

## ANNUAL REPORT

1999

# STATE APPELLATE DEFENDER OFFICE

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### 1999 APPELLATE DEFENDER COMMISSION

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State Bar Designee

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Representative Richard A. Young (Jan-July)  
Supreme Court Designee

Joseph P. Overton (Aug – Dec)  
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### **MISSION STATEMENT**

**APPELLATE DEFENDER COMMISSION:** To provide a high-quality, efficient and effective, mixed indigent appellate defense system composed of a state-funded public defender office (State Appellate Defender Office) and a county-funded, assigned counsel panel (Michigan Appellate Assigned Counsel System).

**STATE APPELLATE DEFENDER OFFICE:** To provide cost-efficient, high-quality, timely, public appellate defense services to indigent criminal defendants in cases assigned by the courts to provide legal resources and training materials to support private criminal defense practitioners assigned to represent indigent criminal defendants, to enhance the quality and effectiveness of that representation and reduce indigent defense and overall criminal justice costs to State and local governmental units.

### **GOALS**

- Handle no less than 25% of the assigned indigent criminal appeals.
- Provide high-quality, timely services.
- Distribute services to all counties fairly and efficiently.
- Provide support services seasonably and efficiently to all assigned counsel in the state.

### **1999 OBJECTIVES**

- Maintain quality while reducing staff by 20%.
- Avoid unnecessary delay while absorbing workload of departing attorneys.
- Increase efficiency through innovation and automation.
- Reduce costs to counties (which pay for all appeals handled by the private bar) by changing the case-assignment formula to accept 50% of the more costly complex Level III cases) while maintaining and supporting a mixed system of representation.
- Lower assigned counsel costs by reducing attorneys' need to duplicate work already done by SADO and other contributors, and efficiently supply current legal information to all assigned counsel to reduce errors and reduce the need for appeals.

The following report contains narratives and graphs that depict the State Appellate Defender Office's 1999 activities and efforts to accomplish its mission and goals.

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## BACKGROUND, STATUTES and GOVERNANCE

The State Appellate Defender Office (SADO) was formed in 1969 as a result of a grant submitted by the Michigan Supreme Court to the Law Enforcement Assistance Administration (LEAA). After receiving the grant, the Court issued Administrative Order 1970-1, formally establishing the Appellate Defender Commission. The Court established the office to provide high-quality, cost-efficient legal representation to indigent criminal defendants in post-conviction matters. In 1979, legislation was enacted that formally established the office. The legislation created a seven-member Appellate Defender Commission, established within the State Court Administrator's Office, to develop and supervise a coordinated system for regulating the assignment of counsel to all indigent criminal appeals in Michigan. 1978 PA 620; MCL 780.711 et seq; MSA 28.1114(101) et seq.

Six Commission members are recommended to the Governor for appointment: two by the Supreme Court, two by the State Bar, one by the Court of Appeals, one by the Michigan Trial Judges Association, and one, non-lawyer who is appointed by the Governor directly.

Pursuant to its statutory charge, the Commission held public hearings and determined that a mixed system of full-time defenders and assigned private attorneys would best serve the long-term interests of the entire system. It created the Michigan Appellate Assigned Counsel System (MAACS) to provide training, maintain the roster of appointed counsel and to coordinate assignments between the private bar and SADO. SADO would employ a staff of public defenders to handle its statutory percentage of assigned appeals and provide legal resources to the indigent criminal defense bar. The Michigan Appellate Assigned Counsel System began operation in 1985. Pursuant to 1978 PA 620, the Commission developed standards for criminal appellate counsel, which were adopted by the Michigan Supreme Court.

The enabling legislation specifically limits SADO to criminal post-conviction cases to which it is appointed by a court. It cannot handle civil cases and cannot sue the Department of Corrections.

