



State Appellate Defender Office



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

ANNUAL REPORT 2020

TABLE OF CONTENTS

2020 Appellate Defender Commission and Executive Management Team	1
Introduction	2
State of Michigan Appellate Framework.....	2
COVID-19 and SADO	3
SADO Takes Action to Improve Diversity Efforts and to Address Race in the System	7
SADO Attorneys Adapt and Deliver	9
Juvenile Lifer Unit Year In Review.....	17
Assigned Counsel System Highlights	21
SADO's Criminal Defense Resource Center	33
SADO and MAACS Award Attorneys for Excellence in Advocacy	35
Other News	37

2020 Appellate Defender Commission and Executive Management Team

Commissioners:

Thomas W. Cranmer, Chair, Supreme Court Designee
Thomas G. McNeill, Vice-Chair, Supreme Court Designee
Darryl J. Woods, Governor's Designee
Honorable Thomas Solka, Michigan Judges Association Designee (appointed May, 2021)
Judith Gracey, State Bar Designee
Doug Mains, State Bar Designee
Douglas Messing, Court of Appeals Designee

*** The Commission and SADO staff were saddened by the loss of fellow commission member, Honorable William Caprathe. A tribute by the Commission can be found at the end of this report.*

Leadership Team:

Jonathan Sacks, Director
Marilena David-Martin, Deputy Director
Bradley R. Hall, MAACS Administrator
Kathy Swedlow, Deputy MAACS Administrator
Katherine Marcuz, Tina Olson, Jessica Zimbelman, Managing Attorneys
Julianne Cuneo, Chief Investigator
Wendy Dealca, Human Resources and Office Manager
Bryan Vance, Finance Manager

Introduction

In 2020, the State Appellate Defender Office (SADO) continued to provide high quality appellate representation to over 2,000 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.

All these accomplishments took place in the shadow of the COVID-19 pandemic. SADO public defenders and MAACS roster attorneys provided superior representation, while the Criminal Defense Resource Center offered COVID-specific trainings. SADO and MAACS coordinated efforts to secure early release for people serving jail sentences in some of the most unsafe and unhealthy environments during a pandemic.

As Michigan's indigent defense trial system continues critical reforms, SADO serves 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 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.

COVID-19 and SADO

During the COVID-19 crisis, SADO faced unique challenges involving the health and safety of our staff and clients. SADO continued to fully function with a heightened sense of urgency. This commitment was necessary to:

- (1) Continue SADO's day-to-day constitutional obligations for our clients, which do not disappear in a pandemic.
- (2) Work to achieve relief for a client population facing grave risks to their health and safety because of the spread of COVID-19 in the Michigan Department of Corrections and county jails.

Incarcerated clients faced severe risk from COVID-19 due to the impossibility of social distancing, the lack of comprehensive access to personal hygiene materials and Personal Protective Equipment, and the prevalence of chronic health conditions in the incarcerated population. This risk has been borne out in the Michigan Department of Corrections (MDOC), where there have been 26,733 confirmed cases and 143 deaths. For SADO, the situation has been especially desperate. Dozens of our clients in MDOC have fallen sick with COVID-19, and two clients are now deceased. One of our deceased clients, [William Garrison](#), a former juvenile lifer had been resentenced to a term of years, and he died weeks before his release. A second, [Richard Palombo](#), had a major role in the exoneration of an innocent man.

SADO responded to the crisis by setting up a fully functional remote workplace where attorneys file pleadings electronically, visit clients via confidential video interviews, hold virtual case rounds and strategy sessions, and participate in virtual court hearings. This work is aimed at both standard operations and special projects to help our clients at a time that they face grave risks to their health and safety.

Standard Operations

For SADO's **public defender division**, our work researching, drafting correspondence, electronic filing, and meetings clients continued apace. SADO saw increased communication with clients, their families, facilities, and courts to monitor and ensure clients' safety and health. Attorneys filed motions seeking client's release from custody on an expedited or interim basis (bond pending appeal or early jail release).

While the complexion of SADO's workload has changed, the volume of work and hours spent working have remained relatively steady since remote workplace measures were implemented in March, 2020. In a typical six week period during the pandemic:

- Attorneys sent over 300 electronic messages to clients in MDOC through the JPay system. Staff sent an estimated 500 client letters.
- SADO attorneys recorded 82 phone and video interviews with clients.
- Attorneys filed 158 pleadings in state and federal trial and appellate courts on behalf of SADO clients.
- **Motions for oral argument.** As part of COVID-19 response, the Court of Appeals initially replaced many oral arguments with summary decision panels. Part of an appellate attorney's responsibilities is to bear witness for a client during the appellate process and advocate for them at every stage of proceedings. This is especially important where many of our clients are in isolation at MDOC because of COVID-19 concerns. SADO attorneys filed motions for video arguments or adjournments instead of summary panels without arguments, and the Court of Appeals granted some of these motions before ultimately shifting to a remote video argument system.

This work has been accomplished with one attorney temporarily deployed to the National Guard and one attorney on sick leave with a confirmed case of COVID-19.

SADO's **Juvenile Lifer and Unit** also worked effectively and productively despite the challenges of working remotely. Our juvenile lifer clients are among the older and more vulnerable in MDOC, and this work is now critical. One of our clients, who was no longer serving a life sentence due to a successful hearing died of COVID-19 in April, prior to his scheduled release from MDOC. In a typical six week period, members of the Juvenile Lifer Unit sent 300 JPay messages to clients, over 50 confidential client visits, and more than twenty-five major pleadings for JLU clients. During the stay-at-home period, multiple successful negotiations have converted life without parole sentences to a term of years, and remote hearings have resulted in term of years decisions. The reentry division of the Juvenile Lifer Unit works with recently released clients and created a special resource guide for formerly incarcerated individuals in the wake of COVID-19.

MAACS ensures the prompt and accurate appointment of appellate counsel in approximately 3000 felony cases annually and provides support and oversight for almost 150 private attorneys. During the COVID-19 emergency period, all MAACS employees have continued these duties remotely, while also meeting the increased need for emergency litigation support from roster attorneys and trial court staff. To function remotely, MAACS has implemented a paperless web-based process for generating and signing appointment orders and payment vouchers. MAACS continued to receive and process appellate counsel requests from virtually all trial courts. Although assignment numbers have decreased, this trend will reverse as courts work through their backlogs.

Identifying a need for specialized litigation support related to the filing of appellate bond motions, early release motions, and other emergency pleadings as a result of COVID-19, MAACS legal staff contributed to the preparation of template pleadings for numerous scenarios and advised roster attorneys daily on the mechanics of remote litigation during the emergency. MAACS identified approximately 750 roster attorney clients incarcerated in jail and reached out to dozens of attorneys to facilitate filing of motions for release.

The **CDRC** serves over 1,100 criminal defense attorney and other paid subscribers, who receive and expect continually updated resources and trainings, with customer service support. Staff continued to publish resources for subscribers which include a newsletter, appellate summaries, and reference books. Hundreds of new accounts have been created since the advent of COVID-19. The CDRC has also had a significant increase in questions from incarcerated individuals because they cannot use prison law libraries during the pandemic. The CDRC conducted specialized trainings including motion practice related to COVID-19 issues and legal issues and dynamics with remote court proceedings.

Administrative staff at SADO adapted to and set-up our remote workplace. The work of information technology staffers has been critical due to the increased demand for end-user tech support, the need to implement new technologies that provide the capabilities for the all staff to telework, cybersecurity concerns for a remote workplace, and data processing and case-related management. SADO's Human Resources Manager has focused on rules and practices relating to COVID-19 and the workplace, and support for 58 staffers on these questions and leave, benefits, and retirement implications. SADO also shuffled the functions and consolidated some tasks under one in-office position for paralegals, administrative assistants, and other support staffers.

Special Projects

In addition to our day-to-day work, SADO implemented multiple projects because our clients face grave risks to their health and safety from COVID-19 in MDOC and county jails:

- **Jail Release Advocacy.** Individuals in jail awaiting trial have counsel who can file bond modification motions advocating for their release. In Michigan, the work of the Joint Task Force on Jail and Pre-Trial Incarceration has shown that half of the people incarcerated in county jails are serving sentences. With few exceptions, this group of people lack counsel to file early release motions if they can be safely released.

SADO worked with Macomb, Wayne, and Oakland Counties to provide advocacy for this neglected group. Each county appointed SADO for

purposes of emergency COVID-19 motions. SADO coordinated volunteer staff and private attorneys for this advocacy. In total, courts granted over one hundred early release motions.

The success of this project resulted in a specialized Department of Justice COVID-19 grant, which funded seven contract attorneys to continue this work in 2021.

