

1988 ANNUAL REPORT
STATE APPELLATE DEFENDER OFFICE

APPELLATE DEFENDER COMMISSION MEMBERS

John C. Emery, Jr., Attorney
Chairman
Appointed by the State Bar
Term Expires May 24, 1991

John E. S. Scott, Attorney
Secretary
Appointed by the State Bar
Term Expires May 24, 1991

Ronald L. Dzierbicki, Chief Clerk
Michigan Court of Appeals
Member
Appointed by the Court of Appeals
Term Expires May 24, 1990

Hon. Richard E. Robinson, Retired Judge
Member
Appointed by the Circuit Judges Association
Term Expires May 24, 1989

Janet E. Findlater, Associate Law Professor
Member
Appointed by the Supreme Court
Term Expires May 24, 1991

Frank Eaman, Attorney
Member
Appointed by the Supreme Court
Term Expires May 24, 1991

Rolando H. Shorey, Executive Director
Metro Youth Program, Inc.
Member
Appointed by the Governor
Term Expires May 24, 1992

Barbara R. Levine
Administrator
Michigan Appellate Assigned Counsel System

James R. Neuhard
Defender
State Appellate Defender Office

STATE APPELLATE DEFENDER OFFICE

The State Appellate Defender Office (SADO) was established in 1970 pursuant to Michigan Supreme Court Administrative Order 1970-1. Its purpose was to provide competent, high-quality legal representation of indigent criminal defendants in post-conviction matters. The Office currently operates pursuant to 1978 PA 620 (MCL 780.711 et seq.), as the fully state-funded public component of the Michigan Appellate Assigned Counsel System, and is governed by the seven-member State Appellate Defender Commission, which also oversees the private component of the system. Under the system, SADO is to receive 25% of all indigent criminal appeals, with the remaining 75% going to locally appointed private counsel.

Defender James R. Neuhard directs the operations of SADO. The private roster component of the appellate assigned counsel system (MAACS) is administered by Barbara R. Levine. The Commission adopted regulations for operation of the system, and full operation of the mixed (public defender/private roster) appellate representation scheme began on December 2, 1985.

Under the Commission's regulatory scheme, SADO appears on local assigned counsel rosters in every third, fourth, or fifth slot, depending on the ratio of attorneys to the number of criminal felony appeals taken in that particular jurisdiction, and local appointing authorities sequentially appoint either SADO or private defense counsel from those rosters.

Thus, SADO may receive anywhere from one-third to one-fifth of the appellate assignments from a given jurisdiction, but no less than 25% of the

State's total number of indigent felony appeals, which according to MAACS, was approximately, 4,230 in 1988. SADO accepted 898 of these assignments, counting substitutions (MAACS puts the total at 889 without substitutions). This is a 5.5% increase over the number accepted in 1987, but still only 21% of the total indigent criminal appeals.

Between 1979 and 1986, SADO accepted an average of about 700 cases a year. However, over the last two years, the number of assignments to SADO would have exceeded 900 if the Commission had not stopped intake. If SADO had received 25% of the State's appellate appointments this year, as it expected when all jurisdictions begin complying with the MAACS Regulations, the total number of new assignments would have exceeded 1,060 - 305 (40%) more than its capacity of 755. Even with the three (3) new attorney positions added for 1989, intake shut-downs will still be required because those attorneys will enable SADO to handle only 860 of the projected 1153 assignments for next year (25% of the projected 4,614 State totals), leaving 293 excess cases to be handled by other counsel.

SADO attorneys review transcripts and lower court records, visit and interview clients at Michigan's 42 prisons and camps and community corrections centers scattered across the state, investigate facts, research issues, file all necessary pleadings, conduct post-conviction hearings in state and federal trial courts and present oral arguments at all levels of the Michigan and Federal judiciaries.

During 1988, the Defender, Chief Deputy Defender, sixteen (16) Assistant Defenders, Legal Resources Project Director, and Training Coordinator were

housed in the Detroit office. Four Assistant Defenders and the Deputy Defender were housed in the Lansing office. Ten and one-half (10.5) legal secretaries, the Chief Investigator and her paralegal assistant, eight (8) administrative assistants, two and one-half clerks, and one receptionist supported the legal staff. Special Assistant Defenders, post-graduate legal research assistants, and part-time law students were also periodically employed as support. As has been done for the past 18 years, one SADO attorney was housed at and received clerical support from the University of Michigan Law School while teaching the Appellate Practice Course there.

Volunteers from schools, government and civic organizations, and other criminal justice programs also provided some much-needed assistance.

Activities and Workload Analysis

Case Activity

In 1988, SADO's nineteen (19) (20 for part of the year) Assistant Defenders, and the Chief Deputy and Deputy Defenders handled a combined total of 826 new cases. The Special Unit, which included the Chief Deputy Defender, the Unit Manager and four (4) other Assistant Defenders handled 324 of these assignments. The Unit is designed to provide expedited relief and to process a high volume of simple cases with similar issues. Unit attorneys handle about twice as many cases as regular assistant defenders.

