

State of Michigan

STATE APPELLATE DEFENDER

ANNUAL REPORT

1974 - 1975

STATE APPELLATE DEFENDER  
COMMISSION

WILLIAM R. WALSH, CHAIRMAN  
PORT HURON

HON. DONALD S. LEONARD  
DETROIT

JOHN F. FOLEY  
VICKSBURG

JOHN C. EMERY, JR.  
GROSSE POINTE FARMS

HONDON HARGROVE  
DETROIT

HON. GEORGE N. BASHARA JR.  
DETROIT

SEYMOUR POSNER  
DETROIT

STATE APPELLATE DEFENDER OFFICE

ANNUAL REPORT

1974 - 1975

ORGANIZATION AND STAFF

The State Appellate Defender Office is supervised by a seven member commission, the Appellate Public Defender Commission. The commission is appointed by the Governor on the recommendation of various bodies. The trial court, 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:

Chairperson

William R. Walsh, Jr., Esq., a Port Huron attorney

Commission Members

The Honorable Donald S. Leonard, Recorder's Court Judge  
The Honorable George N. Bashara, Jr., Court of Appeals Judge  
John Foley, Esq., a Kalamazoo attorney  
John Emery, Esq., a Detroit attorney  
Seymour Posner, Esq., a Detroit attorney  
Hondon Hargrove, a Michigan Parole Board member

-----  
James R. Neuhard, State Appellate Defender  
Larry R. Farmer, Deputy State Appellate Defender

Additional staff shortly prior to June 30, 1975 consisted of:

|    |                      |
|----|----------------------|
| 20 | Staff attorneys      |
| 3  | Research Attorneys   |
| 13 | Legal Secretaries    |
| 10 | Administrative Staff |
| 55 | Student Researchers  |

