to enter her residence.

***People v Gary Montgomery, Wayne County No. 15-1670***

New trial granted on assault with intent to murder and armed robbery charges based on newly discovered evidence in the form of a witness who was located after client's trial and who testified at codefendant's trial, which resulted in an acquittal.

***People v James Watkins, Oakland County No. 13-245062***

On resentencing pursuant to *People v Lockridge*, armed robbery sentence reduced from 15-60 years to 10-60 years in prison.

***People v Latesha Clay, Kent County No. 15-09347***

Plea withdrawal granted to minor defendant who had pled and been sentenced to 108-240 months for armed robbery and unlawful imprisonment. Negotiated plea entered to assault with intent to commit armed robbery with a sentence of probation.

***People v Treshaun Terrance, Wayne County 16-1235***

Second degree murder conviction vacated on double jeopardy grounds, where jury verdict had previously entered verdict acquitting client of all the elements of second degree murder.

***People v Robert Harris, Wayne County No. 15-2380***

New trial granted on charges of assault with intent to do great bodily harm and felony firearm based on finding that trial counsel was ineffective for failing to present alibi witness and a recording of phone call in which the complainant attempted to extort money from the defendant.

***People v Anthony Dyer, Wayne County Nos. 91-4535-4536***

Rape Kit DNA Project case. Plea based convictions for first and fourth degree CSC vacated and dismissed based on DNA analysis that excluded the client as the perpetrator.

***People v Sherron Davis, Wayne County No. 15-0361***

On remand for resentencing based on guideline scoring errors, sentences for armed robbery and conspiracy to commit armed robbery reduced from 20-40 years to 15-30 years.

***People v Jayvontay Reed, Ingham County No. 16-0649***

On remand under *People v Lockridge*, sentence for armed robbery reduced from 22½-37½ years to 15-20 years in prison.

***People v Tara Sullivan, Wayne County No. 12-8623***

On remand under *People v Lockridge*, sentence for assault with intent to commit murder reduced from 12-20 years to 8½-20 years.

The **Juvenile Lifer Unit** also largely completed the first phase of the juvenile life resentencing litigation in 2017 by representing 41 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:

***Antonio Williams, Wayne County No. 91-6340***

Resentenced from LWOP to 26-60 years. Paroled in May of 2017.

***Gary Steffenhagen, Gratiot County No. 98-3611***

Resentenced to 26-60 years.

***Ulysses Averheard, Wayne County No. 92-0934***

Resentenced to 35-60 years.

***Eric Cammon, Wayne County No. 89-0215***

Resentenced to 38-60 years. Paroled in June of 2018.

***Eric Brown, Wayne County No. 87-1499***

Resentenced to 28-60 years. Immediately eligible for parole.

***Timothy Riddle, Wayne County No. 88-013922***  
Resentenced to 29-50 years. Paroled in November of 2017.

***Christopher Wiley, Wayne County No. 95-2388***  
Resentenced to 25-60 years.

***Corey Bibbs, Wayne County No. 90-3461***  
Resentenced to 27-60 years.

***Ramon Evans, Wayne County No. 91-2066***  
Resentenced to 25-60 years. Paroled in January 2018.

***Terrance Thomas, Wayne County No. 88-5463***  
Resentenced to 28-60 years. Paroled in November of 2017.

***Kimberly Simmons, Wayne County No. 88-3055***  
Resentenced to 29-60 years. Paroled in June of 2017.

***Tony Taylor, Wayne County No. 85-7649***  
Resentenced to 33-60 years. Paroled in September of 2017.

***Demetrious Knuckles, Wayne County No. 91-1862***  
Resentenced to 30-60 years.

***Timothy Lewis, Wayne County No. 92-4650***  
Resentenced to 26-60 years. Eligible for parole in less than a year.

***Bobby Hines, Wayne County No. 89-5583***  
Resentenced to 27-60 years. Paroled in September of 2017.

***Daniel Kyle, Wayne County No. 94-013823-01***  
Resentenced to 26-60 years in prison.

***Daniel Jones, Wayne County No. 96-004081-01***  
Resentenced to 25-60 years in prison.

***Maurice Black, Wayne County No. 00-6576***  
Resentenced to 27-60 years in prison.

## MAACS Noteworthy Cases

***People v Smith***, 319 Mich App 1; 900 NW2d 108 (2017): Remanded for resentencing because trial court sentenced defendant to a minimum sentence on an improperly calculated guidelines range.

***People v Purcey***, unpublished per curiam opinion of the Court of Appeals, issued February 23, 2017 (Docket No. 330877): Remanded for a new trial due to failure to instruct on self-defense.

