



State Appellate Defender Office

2019



ANNUAL REPORT

Fighting injustice through access,
advocacy, compassion, and education.

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2019 Appellate Defender Commission and Executive Management Team

Commissioners:

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

Executive Management Team:

Jonathan Sacks, Director
Michael L. Mittlestat, Deputy Director
Marilena David-Martin, Deputy Director
Bradley R. Hall, MAACS Administrator
Kathy Swedlow, MAACS Deputy Administrator

Introduction

In 2019, the State Appellate Defender Office (SADO) continued to provide high quality appellate representation to over 3,000 people convicted of crimes who could not afford their own attorneys. SADO's public defender division successfully represented clients in the Michigan Supreme Court and Michigan Court of Appeals, saved clients years of their lives and the State of Michigan millions of dollars through sentencing error corrections, and represented "juvenile lifers," who had their first opportunity for freedom. SADO's assigned counsel division, the Michigan Appellate Assigned Counsel System, extended the successful regional list and uniform fee policy, increased the quality of assigned appellate counsel representation, and continued to show success through roster attorney support and training. SADO's Criminal Defense Resource Center served as a training and education model for all levels of the criminal defense bar. As Michigan's indigent defense trial system undergoes critical reforms, SADO continues to serve as a model to achieve the best possible indigent defense.

State of Michigan Appellate 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 pending before the appellate courts of this state," 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 public defender division 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 and maintain the system for selecting counsel and preparing appointment orders in all assigned appeals. AO 1981-7. In 2014, the Court consolidated MAACS with SADO for management purposes. AO 2014-18.

At its September 19, 2018 meeting, the Appellate Defender Commission formally authorized SADO to make intake and assignment decisions based on whether cases are "pending before the appellate courts of the state," as per MCL 780.716. This policy allowed the SADO public defender division to focus on more complex trial appeals and the MAACS roster to increase their plea appeal caseload, which allows budget predictability for funding units that pay the roster.

SADO Provides Outstanding Service to Clients, Achieving Remarkable Results

SADO's core function is to provide high quality post-conviction legal representation to clients in the trial and appellate courts of the state. In 2019 SADO again saw a very high number of its litigated in the Michigan Supreme Court. Our attorneys continued to creatively and zealously present effective and innovative legal arguments through quality briefing, oral argument, and trial court litigation throughout Michigan. Our attorneys, investigators, and mitigation specialists worked to discover important evidence that undermined the integrity of convictions and helped courts craft just, lawful, and accurate sentences for clients.

Overview and Highlights of SADO Advocacy:

SADO in the Michigan Supreme Court

- 173 clients represented in the Michigan Supreme Court through applications for leave to appeal, arguments and briefing on applications, and arguments and briefing on cases where leave to appeal was granted
- 29 clients obtained relief by the Michigan Supreme Court
- SADO helped make significant improvements in the law, to the benefit of our clients and to convicted individuals throughout the state. Notable successes included:
 - ***People v Thorpe & Harbison***: The Court barred the longstanding practice of prosecutors presenting faulty and misleading expert opinion testimony that invades the province of the jury and unfairly endorses the credibility of complainants in sexual assault cases
 - ***People v Hamerlund***: The Court reinforced the Fourth Amendment rights citizens to be free from intrusions by police officers into their homes to make warrantless arrests for alleged minor offenses.
 - ***People v Jackson***: The Court imposed important, meaningful limits on the prior alleged conduct that could be used to inflate a sentence range, holding that only proven felonious conduct rather than unproven misdemeanor conduct could be used to score certain Offense Variables.
 - ***People v Walker***: The Court reinforced important safeguards against unfair and inaccurate jury verdicts coerced by overbearing comments and instructions from trial judges, and made a forceful statement reinforcing the principle that accused citizens are entitled to respectful treatment in court proceedings.

SADO in the Michigan Court of Appeals

- 437 major pleadings filed
- 135 oral arguments held
- Relief obtained for 43 clients
- Important rights protected, including:

Sixth Amendment right to the effective assistance of counsel:

People v Deonta Belton: The court reversed defendant's conviction for armed robbery based on finding counsel was ineffective in failing to object to inadmissible statements found in recordings of phone conversations

Fifth and Sixth Amendment protections from criminal prosecution of poor parents simply because they did not choose the correct form of medical treatment for an injured child:

People v Dane Krukowski: The court reversed a second degree child abuse conviction, holding that parent's decision not to seek medical attention for child's bump on the head was did not support criminal liability under second degree child abuse statute

Right to be sentenced based on accurate sentencing guidelines and by a judge who harbors no animus toward immigrants:

People v Christobal Deleon: The court reversed a 65 to 80-year upward departure sentence, ruling that the sentence was based on incorrect assessment of the correct guideline range and that the sentencing judge had made inappropriate and "troubling" comments about the defendant's nationality.

The right to be free from unlawful arrests:

People v Jason Evans: The court reversed multiple convictions for resisting and obstructing a police officer, holding the trial court erred in failing to instruct jury that a person may resist an unlawful arrest.

SADO in Michigan's Trial Courts

- 115 motions filed statewide
- Hearings held for 176 clients, including legal motions, evidentiary hearings, and resentencings

- Relief granted for 62 clients
 - 1 client received plea withdrawal
 - 3 clients received a new trial
 - 3 clients had all charges dismissed
 - 38 reduced sentences
- Numerous errors identified and corrected, including among many others:

Ineffective assistance of trial counsel:

People v Ricky Sanders: New trial granted based on finding that trial counsel was ineffective in failing to request jury instruction on defense of another at trial on assault charges.

The lack of necessary expert witness to challenge the prosecution's case:

People v Miller: Conviction for being a sexually delinquent person vacated based on failure to call expert witness at trial pertaining to client's lack of danger of reoffending.

Unfair, excessive and unlawful sentences:

People v Alexander: Client originally sentenced to three consecutive 45 to 70-year prison terms, resentenced to three concurrent 15-30-year sentences – a 120-year reduction in the minimum sentence.

