

STATE APPELLATE DEFENDER OFFICE
1972 ANNUAL STATUS REPORT OF CASES

STATE APPELLATE DEFENDER OFFICE

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INTRODUCTION

This report presents the structure and accomplishments of the State Appellate Defender Office. It should be remembered that this office was created in mid 1970 and officially began accepting assignments in September of that year. The purpose of this office has been to provide, in criminal post conviction matters, competent legal representation consistent with constitutional requirements of equal justice and due process.

The office depends on the Justices of the Supreme Court of Michigan, Court of Appeals of Michigan, the Circuit Courts in the State of Michigan and of Detroit Recorder's Court for all of its appointments to represent indigents on appeal.

Once the office is appointed as counsel for a particular client, the court documents are processed and one of the staff attorneys is assigned to handle that case until completion. In general the attorney's work consists of examining the lower court documents, researching issues, making motions, and oral arguments, and writing briefs. The details of the work actually done by this office is presented in the body of this report.

This office has employed Junior and Senior law students as research assistants in an effort to utilize the attorney's time more efficiently and also to provide a continuing source of well trained criminal appellate attorneys.

The University of Michigan has commenced a program with funds provided by the State Crime Commission providing instruction in appellate practice. Approximately twenty students per semester are involved doing actual research on pending cases. Many of the pending

cases are from this office. The Professor¹ works extremely closely with the attorney in charge of the case. The reciprocal benefits are a meaningful learning experience for the student as well as a valuable resource for this office.

¹ The Professor currently in charge of this program is Michael C. Moran, formerly an attorney with the State Appellate Defender Office.

I. ORGANIZATION AND STAFF

The State Appellate Defender Office is supervised by a seven person commission, the Appellate Public Defender Commission. The Commission is appointed by the Governor on the recommendation of various bodies. The trial courts, the Court of Appeals, and the Supreme Court each have one recommendation; the State Bar, two recommendations and the Governor, two recommendations. The present commission is composed of (1) The Honorable Donald S. Leonard of the Recorder's Court of Detroit; (2) Ronald L. Dzierbicki, Clerk of the Michigan Court of Appeals; (3) John Foley, a Kalamazoo attorney; (4) John Emery, a Detroit attorney; (5) Seymour Posner, a Detroit attorney; (6) William Walsh, a Port Huron attorney and (7) Hondon Hargrove a member of the Parole Board of the State of Michigan.

The current State Appellate Defender is James R. Neuhard. Mr. Neuhard succeeds Arthur J. Tarnow, who resigned in order to seek election as a Recorder's Court Judge. During part of 1972, Mr. Neuhard served as Deputy Defender.

As of December 31, 1972, the office employed seven attorneys. Biographical sketches of the staff follow this section:

JAMES R. NEUHARD -- STATE APPELLATE DEFENDER

Mr. Neuhard graduated from the University of Notre Dame (undergraduate) and the University of Michigan Law School. He was an honor student throughout undergraduate school. In both undergraduate and law school he was involved in commissions dealing with black admissions, civil rights, urban problems and student rights. Once graduated from law school, he worked two years for the Supreme Court of Michigan as a research attorney and administrative assistant.

DAVID A. GOLDSTEIN -- DEPUTY DEFENDER

Mr. Goldstein had consistently outstanding grades in Criminal Law, Constitutional Law, and Criminal Procedure and excellent recommendations from three University of Michigan professors in those areas. Mr. Goldstein also graduated cum laude from the University of Pennsylvania and was active as an undergraduate and law student in such activities as Project Mississippi, Philadelphia Tutorial, Legal Aid, Special Admissions Committee and Editor of Res Gestae. He worked part-time for this office while studying for the Bar, to which he was subsequently admitted in June of 1971.

RICHARD S. McMILLIN -- ASSISTANT DEFENDER I

Mr. McMillin received his B. S. degree from M.I.T. and his M. S. degree from the University of Chicago Law School in 1970. During his law school tenure he worked in the legal aid program associated

with the law school, and, upon graduation was awarded the Edwin F. Mandel Award for his contribution to the legal aid program.

Mr. McMillin began working in September, 1970, for the Detroit Chapter of the National Lawyers Guild, was admitted to the Michigan Bar in December, 1970, and worked later as staff attorney for the Labor Defense Coalition before joining the State Appellate Defender Office in July, 1971.