***People v Robinson***, unpublished per curiam opinion of the Court of Appeals, issued February 21, 2017 (Docket No. 329903): Remanded to allow plea withdrawal because defendant did not receive the full benefit of his plea bargain.

***People v Thompson***, unpublished per curiam opinion of the Court of Appeals, issued January 19, 2017 (Docket No. 326282): Affirmed trial court's grant of new trial.

***People v Kocevar***, unpublished per curiam opinion of the Court of Appeals, issued March 18, 2017 (Docket No. 329150): Reversed trial court's ruling that officer would have inevitably discovered methadone in defendant's car.

***People v Garay***, unpublished per curiam opinion of the Court of Appeals, issued April 12, 2017 (Docket No. 329091): Reversed juvenile defendant's life without parole sentences because the trial court considered the goals of sentencing instead of considering that life without parole sentences should be "reserved for the rare juvenile offender whose crime reflects irreparable corruption."

***People v Gordon***, unpublished per curiam opinion of the Court of Appeals, issued April 27, 2017 (Docket No. 329449): Vacated convictions of first-degree child abuse and involuntary manslaughter.

***People v Warren***, 500 Mich 1056; 898 NW2d 597 (2017): Remanded as on leave granted due to trial counsel's failure to advise defendant that his sentences would run consecutively.

***People v Confere***, unpublished per curiam opinion of the Court of Appeals, issued August 10, 2017 (Docket No. 331619): Remanded for new trial due to prosecutorial misconduct.

***People v Russo***, unpublished per curiam opinion of the Court of Appeals, issued August 31, 2017 (Docket No. 331210): Remanded for new trial due to trial court's failure to comply with requirements for waiving right to trial counsel.

***People v Spittle***, unpublished per curiam opinion of the Court of Appeals, issued June 20, 2017 (Docket No. 331962): Vacated conviction for second degree murder and remanding for new trial; trial court improperly admitted testimony from expert in "linguistic statement analysis" in violation of MRE 702.

***People v Sadler***, unpublished per curiam opinion of the Court of Appeals, issued June 20, 2017 (Docket No. 333409): Remanded after parties stipulated to error and trial court ordered new trial; jury had been given manslaughter instruction but manslaughter was not included on the verdict form.

***People v Dixon-Bey***, 321 Mich App 490; 909 NW2d 458 (2017): Remanded for resentencing because sentence of 35-70 years, representing 15-year upward departure from guidelines range, was unreasonable and disproportionate for defendant's conviction of second-degree murder.

***People v Lee***, unpublished per curiam opinion of the Court of Appeals, issued November 14, 2017 (Docket No. 333664): Vacated convictions for CSC-3 and CSC-4 and remanded for a new trial after federal court conditionally granted defendant's petition for a writ of habeas corpus due to ineffective assistance of prior appellate counsel.

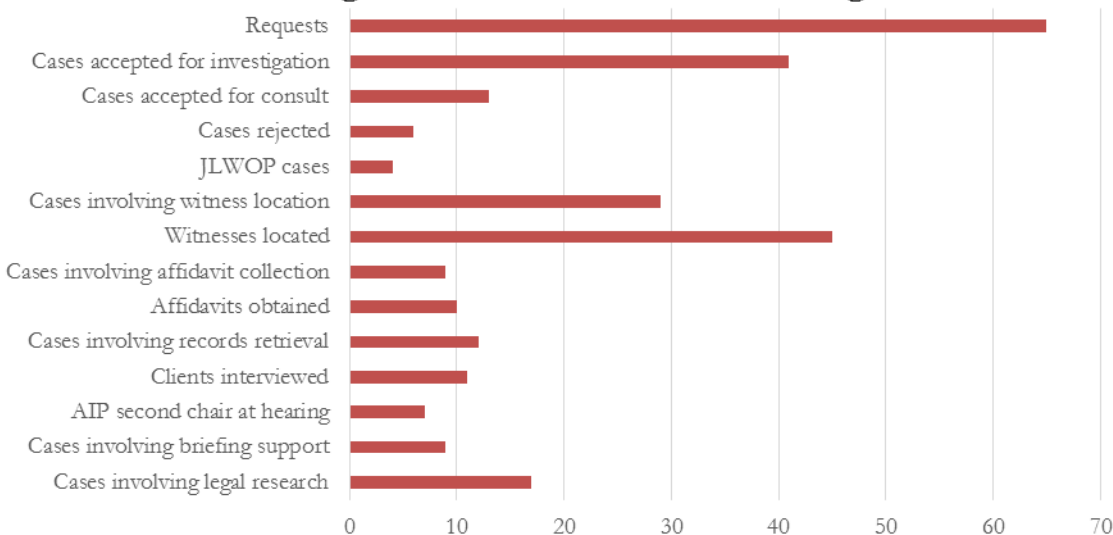
### **Goal 3: Provide support services and training to assigned criminal defense counsel, in all circuits of Michigan**

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#### **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 to extend investigative assistance to the MAACS roster. In its first two years, the AIP was run by Principal Attorney Katherine Marcuz and Investigative Attorney Andrew Lee, after which Brett DeGroff took over as Principal Attorney aided by contract investigative services. This 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.