331-year cumulative reduction in minimum sentences through sentence advocacy

- 132-year total reduction in minimum sentences for Juvenile Lifer clients
- 199-year total reduction in minimum sentences for all other clients

\$12,279,423 in potential savings to state from reduced incarceration costs as a result of sentence reductions (based on average incarceration costs of \$37,080 per year, per individual)

Jennifer Hammerlund

A police officer believed Jennifer Hammerlund might have committed a misdemeanor by leaving the scene of a one-car accident, so he went to her home to question her about it. From the front porch of the home, the officer threatened to arrest Ms. Hammerlund's roommates for "harboring a fugitive" unless she came out of her bedroom, so she did. Rather than exit her home, Ms. Hammerlund asserted her constitutional right to remain inside while speaking politely with the officer through her front screen door. Under the guise of returning her driver's license, the officer lured Ms. Hammerlund toward the door, and when she got close enough, he reached out and grabbed her arm, then wrestled her to the floor inside her house.

Ms. Hammerlund was placed under arrest, dragged from her home, and forced to submit to blood alcohol tests to investigate whether she had been drunk while driving her car. She was charged and convicted of driving while intoxicated based on the elevated BAC levels the tests revealed.

Through SADO attorney Jason Eggert, Ms. Hammerlund appealed, arguing that the evidence in support of her conviction should have been suppressed because it was obtained as a direct result of the police officer's unlawful entry into her home to effectuate a warrantless arrest for a minor offense, in violation of the Fourth Amendment's prohibition against unreasonable searches and seizures.

The Michigan Supreme Court agreed, holding that Ms. Hammerlund had a right under the Fourth Amendment to be secure in her home. Absent an emergency or other exigent circumstance, police may not enter persons' homes without a warrant to effectuate an arrest. Ms. Hammerlund did not forfeit her reasonable expectation of privacy by reaching toward the door for her license -- at all times she manifested a clear intent to remain inside, which she had the right to do. By grabbing Ms. Hammerlund's arm and entering her home to arrest her, the officer violated the Fourth Amendment, and all evidence obtained as a direct result of the officer's illegal conduct must be suppressed.

This decision signals a clear repudiation of the aggressive, overreaching tactics employed by police officers that violate the citizens' rights and erodes trust and confidence in law enforcement. The ruling also makes clear the delineation between a public place, where a warrant is not always required to make an arrest, and private home, where a warrant issued by a magistrate is almost always required. And finally, the Court's ruling reinforces the property rights of all citizens, and the right to privacy and to be free from government intrusion we all enjoy while in our homes.

Juvenile Lifer Unit Continues Contested and Complex Hearings

SADO's Juvenile Lifer Unit (JLU) continued with its fourth year of the monumental task of representing nearly two thirds the state's 366 individuals who were serving life without parole sentences for crimes committed while they were juveniles. Those individuals became eligible for resentencing under the United State Supreme Court's landmark decisions in *Miller v Alabama* and *Montgomery v Louisiana*.

Funded by year-to-year allocations and in-kind contributions from its regular budget, SADO formed the Juvenile Lifer Unit in 2016, which by the end of 2019 consisted of seven full-time attorneys, and five full time mitigation specialists to focus on representation and mitigation for hearings, where clients will either receive sentences that will allow eventual release from prison or life without parole. The JLU has progressed through three phases of an estimated five-year project:

Phase I (2016-17) – The Project Begins:

- SADO appointed to represent 193 juvenile lifers
 - 61 designated for term of years sentences (TOY) (31.6%)
 - 132 designated for life without parole (68.4%)
- Massive investigative and mitigation efforts made, negotiations pursued

Phase II (2017-September 2018) -- TOY Clients Resentenced:

- 85 clients received the opportunity for release
- 38 clients received parole

Phase III (September 2018-?) -- The *Miller* Hearings Begin:

- Court decisions provide guidance, allowing *Miller* hearings to move forward
- Numerous cases ready for hotly contested *Miller* hearings, which commenced in September 2018
- Juvenile Lifer Unit shored up by hiring mitigation specialists in house rather than on a contract basis.

Although much work remains, significant progress was made by the JLU in 2019, which litigated the most complicated and rigorously-contested cases, many of which required robust *Miller* resentencing hearings, and continued negotiations with prosecutors.

JLU Case Progress in 2019

- 94 clients await Miller resentencing hearings as of January 2019.
- 80 clients await Miller resentencing hearings as of December 31, 2019.
 - Prosecutors agreed not to seek life without parole for 2 individuals after negotiations with JLU and receipt of robust mitigation presentations
- 11 individuals resentenced to a TOY
 - Average minimum sentence imposed: 31.3 years
 - Average age of clients at time of resentencing: 43.9
 - Average number of years served at time of resentencing: 25.9
- *Miller* hearings held for 12 clients in 2019
 - 4 individuals resentenced to a term of years in 2019
 - 2 individuals resentenced to a term of years in 2020 for the 2019 *Miller* hearing
 - 2 decisions pending at the end of 2019
- 11 clients released on parole or discharged from parole
- 180 years combined reduction in minimum sentences for 14 clients resentenced
- **\$6,257,012** in potential savings to the state (based on average costs to house a prisoner of \$35,000 per year)

Reentry

In 2019, SADO's Project Reentry served approximately 70 clients at various stages of litigation while in prison and after coming home. SADO's 2019 Project Reentry team included: full-time Reentry Coordinator Allison Gorine, MSW, and graduate interns from the University of Michigan School of Social Work and Wayne State University School of Social Work. The project was managed by Deputy Director Marilena David-Martin and supported by Mitigation Attorney Katherine Root, LMSW. The Project Reentry team assisted clients with building comprehensive reentry plans, assisting with parole preparation, and providing post-incarceration support. Project Reentry hosted 8 reentry workshops for formerly incarcerated individuals on topics such as taxes, art therapy, technology, life mapping, and healthcare. Project Reentry published 11 volumes of *The Drum*, a newsletter containing information relevant to formerly incarcerated individuals. Project Reentry also launched a Reentry Guidebook for use by the public.

Postconviction DNA Project Winds Down

In late 2017, SADO was awarded a National Institute of Justice Bloodsworth grant to fund its DNA Project for an additional two years. Beginning in 2018 and then throughout 2019, Project Attorney Ayda Razaian-Nojani and Project Assistant Terry Huhn focused their efforts on completing the screening of the 650 remaining cases involving untested rape kits from the Detroit Police Crime Lab and, in appropriate cases, arranging for DNA testing. Progress during 2019 included the review and processing of 108 of those cases.