JUDITH K. MUNGER -- ASSISTANT DEFENDER I

Mrs. Munger graduated from Radcliffe College (B. A. 1964) and University of Michigan Law School (J. D. 1970) where she was a member of the Law Review. In 1970-1971, she was an instructor at Wayne State University Law School and in 1971 was in private practice in Detroit.

NORRIS J. THOMAS, JR. -- ASSISTANT DEFENDER I

Mr. Thomas received his B. A. degree in political science from Tougaloo College and his J. D. degree from the University of Michigan Law School. While an undergraduate, Mr. Thomas was elected to Who's Who in American Colleges and Universities. In law school, Mr. Thomas was a case club finalist, the senior staff manager of the University of Michigan Legal Aid Society, the vice president of the Black Law Students Alliance, and the recipient of the award for the senior student who made the greatest contribution to activities designed to advance social justice. Before coming to work at the State Appellate Defender Office, Mr. Thomas was Deputy Director of the Washtenaw

County Legal Aid Society in Ann Arbor.

STUART M. ISRAEL -- ASSISTANT DEFENDER I

Mr. Israel was graduated from Michigan State University in Divisional Social Science (1968) and the University of Michigan Law School (cum laude, 1971). While in law school Mr. Israel was the Law Students Civil Rights Research Council representative and was awarded two LSCRRC summer internships. He also spent a summer as a researcher for the Appellate Defender Office. Currently, he is a member of the Young Lawyers Section Prison Reform and Rehabilitation Committee. He has been with the office full time since March, 1972.

JOHN B. PHELPS -- ASSISTANT DEFENDER I

Mr. Phelps was graduated from Albion College with a B. A. in 1964. From 1965 to 1969, he served in the U. S. Army as a commissioned officer in the Military Police Corps. Upon discharge from the Army, Mr. Phelps entered the University of Michigan Law School and received a J. D. in December of 1971. During law school, he worked as a researcher for the State Appellate Defender Office and began working as an attorney in March of 1972.

JOSEPH B. SZEREMET -- ASSISTANT DEFENDER I

Mr. Szeremet was graduated from John Carroll University, University Heights, Ohio, in 1961 with a B. S. in Philosophy. He then served in the U. S. Army as a commissioned officer (1962-1965). He earned his law degree from the University of Detroit School of Law in 1972,

graduating magna cum laude. He was a member of the Law Journal and received membership in Alpha Sigma Nu, a Jesuit Honor society.

Recently added to the staff of the State Appellate Defender Office as Assistant Defender I's are Dennis H. Benson, Roger L. Wotila and Allan C. Miller. Also added to the staff is Frank M. Zebot, admitted to the Illinois and New York Bar Associations and currently applying for admission to the Michigan Bar.

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II. STATUS OF STATE APPELLATE DEFENDER CASES AS OF
DECEMBER 31, 1972

Since its inception, the State Appellate Defender Office has received 849 assignments. The following table shows the status of those cases unresolved as of December 31, 1972:

<u>PRESENT STATUS OF CASES</u>	
Cases assigned to the office -----	69
Transcript received -----	23
Claim filed but transcript not received -----	69
Claim filed, transcript received -----	68
Application for Leave to appeal to the Court of Appeals filed --	11
Motion for new trial/new sentencing filed -----	39
Motion for new trial/new sentencing denied -----	11
State Appellate Defender Office's Brief on Appeal filed -----	32
Prosecutor's Brief filed on appeal -----	10
Oral argument requested in the Court of Appeals -----	96
Oral argument had in the Court of Appeals -----	24
Court of Appeals' decision rendered; advisability of seeking Leave to the Supreme Court being considered -----	39
Leave to the Supreme Court applied for -----	30
Leave to the Supreme Court granted; our brief filed -----	4
Prosecutor's brief filed in the Supreme Court -----	10
Oral argument had in the Supreme Court -----	4
Prosecutor applying for rehearing -----	1
Case remanded by Supreme Court; further action necessary -----	1

Each case has been listed in only one category. The category indicates the last procedure which has been done in a particular case.