#### **AIP Investigations and Consultations through 2017**



#### **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 2017, CDRC conducted trainings in 5 counties and administered over 70 hours of training for defense attorneys. CDRC continues to partner with various organizations. This year's training partners included:

- Kent County Bar Association
- Criminal Defense Attorneys of Michigan (CDAM)
- Genesee County Bar Association
- Michigan Appellate Assigned Counsel System (MAACS)
- MAACS Appellate Investigation Project (AIP)
- Wayne County Criminal Advocacy Program (CAP)
- Wayne State University Law School (WSU Law)
- Western Michigan University Cooley Law School (WMU Cooley)

#### *a. CDRC Trainings: Open to 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](http://www.SADO.org). CDRC offered the following issue-specific trainings throughout the year:

1. January 26, 2017 – Juvenile Lifer Cases for the Kent County Bar in Grand Rapids
2. January 25, 2017 – Immigration Consequences of Criminal Activity (Lansing and via webinar)
3. January 26, 2017 – Motions to Remand 101 (via webinar)
4. February 9, 2017 – Litigating Ineffective Assistance of Counsel Claims in the Trial Court Part I (in partnership with the MAACS Appellate Investigation Project) (Detroit)
5. February 16, 2017 – Litigating Ineffective Assistance of Counsel Claims in the Trial Court Part II (in partnership with the MAACS Appellate Investigation Project) (Detroit)
6. March 16, 2017 – SADO's Web of Knowledge and Basic Microsoft Technology for Lawyers (in partnership with CDAM) (Troy)
7. March 22, 2017 – Immigration Consequences of Juvenile Delinquency & Relief for Crime Victims (Detroit and via webinar)
8. August 2, 2017 – Westlaw Refresher (Detroit)
9. November 7, 2017 – How to Get a *Ginther* Hearing (Detroit and via webinar)
10. November 9, 2017 – SADO's Web of Knowledge and Basic Microsoft Technology for Lawyers (in partnership with CDAM) (Boyne)

11. November 17, 2017 – Sentencing Update (in partnership with the Wayne County Criminal Advocacy Program) (Detroit and via webinar)

***b. CDRC Trainings: SADO staff***

CDRC administered approximately 20 hours of in-house brown bag trainings to staff on topics such as technology, client relationships, mental health issues, appellate writing, juvenile lifer issues, and attended group-viewings of webinars on a variety of topics hosted by the National Association for Public Defense. SADO's Deputy Director also held regular case rounds sessions for staff focused on brainstorming and strategizing on individual cases.

***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 October 19, 2017 at SADO Detroit. The Annual Fall Training took place the next day on October 20, 2017 in Auburn Hills and again on October 27, 2017 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 third Appellate Writing Workshop on May 18-20, 2017. 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, and Kathy Swedlow.



The third annual Appellate Writing Workshop was held on May 18-20, 2017 at Wayne State University Law School in 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](http://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 2017, 78 MAACS roster attorneys signed up for the package, valued at over \$3,000 annually.

### iv. MAACS Virtual Case Rounds

MAACS Virtual Case Rounds (VCR) allows 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. In 2017, case rounds were hosted monthly by SADO's Training Director, and each session begins with a short discussion on a pre-determined, appellate-focused topic. All participants of VCR were given the opportunity to discuss general or case-specific issues that arise during their representation of indigent defendants on appeal.

### *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 2017 and the fall conference was held in Boyne City in November 2017. Approximately 420 attorneys from all over Michigan attended the two conferences. CDAM's Trial College, held in Bay City in August 2017, had approximately 40 attendees. SADO offered 20 scholarships to attendees based on demonstrated need.

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. SADO's Training Director serves as a CAP Board member and actively participates in the planning of the CAP program. This year, CDRC assisted CAP with its first ever webinar training.

*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 1,325 inquires during the year.

## **SADO/CDRC Print and Web Resources**

### ***a. Website***

[www.SADO.org](http://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](http://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](http://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 2017, there were approximately 3,000 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.

In 2017, SADO received a grant from the Michigan Commission on Law Enforcement Standards for the development of a new Defender Appellate Manual, which will be published in 2018.