The 826 cases assigned to attorneys included: 29 special assignments (these range from United States Supreme Court briefs to responses to prosecutor appeals), 449 plea and 348 trial appeals.

Even with a one-month shutdown of intake in June, SADO still received a record 898 new assignments in 1988. In an effort to control assignments to SADO to avoid overload, the Commission gave SADO strict orders not to accept more assignments from any jurisdiction than allotted by the MAACS Regulations. In December, 1988, SADO and the Commission filed an action for superintending control against the judges of one judicial circuit because they refused to comply with the Regulations, assigning SADO all of their indigent criminal appeals, except for conflict cases. The case is now pending in the Michigan Supreme Court on application to by-pass the Court of Appeals, where it originally was filed.

At the close of the year, SADO had 1,414 open-active cases, had closed 820 cases, and processed some 2,234 cases.

Collateral Activity and Special Projects

The Legal Resources Project completed twelve years of service to the criminal justice community. It responded to over 4,200 requests for information and assistance from attorneys (assigned and retained) and incarcerated individuals, provided more than 26,000 pages of materials and maintained a mailing list and database of over 2243 individuals. Of those, approximately 323 were judges and 1591 were criminal defense attorneys. Nine issues and an index of the Criminal Defense Newsletter were distributed to over 1,500 subscribers. The Project summarized over 260 opinions and orders issued by the Court of Appeals, Michigan Supreme Court and federal courts. Approximately 450 individuals received the Project's opinion summaries. The Project reached individuals in 78

counties and 174 cities in Michigan. There were 44 out-of-state requests. The brief bank contained over 5,700 SADO briefs, and over 350 non-SADO briefs (MAACS attorneys and other contributors). The 1987 Supplement to the Defender Trial Book was completed and distribution begun in April, 1988. Over 1500 copies of the supplement were distributed. The Supplement numbered over 325 pages. There were over 441 orders for the reprint of the 1985 edition of the Defender Trial Book, 3rd edition, which also became available in April, 1988.

Under the auspices of the State Appellate Defender Commission, Michigan Justice Training funds obtained by SADO, MAACS and the Criminal Defense Attorneys of Michigan enabled those organizations to continue producing training materials conducting vital training for attorneys representing indigent criminal defendants.

SADO's effort to expand its presence in Michigan's law schools suffered a setback in 1988: The Wayne State University Law School had a clerical staff labor strike and the Law School administration was unable to provide the space and support SADO needed to teach the proposed appellate practice course there. However, one SADO staff attorney did teach the Criminal Appellate Practice Course at the University of Michigan Law School, and several other SADO attorneys lectured at the Cooley Law School and supervised Cooley and Wayne State University law students assigned to SADO's Detroit and Lansing offices.

SADO attorneys again participated in legislative hearings on matters relating to criminal justice, working with legislators and legislative committees on criminal law and corrections matters. They also served on many boards, commissions, committees, and task forces working on criminal justice programs at

both the state and national levels and were faculty and participants in the full spectrum of criminal justice activities.

Goals

SADO will continue to seek funding for the resources it needs to provide effective, high-quality, cost efficient representation in its 25% of the ever expanding number of indigent appeals taken annually and to support the private component of Michigan's unified indigent appellate defense delivery system and the criminal defense bar in general. It will also continue to publish training materials, practice and procedure books and manuals, distribute the Criminal Defense Newsletter and opinion summaries, and conduct and participate in various training programs.

STATE APPELLATE DEFENDER OFFICE ANNUAL REPORT
FOR THE YEAR ENDED DECEMBER 31, 1988

Total New Assignments 1/1/88 to 12/31/88	898
Cases Open as of 12/31/88	1,414
Cases Closed 1/1/88 to 12/31/88	820
TOTAL CASES PROCESSED 1/1/88 TO 12/31/88	2,234