For example, when a case is listed in category nine, a brief has been filed -- that means that the case has been processed to that point. Specifically, a claim of appeal has been filed, the transcript has been received, and, in certain cases, a motion for remand has been filed. When another of that listed on the chart occurs, the case is removed from the category it was previously listed under and placed under the category of the last event.

III. PROCEDURE IN SEEKING POST-CONVICTION RELIEF

After the transcript is received, the Attorney begins to analyze the issues involved. Research is begun and the client consulted. Often the client is seeking only some form of extra judicial relief. In proper cases, the client is advised to withdraw his appeal if post conviction action seem futile or is unwarranted.

If post conviction relief is agreed to be appropriate, either a motion for new trial with supporting memorandum of law or a brief to the Court of Appeals is submitted. Often, several other motions, such as for bond or for remand must be made during process.

In the great majority of cases where the motion for new trial has been denied, relief is sought in the Court of Appeals. If necessary and proper, after an unfavorable decision in the Court of Appeals, Supreme Court review will be sought.

IV. CASE DISPOSITION AS OF DECEMBER 31, 1972

The following table shows the disposition of all cases which have been closed since the formation of the State Appellate Defender Office:

Assigned in error, improper assignment, assignment revoked or assignment returned because of conflict of interest -----	7
Client retained own counsel -----	3
Assigned to advise client only -----	1
Client missing, no action possible -----	2
Motion for new trial or motion for new sentencing granted by the trial court -----	44
Motion for new trial denied by trial court; no further action deemed advisable -----	2
Motion to dismiss charges granted by trial court -----	2
Client released on habeas corpus -----	1
Application for Leave to appeal to the Court of Appeals denied -----	1
Confession of error by prosecutor received after Claim of Appeal filed -----	1
Appeal dismissed as moot -----	2
Appeal withdrawn -----	60
Won at Court of Appeals (complete or partial relief)-----	72
Lost at Court of Appeals, no further action taken -----	13
Prosecutor's Leave to the Supreme Court denied -----	2
State Appellate Defender Office Leave to the Supreme Court denied -----	39
Client died during Supreme Court appeal -----	1
Won at Supreme Court (by Motion, Order or full Opinion)-----	20
Lost at Supreme Court -----	1

Although the above columns are generally self-explanatory, it is felt that more information should be given as to certain categories. The large number of withdrawn appeals is attributable to several factors: The obvious reason for the appeal being withdrawn is that no substantial grounds for presenting an appeal could be found. Because of the delay in receiving transcripts, it has often been necessary to file a Claim of Appeal before the transcript is received in order to protect the client's right of appeal. Later, after the transcript was received and thoroughly reviewed, it became apparent that no issues were present and the Claim of Appeal was withdrawn. In several cases, the client was paroled during the process of appeal and the client, having regained his freedom, chose not to pursue his appeal. In certain cases, the client was seeking non-judicial relief. As the table below shows, the number of withdrawn appeals has declined by 33% in 1972. This is explainable by the fact that cases without appealable issues are closed as soon as possible and thus the earlier cases in this category have been closed.

It is the State Appellate Defender Office's position that a "win-loss" record is not a truly reliable indication of this office's competency. The Appellate Defender Office accepts all cases assigned to it and has never refused to accept a case except where there is a conflict of interest. The Appellate Defender thus does not choose its cases.

Nevertheless, the win-loss record of this office is impressive. Of the 199 cases in which decisions were rendered (thus excluding the cases improperly assigned, cases where the appeal was withdrawn and cases dismissed as moot), the State Appellate Defender Office

Client died during Supreme Court appeal -----

1

Won at Supreme Court -----

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V. FEES

The State Appellate Defender Office has received as of December 31, 1972, a total of \$80,216.50. This represents fees from 158 cases. This averages to slightly over \$507.00 per case. Of the \$80,216.50, \$72,452.59 was received in 1972 for 139 cases.

The State Appellate Defender Office has been requesting payment at the rate of \$15.00 per hour, a figure well below the \$40.00 once suggested as a minimum bar fee. Nevertheless, this Office has found the counties reluctant to pay the requested amounts. Thus in those cases paid for in 1972, the State Appellate Defender Office billed the counties for \$111,421.23. However, as pointed out, only \$72,452.59 was received in 1972. Thus, the State Appellate Defender Office, which has completed over 250 appellate criminal cases was being paid at the rate of \$9.75 per hour.