The Appellate Defender Commission regulates the allocation of assignments between the SADO and private assigned appellate attorneys by adjusting SADO's capacity based on resources and the projected number of appeals for the fiscal year. Standards for the appointment of appellate counsel and counsel's performance are found in Administrative Order 1981-7, 412 Mich lxv. The regulations governing the provision of appellate defense services are published in a booklet available from the Commission through MAACS in Lansing. Administrative Order 1989-3 mandated that all circuit courts comply with Section 3 of the MAACS regulations regarding appointing counsel on appeal.

The Appellate Defender Act requires that SADO receive no less than 25% of all indigent criminal appeals, but limits the total intake by adding that SADO may accept only that number of cases that will allow it to provide quality defense services consistent with the funds appropriated by the legislature.

The principal office of SADO is in Detroit. The branch office is located in Lansing, Michigan. In addition, the office runs criminal appellate practice clinics at the University of Michigan Law School and Wayne State Law School.

The Legal Resources Project (LRP) of the State Appellate Defender Office formally began in 1977. It is located in the Detroit office and provides a brief bank, newsletters, trial and sentencing books, recent case summaries, direct training events, on-line web services, phone support and legal support for both staff attorneys and several thousand assigned counsel throughout the state.

The seven Appellate Defender Commission members are: The Chair, John E. S. Scott, who may be reached at Dickinson, Wright, Moon, VanDusen and Freeman, One Detroit Center, 500 Woodward Avenue, Suite 4000, Detroit, MI 48226-3425; (313) 223-3500 and members D. Joseph Olson, Vice-Chair; Honorable Samuel Gardner; Honorable Kenneth Sanborn; Joseph Overton; Bethany Goodman and Allan S. Falk. SADO's Director, James R. Neuhaard, the Chief Deputy Defender, Norris J. Thomas, Jr. and the Legal Resources Director, Dawn Van Hoek are in the Detroit office. F. Martin Tieber is the Deputy Defender in the Lansing Office at 340 Business and Trade Center, 2<sup>nd</sup> Washington Square, North, Lansing, MI 48913.

# **THE 1999 ANNUAL REPORT OF THE STATE APPELLATE DEFENDER OFFICE**

## **INTRODUCTION**

The annual report will review the State Appellate Defender Office's (SADO's) 1999 caseload and workload activity within the context of the 20% budget cut recommended for SADO in the Governor's proposed budget for Fiscal Year 99/2000. That budget cut was implemented on October 1, 1999, the start of the new fiscal year.

## **BACKGROUND**

Over the years, two of the most important functions of the Appellate Defender Commission (ADC) have been balancing SADO's workload with its funding, and allocating the workload between SADO and the Michigan Appellate Assigned Counsel System (MAACS). MAACS creates and manages the list of private attorneys accepting indigent criminal appellate assignments. 1999 proved to be a very challenging year.

The balancing and distribution of the workload between SADO and private assigned counsel is necessary due to the pressure to overassign cases to SADO and the failure to fund staffing increases to match the workload. Cases assigned to SADO are state-funded and those to the private bar are paid for by the counties. Understandably, the counties want the more costly, difficult cases to be assigned to SADO. In addition, extremely low fees paid to the private bar create high turnover and an uneven distribution of lawyers from county to county. Fee rates also vary greatly, from county to county. This imbalance in the distribution of lawyers among the counties also creates pressure to overassign SADO.

By the spring of 1998 and for all of calendar 1999, SADO achieved the capacity to handle and was receiving 25% of the total indigent appellate caseload and workload. Two major developments occurred in 1999: in February, the ADC increased SADO's percentage of the more difficult and costly appeals, and by the last quarter of calendar 1999, a severe 20% budget reduction caused a 20% reduction in case-handling capacity.

## **CHANGE IN THE MIX OF CASES ASSIGNED TO SADO**

In February, the Appellate Defender Commission (ADC) increased SADO's Level III appeals to 50%. Level III appeals are jury trials with sentences of 15 years or more and tend to be the longer, more complex and more costly appellate assignments. The ADC has regularly reviewed and changed the allocation of cases between SADO and MAACS roster attorneys to better distribute the appellate assigned workload. The distribution formula reflects the overall number of appeals, SADO's capacity, the number

of attorneys available and willing to accept appellate appointments in the circuits, the costs to the counties, and the willingness and ability of private attorneys to accept and timely process the cases.