As 2019 came to a close, SADO's role in reviewing the untested rape kits in Detroit and statewide wound down, as the grant-funded project reached its completion. Beginning in December, the project at SADO began closing down. Primary responsibility for completing this important work was shifted to the Innocence Clinic at Cooley Law School, which will working in cooperation the Conviction Integrity Units of the Wayne County Prosecutor's Office and the Michigan Attorney General's Office.

SADO Hosts Family Information Sessions for the Community

SADO hosted two Family Informational Sessions in 2019 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.

Farewells and New Faces

SADO has offices in Detroit and Lansing. In 2019, staff consisted of 21 attorneys, 1 investigator, 1 mitigation specialist, and 11 support staffers. Five of those attorneys and an additional 3 attorneys and 5 mitigation specialists compose a separate Juvenile Lifer Unit (JLU).



SADO bade farewell to a number of staffers and welcomed several new faces over the course of 2019:

Jessica Zimbelman: Ms. Zimbelman rejoined SADO as an Assistant Defender in 2019. She returned to handling direct appeals at SADO after serving for a year as the first ever MAACS Litigation Support Counsel.

Maya Menlo: Maya Menlo joined SADO as an Assistant Defender in October. A 2018 graduate of the Yale University Law School, Ms. Menlo previously worked at the Washtenaw County Public Defender's Office.

Matt Monahan: Matt Monahan joined SADO as an Assistant Defender in September after clerking for two years in the United States District Court for the Eastern District of Michigan. Mr. Monahan is a 2017 graduate of the Northwestern University School of Law.

Jessica Newton: Jessica Newton became an Assistant Defender in September after working as a juvenile lifer mitigation specialist for three years. She joined the JLU and would begin handling a juvenile lifer caseload in January 2020.

Aida Rezaian-Nojani: The Project Leader and screener of the successful Rape-Kit DNA project, Ms. Rezaian-Nojani accepted a position with the Ottawa County Public Defender's Office in December, as the grant-funded project approached a successful conclusion in early 2020.

Monique Dake: 2019 ended with Monique Dake joining SADO as its newest mitigation specialist. Ms. Dake has a Master's Degree in Social Work, and worked as clinician and therapist both in private practice and with the Michigan Department of Corrections prior to coming to SADO.

Leah Ouellet: Leah Ouellet departed SADO in August, after working as a mitigation specialist in the JLU since 2016. Ms. Ouellet is working towards her PhD in Criminal Justice at Northwestern University.

Jeanice Dagher-Margosian: Jeanice Dagher-Margosian retired in August, after a 13-year distinguished career representing clients as a member of SADO's Plea and Sentencing Unit. She returned to the MAACS roster and has continued representing clients on a part time basis.

Chari Grove: In June, SADO bade a fond farewell to Ms. Grove, who retired after an incredible, 44-year career providing outstanding legal assistance to her clients. Ms. Grove left a legacy of excellence at SADO that few have matched.

Ruth Paeth: SADO continues to mourn the loss of Ruth Paeth, who succumbed to cancer in December. Ruth was an incredibly loyal member of the SADO family, and a tireless worker who for nearly three decades, made many invaluable contributions to our work in so many ways, as a file clerk, paralegal, receptionist, administrative assistant, and friend to all. Throughout all the trials and tribulations of a busy appellate defender office, Ruth was a rock, a stabilizing force, and an invaluable resource to all. We will miss her dearly.

In Memoriam: Ruth Paeth
August 22, 1950 – December 21, 2019

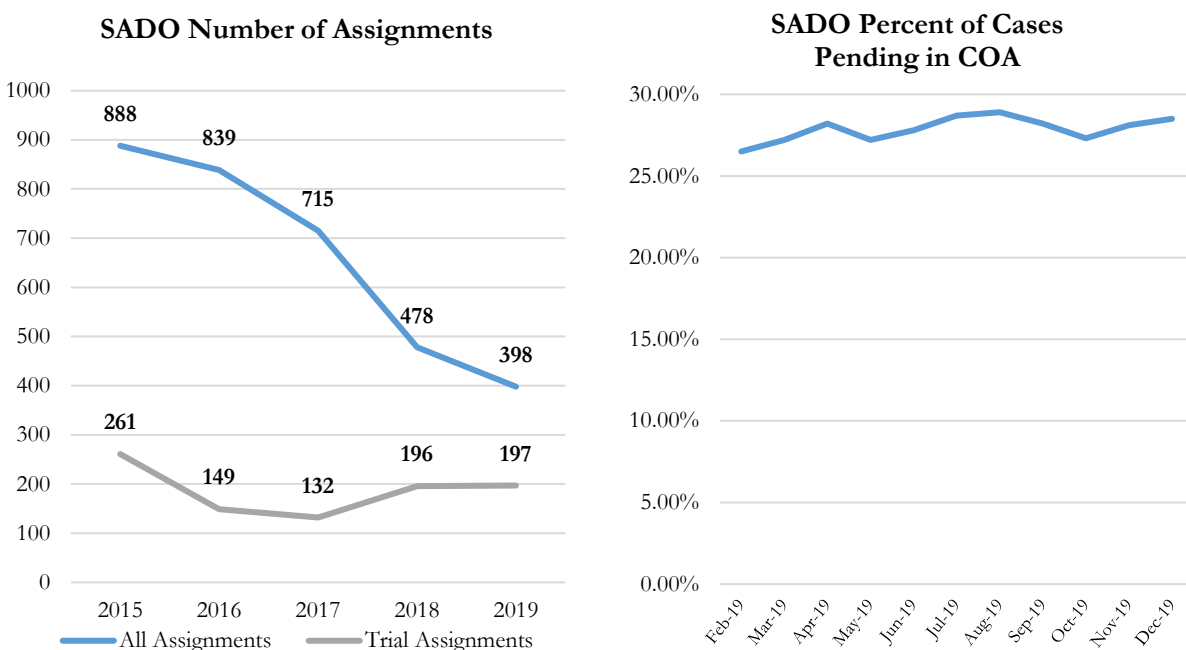


Assigned Counsel System Highlights

MAACS is located in Lansing and consists of two attorney-administrators, one litigation support attorney, and a small administrative staff. In 2019, MAACS processed appointment orders in 3332 felony appeals, 398 of which were assigned to SADO and 2934 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.