STATUS OF OPEN CASES AS OF JUNE 30, 1975

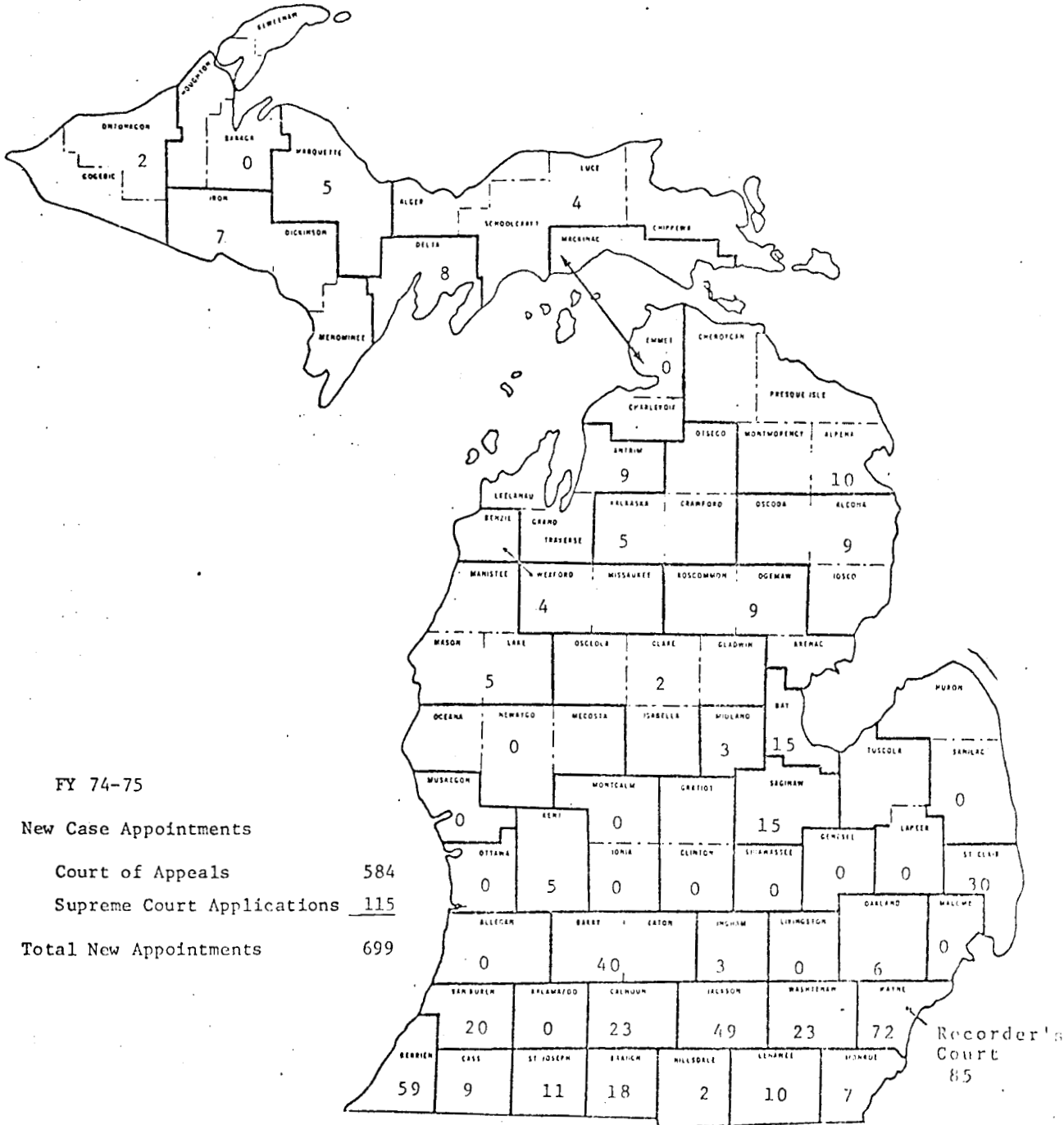
|  |     |
|--|-----|
| Cases Assigned to the Office .....                                 | 78  |
| Request to Withdraw Appeal by Client .....                         | 2   |
| Transcript Received .....  | 44  |
| Claim Filed - Transcript Not Received .....                        | 61  |
| Claim Filed - Transcript Received .....                            | 216 |
| Application for Leave to Appeal to the Court of Appeals Filed..... | 7   |
| Motion for New Trial/New Sentencing Filed - Further Action Pending | 29  |
| Preliminary Action Taken - Further Action Taken .....              | 54  |
| State Appellate Defender Office Brief On Appeal Filed .....        | 89  |
| Prosecutor's Brief On Appeal Filed .....                           | 101 |
| Oral Argument Had in the Court of Appeals .....                    | 60  |
| Motion for Remand Granted - Further Action Pending .....           | 14  |
| Court of Appeals' Decision Rendered - Further Action Pending ..... | 4   |
| Assignments for Leave to Supreme Court .....                       | 104 |
| Application to Supreme Court for Leave Pending (S.A.D.O.) .....    | 22  |
| Prosecutor's Application for Leave to Supreme Court Pending .....  | 7   |
| Application for Leave to Supreme Court Pending From Assignment ... | 42  |
| Leave To Supreme Court Granted .....                               | 6   |
| Leave To Supreme Court Granted; S.A.D.O. Brief Filed .....         | 5   |
| Prosecutor's and S.A.D.O. Brief Filed in the Supreme Court .....   | 21  |
| Case Remanded by Supreme Court - Further Action Necessary .....    | 7   |
| Federal District Court Habeas Corpus Pending .....                 | 1   |

97

Each case has been listed in only one category. The category indicates the last procedure completed 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 matter 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.

STATE APPELLATE DEFENDER OFFICE  
 1974 - 1975 Fiscal Year  
Appointments by Judicial Circuits

Below is a visual summary of new case appointments for FY 74-75 broken down by judicial circuits. Figures indicated by circuits represent only appointments for initial processing through the Court of Appeals. This category alone totals 584 as noted below. The other category of new appointments is that of Supreme Court Applications. This category totaled 115. No breakdown by circuits affected was available for FY 74-75 for Supreme Court Applications. However, of the 115 Supreme Court Application appointments, many were from circuits and counties where the State Appellate Defender Office was otherwise not appointed.



Previous years' reports of the State Appellate Defender Office have been on a calendar year basis. The Office now operates totally on a fiscal year basis. As the transition occurred during calendar year 1974, work completed by the Office from January through June of 1974 is reported separately below.