1999 began with SADO receiving 25% of all assignments for the first time in over 15 years. At the start of the year, the Commission reviewed the level of all assignments, the mix of appeals across the State according to their difficulty, the pattern of cases assigned to SADO, and the distribution and turnover of lawyers on the MAACS roster.

The review revealed a need to reformulate the mix of cases between MAACS and SADO. MAACS divides the cases into three levels of difficulty and qualifies attorneys to handle cases at each level. Two primary factors had affected the distribution of MAACS attorneys between the three levels. First, a 5-year decline since 1993 in the overall number of appeals were due to the general reduction in crime. Fewer arrests, convictions and subsequent appeals made it difficult for Level I and Level II attorneys to get sufficient numbers of required cases and experience at lower levels to allow them to move up to handle the more difficult Level III cases. Second, many attorneys declined promotion to handle the more difficult Level III cases because they require more attorney time at lower fees, and often have caps on the maximum fee. As a result, some MAACS attorneys elected to handle a higher volume of Level I appeals. They can handle more Level I and II appeals in less time, and therefore earn more.

The ADC determined that the counties also would be better served if SADO handled a greater percentage of the Level III appeals. This reflects the way counties have actually used SADO over the years. If SADO handles the case, the state pays defense costs. If a MAACS roster attorney is appointed, the county must pay. Therefore, some counties over appointed SADO to Level III appeals. This resulted in SADO receiving over 35% of the Level III cases, while it was only accepting 17% of all the appeals (double the Level III appeals SADO should have been receiving). Consequently, even though the office received only 17% of the assigned caseload, on a weighted basis, it handled a far greater percentage of the assigned appellate workload.

Finally, the ADC considered the impact on the total number of appeals of Proposal B's constitutional amendment eliminating guilty plea appeals of right. Various models for the caseload and workload levels were projected, depending on whether some or all plea appeals would be assigned counsel to handle them.

After review, the ADC determined that MAACS, the courts and the counties would be better served if SADO took a greater percentage of the more difficult and costly Level III cases, and fewer of the Level I appeals. The ADC changed the mix to raise SADO's allotment to 50% of the Level III appeals, and lower the percentage of Level I appeals to 20% to meet the demonstrated needs of the counties and more fairly allocate the state-funded resource (rather than continuing the practice of some counties to shift disproportionate costs to the state while others abided by the strict rotation at 25%). The ADC reviewed the current workload, agreed to consider a new mix at its next meeting,

and at its May 14, 1999, meeting, adopted the new formula: 50% of Level III, 25% of Level II and 20% of Level I cases.

## **20% BUDGET REDUCTION**

Shortly after this action, the second major development occurred – the Governor's FY 99/00 budget proposed a 20% reduction in SADO's budget. Ultimately, through a combination of legislative action and Gubernatorial veto, SADO's budget was reduced \$1,000,000, effective October 1, 1999, the start of the 99/2000 fiscal year.

Because the Governor's proposed 20% budget reduction was released early in 1999, virtually all of calendar 1999 had a hiring freeze. Ultimately, SADO lost 13 full-time equivalents (FTEs). This significantly reduced its capacity, forcing the remaining SADO staff attorneys to absorb the caseloads of the departing ones.

The primary reason given for the budget reduction was the "pay off" from the passage of Proposal B in 1994. Proposal B amended the Michigan Constitution and changed appeals of guilty plea convictions from appeals of right, to appeals by leave. This did not eliminate the appeals, it just changed the form of them. Some believed this change also eliminated the right of poor people to have counsel appointed to appeal their guilty plea convictions and sentences. The case of People v Bulger was pending before the Michigan Supreme Court during 1999, presenting the constitutional question of whether counsel was required for plea appeals. Toward the end of 1999, HB 4625, which governed appointment of counsel in guilty plea appeals, was also introduced.