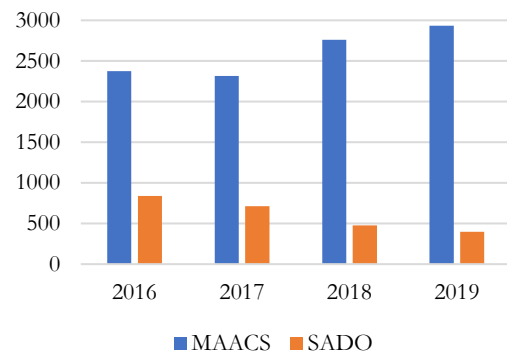
Rebalancing the Appellate Workload: Assignment of More Trial Appeals to SADO

In September 2018, the Appellate Defender Commission Commission approved a plan to rebalance the overall assigned appellate workload, with SADO handling fewer overall assignments but a greater share of trial appeals. The goals of this rebalancing were to deploy SADO's resources to the benefit of more indigent defendants in the most complex and challenging appeals, while providing greater budget predictability to local courts and funding units. To achieve this rebalancing, SADO's intake would be adjusted to ensure its consistent handling of at least 25% of appeals pending in the appellate courts (most of which are trial appeals), albeit not necessarily 25% of overall assignments (many of which are plea appeals). SADO's intake was adjusted in 2019 to account for this rebalancing, with a goal of handling approximately 40% of trial appeals and 30% of pending appeals overall. In February 2019, the Court of Appeals began providing monthly statistics on counsel for "pending" appeals.

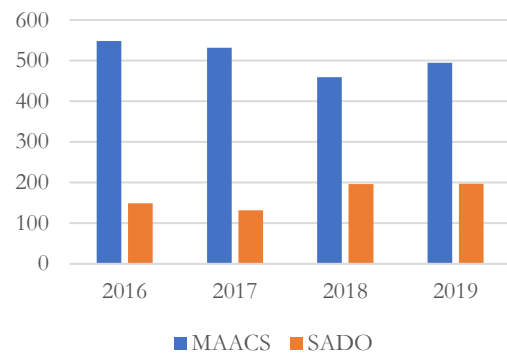


Total Appellate Assignments 2019			
	MAACS	SADO	TOTAL
<i>Jury Trial</i>	446	178	624
	71.47%	28.53%	
<i>Waiver Trial</i>	49	19	68
	72.06%	27.94%	
<i>Plea</i>	1986	139	2125
	93.46%	6.54%	
<i>Resentencing</i>	84	15	99
	84.85%	15.15%	
<i>PV</i>	325	31	356
	91.29%	8.71%	
<i>6.500</i>	15	7	22
	68.18%	31.82%	
<i>Interlocutory</i>	3	2	5
	60.00%	40.00%	
<i>PPO</i>	5	2	7
	71.43%	28.57%	
<i>Evid Hrg</i>	1	1	2
	50.00%	50.00%	
<i>JLWOP</i>	20	4	24
	83.33%	16.67%	
<i>Total</i>	2934	398	3332
	85.24%	14.76%	

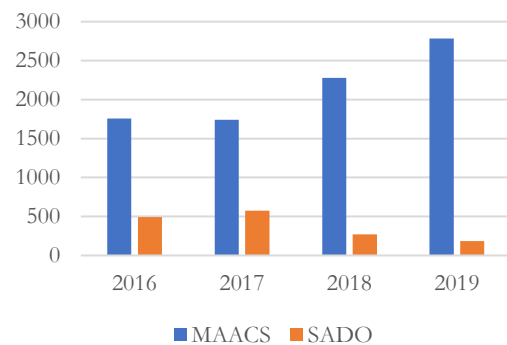
Total Appellate Assignments
2016 - 2019



Trial Assignments
2016 - 2019



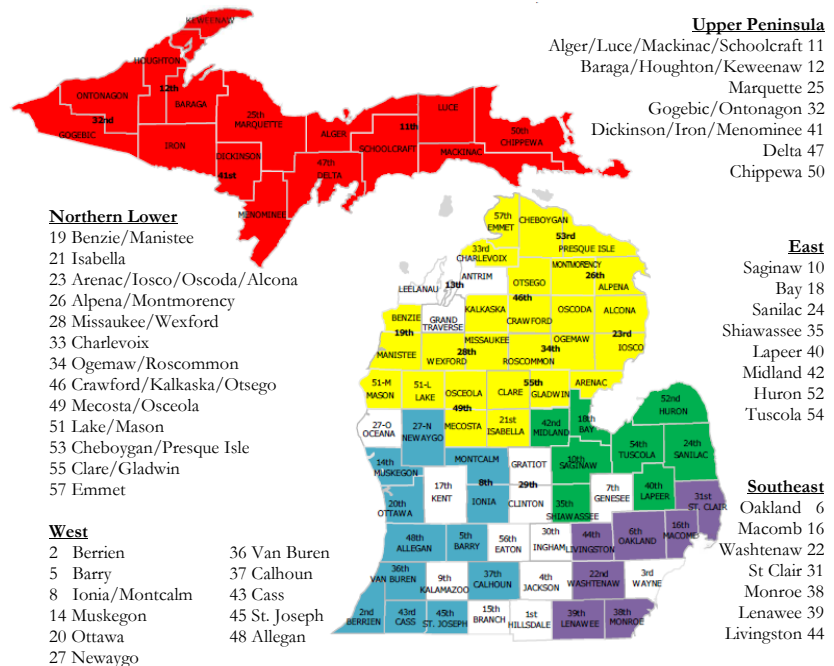
Plea/Re/PV Assignments
2016 - 2019



Streamlining Assignments and Standardizing Fees: Regional Assignment List Expansion

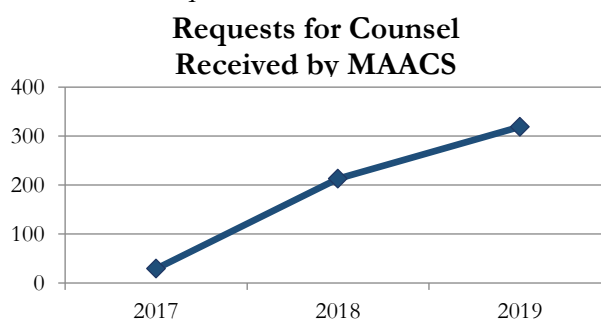
MAACS continues to expand its innovative regional assignment model, which has grown to include 46 demographically diverse trial courts in all corners of the state. Under oversight of the Michigan Supreme Court and the Appellate Defender Commission, these courts have voluntarily partnered with MAACS to standardize case assignment and attorney fee policies and facilitate a more efficient administrative model. 57 distinct assignment lists of differing sizes have been replaced by 5 large regional lists maintained by MAACS, featuring a paperless process to pre-screen, select, and appoint counsel.