- **Appellate Bond Motions.** SADO attorneys have filed motions for appellate bond where our clients have either a strong issue on appeal or dangerous preexisting or chronic health conditions. The MAACS roster has worked with private attorneys on these motions. Courts have granted these motions for multiple SADO and MAACS roster clients.
- **HYTA Review.** A small group of people serving prison sentences do so under the Holmes Youthful Trainee Act (HYTA). For this group, judges have discretion to modify the sentence and order release. SADO has represented some of these people in Wayne County and judges have ordered early release for two clients.
- **Medically vulnerable clients.** SADO identified 31 former clients for potential release due to medical vulnerability should the Governor expedite commutation procedures during the COVID-19 emergency.
- **Reentry.** SADO's Project Reentry published a resource guide on reentry during the COVID-19 crisis and hosts virtual meetings and support groups for formerly incarcerated clients.
- **Resources and Training.** SADO's website, www.sado.org, contains a special section for COVID-19 resources for attorneys and loved ones of incarcerated individuals. Reentry resources are available for recently released individuals. Loved ones of incarcerated individuals can fill out surveys about conditions in prisons and jails during the crisis, and members of the criminal defense bar can access model motions for early release.

SADO Takes Action to Improve Diversity Efforts and to Address Race in the System

In July 2020, SADO staff got together for yet again another online Zoom meeting. But this was no ordinary meeting. It was the first gathering of SADO's Racial Justice Initiative—a space dedicated to open dialogue about race and how it operates within the walls of our office and in the criminal legal system.

RJI was launched by Deputy Director Marilena David-Martin and Managing Attorney Jessica Zimbelman. Their motivation was to improve understanding amongst colleagues on issues of race and belonging within the office, to encourage colleagues to engage in self-reflection and growth, to address the lack of diversity in attorney positions, to discuss implicit biases that may be affecting the way we represent clients, and to begin litigating issues of racial injustice for clients.

At the first few meetings, staff talked openly about what was on their minds when it came to race inside of our office and in the legal system. We also discussed our previous 2018 Diversity Plan and looked at it with a critical lens aimed at identifying areas of improvement. In small group breakout sessions, people worked together to generate priority areas of concern and suggestions for improving our diversity efforts and our workplace.

After several meetings, we developed an “Action Plan” broken down into several broad categories. Some of these categories included: (1) recruitment, (2) retention, (3) screening and hiring, (4) student pipeline cultivation, (4) racial injustice litigation, (5) funding and resource distribution, (6) workplace improvements, and (7) anti-racism and racial justice dialogue.

Under each of these categories were several more narrow and specific action items that had been identified in prior meetings with staff. On a volunteer basis, staff signed up to lead or to work on action items that piqued their interest. The idea being that over time, and one by one, we might tackle some of these issues by steadily working together.

In the eight months we have been meeting as a group, RJI has led to many positive outcomes.

- Our Black colleagues shared personal, and at times heart-wrenching, experiences they have had while working in our office or while out in the community. They shared these stories with true vulnerability, and our staff made a commitment to honor that by engaging in introspection and personal growth.

- We have engaged in several training programs and conversations around anti-racism, race, and cultural humility, and are implementing several more for the upcoming year.
- We have worked together as an office to improve our job postings to attract the most diverse and qualified job applicants.
- We are reviewing our internal operating procedures to ensure they are equitable and fair.
- We are strategizing around racial litigation, collecting resources, and brainstorming ways in which racial challenges can be made for our Black and brown clients who are disproportionately impacted by the system.
- We are engaging in a diversity audit with an outside contractor who will assess our operations and provide recommendations for improvement.

We would be remiss if we did not address the fact that the RJI is something SADO should have launched a long time ago. We are not proud that it took the death of George Floyd and a national racial awakening for us to prioritize this important effort. But it did. Now that RJI is an established group within our office, we depend on the motivation of our staff and leadership to carry it forward to tangible positive results for our colleagues, clients, and the community.

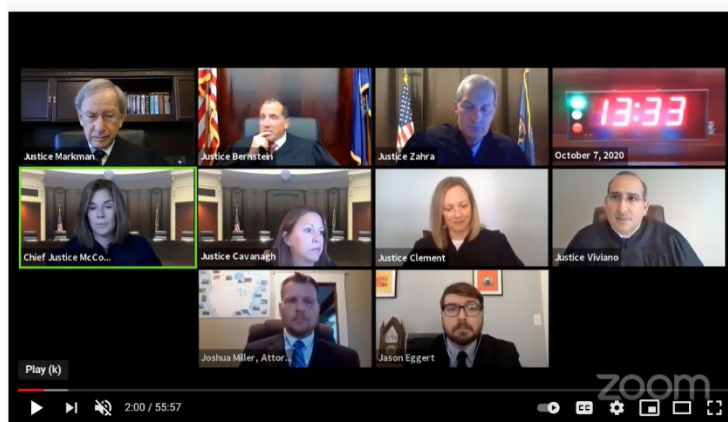
SADO has a long way to go, but we are on our way.

Navigating the Pandemic: SADO Attorneys Adapt and Deliver

SADO's core function is to provide high quality post-conviction legal representation to clients in the trial and appellate courts of the state. This function was tested in 2020 as the world faced the COVID-19 pandemic. SADO offices closed, courts quickly adopted Zoom technology and remote hearings, and the virus ravaged the Michigan Department of Corrections and local jails, putting our clients' lives in danger. During such turmoil and challenge, SADO attorneys continued to deliver high quality representation to our clients throughout Michigan. Our team of attorneys, an investigator, a mitigation specialist, and our paralegals worked hard to make sure our clients were not forgotten and continued to fight a system stacked against them.

Highlights of SADO courtroom advocacy

SADO in the Michigan Supreme Court



158652 People of MI v Kristopher Allen Hughes

SADO attorneys helped make significant improvements in the law, to the benefit of our clients and to convicted people throughout the state:

- *People v Dane Krukowski*: The Court affirmed the Court of Appeals opinion vacating Mr. Krukowski's conviction for second-degree child abuse due to insufficient evidence.
- *People v Miles*, *People v Murray*, *People v Brown*: all remanded to the Court of Appeals to address constitutional challenges to court costs.
- *People v Troy Brown*: In lieu of granting leave to appeal and without hearing oral arguments, the Court reversed Mr. Brown's conviction for first-degree

criminal sexual conduct and remanded for new trial holding that the prosecutor failed to correct false testimony which essentially claimed that client had confessed to the crime and took affirmative actions to cloud defense counsel's efforts to correct the record.

- *People v Jemison*: The Court reversed Mr. Jemison's conviction for first degree criminal sexual conduct and held that presenting expert testimony by two-way interactive video violated the Sixth Amendment right to face-to-face confrontation
- *People v Derek Smith*: The Court affirmed that a two-year sentence for felony firearm could not run consecutively to the minimum sentence for assault with intent to do great bodily harm because the jury did not find that the client used a firearm during the commission of that offense.
- *People v Kristopher Hughes*: The Court reversed the Court of Appeals opinion affirming Mr. Hughes' conviction and remanded to the Court of Appeals to determine whether Mr. Hughes is entitled to a new trial. In a lengthy, ground-breaking opinion, the Court wrote: "a warrant to search a suspect's digital cell-phone data for evidence of one crime does not enable a search of that same data for evidence of another crime without obtaining a second warrant. . . . We hold that, as with any other search, an officer must limit a search of digital data from a cell phone in a manner reasonably directed to uncover evidence of the criminal activity alleged in the warrant." *People v Hughes*, slip op at 36-37.
- *People v Darrel Wilder*: while pending oral argument, the prosecutor agreed to vacate the convictions based on disclosure of possible police misconduct.
- *People v Jamal Bennett*: The Court reversed Mr. Bennett's second degree murder conviction, holding that reversible error was committed when the trial court admitted irrelevant and prejudicial gang evidence and rap video pertaining to client at trial
- *People v Gary Gilmore*: The Court ordered a restitution hearing after holding the Court of Appeals erred in holding that Mr. Gilmore waived the right to the hearing. In 2021, at the restitution hearing, restitution was reduced from \$18,000 to zero.
- *People v Brent Geesey*: The Court remanded for Court of Appeals to consider Mr. Geesey's motion to withdraw plea to armed robbery based on serious concerns over mental competency and capacity to plead. In 2021, there was an evidentiary hearing in the trial court on these issues.
- *People v David Corzilius*: The Court remanded to trial court for an evidentiary hearing on whether Mr. Corzilius' plea to second degree murder was involuntary because he was misadvised that he would be eligible for good time credits in prison.

- *People v Brian Furlong*: The Court remanded to the Court of Appeals to decide whether there was error in scoring 50 points on OV 13 and whether the sentence was disproportionate.
- *People v Ryan DeWeerd*: The Court remanded for the Court of Appeals to decide whether there was error in scoring OV 19.

