

STATE APPELLATE DEFENDER OFFICE

1978-79

ANNUAL REPORT

History

The State Appellate Defender Office was created in mid-1970 and officially began accepting assignments in September of that year. The office was created to provide competent legal representation in criminal post-conviction matters, consistent with constitutional guarantees of equal justice and due process of law. The office had its genesis in administrative order of the Michigan Supreme Court and functioned under the auspices of that court within the office of the State Court Administrator.

From 1970 to 1978 the State Appellate Defender Office was based in and operated only out of Detroit. However, in January of 1979 the Lansing division of the State Appellate Defender Office began operations. This office was established to improve the delivery of services to northern and western counties, cut travel expenses and facilitate access by more individuals and agencies to the State Appellate Defender Office's expertise in the area of criminal law and procedure.

The defender office is appointed by the Michigan Supreme Court, the Michigan Court of Appeals, the Michigan circuit courts and the Recorder's Court for the City of Detroit to represent indigent criminal defendants on regular appeals and in a variety of other post-conviction proceedings.

Once the Defender is appointed as counsel for a particular client, all the documents necessary to process the case to its completion are obtained and Deputy Defenders and Assistant Defenders are assigned to actually handle the case. In general, the work consists of examining the lower court documents, interviewing clients, investigating, researching issues, making motions and oral arguments and writing briefs.

On January 6, 1979, P.A. 1978, NO. 620 (MCLA 780.711 et. seq.) was enacted by the Michigan Legislature and became effective immediately. This act is known as the "appellate defender act" and it creates an Appellate Defender Commission within the office of the State Court Administrator which has the responsibility for supervising the State Appellate Defender. The Commission consists of seven members appointed by the Governor for terms of four years. Two members are recommended by the Supreme Court, one by the Court of Appeals, one by the Michigan Judge Association, two by the State Bar of Michigan, and one, who cannot be an attorney, is selected from the general public by the Governor.

In addition to supervising the work of the State Appellate Defender, P.A. 620 charges the Commission with the supervision of a statewide roster of locally appointed private counsel who will represent indigent criminal defendants on appeal in cases where the Defender is not assigned. The act directs the Commission to develop minimum standards to which all indigent criminal appellate services must conform, to submit them to the Michigan Supreme Court for its approval and adopt same if approved. It is also to provide a continuing legal education training program for the Defender's staff and the roster attorneys.

On May 25, 1979, pursuant to the provisions of Public Act 620, the

Governor appointed the State Appellate Defender commission. Its members are: Mr. William R. Walsh, Jr., Chairman, Port Huron, Michigan, Mr. John C. Emery, Jr., Grosse Pointe, Michigan Ms. Vesta Svenson, Detroit, Michigan Judge Harold E. VanDomelen, Hart, Michigan Mr. James McMillan, Grosse Pointe Shores, Michigan Mr. John E. Scott, Detroit, Michigan Mr. John Stenger, Lansing, Michigan

During this year the Defender Commission appointed an Advisory Committee on Assigned Appellate Counsel, composed of a cross section of interested individuals, to prepare proposed minimum standards for indigent criminal defense appellate services and to propose an administrative design for the statewide roster of private assigned counsel. That committee is to meet, conduct public hearings, and submit its findings and proposals to the Defender Commission. The Commission will then hold public hearings on the committee's proposals, make necessary modifications and submit its proposed standards and administrative design to the Michigan Supreme Court for approval. The Court is expected to act on the matter in 1980.

The State Appellate Defender Office appears as counsel at all levels of the Michigan and federal judiciaries. Office attorneys make regular client visits and lower court appearances in virtually all areas of this state. They also appear before the Michigan Supreme Court and the Court of Appeals at locations where it sits.

In addition to the work produced in each case, the office is also involved in collateral matters associated with all facets of the criminal justice system. The Legal Resources Project, a division of the office, is now in its third year of operation. Financed by federal grant from the Office of Criminal Justice Programs, the project was conceived in response to demands from all sectors of the community for specialized assistance in the area of criminal law and procedure. It brought together the existing resources of the defender office and formed them into the only statewide informational resource for criminal defense attorneys. It has become a central clearinghouse of information and developed a cohesive and effective network for information dissemination.