2019 Regional Assignment Lists



Ensuring Access to Counsel: Administrative Advocacy and Litigation to Protect Constitutional Rights

In response to a proposal that would have complicated the filing requirements for felony requests for appellate counsel, MAACS advocated for a different change – one that would make it easier, not more difficult, to receive appointed appellate counsel. In 2019, the Michigan Supreme Court adopted the MAACS proposal, which requires trial courts to permit defendants to request appellate counsel at the sentencing hearing if they wish to do so, and also provides that a request for counsel must be “deemed filed” on the date it is received by the court or MAACS – whichever is earlier. Coupled with a 2017 amendment to the court form that encourages defendants to contact MAACS if they encounter difficulty obtaining counsel, this has led to a sharp increase in the number of requests sent directly to MAACS – and thus the number of cases in which MAACS can help protect defendants’ right to appellate counsel.



Drawing on its unique perspective working with the the roster, MAACS also spearheaded the drafting of a comprehensive package of court rule proposals that would:

- Inform indigent defendants of the right to appeal the denial of appointed appellate counsel.
- Expand the prison mailbox rule to all types of filings by indigent individuals confined in all types of correctional institutions.
- Expand the window for filing postjudgment trial court motions to coincide with the appellate briefing deadline, thereby protecting defendants’ ability to create a full record for appeal and alleviating the need for most remand motions.
- Expand the restoration of appellate rights provision to ensure that indigent defendants do not lose their rights to appeal or appellate counsel due to errors by the courts or counsel, including in guilty plea cases.
- Ensure that criminal defense counsel have a reasonable opportunity to attend presentence interviews with their clients, and that presentence investigation reports are accurately corrected, maintained, and available when necessary.

MAACS also engaged in proactive litigation to protect the right to counsel. In July 2019, after a trial court denied counsel to an indigent defendant who failed to articulate the reasons for her appeal, MAACS appealed to the Court of Appeals, which vacated the trial court’s “constitutionally infirm decision” and remanded for the appointment of counsel. *People v Beauvais*, unpublished order of the Court of Appeals, entered July 23, 2019 (Docket No. 349814). MAACS also challenged a Court of Appeals decision in favor of the prosecution – reversing a lower court dismissal – without the involvement of any counsel for the indigent defendant-appellee. See *People v Haywood*, COA Docket No. 345243.

Improving Efficiency, Accuracy, and Data Collection: Integrated Assignment, Vouchering, and Case Management System

Since launching its innovative case assignment system in June 2017, MAACS has upgraded and expanded the popular new platform. New features allow the collection and analysis of real-time data from the moment of assignment until the payment of fees, including client correspondence, the nature and length of trial and appellate court pleadings, court appearances, fact investigation, the hours and expenses reported, and case outcomes, including sentencing and cost relief. This data helps MAACS measure the effectiveness and efficiency of roster attorneys, ensure that all assignments are properly resolved within the appropriate deadlines, and establish informed and sensible attorney fee policies.

In 2019, MAACS began rolling out an online vouchering component to replace a decades-old carbon copy process. The new system allows MAACS and trial court staff to review vouchers more seamlessly and carefully, allowing prompt and accurate payments for counsel, more information and greater confidence for trial courts, and significant client representation data for MAACS.

COA - Leave Application	07/01/2020	2.0	\$75.00	\$150.00
COA - Leave Application	07/02/2020	0.7	\$75.00	\$52.50
Client Correspondence	07/02/2020	0.1	\$75.00	\$7.50
Client Correspondence	08/19/2020	0.1	\$75.00	\$7.50
Total Reported:		19.6		\$1,470.00
Total Requested:		15.0		\$1,125.00

15.0 hours requested to remain within the 15.0 hour presumptive maximum plus appeal limit.

Description	Date	Hrs/Mi	Rate	Amount
Client Visit (Mag Trip)	10/18/2019	(Round Trip)		
From: Attorney's Address 23169 Michigan Ave P.O. Box 2723 Dearborn, MI 48123		Hours: 3.0	\$25.00	\$75.00
To: E.C. Brooks CF 2500 S. Sheridan Dr Muskegon Heights, MI 49444		Miles: 189	\$0.34	\$64.26
Attorney Comments: I visited another client in addition to Zinner; bill split accordingly				
Total Hours:		3.0		\$75.00
Total Miles:		189		\$64.26

Description	Date	Pages	Rate	Amount
Printing	01/01/1900	153	\$0.10	\$15.30
Attorney Comments: Routine printing of file material, correspondence, pleadings, etc.				
Total:		153		\$15.30

Description	Date	Amount
Postage		\$16.90
Attorney Comments: Total postage for correspondence, pleadings, etc.		
Total:		\$16.90

Requested Time and Expenses for Payment				
Total Legal Hours:	15.0	\$75.00	\$1,125.00	
Total Travel Hours:	3.0	\$25.00	\$75.00	
Total Mileage:	189	\$0.34	\$64.26	
Total Expenses:			\$32.20	
Total Requested Amount:				\$1,296.46