By the numbers:

- **205 clients represented in the Michigan Supreme Court**
- **25 clients obtained relief from the Michigan Supreme Court**
- **The Court heard oral arguments for 8 SADO clients.**

SADO in the Michigan Court of Appeals

Through their work in the Court of Appeals, SADO attorneys protected important rights of our clients and improved the system as a whole, including:

- *People v Granderson*: Reversed first-degree murder conviction, holding the trial judge violated due process by piercing the veil of judicial impartiality in its lengthy questioning of a defense witness in a manner that displayed disbelief in his credibility.
- *People v Elliot*: Reversed first-degree murder conviction, holding the trial judge violated due process by piercing the veil of judicial impartiality in its lengthy questioning of two defense witnesses in a manner that displayed disbelief in his credibility.
- *People v Vann*: The Court held a new trial was warranted where trial counsel was ineffective in failing to investigate and present evidence that, within days of the crime, the gun associated with the crime was recovered in the possession of another suspect who matched the description given by the victim.
- *People v Easterwood*: Reversed multiple convictions, holding the trial court erroneously allowed the client to be visibly shackled and the jurors committed misconduct by considering extraneous evidence.
- *People v Fuller*: Resentencing granted because the trial court's sentence was based on acquitted conduct. Mr. Fuller was resentenced in 2021 and the trial court reduced the minimum term by one year and reduced the maximum by five years. In doing so, the trial court made clear that his change of mind about the appropriate sentence was influenced by our mitigation specialist's mitigation memo and the presentation at resentencing.
- *In re Parole of Charles Lee*: Reversed the trial court and reinstated the grant of parole to Mr. Lee.

- *People v Oliver*: Reversed and vacated conviction for obtaining a pistol without a license, holding that the evidence was insufficient to convict because all evidence presented suggested Mr. Oliver had obtained the firearm lawfully.
- *People v Stevens*: Reversed criminal sexual conduct third convictions because trial counsel was ineffective for failing to object to instructions that omitted elements of the offense and failing to request a limiting instruction regarding other bad acts evidence.
- *People v Vary*: Resentencing granted for errors in OV 8 and OV 12.
- *People v Parchman*: Resentencing granted for improper consecutive 25-year sentences.
- *People v Brooks*: Resentencing granted for errors in scoring OV 11. 10-year minimum sentenced reduced to 65 months and client granted parole in 2021.
- *People v Hopkins*: Reversed multiple criminal sexual conduct convictions based on the improper admission of expert witness testimony because it vouched for the complainant's credibility and invaded the province of the jury.
- *People v Bonner*: Reversed multiple criminal sexual conduct convictions, holding that the trial court had improperly closed the courtroom to the public in violation of the client's Sixth Amendment rights to a public trial.
- *People v Neal*: Reversed multiple convictions for assault with intent to murder, holding the prosecutor committed misconduct by cross-examining Mr. Neal about the underlying facts of his prior convictions and in arguing facts not in evidence in closing argument.
- *People v Perkins*: reversed conviction for uttering and publishing, holding that the trial court erred in refusing to give a missing witness instruction.
- *People v Bugajski*: Reversed conviction for prisoner in possession of contraband, holding Mr. Bugajski was deprived of his Sixth Amendment right where he represented himself at trial without a valid knowing and intelligent waiver of counsel.
- *People v Lockmiller*: Reversed 38 month minimum for second-degree criminal sexual conduct based on error in scoring Offense Variable 7 . In 2021, the trial court reduced Mr. Lockmiller's minimum sentence from 38 months to 17 months, making him immediately parole eligible. He paroled in April 2021.
- *People v Kennedy*: On second remand from the Michigan Supreme Court, the Court reversed Mr. Kennedy's conviction for first-degree murder, holding that trial court's error in refusing to provide funds for a DNA expert was not harmless beyond a reasonable doubt.
- *People v Sadler*: Reversed and remanded for resentencing based on error in scoring Offense Variable 3.
- *People v Peterson*: Reversed conviction for disturbing the peace, holding that some of the statements used to convict were constitutionally protected speech.
- *People v Ewing*: After federal habeas proceedings and a trial court hearing ordered by the federal court, the Court of Appeals affirmed the trial court's reversal of client's first-degree murder conviction because the extraneous information that influenced the jury's guilty verdict was not harmless.

- *People v Hall*: Reversed convictions for discharging a firearm at a motor vehicle causing serious impairment and felony-firearm and the sentences, holding that the trial court failed to instruct the jury on an essential element of the offense and trial counsel failed to object to the flawed instruction.
- *People v Yeager*: Remanded for *Ginther* hearing after oral argument.
- *People v Pryor-McCoverly*: Remanded for evidentiary hearing on ineffective assistance of counsel claims.
- *People v Fall*: Resentencing granted based on errors in scoring PRVs 1 and 2.

By the numbers:

- 951 pleadings filed in the Court of Appeals
- SADO attorneys did oral argument for 131 clients.
- 48 clients obtained relief from the Court of Appeals.

SADO in Michigan's Trial Courts

SADO attorneys traversed the state—by car and by Zoom—and fought for our clients in the local trial courts, including:

- *People v Ealy*: Due to a joint investigation between SADO and the Wayne County Conviction Integrity Unit, multiple convictions were vacated based on newly discovered evidence showing eyewitness misidentification.
- *People v Faubert*: Following an evidentiary hearing, the trial court vacated Mr. Faubert's conviction for second degree arson, finding the trial counsel was ineffective in failing to consult with and call an arson expert.
- *People v Hammerlund*: On remand from the Supreme Court, the trial court vacated Ms. Hammerlund's conviction for driving while intoxicated holding that the blood alcohol content evidence should have been suppressed because it was the direct fruit of the police officer's illegal arrest and entry into the Ms. Hammerlund's home in violation of the Fourth Amendment.
- *People v Blackwell-Esters*: After an evidentiary hearing, the conviction was vacated based on trial counsel's ineffectiveness in failing to present police body camera video of an eyewitness whose description of the shooter contradicted that of the complainant.
- *People v Miller*: On remand from the Court of Appeals, Mr. Miller's conviction for being a Sexually Delinquent Person and his sentence of one day to life were vacated.
- *People v Jacob McKay*: On remand from the Court of Appeals, Mr. McKay received a 19-month minimum sentence reduction.
- *People v Jennings*: Errors in the scoring of OV 9 and OV 14 led to resentencing and a 2.5 year reduction in Mr. Jennings' minimum sentence.

- *People v Shokelle McKay*: Following a lengthy evidentiary hearing, the trial court ordered Mr. McKay's right to appeal be reinstated based on ineffective assistance of two prior appellate attorneys. In 2021, the prosecutor confessed to error and agreed to plea withdrawal. Subsequent negotiation by SADO attorneys resulted in a new plea agreement that allowed him to be parole eligible in a matter of months.
- *People v Lamarque*: Resentencing granted for error in OV 4 and a finding that there was not proper notice of the habitual offender third enhancement.
- *People v Nelson*: On remand for an error in the scoring of OV 19, an improper departure, and improper statements by a judge at sentencing about Mr. Nelson, his 9-year minimum sentence was reduced to 57 months.
- *People v Garrett*: Notice of 25-year mandatory minimum not proper and Mr. Garrett was resentenced to a minimum term of 18 years, 9 months.
- *People v McGee*: The trial court removed an improper lifetime electronic monitoring requirement for a criminal sexual conduct second degree conviction.
- *People v Johnson*: Mr. Johnson's minimum sentence was reduced by 2.5 years after remand from the Court of Appeals for an improper departure.
- *People v Rose*: Mr. Rose's 10-year minimum sentence was reduced to 6.5 years because of errors in the scoring of PRVs and OVs.
- *People v Collins*: On remand for resentencing due to trial court's failure to recognize its discretion to impose a lesser maximum sentence, Ms. Collins' minimum term was reduced by five years.
- *People v Taylor*: On remand for resentencing based on the trial court's failure to articulate why the departure sentence was warranted under the facts of the case and proportionate, Ms. Taylor received a reduction of six years in her minimum sentence.
- *People v Slaiwa*: Plea withdrawal granted after a *Ginther* hearing that demonstrated trial counsel was ineffective for failing to secure an interpreter and advise client about immigration consequences.

By the numbers:

- 319 pleadings filed in trial courts across Michigan.
- 159 hearings were held across the state, including motion hearings, evidentiary hearings, and resentencing hearings.
- 66 clients obtained relief from trial courts.

In 2020, SADO attorneys obtained 177.3 years of cumulative sentence reduction for direct appeal clients

While the human cost is immeasurable, there was \$6,574,284 in potential savings to the state from reduced incarceration costs from these sentence reductions (based on average incarceration costs of \$37.080 per year, per person)

Workload Concerns

In September 2020, the Appellate Defender Commission implemented an interim workload adjustment plan, which provided greater caseload credit to staff attorneys and a corresponding reduction in SADO intake. SADO had relied on a decades-old obsolete method of counting caseloads. The interim adjustment would ensure that SADO attorneys received caseload credit for events requiring significant work, but not previously credited due to the changing nature of appellate practice: trial court evidentiary hearings, new sentencing hearings, and substantive case transfers.