Information which may be accessed through the project includes: all briefs and motions on file in the State Appellate Defender Office; a monthly criminal defense newsletter published by the project on significant developments in Michigan and federal law; an expert witness file containing names and resumes of experts who have been used or recommended by attorneys across the state; and research memoranda on important, complex, or new areas of the law. During this past year, the project responded to a total of 757 requests, sent out more than 19,530 pages of materials, and provided indigent criminal defendants and those who represent them with some 350 briefs and memoranda. The project's newsletter had over 1,000 subscribers, and it served 59 counties and 145 cities.

The office completed preparing the criminal appellate practice and procedure book which is to be used by attorneys, secretaries, law student paralegals, and all others interested in criminal practice in Michigan. This manual comprehensively covers the processing of cases after conviction and in early 1980 will be distributed free throughout the state to law libraries and attorneys who regularly handle assigned indigent appeals.

The office has continued to conduct training seminars for attorneys representing indigent defendants in criminal proceedings. Three three-day intensive training seminars were held this year and similar training seminars will be conducted in the upcoming year.

Further, the office is exploring means of increasing its efficiency in effectiveness by introducing technology which will permit it to develop systems of information gathering and dissemination which will permit almost instant access to a comprehensive repository of information by attorneys throughout the state who represent indigent criminal defendants.

SUMMARY OF CASE ACTIVITY FROM 7/1/78 to 6/30/79

Although new data gathering systems were started by the office during this reporting year, much crucial information is still unavailable, so this report cannot fully describe all the work of the office. The average case has several actions prior to final disposition. Examples of the various types of actions taken on a particular case before final disposition may be found below in the case activity reports.

Below is a summary of actions taken on cases during the 1978-1979 reporting period. It should be noted that several cases which are closed during the year are reopened for further proceedings at a later time. The majority of the post-conviction cases closed at the trial court and Court of Appeals levels are reopened for further appeal. Also, several of those closed in the Michigan Supreme Court are pursued at a later time in federal court or via delayed motion for new trial in the trial court.

At the close of this reporting period, the office had a total of 909 open, active cases, 621 new assignments had been received, and 546 cases closed.

ACTIVITY ON CASES CLOSED 7/1/78 to 6/30/79

I. TRIAL COURT

1.	Assigned in error, improper assignment	2
2.	Withdraw as counsel	5
3.	Case dismissed	1
4.	Appeal withdrawn	12
5.	Substitute counsel appointed	6
6.	Regular disposition	<u>27</u>
	TOTAL	53

II. COURT OF APPEALS

1.	Client retained own counsel	1
2.	Client deceased	1
3.	SADO motion to withdraw as counsel granted	1
4.	Substitute counsel appointed	1
5.	Application for appointment of appellate counsel denied	1
6.	Appeal dismissed by stipulation	82
7.	Appeal dismissed on motion	4
8.	Appeal dismissed as moot	1
9.	Case remanded	14
10.	Regular disposition	<u>270</u>
	TOTAL	376

III. SUPREME COURT

1.	Appeal dismissed	1
2.	Prosecutor's leave denied	15
3.	SADO leave denied	70
4.	Other disposition	<u>29</u>
	TOTAL	115

IV. UNITED STATES SUPREME COURT

1.	Writ of certiorari by prosecutor denied	1
2.	Final disposition	<u>1</u>
	TOTAL	2

TOTAL FINAL DISPOSITIONS546

LAST ACTION ON CASES OPEN 7/1/78 to 6/30/79

I. TRIAL COURT

Motion New Trial with supporting Memorandum of Law	12
Motion Vacate Plea/Conviction/Sentence	6
Motion Withdraw as Appellate Counsel	1
Hearing on Remand pending	5
Motion pending (Prosecutor appeal)	1
Motion denied, further action pending	6
Appointed for determination of indigency	1
Applicaton for Delayed Appeal pending in Court of Appeals	3
Motion for Rehearing	2
Leave case - no transcript	7
Leave case - transcript	27
Leave case - no action this year	13
Cases assigned to SADO, no claim filed - transcript received	15
Cases assigned to SADO, no claim filed - transcript not received	<u>77</u>
TOTAL	176