People v Bulger was not released in 1999. It was not decided before the Court's term ended and was therefore reargued in October of 1999. HB 4625 did not take effect in 1999. Therefore, the number of assignments continued at the same rate as in previous years throughout all of calendar year 1999 and through all of FYs 98/99 and 99/00.

However, while the workload continued unabated, office capacity steadily declined due to attrition, accompanied by the hiring freeze. By October 1<sup>st</sup>, the start of the new fiscal year (FY 99/2000), the staff had been reduced by 20% (see Capacity chart and the 1999 Monthly Assignment chart).

Because of the year-long hiring freeze and decline in capacity, the office, early in the year, explored options for implementing the probable staff reductions. It was clear that the loss of staff would result in a work overload. Not only would the weight and number of new cases exceed the ability of the remaining attorneys to handle them, but the caseloads of those who left would also have to be absorbed. The ADC considered a variety of plans that included: withdrawing from existing cases, closing the office to new assignments, not implementing economic increases to retain as much staff as possible, hiring contract attorneys to complete the cases of those who left, reducing support to the private assigned bar, having 6-7 attorneys share one secretary, and using unpaid leaves of absences.

Ultimately, except for withdrawing from existing cases, all of the steps were taken. Withdrawal was deemed to be the hardest on the counties, clients and courts and would create delay and congestion in the Court of Appeals. Also, it would have significantly delayed the cases of those clients while new substitute counsel familiarized themselves with their cases. Instead, the ADC closed the office to new assignments for the months of November and December. This allowed the remaining attorneys on staff to absorb the caseloads of the attorneys who had left, while processing cases previously assigned to the office.

## **SADO STAFFING AND DIRECT CLIENT SERVICES**

SADO is committed to providing high-quality, efficient defense services to its clients. SADO attorneys obtain all transcripts and court records and review them for appealable issues. They then visit and interview clients at the 60-odd Michigan prison facilities and all the county jails around the state. Attorneys litigate cases at all levels of the Michigan and federal courts. They investigate facts, research, analyze and write legal issues, file appropriate pleadings, conduct post-conviction hearings and present oral arguments in state and federal courts, handling many of landmark, high-profile, and complex cases.

At the end of 1998, the Director, Chief Deputy Director, 24 Assistant Defenders and the Legal Resources Project Director were housed in the Detroit (main) office, and the Deputy Director, Special Unit Director and four (4) Assistant Defenders were located in the Lansing office. Two Paralegals/Secretaries, 8 Legal Secretaries, the Chief Investigator and her Paralegal/Investigator Assistant directly supported the legal staff. The Office Managers in the Detroit and Lansing offices, the Financial Analyst, the Computer Systems Manager, Administrative Assistants, Clerks and Receptionist assisted the administration and provided secondary support to the legal staff.

By the end of 1999, SADO's Detroit staff was reduced to 18 Assistant Defenders. The office lost (without replacing) one Executive Administrative Assistant to the Chief Deputy Defender, two Paralegal/Secretaries and one Legal Secretary. The Legal Resources Project lost two contract attorneys and an Administrative Assistant. The Director, Chief Deputy Director, Financial Analyst, and Computer Systems Manager all shared a single support person, who also served as office manager and human resources specialist.

As in past years, two SADO lawyers were adjunct professors of clinical law and received secretarial/clerical and legal research support from the University of Michigan while teaching the Criminal Appellate Practice Course. Another taught the other SADO-established Criminal Appellate Practice Course at the Wayne State University Law School. These courses enjoy excellent reputations among both students and faculty, provide excellent client representation and often provide future SADO lawyers.



## **PRODUCTIVITY**

In 1999, SADO Assistant and Deputy Defenders were assigned 1,041 cases and produced some 2,974 filings, 1,025 of which were opening pleadings. (Table I, infra)

The Unit Director and three attorneys in SADO's Special Unit for Pleas and Early Releases continue to expeditiously handle non-trial-based (mostly plea) appeals. Even though Proposal B dramatically reduced the number of guilty plea appeals reaching the Court of Appeals and diverted them to the trial court dockets, there was very little reduction in the total number of assigned guilty plea appeals.