The interim adjustment will continue until SADO conducts an updated appellate workload study to determine optimal appellate public defense workloads. This interim adjustment, while critical for SADO attorneys necessarily steered more appeals to the MAACS roster. SADO and MAACS workloads remain a continuing and evolving concern.

SADO attorneys outside of the courtroom

During a global pandemic, SADO attorneys continued to contribute their talents to making improvements to the criminal legal system as a whole. Some things SADO attorneys did in 2020 included:

- Faculty at multiple training sessions for public defenders and the criminal defense bar;
- Adjunct faculty at Wayne State Law School at the University of Michigan Law School clinics;
- Appointed to statewide boards and commissions;
- Supported each other through weekly case rounds, moots, brief editing, and conversations of support through trying times.



SADO Direct Appeals

Saying goodbye to 2020 and toasting to 2021 with a Hot Chocolate Case Rounds

Juvenile Lifer Unit Year In Review

The Juvenile Lifer Unit (JLU) continued to successfully represent clients sent to prison for life without parole (LWOP) for crimes committed as children. These individuals became eligible for resentencing under the United States Supreme Court's decisions in *Miller v Alabama* and *Montgomery v Louisiana*.

The JLU was formed in 2016, and has been funded by year-to-year allocations and in-kind contributions from SADO's regular budget. In 2020, the JLU was staffed by six full-time attorneys and five full-time mitigation specialists. This represents a change from 2019, as positions have shifted back to direct appeals from the JLU as cases have been litigated, negotiated, and ultimately resolved.

In 2016, SADO was appointed to represent 193 "juvenile lifers." That number has not remained fixed, as some clients received other counsel and other juvenile lifers were assigned to SADO.

JLU Progress in 2020

2020 presented numerous challenges to all facets of the JLU's operations, as the pandemic curtailed access to clients, access to witnesses, access to courts, and more. Despite the pandemic, the JLU was able to accomplish outstanding work and reduced the number of clients serving LWOP. As of December 31, 2020:

- 67 clients awaited resentencing.¹
- 5 Miller hearings were held remotely, in-person, or in a combination of remote and in-person litigation.²
- 8 cases were negotiated from LWOP and the clients resentenced to a term of years after presentation of mitigation evidence to prosecutors.
- 3 clients were sentenced to LWOP, following *Miller* hearings held in 2019.
- 1 client was resentenced to a term of years, following a *Miller* hearing held in 2019.
- 1 client was awaiting decision on a *Miller* hearing held in 2020 (later resentenced to a term of years in 2021).
- The JLU continued to litigate juvenile lifer cases on appeal.
- 5 clients were released on parole in 2020.

¹ As of July 30, 2021, this number has been reduced to 59 clients awaiting contested or term of years resentencing. This number includes two clients for whom SADO assumed representation, and two clients whose cases were reversed following re-imposition of LWOP sentences—thus, four additional clients who were not part of SADO's original 193 assignments.

² A *Miller* hearing started in 2019 was also completed in 2020.

Effects of the COVID-19 Pandemic on JLU Functions

Mitigation investigation:

Robust mitigation investigation is at the center of the many favorable negotiations and *Miller* hearing results. From March of 2020 through the end of the year, JLU staff were unable to perform normal field work. In-person witness interviews, in-person record collection, in-person client visits all came to an almost complete halt.³ SADO proactively provided guidance, using state and local reference sources, for safety in performing essential fieldwork, and utilizing that guidance, limited field work occurred.

Mitigation efforts continued through other channels. Written, telephonic, and electronic efforts at record collection were ongoing throughout 2020. Telephone and Zoom interviews, though not best practice, were conducted in order to keep cases moving forward, to aid in hearing preparation and negotiations.

Client contact was essential, particularly given the surge of COVID-19 throughout the MDOC. Many JLU clients contracted COVID-19 and indeed, one, William Garrison, passed away while waiting parole following a successful *Miller* hearing. In such a climate the visits of SADO JLU staff were vital to maintaining client relationships and client well-being.

Litigation:

When courts moved to solely remote functions, SADO offered training on how to effectively represent our clients in the remote setting. JLU attorneys were able to conduct dozens of hearings over the course of 2020, including the *Miller* hearings referenced above, scheduling and status conferences, hearings on contested motions, Court of Appeals argument on JLWOP issues, and more.

However, aggressively pursuing litigation in a remote setting was not always best for many cases, particularly with the quality of video available at many correctional facilities. In contested resentencing hearings, our clients had an absolute right to be present in person. Judges need to be able to see and assess our clients. As attorneys, we need to be able to confidentially counsel our clients and answer questions during such hearings. So throughout the pandemic, in close consultation with our clients, we strove to strike the right balance in each case.

³ Field work has since resumed.

Mitigation Internship Program and Training

Mitigation specialist Chelsea Richardson has established a robust mitigation internship program. The result has been beneficial to both JLU clients and the students participating in the program. Students learn interviewing skills, how to find and collect records, and gain experience drafting bio-social history reports.

Under the direction of Deputy Director Marilena David-Martin, SADO presented a sentencing training in November and December of 2020. Because it was a virtual event, mitigation specialists and attorneys from around the country were able to attend. Reentry Coordinator Allison Gorine, Reentry Specialist Jose Burgos, Mitigation Attorney Katherine Root, Mitigation Specialist Chelsea Richardson, and Managing Attorney Jessica Zimbelman were among the SADO staff offering training sessions, as well as a number of nationally recognized experts.

Staff Changes

The JLU experienced significant staffing changes in 2020. Departing were mitigation specialists Haley McMullen, KP Friess, and Erin Robinson. Mitigation specialists Chelsea Richardson, Nia Bonds, and Jazmine Wells joined the JLU. Attorney Susan Meinberg retired, and attorney Jessica Newton assumed her caseload as “in-kind” from SADO’s Direct Appeal division, as well as cases from attorney Erin Van Campen, who transitioned back to Direct Appeals.

Financial Benefits of the JLU’s successes

As of December 31, 2020:

- *1402 years:* Estimated cumulative number of reduced sentences for the clients no longer serving life sentences (based on an estimated average lifespan of 64 years)
- *\$49,300,792:* Estimated savings to State in reduced incarceration costs
- *13.6 to 1 (1358%):* Return on Investment

Reentry

In 2020, SADO's Project Reentry served approximately 150 clients at various stages of litigation while in prison and after coming home. SADO's 2020 Project Reentry team included: full-time Reentry Coordinator Allison Gorine, MSW, and two grant-funded Reentry Specialists—Jose Burgos and Marcus Williams. The project was managed by Deputy Director Marilena David-Martin. The Project Reentry team assisted clients with building comprehensive reentry plans, assisting with parole preparation, and providing post-incarceration support. Project Reentry also developed a COVID-19 reentry response that included a published resource guide and increased support to returning citizens—delivering supplies, food, and other goods to people in need. Project Reentry hosted 7 reentry workshops for formerly incarcerated individuals on topics such as entrepreneurship, mental wellness, personal growth, and co-op businesses. Project Reentry published 7 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.

Assigned Counsel System Highlights

MAACS is located in Lansing and consists of two attorney-administrators, one litigation support attorney, and a small administrative staff. MAACS manages the independent process for appointing counsel in indigent felony appeals, as well as the roster of approximately 150 qualified private attorneys who handle most cases. In 2020, MAACS processed appointment orders in 2099 felony appeals, 205 of which were assigned to SADO and 1894 of which were assigned to private roster attorneys.

Confronting the Challenges of COVID

Although the number of felony appellate assignments dropped significantly in 2020, the COVID-19 pandemic presented a host of other challenges – as well as some unforeseen opportunities. MAACS staff and roster attorneys rose to the occasion.

Roster Attorney Melvin Houston (bottom right) argues by Zoom in the Michigan Court of Appeals.



When the pandemic hit, MAACS pivoted and adapted quickly to a remote-work environment. This presented unique difficulties given the volume of paper correspondence from incarcerated individuals – including requests for appellate counsel, which must be processed and filed immediately to protect defendants' appellate rights. MAACS developed new processes to ensure timeliness and accountability, while also protecting the health and wellbeing of staff. MAACS also developed paperless workflow processes and turned to videoconferencing technology for staff meetings, roster attorney support, court and county outreach, and other matters.

MAACS also developed new processes for scheduling and hosting video visits between roster attorneys and their incarcerated clients. While previously only available within the SADO offices in Detroit and Lansing, video visit access was expanded using Zoom technology, allowing attorneys to connect from the safety and convenience of their private offices or homes. MAACS staff hosted these meetings using private breakout rooms to provide support and ensure confidentiality. Between May and December of 2020, MAACS hosted 818 confidential attorney-client Zoom visits.

