

INTRODUCTION

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

Once the Defender 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.

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 Law School and this Office are operating a program providing instruction in appellate practice. Approximately 20 students per semester are involved doing actual research on pending cases. All pending cases are from the Defender. The reciprocal benefits are a meaningful learning experience for the student as well as a valuable resource for this Office.

## 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 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:

### Chair Person

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

The current State Appellate Defender is James R. Neuhard, who succeeded Arthur J. Tarnow, who resigned in the summer of 1972.

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 students' rights. Once graduated from law school, he worked two years for the Supreme Court of Michigan as a research attorney and administrative assistant. Mr. Neuhard is currently Chair Person of the Appellate Defenders Council of the National Legal Aid and Defender Association. In his capacity as an appellate defender he has argued before every level court in the State

and has represented this State before the United States Supreme Court.

STATUS OF STATE APPELLATE DEFENDER CASES AS OF DECEMBER 31, 1974

Since its inception, the State Appellate Defender Office has received 1,945 assignments. The following table shows the status of those cases unresolved as of December 31, 1974.

PRESENT STATUS OF CASES AS OF DECEMBER 31, 1974 (ACTIVE)

Cases assigned to the Office-----	61
Request to withdraw appeal by client-----	8
Transcript received-----	60
Claim filed - transcript not received-----	72
Claim filed - transcript received-----	199
Application for Leave to Appeal to the Court of Appeals filed-----	9
Motion for new trial/new sentencing filed - further action-----	31
S.A.D.O. Brief on Appeal filed-----	56
Prosecutor's Brief on Appeal filed-----	123
Oral Argument had in the Court of Appeals-----	34
Motion for Remand - Evidentiary Hearing-----	2
Court of Appeals decision rendered - further action pending (Won)-	6
Court of Appeals decision rendered - further action pending (Lost)-	12
S.A.D.O. Application Leave to Supreme Court applied for-----	17
Prosecutor's Application Leave to Supreme Court applied for-----	2
Assignment to prepare Leave to Supreme Court-----	122
Application to Supreme Court for Leave from assignment filed-----	18
Leave to Supreme Court granted-----	11
Leave to Supreme Court granted; our brief filed-----	7
Prosecutor's and our brief filed in the Supreme Court-----	15
Case remanded by Supreme Court - further action necessary-----	4
Federal District Court Habeas Corpus-----	1

870

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 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.

It should be noted and will be discussed later that there is a new category of "Assignment to prepare Leave to the Michigan Supreme Court." These "new" assignments resulted in a dramatic increase in the work of the Office.

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

CLOSED CASES AS OF DECEMBER 31, 1974, AND DISPOSITIONS - CLOSED IN 1974

Assigned in error, improper assignment, etc.-----	16
Withdrew as counsel-----	4
Client retained own counsel-----	2
Final disposition reached in trial court-----	16
Case dismissed - client died-----	1
Application for Leave to Appeal to Court of Appeals denied-----	8
Appeal withdrawn-----	39
Court of Appeals decision rendered-----	218
Supreme Court - client found not indigent-----	1
Prosecutor's Leave to Supreme Court denied-----	6
S.A.D.O. Leave to Supreme Court denied-----	81
Supreme Court decision - Won-----	19
Supreme Court decision - Lost-----	15
Writ of Habeas Corpus dismissed-----	2

It should be noted that the above are cases where action has ceased and no further action is contemplated. Although the above columns are generally self-explanatory, it is felt that 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.

The following table shows the results obtained for cases closed in 1974:

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

Assigned in error, improper assignment, etc.-----	27
Withdrew as counsel-----	6
Client retained own counsel-----	11
Assigned to advise client only-----	1
Client missing, no action possible-----	2
Case dismissed - client died-----	1
Final disposition reached by trial court-----	84
Motion to dismiss charges granted by trial court-----	4
Client released on habeas corpus-----	1
Application for Leave to Appeal to the Court of Appeals denied- Confession of error by prosecutor received after claim of appeal filed-----	16 1
Appeal dismissed as moot-----	4
Appeal withdrawn-----	143
Court of Appeals decision rendered-----	412
Supreme Court - client not found indigent-----	1
Prosecutor's Leave to Supreme Court denied-----	12
Prosecutor's Leave to Supreme Court granted-----	1
S.A.D.O. Leave to Supreme Court denied-----	158
S.A.D.O. Leave to Supreme Court granted; client retained own counsel-----	1 1
Client died during Supreme Court appeal-----	1
Supreme Court decision rendered-----	76
Writ of Habeas Corpus dismissed-----	2
Writ of Certiorari by prosecutor denied U.S. Supreme Court-----	1
United States Supreme Court argument and decision-----	1