STATE OF MICHIGAN 38TH JUDICIAL CIRCUIT MONROE COUNTY					MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM STATEMENT OF SERVICES AND REQUEST FOR PAYMENT OF COURT APPOINTED COUNSEL					CASE NO. 19-245087-FC																																																																							
Court Address MONROE COUNTY COURTHOUSE, 106 E. FIRST ST., MONROE, MI 48161							Court Telephone (734) 240-7020																																																																										
Case Information Case No.: 19-245087-FC County: Monroe Judge: MICHAEL A. WEIPERT Case Type: Plea Case Level: II Transcript Pages: 73 COA Case No.: 354076 SC Case No.:							Defendant Information JOHN ROY ZINNER Attorney Information Appointed: 8/29/2019 TIMOTHY DOMAN P77811 P.O. Box 2723 Dearborn, MI 48123 (734) 642-7916																																																																										
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REQUEST FOR PAYMENT I declare that I was appointed by the court to serve as appellate counsel for Defendant JOHN ROY ZINNER. The information above is a true and accurate statement of uncompensated services rendered and expenses incurred during the course of my appointed representation to the best of my information, knowledge, and belief. This is my final voucher. Representation has concluded. Attorney retained transcripts and record for their file. 8/21/2020 /s/ Timothy A. Doman Date Attorney																																																																																	

Promoting Quality Representation: Expanded Resources and Litigation Support

In 2019, MAACS continued to improve upon its existing support mechanisms and found new ways to support and mentor roster attorneys.

Monthly Case Rounds: MAACS continued to offer monthly online case rounds to roster attorneys, with each session beginning with an overview of a discrete legal topic followed by open-ended discussion about roster cases and attorney concerns. Overall, 112 attorneys participated in case rounds in 2019 – including new attorneys and seasoned veterans.

Targeted Trainings: MAACS offered multiple primary trainings for its attorneys in 2019. In February, MAACS held the second part of its 2018 New Attorney Orientation – a bring-your-own-case workshop. The session provided new attorneys with the opportunity to work in small groups on their first cases, guided by experienced appellate practitioners. In April, MAACS offered its annual three-day Appellate Writing Workshop, a hands-on program that teaches attendees new ways to write engaging and compelling briefs. And in October, MAACS held its traditional New Attorney Orientation and Annual Fall Training sessions.

Mentorship: In 2019, MAACS welcomed 42 new roster attorneys to its ranks – the largest class since 2013. The MAACS Litigation Support Counsel formally mentored each new attorney, working with them on their first two assignments to ensure they begin their MAACS practices on solid footing.

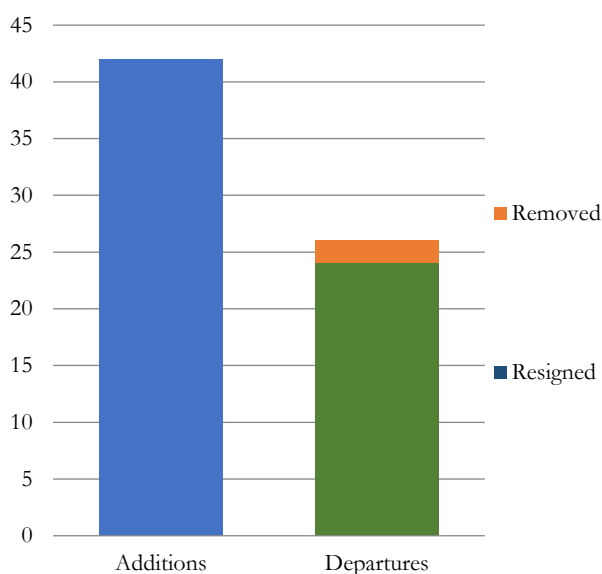
Written Resources: With the support of the CDRC, MAACS drafted and released the first-ever Appellate Manual. The Manual provides a comprehensive procedural overview of Michigan criminal appeals, with a focus on client-centered representation and best practices. Together with the revision of the MAACS Comment to the Minimum Standards, MAACS staff can now use the Manual as a point of reference to train, advise, and mentor roster attorneys.

Raising the Bar: Oversight, Evaluation, and Retention

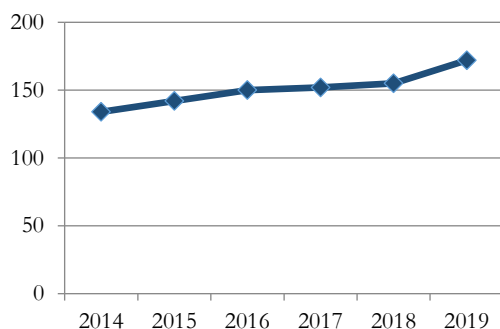
MAACS began 2019 with 155 roster attorneys. Through active recruitment, a competitive application process, and by following its Recruitment and Diversity Plan, MAACS added 38 new attorneys to the regular roster and 4 attorneys to the special assignment list. Throughout 2019, MAACS lost 24 attorneys through ordinary attrition, removed one attorney for performance reasons, and removed one attorney for failing to comply with CLE requirements. At the end of 2019, the roster consisted of 172 attorneys.

In 2019, MAACS continued its ongoing reviews of roster attorney work product, evaluating the work of attorneys who joined the roster in 2016. MAACS also continued to review the work product of attorneys whose work had been reviewed once in recent years but had been identified as requiring additional review. Work product reviews consist of evaluating and summarizing the attorneys' history at MAACS, critiquing a wide representative sample of pleadings, and surveying case assignments for problems. Each review addresses multiple years 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, these comprehensive reviews help MAACS identify training priorities.