To ensure the protection of indigent defendants' appellate rights during this tumultuous time, MAACS proposed and advocated in support of several significant

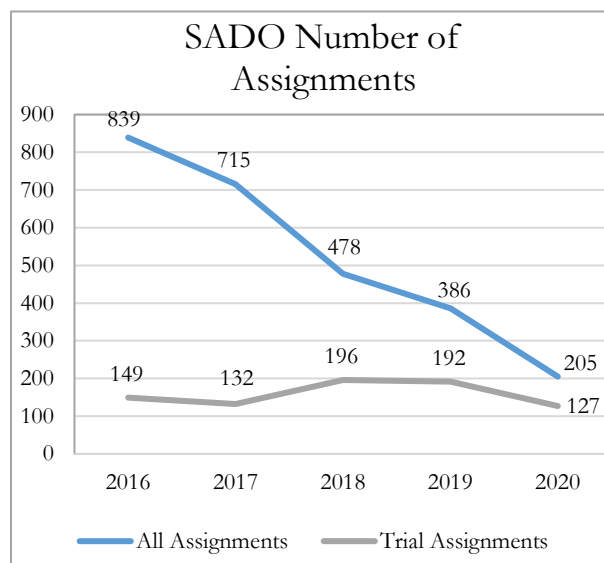
court rule amendments and emergency administrative orders. These included an extension of the request for counsel deadline from 42 days to six months (AO 2020-21), an expansion of the prison mailbox rule to all pleadings filed by incarcerated individuals (MCR 1.112), and the restoration of appellate rights due to errors by prior counsel or the courts (MCR 6.428).

Finally, MAACS utilized its database to help get several clients out of harm's way. In late March 2020, MAACS identified all recent assignments with jail-sentenced clients, verified which clients were still incarcerated, and reached out to their MAACS roster attorneys to provide support for appropriate motions for early release due to the pandemic. MAACS supplied template motions and a range of litigation support, and many of these motions were successful. MAACS also provided support for its attorneys litigating appellate bond motions due to the pandemic.

Balancing the Appellate Workload

In 2018, the Appellate Defender Commission approved a plan to rebalance the overall assigned appellate workload, with SADO accepting fewer overall assignments but a greater share of trial appeals – and, consistent with its mandate, over 25% of cases pending in the Court of Appeals at any given time. 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.

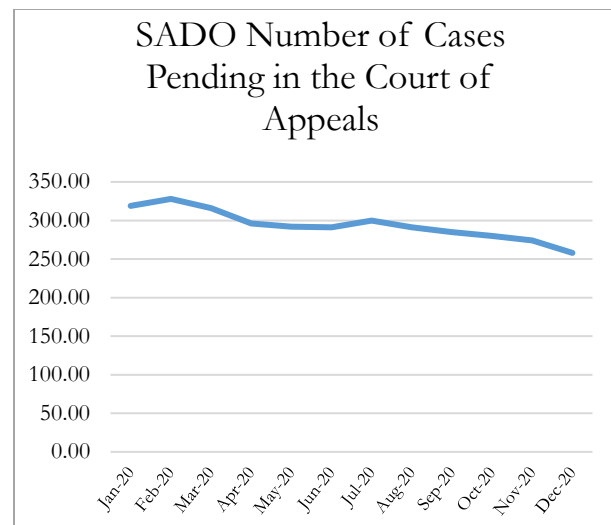
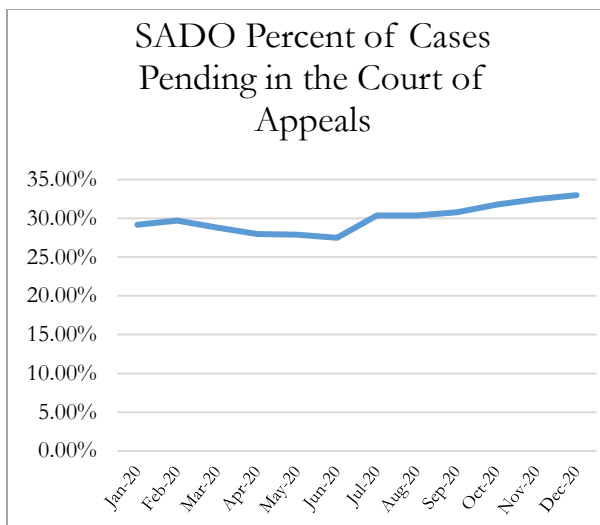
This rebalancing effort continued into 2020, but was impacted by multiple events – First, the COVID-19 pandemic halted many in-person court proceedings including jury trials, resulting in a 44% drop in the overall number of appellate assignments from 2019 (3187 assignments) to 2020 (2099 assignments).⁴ Second, in September 2020, the Appellate Defender Commission implemented an interim workload adjustment plan, which would provide greater caseload credit to staff attorneys and a corresponding reduction in SADO



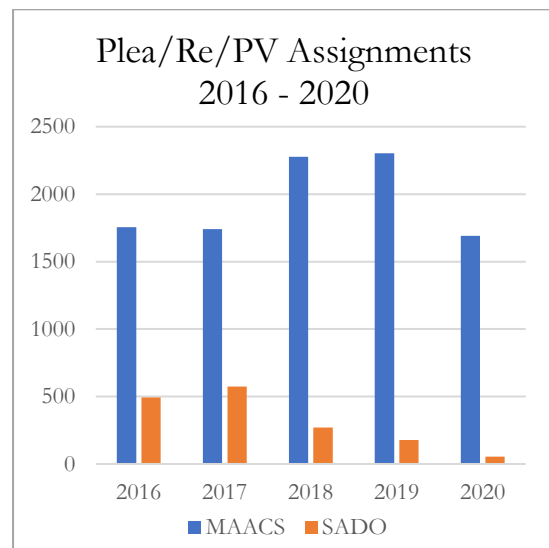
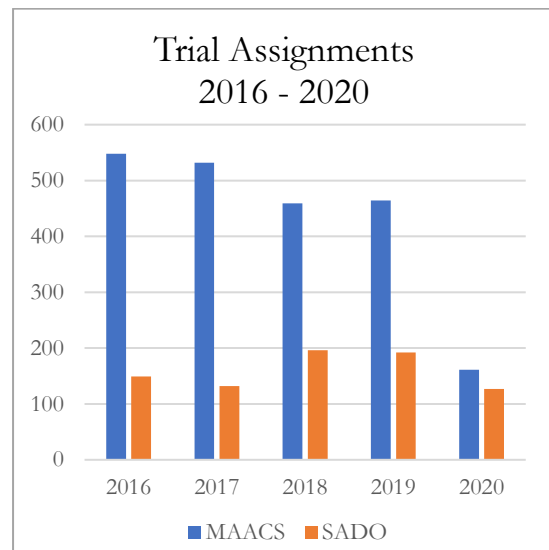
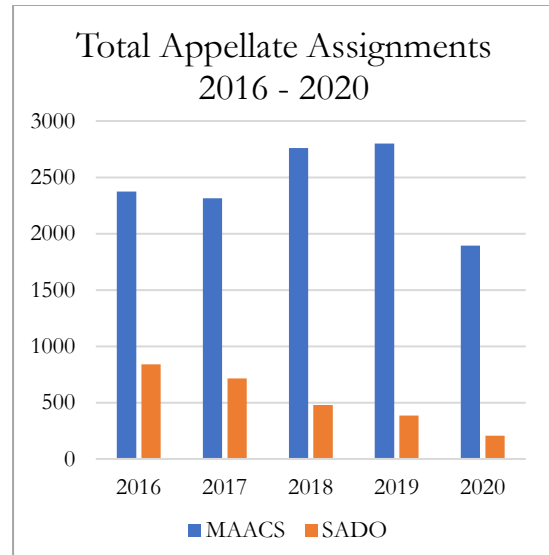
⁴ This Annual Report includes an adjustment to the manner in which assignments are measured. Prior reports have counted all cases assigned in a calendar year, including substitutions-of-counsel in cases previously counted in prior annual reports. This resulted in a small number of cases counted twice in consecutive annual reports. This report removes all duplicate assignments from 2020 and 2019, but not prior years. The 2019 figures here do not mirror those published in the 2019 Annual Report.

intake. Third, the challenges of the COVID crisis coupled with the decrease in total appeals resulted in the decision to temporarily reduce intake for SADO staff for two months. Fourth, multiple SADO attorneys departed during 2020, while a COVID hiring freeze meant no replacements. Finally, different SADO staffers took extended leave during 2020 for events ranging from National Guard COVID-related deployment to recovery from a confirmed case of COVID.

These events combined with the continued in-kind contribution of four SADO appellate attorneys to the Juvenile Lifer Unit has resulted in a decrease in intake of appellate assignments for SADO, even as the overall reduced appellate caseload increased SADO's percentage of pending appeals. This decrease in total volume appears especially pronounced because shifting from pleas to trials per the 2018 policy meant a lower volume of appeals – SADO equates approximately three pleas to one trial for assignment purposes. Appellate workload levels will remain an ongoing challenge for SADO and MAACS.