As shown in Table III, SADO was assigned 577 (53.5% of its assignments) guilty pleas appeals in 1993 and 532 (52%) in 1994, prior to Proposal B. SADO received an almost equal number in the following two years 539 (58%) in 1997, 618 (60%) in 1998, but dropped to 462 (54%) in 1999 due to the 20% budget cut and an equal percentage reduction in staff.<sup>1</sup>

After review of the entire file, preliminary research and consultation with and advice to the client, the Special Unit voluntarily dismissed between 38% to 42% of its cases.<sup>2</sup> The Unit's overall relief rate<sup>3</sup> exceeds 32%, with a relief rate of over 75% in the cases taken to hearings in the trial courts. In 1996 and 1997 the four Unit attorneys handled 79% and 85% respectively of the plea appeals assigned to SADO attorneys. The percentage was 78% in 1998 and remained at 78% in 1999, but at the substantially reduced 1999 guilty plea appeal intake number (from 612 to 462), due to the 20% budget cut and loss of one Unit attorney who was not replaced. The goal remains to assign the Special Unit virtually all plea appeals.

## **INCREASED INNOVATION, INTERNAL EFFICIENCY AND CASE MONITORING**

Beginning in 1978, through a series of grants and internal cost savings, SADO became one of the most automated law offices in America. Automation of brief production and management information systems started in 1980. SADO now has automated its case tracking system and integrated it into its word processing software. In addition, it has automated its brief bank, publications and houses an award-winning website. The entire staff is highly proficient on computers, and assigned counsel from all parts of the state are permitted electronic access to all its legal resource materials. This has allowed the office to eliminate typing and clerical positions and use the funds for staff attorney positions, to increase office production, even at time the budget remained static or decreased.

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<sup>1</sup> Numbers differ from those in previous reports because of technical corrections.

<sup>2</sup> This percentage is quite significant, because voluntary dismissals markedly reduce work for the courts and prosecutors, since no pleadings are filed and, therefore, no oral argument or opinions are required.

<sup>3</sup> On cases where relief is sought (excludes dismissals).

## **INNOVATION AND AUTOMATION**

As part of its continuing effort to provide high-quality, cost-efficient representation, SADO created in 1999, another special work team, composed of four staff attorneys and one paralegal. The attorneys do virtually all of their own word-processing and many other tasks formerly done by legal secretaries. In exchange, the paralegal assists the lawyers on a much broader range of activities than they would receive from a regular legal secretary. Other such groups are in the planning stage, but this came to a halt when the paralegal positions were vacated and not filled due to the 20% budget cut.

## **CASE MONITORING – PRODUCTIVITY**

Over the last three years, SADO has gone from a very good caseweighting system (probably the first appellate defender office in the nation to do so) for determining appropriate attorney and office workloads, to a sophisticated, automated system of caseweighting, monitoring and supervision. Computer-generated reports now show the precise overall position of the office and the individual attorney caseloads at chosen intervals, permitting the efficient regulation of the workload and workflow and assuring that deadlines are met.

In 1997, the office completed its third generation case-related management information system (MIS). The DOS-based database was overhauled and upgraded to a Y2K compliant windows-based, Client/Server system. SADO employed additional contractual staff on a per-project basis to assist the in-house Information Services team in designing and implementing the new system. The new Windows-based system is user-friendly and intuitive, helping SADO reduce its training requirements and improve productivity. The system uses selection lists wherever possible. These lists allow all SADO staff to update selected fields while maintaining database accuracy. The open-system, Client/Server design of the new case management system allows access to data from many applications, such as a traditional database utilities, Web Pages, E-Mail applications, and MS Word. This is the first phase of a two-phase project that will streamline SADO's business applications.

The second phase is streamlining of SADO's business applications. This goal is to effortlessly convert existing boilerplates to templates (codes and all), create master templates for all types of legal documents, merge templates with case management data from a live database, utilize a familiar intuitive interface, and reduce overall training requirements. By 1999's end, over half of the staff had their computers upgraded and had moved on to using the new system.