### ***d. Criminal Defense Newsletter and Summaries***

The Criminal Defense Newsletter delivers essential information to subscribers in both electronic and hard copies. Each of the eleven issues published in 2017 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 Editors Neil Leithauser,

Susan Walsh, and John Zevalking are central contributors 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 2017, CDRC distributed approximately 350 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 2017. 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.

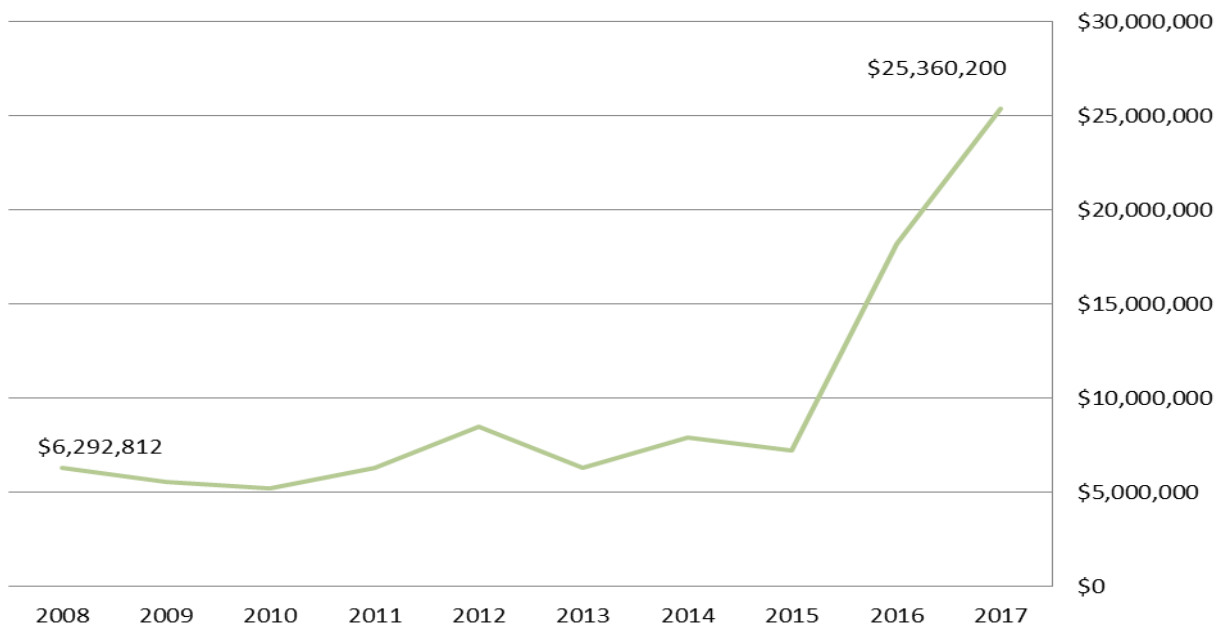
**Goal 4: Provide cost-effective services that represent a good return on investment to Michigan taxpayers**

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**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. That increase continued through 2017, during which 41 SADO juvenile lifers were resentenced to terms of years.

**Estimated Savings to State of Michigan through Prison Sentence Reductions**



\* The cost of prisoner incarceration is supplied by the Michigan Department of Corrections and was \$34,740 annually in 2017.

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, 1149 times by SADO staff during 2017 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 1180 virtual visits in 2017.



## **Goal 5: Advocate for improvements in the administration of justice**

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

### **SADO/MAACS State Bar Service Professional Activism**

SADO and MAACS staff remained engaged in professional activities benefitting the bar and public, including service on the Attorney Discipline Board (Director Dawn Van Hoek), State Bar Appellate Practice Section Council (Brad Hall, Christopher Smith, and Kristin Lavoy), Prisons and Corrections Section (Immediate Past-Chair Jackie Ouvry), Prisons and Corrections Section Council (Marilena David-Martin); State Bar Representative Assembly (Jessica Zimbelman); Criminal Defense Attorneys of Michigan Rules and Laws Committee (Jessica Zimbelman); co-chair of Criminal Issues Initiative and State Bar Task Force on Eyewitness Identification (Valerie Newman); Criminal Jurisprudence and Practice Committee (Sofia Nelson); Criminal Law Section Council of the State Bar of Michigan (Sofia Nelson); and member of the Criminal Jury Instructions Committee (Michael Mittlestat).

### **SADO/MAACS Court Rule Proposals**

Through a court rules committee, SADO and MAACS submitted court rule amendments, and commented on court rule proposals involving the deadlines for filing post-conviction motions and applications for leave to appeal, and standards governing motions to withdraw from assigned appeals based on lack of merit. SADO attorneys and MAACS representatives 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.



## **SADO Law School Clinics**

SADO attorneys taught three 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 Clinic at the 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.