II. COURT OF APPEALS

Claim filed - no transcript	65
Claim filed - transcript received	244
No action this year	3
Previous attorney - Motion to Withhold Submission	1
Motion Remand (including supplementals)	13
Motion Peremptory Reversal/Resentencing	11
Motion Require Psychiatric Evaluation	1
Motion Vacate Sentence with supporting Memorandum of Law	1
Complaint for Superintending Control	1
Court of Appeals Order holding in abeyance	4
Peremptory Reversal denied, further action pending	1
Motion to hold in abeyance denied, further action pending	1
Remand denied, further action pending	1
Bond denied, further action pending	1
Stipulation Dismissing Appeal	6
Motion Guidance	1
Brief	181
Supplemental Brief	6
Supplemental Brief (Prosecutor)	3
Oral Argument had	81
Remanded, decision pending (Michigan Supreme Court)	4
Remanded, decision pending (United States Supreme Court)	1
Prosecutor emergency Application	1
Remanded, jurisdiction retained	6
Rehearing/Reconsideration	<u>3</u>
TOTAL	641

III. SUPREME COURT

No action this year	10
Application for Leave to Appeal with Brief	40
Application for Leave to Appeal (Prosecutor appeal)	10
Reconsideration/Rehearing	5
Reconsideration/Rehearing (Prosecutor appeal)	2
Application for Leave - Order holding in abeyance	7
Leave granted - Brief filed	2
Cases assigned to SADO - transcript received	3
Leave granted SADO	1
Oral Argument had	4
Decision pending on Remand (United States Supreme Court)	1
Prosecutor Answer to Show Cause (Prosecutor appeal)	<u>1</u>
TOTAL	86

IV. UNITED STATES DISTRICT COURT

No action this year	2
Brief	3
Writ of Habeas Corpus	<u>1</u>
TOTAL	6

TOTAL OPEN CASES 909

FILINGS BY SADO 7/1/78 to 6/30/79

Court	Closed Cases	Open Cases	Reporting Year Total
I. Trial Court	43	54	97
II. Court of Appeals	342	966	1,308
III. Supreme Court	<u>98</u>	<u>90</u>	<u>188</u>
	483	1,110	1,593

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DISPOSITION OF ALL CASES CLOSED
SINCE THE 1970 FORMATION OF THE STATE APPELLATE DEFENDER OFFICE

I. TRIAL COURT

1. Assigned in error, improper assignment, etc.	
2. Assigned to advised client only	
3. Withdrew as counsel	
4. Client retained own counsel	
5. Client missing, no possible action	
6. Case dismissed	
7. Appeal withdrawn	
8. Client released on habeas corpus	
9. SADO withdrew as counsel by request/appointment returned	
10. Substitute counsel appointed	
11. Final disposition reached	1

II. COURT OF APPEALS

1. Withdrew as counsel	
2. Client retained own counsel	
3. Client missing, deceased	
4. SADO motion to withdraw as counsel granted	10
5. Prosecutor's motion to dismiss appeal granted	0
6. Application for Leave to Appeal denied	0
7. Confession of error by prosecutor	
8. Appeal dismissed as moot	
9. Appeal dismissed by motion or stipulation	41
10. Appeal dismissed for lack of progress	
11. Final disposition reached	1,65

III. SUPREME COURT

1. SADO removed as counsel, client found not indigent	
2. Withdrew as counsel	
3. Client withdrew appeal	
4. Case dismissed - client missing	
5. Appointment vacated	28
6. Appeal dismissed	8
7. Prosecutor's leave denied	48
8. Prosecutor's leave granted	30
9. SADO leave denied	611
10. Disposition by Supreme Court on plea cases for Court of Appeals	10
11. SADO leave granted - client retained own counsel	5
12. Final disposition reached	293

IV. FEDERAL COURT

1. Writ of habeas corpus	4
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V. UNITED STATES SUPREME COURT

1. Writ of certiorari by prosecutor granted	1
2. Writ of certiorari by prosecutor denied	3
3. Final disposition reached	2