SADO's main IS project for 1999 was replacing the system manager.

## **COLLATERAL ATTORNEY SERVICES AND ACTIVITIES**

As has historically been the case, SADO attorneys are expected to and continued in 1999 to again serve as officers and members on boards and commissions, sections and committees of many national, state and local bar organizations and task forces, including the Legislative Sentencing Guidelines Commission, the Michigan Justice Training Commission, legislative workgroups, and committees of the Michigan and American Bar Associations, and National Legal Aid and Defender Association. Office attorneys have testified before Michigan and federal legislative committees and the Attorney General of the United States, taught classes in virtually all of the Michigan law schools and served as faculty for many legal and cross-professional seminars and conferences. They taught criminal law and procedure to judges, lawyers, law students, high school students, paralegals, corrections personnel and prisoners. Some wrote practice and procedure manuals for both the bench and bar. Some volunteered to mentor pre-law and law students. Many were deeply involved in civic and community-based activities.

## 1999 GOALS AND OBJECTIVES ACHIEVED

SADO's principal goal at the start of 1999 was to review and adjust the distribution of appeals between SADO and MAACS. Early in 1998, SADO had eliminated its backlog and had achieved an intake of 25% of all indigent appeals, and over 35% of the Level III appeals, which are more lengthy and usually more difficult and time-consuming. While SADO should have received a strict 25% of Levels I, II and III appeals, it was clear that many counties were over-assigning Level III appeals to SADO. The main reasons were: 1) that SADO was "free" to the counties, which had to pay private attorneys to handle appeals, so they assigned SADO more than the formula allowed; 2) fees were abysmally low for handling the more difficult Level III appeals and fewer attorneys would sign up on the lists of counties paying the worst fees; and finally 3) the distribution of attorneys willing to accept Level III appeals was uneven across the state.

The new formula providing for assignment to SADO of 50% of Level III, 25% of Level II and 20% of Level I cases compensated for this pattern of use. This new formula gave all counties a fairer share of the state-funded resource. In addition, it made the Court of Appeals docket more timely by having the full-time SADO staff handle more of the time-consuming and complex appeals. There were fewer attorney substitutions and withdrawals. In 1999, there were no cases where SADO was removed for want of prosecution of the appeal [MCR 7.217 (A)], in spite of the dramatic loss of over 20% of SADO's staff during the year.

At its May 1999 meeting, the ADC adopted the new formula allocating 50% of Level III, 25% of Level II and 20% of Level I appeals to SADO. At the same time, MAACS implemented a web-based method for selecting and appointing assigned counsel. MAACS determined that the automated counties would be the first to use the new Level III and Level I percentages. The formula could be changed in the computer and SADO's appointments would be generated automatically, along with the private bar's appointments. It is anticipated that by the end of 2000, all the counties will be either on-line using the automation, or notifying MAACS of the need for an appointment, with MAACS generating the order of appointment. As a result, all counties will be using the new formula.

For all of 1999, SADO accepted only 36.7% of the Level III assignments. This was because the formula took effect halfway through the year and not all counties were on-line and using the new formula. (See Table II – SADO's percent of Level III cases.)

# LEGAL RESOURCES PROJECT REPORT

## 1999

### OVERVIEW AND GOALS ACHIEVED

#### **PRIMARY GOAL: INCREASE QUANTITY OF SUPPORT TO THE PRIVATE BAR AND INCREASE ACCESS TO SERVICES WITH THE INTERNET.**

1999 marked the twenty-third year the Legal Resources Project (LRP) has served Michigan's criminal defense community with services essential to the competent practice of criminal law in Michigan. The LRP's objectives for the year remained to deliver core services through traditional means, while expanding their delivery through new, and Web-based, means. Core services included publication of a monthly newsletter, trial and sentencing books, summaries of appellate decisions, maintenance of a research database which includes a brief bank, and provision of legal advice to attorneys across the state.