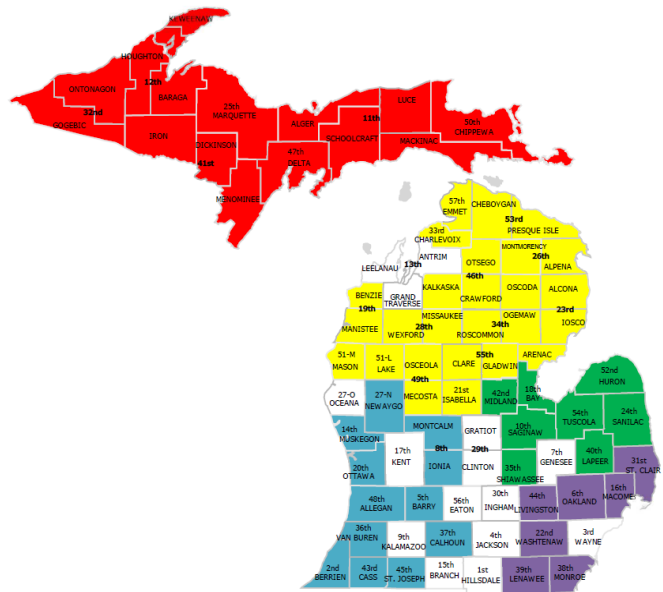
Total Appellate Assignments 2020			
	MAACS	SADO	TOTAL
<i>Jury Trial</i>	147 56.11%	115 43.89%	262
<i>Waiver Trial</i>	14 53.85%	12 46.15%	68
<i>Plea</i>	1420 97.86%	31 2.14%	2125
<i>Resentencing</i>	45 75.00%	15 25.00%	99
<i>PV</i>	227 96.19%	9 3.81%	356
<i>6.500</i>	27 75.00%	9 25.00%	22
<i>Interlocutory</i>	5 35.71%	9 64.29%	5
<i>PPO</i>	0 0.00%	1 100.00%	7
<i>Evid Hrg</i>	3 60.00%	2 40.00%	2
<i>JLWOP</i>	6 85.71%	1 14.29%	24
<i>Parole</i>	0 0.00%	1 100.00%	1
Total	1894 90.23%	205 9.77%	2099



Expansion of Regional Assignment Process

MAACS continues to expand its regional assignment model, which in 2020 grew to include 48 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.

MAACS has now consolidated almost all of Michigan's distinct appellate assignment lists with 5 regional lists featuring a paperless process to pre-screen, select, and appoint counsel.



Launch of Integrated Online Voucher System

MAACS has also upgraded and expanded its popular case assignment and management platform, which first launched in 2017. In 2020, MAACS went live with a new vouchering component, replacing a decades-old carbon copy process.

The new system allows MAACS and trial court staff to review vouchers more seamlessly and carefully, facilitating prompt and accurate payments for counsel, more information and greater confidence for trial courts, and significant client representation data. This data helps MAACS measure the effectiveness and efficiency of client representation, ensure that all assignments are properly resolved within the appropriate deadlines, and establish informed and sensible attorney fee policies.

The web-based voucher system is accessible to trial court staff or independent county personnel, such as public defender agencies or managed assigned counsel administrators.

CDA - Leave Application	07/01/2020	2.0	\$75.00	\$150.00
CDA - 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.				
Travel Events				
Description	Date	Hrs/Mi	Rate	Amount
Client Visit (Map 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
Printing/Photocopying				
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
Expenses				
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

Advocacy and Litigation to Protect Appellate Rights

In 2020, the Michigan Supreme Court adopted a robust package of court rule amendments proposed by MAACS and SADO, many of which respond to problems frequently encountered by MAACS, appointed appellate counsel, and indigent defendants:

MCR 1.112: The prison mailbox rule has been expanded to cover all types of filings by indigent individuals confined in all correctional institutions.

MCR 6.425: Criminal defense counsel are now able to attend presentence interviews with their clients and access accurate presentence reports.

MCR 6.428: A new restoration of appellate rights provision protects against the loss of appeal or appointed appellate counsel due to errors by courts or prior counsel.

MCR 7.205: Many of the rules governing applications for leave to appeal in the Court of Appeals applications have been simplified and clarified, reducing the risk of missed deadlines and other mistakes that can jeopardize appellate rights and increase costs and delay to appellate litigation.

MCR 7.208: The window for filing postjudgment trial court motions has been expanded to coincide with the appellate briefing deadline, allowing the development of a full record for appeal and alleviating the need for most remands.

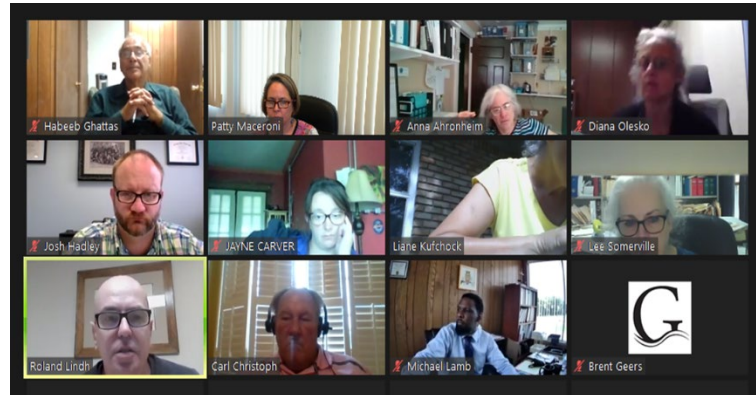
<p style="text-align: center;">Order</p> <p>March 19, 2020</p> <p>ADM File No. 2018-33 ADM File No. 2019-20 ADM File No. 2019-38</p> <p>Proposed Amendments of Rules 6.310, 6.425, 6.428, 6.429, 6.431, 7.204, 7.205, 7.208, 7.211, 7.305, and Proposed Addition of Rule 1.112 of the Michigan Court Rules</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; text-align: center; padding: 5px;"> <p>Order</p> <p>May 20, 2020</p> <p>160753</p> <p>PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,</p> <p>v</p> <p>DEANDRE TAIWAN HAYWOOD, Defendant-Appellant.</p> </td> <td style="width: 40%; text-align: right; padding: 5px;"> <p style="text-align: center;">Michigan Supreme Court Lansing, Michigan</p> <p>Bridget M. McCormack, Chief Justice</p> <p>David F. Viviano, Chief Justice Pro Tem</p> <p>Stephen J. Markman Brian K. Zahra Richard H. Bernstein Elizabeth T. Clement Megan K. Cavanagh, Justices</p> <p>SC: 160753 COA: 345243 Wayne CC: 18-003452-FH</p> </td> </tr> </table>	<p>Order</p> <p>May 20, 2020</p> <p>160753</p> <p>PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,</p> <p>v</p> <p>DEANDRE TAIWAN HAYWOOD, Defendant-Appellant.</p>	<p style="text-align: center;">Michigan Supreme Court Lansing, Michigan</p> <p>Bridget M. McCormack, Chief Justice</p> <p>David F. Viviano, Chief Justice Pro Tem</p> <p>Stephen J. Markman Brian K. Zahra Richard H. Bernstein Elizabeth T. Clement Megan K. Cavanagh, Justices</p> <p>SC: 160753 COA: 345243 Wayne CC: 18-003452-FH</p>
<p>Order</p> <p>May 20, 2020</p> <p>160753</p> <p>PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,</p> <p>v</p> <p>DEANDRE TAIWAN HAYWOOD, Defendant-Appellant.</p>	<p style="text-align: center;">Michigan Supreme Court Lansing, Michigan</p> <p>Bridget M. McCormack, Chief Justice</p> <p>David F. Viviano, Chief Justice Pro Tem</p> <p>Stephen J. Markman Brian K. Zahra Richard H. Bernstein Elizabeth T. Clement Megan K. Cavanagh, Justices</p> <p>SC: 160753 COA: 345243 Wayne CC: 18-003452-FH</p>		

MAACS also engaged in proactive litigation to protect indigent defendants' right to counsel. In *People v Haywood*, COA No. 345243, and *People v Nino*, COA No. 344364, MAACS intervened on behalf of the indigent defendants to challenge the Court of Appeals opinions issued against unrepresented defendants in prosecutor appeals. In both cases, the Michigan Supreme Court agreed with MAACS and remanded to the Court of Appeals, where the prior opinions were vacated, appellate counsel was appointed, and the appellate process began anew, with the defendants' appellate rights adequately protected.

In the wake of these cases, the Court of Appeals has changed its policy and now ensures the presence of defense counsel for prosecutor appeals, while MAACS has proposed a court rule amendment that would help protect against similar problems in the future.

Expanded Litigation Support

The COVID-19 pandemic did not stand in the way of MAACS support for roster attorneys and their clients. In fact, as the public health crisis gave rise to new challenges and needs, MAACS responded by redoubling its efforts.