Last Action on Cases Open as of 12/31/88

I.	TRIAL COURT	
	Cases assigned to SADO, no claim filed - transcript not received	216
	Cases assigned to SADO, no claim filed - transcript received	2
	Motion Resentence	26
	Motion New Trial/Withdraw Plea	44
	Leave case - transcript received	26
	Leave case, no transcript	4
	Motion Bond/Other	4
	No action calendar year	3
	Remanded, hearing/decision pending	2
	Total:	327
II.	COURT OF APPEALS	
	Claim filed - transcript received	321
	SADO and Prosecutor briefs filed	127
	Oral argument had	113
	Claim filed - no transcript	117
	SADO brief filed	100
	Motion Remand pending/granted	29
	Motion Resentencing/Peremptory Reversal/Other	40
	Supplemental brief	27
	SADO/Prosecutor Motion Rehearing	24
	Motion/Stipulation Dismiss pending	8
	Application Leave/Delayed Appeal	5
	Motion Bond	4
	Held in abeyance	1
	No action calendar year	1
	Total:	917
III.	SUPREME COURT	
	Application for Leave to Appeal with brief	124
	Application for Leave to Appeal - held in abeyance	7
	Leave granted, brief filed	7
	Leave granted - oral argument had	2
	Motion Rehearing	2
	Leave granted	2
	Motion Dismiss	9
	Remanded for hearing	6
	Case assigned, transcript in	5
	Total:	164
IV.	UNITED STATES COURTS - DISTRICT/APPEALS/SUPREME	
	SADO/Prosecutor briefs	2
	Petition for Writ of Habeas Corpus	2
	Order for further pleadings	2
	Total:	6
	TOTAL OPEN CASES:	1,414

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Disposition of Cases Closed 1/1/88 to 12/31/88

I.	TRIAL COURT		
	Motion Resentence/Credit granted/denied		51
	Substitute counsel appointed/retained		16
	Dismissed by motion/stipulation		19
	Motion Vacate Plea/Sentence/Conviction granted/denied		8
	Motion New Trial/Withdraw Plea granted/denied		10
	Appeal dismissed-client died		1
	Other disposition		5
	Total:		<u>110</u>
II.	COURT OF APPEALS		
	Regular disposition		337
	Appeal dismissed by stipulation/motion		155
	Consolidated with another case		26
	Application Leave/Delayed Appeal denied		4
	Appeal dismissed-client died		1
	Attorney retained		1
	Total:		<u>524</u>
III.	SUPREME COURT		
	Leave denied - SADO		158
	Leave denied - Prosecutor		2
	Reversed and remanded		11
	Reversed - Prosecutor		2
	Affirmed		3
	Leave granted - SADO (new case started)		1
	Leave granted - Prosecutor (new case started)		1
	Appeal dismissed by motion/stipulation		1
	Total:		<u>179</u>
IV.	UNITED STATES COURTS - DISTRICT/APPEALS/SUPREME		
	Petition for Writ of Certiorari denied		1
	Motion granted/denied		5
	Reversed		1
	Total:		<u>7</u>
	TOTAL CLOSED CASES:		<u><u>820</u></u>

Filings by SADO 1/1/88 to 12/31/88

TRIAL COURT	406
COURT OF APPEALS	2,026
SUPREME COURT	279
UNITED STATES COURTS	<u>24</u>
Total Filings:	<u><u>2,735</u></u>

Assignments of SADO 1/1/88 to 12/31/88

Pleas	480
Trials	381
Specials	<u>37</u>
Total Assignments:	<u><u>898</u></u>

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Disposition of All Cases Closed
Since the 1970 Formation of the State Appellate Defender Office

I.	TRIAL COURT	
	Final disposition reached	619
	Substitute counsel appointed	238
	Case/Appeal dismissed	127
	SADO withdrew as counsel by request/appointment returned	70
	Withdrew as counsel	38
	Assigned in error, improper assignment, etc.	36
	Appeal withdrawn	32
	Client retained own counsel	21
	Client missing, no possible action	3
	Assigned to advise client only	1
	Client released on habeas corpus	1
	Total:	<u>1,186</u>
II.	COURT OF APPEALS	
	Final disposition reached	4,503
	Appeal dismissed by motion/stipulation	1,393
	SADO motion to withdraw as counsel granted	230
	Application for Delayed Appeal denied	82
	Client missing, deceased	20
	Client retained own counsel	10
	Appeal dismissed as moot	7
	Prosecutor's motion to dismiss appeal granted	2
	Confession of error by prosecutor	2
	Appeal dismissed for lack of progress	1
	Total:	<u>6,250</u>
III.	SUPREME COURT	
	SADO/Prosecutor leave granted/denied	2,317
	Final disposition reached	556
	Prosecutor's leave granted	43
	Appointment vacated	32
	Appeal dismissed	18
	Disposition by Supreme Ct on plea cases for Ct of Appeals	10
	Case dismissed - client missing/deceased	6
	SADO leave granted - client retained own counsel	5
	Withdrew as counsel	5
	Client withdrew appeal	3
	SADO removed as counsel, client found not indigent	3
	Total:	<u>2,998</u>
IV.	UNITED STATES COURTS - DISTRICT/APPEALS/SUPREME	
	Final disposition reached	29
	Writ of Certiorari SADO/Prosecutor granted/denied	15
	Writ of Habeas Corpus denied	14
	Appeal dismissed	2
	Substitute counsel appointed	1
	Total:	<u>61</u>
	TOTAL FINAL DISPOSITIONS	<u><u>10,495</u></u>