Providing those services was particularly challenging this year in light of significant budgetary cutbacks experienced by SADO. LRP staff was significantly reduced, as one clerical position was eliminated, and the two research attorney positions were eliminated. Those staff reductions led to cessation of a very valuable service, the provision of legal advice by phone and e-mail to attorneys across the state. While previously the LRP responded to an average of 12 calls daily from attorneys seeking information or advice, the service was eliminated completely in October of 1999. Loss of this service was acutely disturbing to the hundreds of attorneys who have used it during the twenty years it has been provided by the LRP. Many wrote or called expressing their frustration, citing their inability to go anywhere else for this type of direct support.

Due to loss of staffing, the newsletter was published on a less-than monthly basis (nine times during the year), and less legal research for publications was performed. Loss of staff also meant more work for the staff which remained, as all assumed some of the responsibilities which were part of the eliminated positions.

With elimination of the direct support service provided by LRP research attorneys, it became even more important in 1999 to maintain a content-rich and easy-to-navigate web site. Significant efforts continued during the year to increase the contents of online databases which could be accessed over the web, to promote use among attorneys of the online discussion group (the SADO Forum), and train as many attorneys as possible on use of online resources. The advantages of web-delivered services are many, including access at all times, from any location, for unlimited lengths of time. Many attorneys find that research needs are well-met by their own "browsing" or "searching" of the SADO databases. Such online access is very cost-effective, and serves the LRP goals of (1) improving the quality of criminal defense representation, (2) reducing the possibility of errors and need for appeals, and (3) reducing costs for the state

and counties by reducing the hours of research for which appointed appellate counsel might otherwise submit a bill.

LRP operations were once again funded through a combination of SADO budgetary support, user fees and grants from both the Michigan Justice Training Commission and the Michigan State Bar Foundation. User fees supported a portion of the costs of books, newsletters, copying, and operation of the SADO web site. Grants from the MJTC supported a portion of the costs of books and direct training events; a grant from the Michigan State Bar Foundation supported development of online video training and teleconferencing, and direct training events.

### **SERVICES DELIVERED BY MAIL AND PHONE**

During the report period, the Legal Resources Project was forced by budget cutbacks to eliminate one service, and reduce another significantly. These services included:

- (1) **Criminal Defense Newsletter.** This near-monthly newsletter (nine issues published) delivered an average thirty pages of essential information to approximately 1,000 subscribers. Fewer issues were published this year, due to staff reductions. Each issue contains a lead article providing in-depth analysis of an issue, news, announcements, a training calendar, practice notes, summaries of appellate decisions, news of pending and recently-passed legislation, and much more. An annual index issue provides a comprehensive listing of issues covered during the year.
- (2) **Summaries of Appellate Decisions.** Twice a month, approximately 150 subscribers to the LRP's summaries service received summaries of the most recent appellate decisions (Michigan Court of Appeals, Supreme Court, Sixth Circuit Court of Appeals and United States Supreme Court). Summaries of over 800 decisions were mailed to subscribers during 1999.
- (3) **Defender Trial, Sentencing and Post-Conviction Books.** 3000 sets of the popular books were printed for distribution to criminal defense attorneys, judges, inmates, law libraries and other criminal justice system participants. Over 1600 pages of relevant information was delivered to users, covering developments through December of 1997. These two annually-updated looseleaf books contain well-organized summaries of the law on all aspects of criminal law and procedure, from arrest through appeal. Summaries and analysis of case law, statutes, court rules and legal practice are included. Users also receive a diskette version of the books, along with full text of any unpublished Court of Appeals decisions cited in them; the books are installed on a user's own computer and bundled with a powerful search program which allows full text search and retrieval of useful information. Asked in 1999 about how frequently they use the

books, 13% of the trainees said daily, 62% said weekly, 20% said monthly and 5% said less than monthly. These results reflect heavy use, as in prior years. Approximately 63% said they use the books to browse a topic to learn the law, 41% used them to quickly identify a case, rule or statute, and 73% used them to browse a topic to refresh their memories. Many indicated that the books provide a useful starting point in research. Asked about the value of the books to their practices, 69% said they were indispensable, 31% said they were helpful and none said they were of minimal value. Many indicated that they found the diskette version of the books extremely useful: 39% found them indispensable, 57% found them helpful and only 4% said they were of minimal value.