This included an expansion of MAACS Virtual Case Rounds – an online gathering of roster attorneys from all around the state for a short training session followed by a discussion of their appointed appeals and litigation strategies. Held monthly before the pandemic, Case Rounds are now hosted every two weeks by the MAACS Litigation Support Counsel. A total of 85 roster attorneys participated in Case Rounds in 2020, typically in groups of 10-15 participants per session.

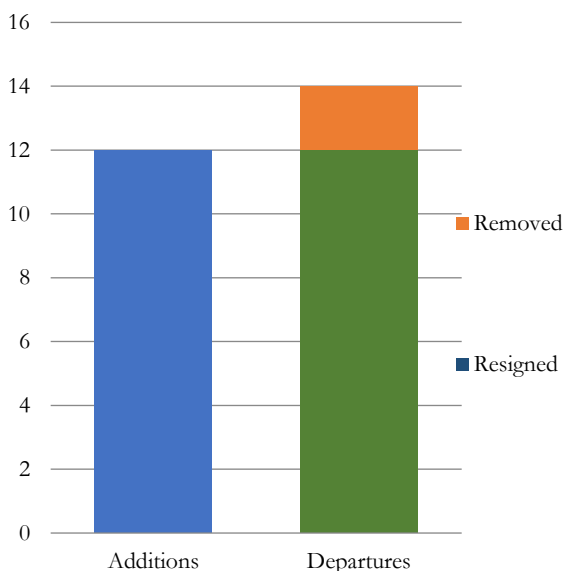
MAACS also provided intense formal mentorship to its new roster attorneys – 42 of whom joined in late 2019, the largest class in several years. The Litigation Support Counsel formally mentored each of these new roster attorneys, providing consultation on their first two assignments to ensure a solid foundation for appointed appellate practice.

Oversight, Evaluation, and Retention

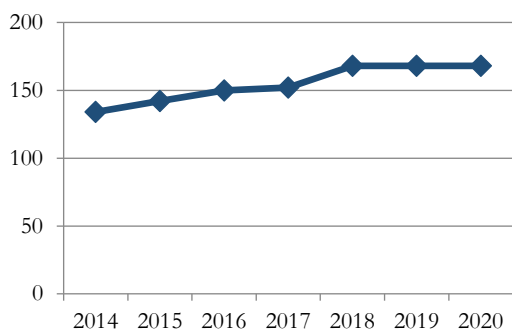
MAACS began 2020 with 172 roster attorneys. Through active recruitment, a competitive application process, and by following its Recruitment and Diversity Plan, MAACS added 8 attorneys to the regular roster and two attorneys to the special assignment list. Throughout 2020, MAACS lost 12 attorneys through ordinary attrition and removed two attorneys for performance reasons. At the end of 2020, the roster consisted of 168 attorneys.

In 2020, MAACS continued its ongoing reviews of roster attorney work product, evaluating the work of attorneys who joined the roster in 2017. 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.

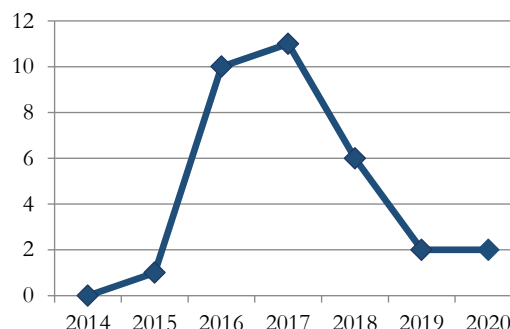
**Additions and Departures
2020**



MAACS Roster Size



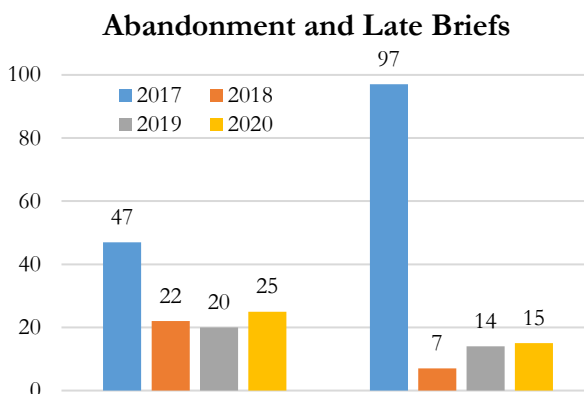
**Removals and Resignations Under
Scrutiny**



In 2019, MAACS rewrote its Comments to the Minimum Standards for Indigent Criminal Appellate Defenses Services. See AO 2004-6. 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.

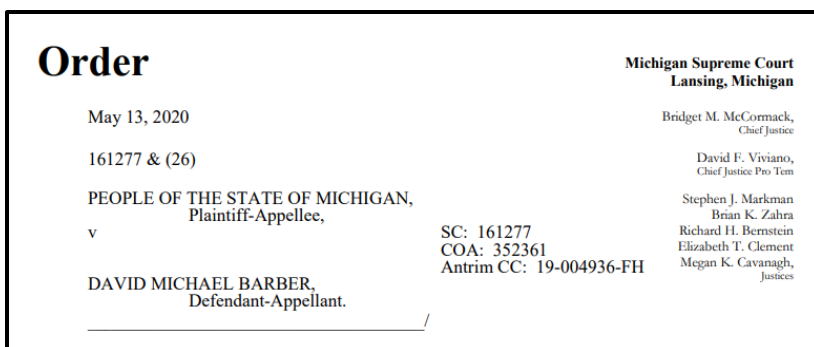


Minimum Standards Violations, 2020	Violations
Standard 1: Failure to collect the entire record	3
Standard 2: Absence of proper client consultation	1
Standard 3: Failure to raise claims of arguable merit	4
Standard 5: Abandonment	25
Standard 6: Failure to preserve oral argument by filing timely	15

A Sampling of MAACS Successes

MAACS roster attorneys were at the forefront of litigation to protect incarcerated clients from the COVID-19 pandemic during 2020.

In *People v Barber*, 505 Mich 1058; 942 NW2d 348 (2020), for example, MAACS roster attorney Gary Strauss argued in the Michigan Supreme Court that the lower courts had erred in their consideration of his emergency motion for bond pending appeal during the pandemic. The Supreme Court agreed, explaining



that “trial courts should be mindful that taking reasonable steps to protect the public is more important than strict adherence to normal operating procedures,” and “[c]ontrary to the trial court’s statements, there are many indications that incarcerated individuals are at a greater risk of COVID-19 infection.”

Relying on *Barber* and other authorities, MAACS roster attorneys secured bond pending appeal in at least six additional cases and early release from jail sentences in at least eight cases in 2020.

Apart from COVID-specific litigation, MAACS roster attorneys were successful in at least 23 cases before the Michigan Supreme Court in 2020, including several significant opinions and orders granting new trials or other meaningful relief. These include:

- *People v Reichard*, 505 Mich 81; 949 NW2d 64 (2020): Roster attorney Michael Faraone successfully argued that duress can be asserted as an affirmative defense to felony murder if it is a defense to the underlying felony.
- *People v Sammons*, 505 Mich 31; 949 NW2d 36 (2020): Roster attorney Gaetan Gerville-Reache secured a new trial in a murder case, successfully arguing that the show-up evidence should have been suppressed and the failure to suppress it was not harmless.
- *People v Warren*, 505 Mich 196; 949 NW2d 125 (2020): Roster attorney Michael Naughton secured an opportunity for his client to withdraw his guilty plea because he had not been informed of the potential for consecutive sentences.
- *People v Haynie*, 505 Mich 1096; 943 NW2d 383 (2020): Roster attorney Cecilia Baunsoe secured a new trial on an assault with intent to murder charge, successfully arguing that the trial court erred by refusing to instruct the jury on the lesser charge of assault and battery.

MAACS roster attorneys also achieved numerous successes in the Michigan Court of Appeals, including new trials for at least 14 clients and resentencing hearings for at least 35 clients.

Lastly, MAACS roster attorneys pursued successful challenges to several trial court orders denying attorney fees and expert witness fees in cases involving indigent defendants, resulting in at least three remands from the Michigan Court of Appeals.

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYRONE ROGERS,

Defendant-Appellant.

FOR PUBLICATION

December 17, 2020

9:20 a.m.

No. 336000

Muskegon Circuit Court

LC No. 15-000559-FC

Before: SAWYER, P.J., and M. J. KELLY and SWARTZLE, JJ.

SWARTZLE, J.

A criminal defendant bears a heavy burden when seeking a new trial based on newly discovered evidence. This is especially the case when the newly discovered evidence consists of recanting statements that are largely hearsay, and even more so when the recanting statements are themselves recanted. But, a heavy burden does not mean an impossible one.