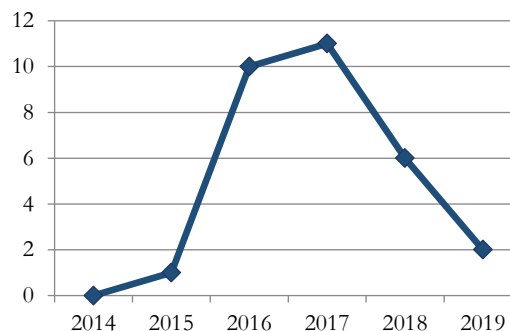
**Additions and Departures
2019**



MAACS Roster Size

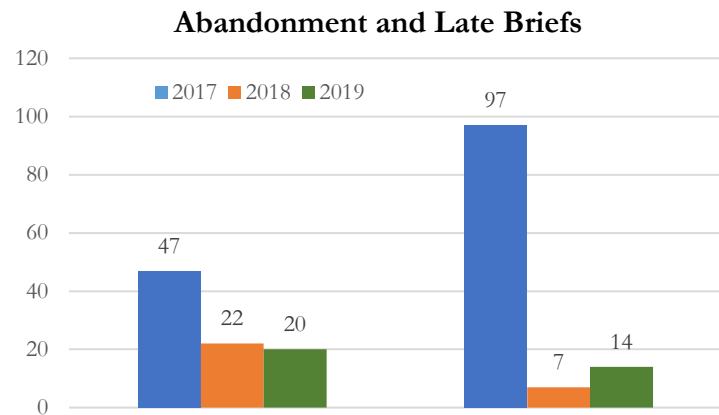


**Removals and Resignations Under
Scrutiny**



In 2019, MAACS rewrote its Comments to the Minimum Standards for Indigent Criminal Appellate Defenses Services. As the original Comments were approved by the Supreme Court in 2005, some of the revisions reflect changes in the law. But the new Comments have also been updated to articulate best practices and heightened expectations for roster attorneys. In rewriting the Comments, MAACS drew heavily on its post-2015 experiences in supervising the roster, and now draws on the Comments to train, advise, and mentor roster attorneys.

MAACS also continued its concerted effort to reduce the number of Minimum Standards violations, particularly those associated with Minimum Standards 5 (client abandonment) and 6 (preservation of oral argument). Focused training on deadlines and increased proactive mentoring of new roster attorneys have significantly reduced Minimum Standard 5 violations and kept these numbers relatively low for two years in a row.



Minimum Standards Violations, 2019	Violations
Standard 2: Absence of proper client consultation	3
Standard 3: Failure to raise claims of arguable merit	2
Standard 5: Abandonment	20
Standard 6: Failure to preserve oral argument by filing timely	14
Standard 8: Failure to advise client of case outcome and further options	3

Achieving Positive Outcomes for Clients: A Sampling of MAACS Case Successes

Michael Faraone, *People v Mead*, 503 Mich 205; 931 NW2d 557 (2019) (holding that “a person—whether she is a passenger in a vehicle, or a pedestrian, or a homeowner, or a hotel guest—may challenge an alleged Fourth Amendment violation if she can show under the totality of the circumstances that she had a legitimate expectation of privacy in the area searched and that her expectation of privacy was one that society is prepared to recognize as reasonable;” overruling *People v LaBelle*, 478 Mich 891 (2007).

Melvin Houston, *People v Clay*, Wayne County Circuit Court No. 17-7062 (after remand from the Court of Appeals, granting joint motion for new trial and dismissing CSC charges with prejudice). See also James Chad-Lewis Clay, National Registry of Exonerations.

John Zevalking, *People v Glatfelter*, unpublished per curiam opinion of the Court of Appeals, issued August 27, 2019 (Docket No. 343408) (granting new trial due to ineffective assistance of counsel for failing to object to lengthy and prejudicial body camera video evidence and noting other errors).

Robert J. Dunn, *People v Stevens*, unpublished per curiam opinion of the Court of Appeals, issued August 1, 2019 (Docket No. 337120) (vacating convictions and sentences and directing trial court to enter judgment of acquittal because defendant’s failure to act on behalf of her child is not proscribed by second degree child abuse statute).

Jordan Leff, *People v Hughes*, unpublished per curiam opinion of the Court of Appeals, issued July 9, 2019 (Docket No. 348991) (after remand, vacating sentence, remanding for resentencing before different judge, and directing trial court to immediately issue order granting bond for immediate release from MDOC; trial court’s reasoning to “determine[] defendant’s sentence term based on her pregnancy due date ... [was] constitutionally inappropriate, prejudicial, and exemplifies extreme bias”).

Laurel Kelly Young, *People v Ulp*, 504 Mich 964; 933 NW2d 37 (2019) (vacating lower court rulings that client was not entitled to expert assistance at public expense for postjudgment ineffective assistance of counsel hearing; due process principles set forth in *Ake v Oklahoma* (US 1985) and *People v Kennedy* (Mich 2018) apply to requests for funding before trial and on appeal).

Mark Hugger, *People v Kiya*, unpublished per curiam opinion of the Court of Appeals, issued April 23, 2019 (Docket No. 340965) (remanding for new trial due to prosecutorial misconduct and noting that “rather than taking special care to avoid arousing the jurors emotions, the prosecutor took special care to deliberately arouse those emotions... given the pervasive nature of the comments, we conclude that it affected the outcome of the trial”).

Ronald Ambrose, *People v Lopez*, Saginaw Circuit Court No. 14-40317 (after remand from the Court of Appeals, granting new trial because witness was made unavailable due to prosecutor’s wrongdoing).

Michael Faraone, *People v Latimer*, Genesee County Circuit Court No. 10-7407 (resentencing juvenile lifer to 40-60 year sentence).

Michael Faraone, *People v Scott*, Genesee County Circuit Court No. 94-49997 (resentencing juvenile lifer to 25-60 years).

Melvin Houston, *People v Storey*, Wayne Circuit Court No. 85-7676 (resentencing juvenile lifer to 40-60 years).

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

Deputy Director Marilena David administers SADO's Criminal Defense Resource Center. In 2019, CDRC conducted live and live streamed trainings throughout the state and administered over 84 hours of training for defense attorneys. 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 trainings throughout the year:

1. February 2019 – How to Challenge Court-Ordered Obligations for Incarcerated Clients (Webinar)
2. February 2019 – MAACS New Attorney Orientation Part II (Detroit)
3. February 2019 – PowerPoint for Defense Attorneys (Detroit)
4. March 2019 – 10 Quick Writing Tips (Detroit and Webinar)
5. March 2019 – How to Conduct a *Miller* Hearing Part 1 and 2 (Ann Arbor)
6. March 2019 – Essential Online Resources for the Criminal Defense Practitioner (in partnership with CDAM) (Pontiac)
7. April 2019 – Sentencing Law Update (Hastings)
8. April 2019 – Appellate Writing Workshop (Auburn Hills)
9. July 2019 - Military Veterans and the Criminal Justice System (Detroit and Webinar)
10. July 2019 - Essential Online Resources for the Criminal Defense Practitioner (in partnership with CDAM) (Kalamazoo)
11. August 2019 – B.Y.O.C. Sentencing Mitigation Workshop (Port Huron)
12. August 2019 - Working with Transgender Clients (Detroit and Webinar)
13. August 2019 - Brief Trim and E-Filing (Detroit and Webinar)
14. September 2019 - 10 Sentencing Advocacy Tips for Better Outcomes (in partnership with CAP) (Detroit)
15. October 2019 – MAACS New Attorney Orientation (Lansing)
16. October 2019 – “Putting Our Clients at the Center” Michigan Appellate Assigned Counsel Fall Training (Auburn Hills and Lansing)
17. November 2019 – Issue Preservation (Detroit)