CASES CLOSED IN 1974, JANUARY - JUNE ONLY

|  |     |
|--|-----|
| Assigned in Error, Improper Assignment, etc. ....                  | 0   |
| Withdrew as Counsel .....  | 4   |
| Client Retained Own Counsel .....                                  | 1   |
| Assigned to Advise Client Only .....                               | 0   |
| Client Missing, No Action Possible .....                           | 0   |
| Case Dismissed, Client Died .....                                  | 0   |
| Final Disposition Reached in Trial Court .....                     | 7   |
| Client Released on Habeas Corpus .....                             | 0   |
| Application for Leave to Appeal to Court of Appeals Denied .....   | 2   |
| Confession of Error by Prosecutor .....                            | 0   |
| Appeal Dismissed as Moot .....                                     | 0   |
| Appeal Withdrawn .....   | 16  |
| Final Disposition Reached in Court of Appeals .....                | 127 |
| S.A.D.O. Removed as Counsel - S. Ct. Client Found Not Indigent ... | 0   |
| Assignment to Supreme Court - Appointment Vacated .....            | 16  |
| Prosecutor's Leave to Supreme Court Denied .....                   | 4   |
| Prosecutor's Leave to Supreme Court Granted .....                  | 0   |
| State Appellate Defender Office Leave to Supreme Court Denied .... | 39  |
| S.A.D.O. Leave to S. Ct. Granted; Client Retained Own Counsel .... | 0   |
| Client Died During Supreme Court Appeal .....                      | 0   |
| Final Disposition Reached in Supreme Court .....                   | 17  |
| Writ of Habeas Corpus Dismissed .....                              | 1   |
| Writ of Certiorari by Prosecutor Denied U. S. Supreme Court .....  | 0   |
| U. S. Supreme Court Argument and Decision .....                    | 0   |

With similar categorization as applicable, following is a summary of cases closed during full FY 74-75:

CLOSED CASES AS OF JUNE 30, 1975 AND DISPOSITIONS: Closed July 1974 to June 30, 1975 only

|  |     |
|--|-----|
| Assigned in Error, Improper Assignment, etc. ....                  | 3   |
| Withdrew As Counsel .....  | 11  |
| Client Retained Own Counsel .....                                  | 2   |
| Assigned to Advise Client Only .....                               | 0   |
| Client Missing, No Action Possible .....                           | 0   |
| Case Dismissed, Client Died .....                                  | 2   |
| Final Disposition Reached in Trial Court .....                     | 14  |
| Client Released on Habeas Corpus .....                             | 0   |
| Application for Leave to Appeal to Court of Appeals Denied .....   | 6   |
| Confession of Error by Prosecutor .....                            | 0   |
| Appeal Dismissed as Moot .....                                     | 1   |
| Appeal Withdrawn .....   | 43  |
| Final Disposition Reached in Court of Appeals .....                | 169 |
| S.A.D.O. Removed as Counsel - S. Ct. Client Found Not Indigent ... | 2   |
| Assignment to Supreme Court - Appointment Vacated .....            | 0   |
| Prosecutor's Leave to Supreme Court Denied .....                   | 5   |
| Prosecutor's Leave to Supreme Court Granted .....                  | 0   |
| State Appellate Defender Office Leave to Supreme Court Denied .... | 85  |
| S.A.D.O. Leave to S. Ct. Granted; Client Retained Own Counsel .... | 3   |
| Client Died During Supreme Court Appeal .....                      | 0   |
| Final Disposition Reached in Supreme Court .....                   | 19  |
| Writ of Habeas Corpus Dismissed .....                              | 0   |
| Writ of Certiorari by Prosecutor Denied U. S. Supreme Court .....  | 0   |
| United States Supreme Court Argument and Decision .....            | 0   |

597

It should be noted that the preceding two summaries are cases where action has ceased and no further action is contemplated. Although the above summaries are generally self-explanatory, more information should be given as to certain categories. The 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.

Every year since the inception of the State Appellate Defender Office a dramatically increasing number of requests for assistance has been received on cases not assigned to this Office. Last year the requests for assistance totaled over 2,000, ranging from instructions on the filing of a Notice of Hearing from a lawyer to a request that we appear as an amicus curiae in the Supreme Court.

