

1989 ANNUAL REPORT STATE APPELLATE DEFENDER OFFICE  
APPELLATE DEFENDER COMMISSION MEMBERS

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

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

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

Fred J. Borchard, Retired Judge  
Nominated by the Circuit Judges Association  
Term Expires May 24, 1993

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

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

Rolando H. Shorey, Executive Director  
Metro Youth Program, Inc.  
Member  
Nominated 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 staffed 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 assigned counsel component of the system, which is locally-funded. 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 appointed counsel 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, 5,153 in 1989. SADO accepted 1,122 of these assignments, counting substitutions (MAACS puts the number at 1,071, excluding substitutions). This is a 25% increase over the number (898) accepted in 1988, 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, in 1987, 1988 and 1989 the number of assignments to SADO dramatically increased and far exceeded its capacity to handle them. If SADO had received 25% of the State's appellate appointments this year, the total number of new assignments would have exceeded 1,288: 424 (49%) more than its capacity of 864. Even with the three (3) new attorney positions added for 1989 and intake shut-downs in July and November, SADO still received 258 more assignments than it had resources to handle. These 258 cases over capacity represent the work of seven (7) attorneys.

SADO projections of future caseload for the office, and necessarily, for the Court of Appeals and Supreme Court, continues

to be bleak. Given the lack of staff increases and the continuing massive caseload increase an ever-increasing restriction of intake will be necessary.

SADO received no staffing increases for 1990 and most likely will receive none for 1991. The caseload projections continue to show that 13% of those convicted and 41% of those imprisoned will appeal. Department of Corrections computer models are projecting 20% increases in imprisonment rates for 1990 and 1991.

SADO attorneys review transcripts and lower court records, visit and interview clients at Michigan's 46 prisons and camps and community corrections centers scattered across the state, investigate facts, research legal 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 1989, the Defender, Chief Deputy Defender, eighteen (18) 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 nineteen years, one SADO attorney was housed at and received clerical support and research assistance from the University of Michigan Law School while teaching the Appellate Practice Course there.

For unknown reasons, SADO did not have its usual volunteer assistance from schools, government and civic organizations, and other criminal justice programs in 1989, a time when it was sorely needed.

#### Activities and Workload Analysis

In 1989, SADO's 24 assistant defenders, and the Chief Deputy and Deputy Defenders handled a combined total of 1,124 new cases. That was 298 cases more than they were assigned in 1988! The Special Unit, which included the Unit Manager and five (5) other Assistant Defenders handled 441 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 other assistant defenders.

The 1,124 cases assigned to attorneys included; 40 special assignments (these range from United States Supreme Court briefs to responses to prosecutor appeals), 649 plea, and 435 trial

appeals.

Even with a two month shutdown of intake in July and November, SADO still received a record 1,122 new assignments in 1989. 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. On March 15, 1989, the Supreme Court issued an Administrative Order for all affected courts to comply with the assignment Regulations adopted by the State Appellate Defender Commission and, thereafter dismissed the action as moot. As a result of compliance with that order, SADO assignments went from an average of 80 cases a month to 130 a month.

**Table 14.1: Assignments of State Appellate Defender Office, 1989**

Pleas	633
Trials	436
Specials	53
Total	1,122

**Table 14.2: Caseload Statistics for State Appellate Defender Office, 1989**

Cases Open as of 12/31/89	1,677
Cases Closed 1/1/89 to 12/31/89	825
Total	2,502

Collateral Activity and Special Projects

The Legal Resources Project completed thirteen years of service to the criminal justice community. Highlights for the Project during 1989 were: a grant award from the Michigan Criminal Justice Training Commission for the writing, editing and production of a new edition of the Defender Trial Book; an increase in the publication schedule of the Criminal Defense Newsletter which resulted in the first time writing, printing and distribution of twelve issues of the Newsletter in a one year period; and the following additions to the Newsletter: a section summarizing selected unpublished Court of Appeals opinions and a regular feature on decisions and orders from the United States Supreme Court.

The Project responded to over 4,300 requests for information and assistance from attorneys (assigned and retained) and incarcerated individuals, provided more than 29,000 pages of materials and maintained a mailing list and database of over 2,500 individuals. Of those, approximately 325 were judges and 1,600 were criminal defense attorneys.

The Project reported on and summarized over 270 opinions and orders issued by the Court of Appeals, Michigan Supreme Court and federal courts. An additional 250 individuals subscribed to the opinion summaries service.

The Project serviced individuals in 79 counties and over 180 cities in Michigan. There were over 50 out-of-state requests. The brief bank contained 6,012 SADO briefs and 358 non-SADO briefs (MAACS attorneys and other contributors). Some 600 copies of the reprint of the Defender Trial Book, 3rd edition and a total of 1,880 copies of the 1987 supplement were distributed during the period 1988-89.

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

SADO continued efforts to expand its presence in Michigan's law schools. The Wayne State University Law School was still 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.