FINANCING

During the 1974 calendar year, the State Appellate Defender Office was financed through vouchers paid by local counties and by monies supplied by the Legislature through the Office of the Supreme Court. This arrangement was a continuation of policy established in fiscal year 1973-1974. Legislation has been and will be pending in the Michigan Legislature regarding both the intermediate and long-range operation of the State Appellate Defender Office.

## 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 report 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 report. 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. The unique mandate to this Office by the Supreme Court has created an Office specialized in the interactions of these areas. 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.

It should be noted that on December 5, 1973, the Sixth Circuit Court of Appeals decided the case of Mitchell v Perry Johnson, et al, No. 72-1481. The impact of this opinion was not felt by this Office in the calendar year of 1973, but had its effect in 1974.

In conclusion, it can be noted that the work load of the State Appellate Defender Office increased dramatically during calendar year 1974. Clearly, judging not only from the 1974 increase in work load from that of previous years, but also from the impact of Mitchell expanding the right to counsel further in the appellate process, the State Appellate Defender Office responsibilities will continue to grow.

It can be assumed that the impact of recent legislation and case law will cause increased demands for assigned counsel in Michigan. The new Mental Health Code and companion case law requires appointment of counsel for involuntary commitments. These cases statewide number in the thousands. Argersinger v Hamlin, a United States Supreme Court case requires appointment of counsel in misdemeanors where the Defendant faces the possibility of a jail term. It can be anticipated that the need for assigned counsel will therefore continue to expand at an ever increasing rate. This in turn will strain every county in this State where lawyers able to do assigned representations remain under-ratioed to the population of the county.



# State of Michigan

STATE APPELLATE DEFENDER

Third Floor, North Tower  
1200 6th Avenue  
Detroit, Michigan 48226  
Phone: 256-2814

## Appellate Defender Assignments by County 1974

Alcona	0	Iron	2	Presque Isle	1
Alger	1	Isabella	0	Roscommon	0
Allegan	0	Jackson	90	Saginaw	11
Alpena	1	Kalamazoo	0	St. Clair	15
Antrim	1	Kalkaska	0	St. Joseph	4
Arenac	2	Kent	9	Sanilac	0
Baraga	0	Keweenaw	0	Schoolcraft	0
				Shiawassee	0
Barry	11	Lake	0		
Bay	14	Lapeer	0	Tuscola	0
Benzie	2	Leelanau	0	Van Buren	12
Berrien	45	Lenawee	20	Washtenaw	43
Branch	8	Livingston	0	Wayne	51
Calhoun	16	Luce	0	Wexford	1
Cass	7	Mackinac	0		
				Recorder's Court	79
Charlevoix	0	Macomb	0		
Cheboygan	0	Manistee	0		
Chippewa	6	Marquette	9		
Clare	0	Mason	0		
Clinton	0	Mecosta	0		
Crawford	2	Menominee	1		
Delta	2	Midland	1		
Dickinson	1	Missaukee	0		
Eaton	9	Monroe	20		
Emmet	0	Montcalm	0		
Genesee	0	Montmorency	0		
Gladwin	0	Muskegon	0		
Gogebic	0	Mewaygo	0		
Gnd Traverse	3	Oakland	6		
Gratiot	0	Oceana	0		
Hillsdale	2	Ogemaw	2		
Houghton	1	Ontonagon	0		
Huron	0	Osceola	2		
Ingham	0	Oscoda	0		
Ionia	0	Otsego	0		
Iosco	3	Ottawa	1		

137

163

= 517