18. December 2019 - Michigan and US Supreme Court Law Update (in partnership with CAP) (Detroit)

CDRC Partnerships

CDRC continues to partner with various organizations to provide high-quality training to the defense bar. In 2019, CDRC's training partners included:

- o American Civil Liberties Union of Michigan (ACLU)
- o Criminal Defense Attorneys of Michigan (CDAM)
- o Michigan Appellate Assigned Counsel System (MAACS)
- o Genesee County Criminal Defense Bar Association
- o Grand Rapids Bar Association
- o St. Clair County Bar Association
- o Michigan Department of Corrections
- o State Bar of Michigan
- o Wayne County Criminal Advocacy Program
- o Western Michigan University Cooley Law School
- o University of Michigan (Juvenile Justice Clinic)

CDRC assisted in the production and sponsorship of the Spring, Summer, and Fall CDAM conferences.

The Spring conference was held in Pontiac in March, 2019, the Summer conference was held in Kalamazoo in July, 2019, and the Fall conference was held in Boyne City in November, 2019. Approximately 740 attorneys from all over Michigan attended these three conferences.

SADO's CDRC Publishes Print and Web Resources for the Defense Bar and Community

CDRC continues to host a resourced website and online criminal defense forum and publishes an updated series of Defender Books each year. In 2019, 12 issues of the Criminal Defense Newsletter were published and included summaries of notable state and federal appellate cases.

In 2019, CDRC produced and published a new Defender Appellate Manual, Defender Search and Seizure Manual and Reentry Guidebook.

SADO and MAACS Award Attorneys for Excellence in Advocacy:

MAACS Roster Attorney John Zevalking was the 2019 Barbara R. Levine Award for Excellence in Appellate Advocacy. Likewise, SADO Assistant Defender Kristin LaVoy was awarded the 2019 Norris J. Thomas Award for Excellence in Appellate Advocacy.

John Zevalking: The Appellate Defender Commission presented MAACS roster attorney John Zevalking with the 2019 Barbara R. Levine Award for Excellence in Appellate Advocacy. The Award is presented annually to an attorney on the MAACS roster who demonstrate extraordinary commitment on behalf of appellate assigned clients and the criminal justice system, and is named for the architect and first Administrator of MAACS.

Mr. Zevalking's involvement with MAACS began not as a roster attorney but as a member of the administrative team. A former Michigan Supreme Court clerk and law professor, he began working with MAACS in 2015 on a contract basis, aiding in a comprehensive review of roster attorney work quality during the period of transition after the merger with SADO. Then, in 2016, he joined the roster and began providing outstanding representation to indigent clients throughout the state.

While serving his clients with outstanding briefing and argument, Mr. Zevalking also continued his service to the roster and profession. He is an editor and frequent contributor to the Criminal Defense Newsletter, wrote an Evidence Manual and a Search and Seizure Manual, devised a complex model problem for the annual MAACS-SADO Appellate Writing Workshop, and remains a reliable partner in the MAACS mission – all while inspiring others with his advocacy and helping his clients however he can.

Kristin Lavoy: At its December Meeting, the Michigan Appellate Defender Commission selected SADO Assistant Defender Kristin LaVoy as recipient of the 2019 Norris Thomas Award for Excellence in Appellate Advocacy. Named for SADO's long-serving and much-respected Norris J. Thomas, Jr., the award is given annually to a SADO attorney whose appellate advocacy achieves outstanding results for clients or the criminal justice system. Thomas served as SADO's Deputy Director over two decades before his untimely passing in 2007. His dedication to clients, and craft in achieving excellent outcomes, were legendary.

Ms. Lavoy joined SADO in 2013 after serving five years as a trial public defender with the Legal Aid and Defender Association. Kristin spent her first few years at SADO putting her excellent trial skills to use serving her clients while working to hone her appellate skills. But she soon blossomed in so many ways, establishing herself as an elite appellate attorney, a leader and role model at SADO, and a pillar in the legal community.

There is not enough space to recount Kristin's many case successes here, but a few stand out as examples of the many ways she has served her clients and improved the law. Examples include *People v Anderson*, where the Michigan Supreme Court gave district court judges authority to refuse bindovers based on credibility determinations, an important tool in controlling docket congestion by weeding

out weaker cases at the preliminary examination stage; *People v Gloster*, where the Michigan Supreme Court limited the scope of codefendants' conduct that may be considered in scoring offense variables; and most recently, *People v Jemison*, where the Michigan Supreme Court preserved accuseds' Sixth Amendment right to face-to-face confrontation by prohibiting prosecution witnesses from testifying via video based simply on convenience or expense.

Kristin has been a major contributor to the criminal defense community, as she has provided valuable training to hundreds of attorneys, through the CDRC, CDAM, and numerous local bar associations. She was a popular instructor at Wayne State University Law School's Criminal Appellate Practice Clinic and inspired many students to pursue careers in criminal defense. And she has served on the Criminal Appellate Practice Section Counsel as well as the SADO Rules Committee, where she successfully advocated for many positive improvements to criminal and appellate procedure.

Kristin established herself as a leader and mentor for many at SADO, having trained many newer attorneys, helped develop and establish best practices and procedures for holistic defense and client-centered representation, and wrote a helpful training manual for supervisors and assistant defenders on staff.

On top of all her other contributions, Kristin is a well-respected colleague who is liked by all. She is always willing to lend a helping hand on cases and projects, and to provide support through generous gifts and kind words of encouragement. She truly is a friend to all at SADO and most deserving of this award.

The Bill of Rights

The Sixth Amendment

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in favor, and to have the Assistance of Counsel for his defense.”