The vast majority of the requests sought advice on both procedural and substantive questions of law in the criminal appellate area. These requests came not only from non-client inmates, but also from other attorneys representing indigents on appeal and judges requesting clarification of both substantive and procedural law. Legislators requesting information and assistance for their constituents or opinions on pending legislation as well as professional and citizen groups interested in the area of criminal law and corrections also contacted the Office.

The straightforward procedural questions were answered by support staff; those requiring more substantive information were directed to the Director and Deputy Defender for answering. Furthermore, the staff attorneys received many requests for assistance from individuals with whom they came in contact during their work. Many of the requests could be answered by a simple phone call or letter. However, an increasing number of outside attorneys were supplied briefs from the brief bank or forms on appellate procedures.

The following summary is that of all cases closed since the formation of the State Appellate Defender Office. This summary includes those cases closed from January through June of 1974, as well as those closed for FY 74-75.

DISPOSITION OF ALL CASES CLOSED SINCE THE FORMATION OF THE STATE APPELLATE DEFENDER OFFICE

|  |     |
|--|-----|
| Assigned in Error, Improper Assignment, etc. ....                  | 30  |
| Withdrew as Counsel .....  | 21  |
| Client Retained Own Counsel .....                                  | 14  |
| Assigned to Advise Client Only .....                               | 1   |
| Client Missing, No Action Possible .....                           | 2   |
| Case Dismissed - Client Died .....                                 | 3   |
| Final Disposition Reached in Trial Court .....                     | 109 |
| Client Released on Habeas Corpus .....                             | 1   |
| Application for Leave to Appeal to Court of Appeals Denied.....    | 24  |
| Confession of Error by Prosecutor .....                            | 1   |
| Appeal Dismissed as Moot .....                                     | 5   |
| Appeal Withdrawn .....   | 202 |
| Final Disposition Reached in Court of Appeals .....                | 708 |
| S.A.D.O. Removed as Counsel - S. Ct. Client Found Not Indigent ... | 3   |
| Assignment to Supreme Court - Appointment Vacated .....            | 16  |
| Prosecutor's Leave to Supreme Court Denied .....                   | 21  |
| Prosecutor's Leave to Supreme Court Granted .....                  | 1   |
| S.A.D.O. Leave to Supreme Court Denied .....                       | 282 |
| S.A.D.O. Leave to S. Ct. Granted; Client Retained Own Counsel .... | 4   |
| Client Died During Supreme Court Appeal .....                      | 1   |
| Final Disposition Reached in Supreme Court .....                   | 112 |
| Writ of Habeas Corpus Dismissed .....                              | 3   |
| Writ of Certiorari by Prosecutor Denied - U. S. Supreme Court .... | 1   |
| United States Supreme Court Argument and Decision .....            | 1   |

## SUMMARY

The statistics presented in this report do not fully describe the work of the State Appellate Defender Office.

The above statistics as noted pertain only to the final action where the State Appellate Defender Office was involved in the case. On the average, each case reported had two other court actions, other than the final one here noted. Actions in the trial court have included: motions for bond pending appeal, evidentiary hearings, motions to vacate sentence and motions for disclosure and production of presentence report.

Actions in the Court of Appeals have included: brief on appeal, motions for peremptory reversal, motions for bond pending appeal, interlocutory appeals, motions for disclosure and production of presentence reports and applications for leave to appeal.

Actions in the Michigan Supreme Court have included: applications for leave to appeal, interlocutory appeals, motions for bond pending appeal and motions for disclosure and production of presentence reports. The issue regarding production and access to the presentence report has been resolved during the past calendar year through Court Rule and Supreme Court decisions.

Another factor intrinsic to an assessment of State Appellate Defender work is travel time for staff attorneys, who must visit clients and make court appearances at numerous locations throughout the State. Regular monthly appearances must also be made before the Supreme Court and at the three locations of the Courts of Appeals.

Input from senior staff attorneys, the Chief Appellate Defender, and Deputy Defender, has been sought by various committees concerned with courts, prisons, and law reform. These committees, formed by the Legislature, Supreme Court and the State Bar, appropriately seek to use the expertise and wide experience of the State Appellate Defender Office legal staff.