Training Trial and Appellate Assigned Counsel

Deputy Director Marilena David administers SADO's Criminal Defense Resource Center. In 2020, CDRC conducted virtual trainings throughout the state and administered over 60 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. January 2020 - DNA Training (Lansing and Webinar)
2. April 2020 - Motions Defense Attorneys Can File in Light of COVID-19
3. May 2020 - How to Zoom Court
4. May 2020 - COVID-19 Issue Spotting and Record Preservation Training for Defenders
5. May 2020 - All About E-Briefing
6. May 2020 - How to Zoom Court
7. August 2020 - Remote Jury Trials: The Good, the Bad, and the Ugly
8. October 2020 - Sentencing Mitigation
9. October 2020 - Michigan Appellate Assigned Counsel System New Attorney Orientation
10. October 2020 - MAACS Town Hall News, Updates and Q&A
11. October 2020 - Preparing an Effective Motion for Bond Pending Appeal
12. October 2020 - Litigating Race on Appeal
13. October 2020 - Gathering the Record on Appeal
14. October 2020 - Understanding Implicit Bias
15. October 2020 - Litigating 6,500 Motions – Keys to Correcting Wrongful Convictions
16. October 2020 – Exploring Antiracism
17. October 2020 - Preparing for & Seeking Fed. Habeas Relief the Do's, Don'ts, & Tips
18. October 2020 - Forum with the MSC Commissioners
19. October 2020 - Tips from the Trenches in Wayne County
20. October 2020 - Sentencing Case Law Update
21. October 2020 - You've Been Granted a Resentencing. Now What?
22. November 2020 - SADO's Web of Knowledge (in partnership with CDAM)
23. November 2020 – Cultural Mindfulness Storytelling: Capturing the Lived Experiences of our Clients
24. November 2020 - Managing Client Suicidality
25. November 2020 - Mitigating Mental Health

26. November 2020 - Client-Centered Teams: How a Case can Inspire Leadership, Creativity, and Courage
27. November 2020 - A Practical Guide to Understanding Defense Initiated Victim Outreach
28. November 2020 - Testing, Testing, 1-2-3: Basic Steps for Psychological Testing and Working with Experts
29. November 2020 - How Neuroscience and Neurodevelopment can Inform Mitigation
30. December 2020 - Best Interviewing Practices and Developing Relationships with Mitigation Witnesses
31. December 2020 - Writing an Effective Mitigation Memo and Interview Memo
32. December, 2020 - Your Turn: Open Forum for Questions on Mitigation Processes
33. December 2020 - Addressing Trauma, Loss, and Resilience in Criminal Defense
34. December 2020 - Presentence Report Interviews

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 2020, 11 issues of the Criminal Defense Newsletter were published and included over 230 summaries of notable state and federal appellate cases.

SADO and MAACS Award Attorneys for Excellence in Advocacy

Rachel Helton Presented with Barbara R. Levine Award

The Appellate Defender Commission presented MAACS roster attorney Rachel Helton with the 2020 Barbara R. Levine Award for Excellence in Appellate Advocacy. Named for the architect and first Administrator of MAACS, the award is presented annually to a roster attorney who demonstrates extraordinary commitment on behalf of appellate assigned clients and the criminal justice system.

Rachel has enjoyed much success since joining the roster in 2015, but one recent case stands out. Immediately upon her appointment to represent a young man convicted of heroin distribution in Lenawee County, Rachel was struck by his sentence – a minimum of fifteen years, far beyond the guidelines range or the typical sentence for a first-time drug offender. When Rachel read the sentencing transcript, the reasons became clear. The judge repeatedly referred to her client coming from Detroit, and said that “a message needs to be sent and that if you sell drugs in Lenawee County, we are going to take an approach that is harsh.” At oral argument, the Court of Appeals validated Rachel’s concerns, with one judge calling the sentence “disturbing” and noting that the sentencing judge’s statement “certainly came across to me as a racial comment.” In February 2020, the court reversed the sentence, citing the “very disturbing statement by the trial court.”

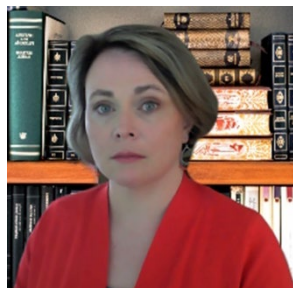
In the days that followed, the COVID-19 pandemic hit Michigan, raising urgent concerns about the safety of incarcerated people. Rachel wasted no time filing a motion for bond, which the Court of Appeals granted, ordering her client’s immediate release due to the public health crisis. This was one of the first cases ordering a defendant’s release on bond pending appeal during the pandemic, establishing a precedent that was followed in several other cases – possibly preventing serious illness or even death to other incarcerated people.

Jacqueline Ouvry and Lindsay Ponce Presented with Norris J. Thomas Award

The Appellate Defense Commission presented the 2020 Norris J. Thomas Award for Excellence in Appellate Advocacy to Lindsay Ponce and Jacqueline Ouvry. The award is named for SADO’s long-serving and much-respected Norris J. Thomas, Jr. and is given annually to a SADO attorney whose appellate advocacy achieves outstanding results for clients or the criminal justice system.

Jackie has more than earned this award through the compassionate and effective advocacy she has demonstrated throughout the past year and throughout her time at SADO.

Jackie came to SADO as a paralegal in 2003. She graduated from Michigan State University in 2000. She attended law school while working fulltime at SADO and graduated from Wayne State University Law School in 2007. From 2007 until 2012, Jackie worked under multiple grants at SADO and, in 2012, became an Assistant Defender.



Jackie is primarily assigned to the Juvenile Lifer Unit. She's had numerous clients successfully resentenced to term of years sentences and several have come home to their loved ones, after decades in prison. Jackie also handles a number of direct appeal cases and had five appellate wins in 2020.

Her dedication to improvement of the criminal legal system extends beyond her work at SADO. To name but a few of her activities and accomplishments, Jackie is a past Chair of the State Bar's Prisons and Corrections Section; she is an Adjunct Professor at Wayne State University Law School's SADO clinic; she leads SADO's Quality of Prisoner Life Committee; and she's a co-author of SADO's upcoming Sentencing Book. During the pandemic, Jackie was instrumental in identifying medically vulnerable prisoners and drafting and sharing appellate bond motions with the legal community. She was recently appointed by Governor Whitmer to the Protect Michigan Commission, which works to ensure that every Michigan resident has up-to-date COVID-19 vaccine information.

Lindsay joined SADO in October 2016 as part of the Juvenile Lifer Unit. Lindsay came to SADO from the Missouri State Public Defender trial office in Moberly, MO. After some time representing our juvenile lifer clients, Lindsay moved to the Direct Appeals team.

Lindsay had a remarkable year in 2020, bringing a relief and a voice to her clients. The Court of Appeals remanded three of Lindsay's cases to the trial court for an



evidentiary hearing and three for resentencing hearings. Two of Lindsay's juvenile lifer clients paroled and are home with their families after her successful litigation. The Michigan Supreme Court granted oral argument in *People v Allen*, on whether *People v Idziak* applies to individuals without parole detainees. Astonishingly, in 2020 alone, the Court of Appeals has remanded for new trials in *five* of Lindsay's cases; as noted by one of Lindsay's colleagues: "She's had several new trial grants including a published decision a couple weeks ago. It seems like

every month in the pandemic she's had a significant win. I think she is extremely deserving of the award and would be a great choice."

Other 2020 News

Relocation to New Center

In November 2020, SADO completed a move of the Detroit offices from the Penobscot Building to the New Center. Facilities in the New Center include a training center and a cafeteria.

Recognition of UAW as Bargaining Representative

In August 2020, SADO received a request for recognition of the UAW as bargaining representative for SADO employees. The Appellate Defender Commission voted to voluntarily recognize the employee union upon a showing of a majority of staff support. Following a neutral card count, SADO recognized this majority. Collective bargaining commenced in the summer of 2021.

Tribute to Commissioner Judge William Caprathe

Resolution of Tribute
Appellate Defender Commission
September 16, 2020

Whereas,
Judge William Caprathe

As the representative of the Michigan Judge's Association, brought to the Appellate Defender Commission experience, a sense of fairness, and an important judicial perspective for seven years of service;

As a former Assistant Defender in Bay County, he exhibited a dedicated commitment to the right to counsel, equality, and justice;

Provided time, energy, and creativity to the Appellate Defender Commission and indigent clients, even as he continued to act as visiting judge, arbitrator, and mediator;

Paved the way for most of the State to adopt a superior delivery system for appellate indigent defense by securing Bay County participation in the MAACS pilot project for uniform fees and regional counsel;

Showed compassion, decency, and caring for SADO clients and made them a priority as a Commissioner;

Provided unflagging integrity and leadership for the development of the appellate indigent defense system and the quality of its work.

The Appellate Defender Commission pays tribute to Judge William Caprathe, gives thanks for his service, and extends to his family its deepest sympathies.

Adopted this September 16, 2020

*Thomas W. Cranmer,
Chair*

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.”