- (4) **Legal Consultation and Brief Bank Service.** During the report period, this service was not provided. In the previous year, a total of approximately 3600 contacts were reported, consisting of 1,300 attorneys, 550 inmates, and 1,400 others, who called, wrote or visited the LRP for help with a legal issue. Their questions ranged from help framing a legal issue to advice on strategy, and were answered by the LRP's two experienced legal research attorneys. An estimated 300 automated research requests were completed for SADO attorneys, in addition. Legal consultation and brief bank services were used by attorneys in virtually all of Michigan's 83 counties. Prison inmate support was limited to mailing of information packets on how to pursue relief on their own, or advice on how to obtain counsel.

### **SERVICES DELIVERED BY THE WEB**

Web-delivered support services grew in popularity and use during 1999, as attorneys lost the direct support (via phone and e-mail) they had received for twenty years. Attorneys also continued to upgrade their home and office computer systems, and more attorneys were trained by LRP staff. Overall, the trend toward greater use of the web was clearly reflected in statistics on use of SADO's web site: this year saw increased numbers of user sessions, web page "hits" and Forum messages, while the numbers for traditionally-delivered services declined (largely due to the budget cut-back). This means that more attorneys are dialing up online databases, with fewer relying on mail-delivered or printed resources. The advantages of this delivery method remain that:

- ❑ Attorneys may perform online research from their office or home computers, at any time of night or day, downloading useful material and legal pleadings;
- ❑ Research and downloaded materials are available immediately, without the delay inherent in surface mailing;
- ❑ Research results improve, as attorneys adapt their own searches, without filtering requests through another person; and
- ❑ The currency of information is vastly improved over traditional methods, as the web site is updated on a near-daily basis.

During 1999, growth was experienced in both the public and restricted sides of the web site. Materials were added in all segments, including descriptions of legal processes, training events, legal databases, and summaries of appellate decisions. The value of the site to users was demonstrated by the number of web site hits, user sessions and Forum messages, all of which continued to climb. The most revealing statistic tracked, user sessions, grew from approximately 6600 per month to nearly 10,000 per month during the year. Membership in the SADO Forum grew to approximately 600 criminal defense attorneys. Graphs tracking site usage accompany this report

## **DIRECT TRAINING EVENTS**

With funding support from the Michigan Justice Training Commission and State Bar of Michigan Foundation, the LRP once again offered statewide training events on the subject of Automated Research and Writing for Criminal Defense Attorneys. Twenty-three events took place, each four hours long, reaching a total of 234 trainees. The average size of the group trained was twelve, a small-group format ideal for this type of training. Each trainee had good access to the trainer, for questions and demonstrations. Taking the events directly to the attorneys' communities allowed for more participation by those unable to take the time to travel to a central location.

Direct training is not only effective, but essential. A comparison of those handling assigned trials and appeals statewide reveals nearly one-third turnover on an annual basis. With so many new attorneys taking assignments, training prevents many costly blunders attributable to lack of knowledge. The hundreds of attorneys trained annually by the LRP gain the skills needed to navigate the Web for its legal research capabilities, and to incorporate their findings into legal pleadings. Without timesaving automated research, counties would be billed much more time for traditional research.

Evaluations of the direct training events showed their great value to practicing attorneys. Surveys revealed that nearly 85% of trainees increased their use of the Internet for legal research after receiving the training. Asked how often they use the Internet for legal research, 70.9% said that they used it at least once a week. Asked how often they include the SADO site in a research session, 61.8% of the trainees said that they use it most or all of the time. Trainees also were asked how much research time was saved by using the SADO online databases: 25.4% said more than 10 hours monthly, 35.1% said between 5 and 10 hours monthly, and 35.1% said under 5 hours monthly (34.3% in 1997). Asked if they would continue to use the SADO site for research and writing purposes, nearly 100% gave an affirmative answer.



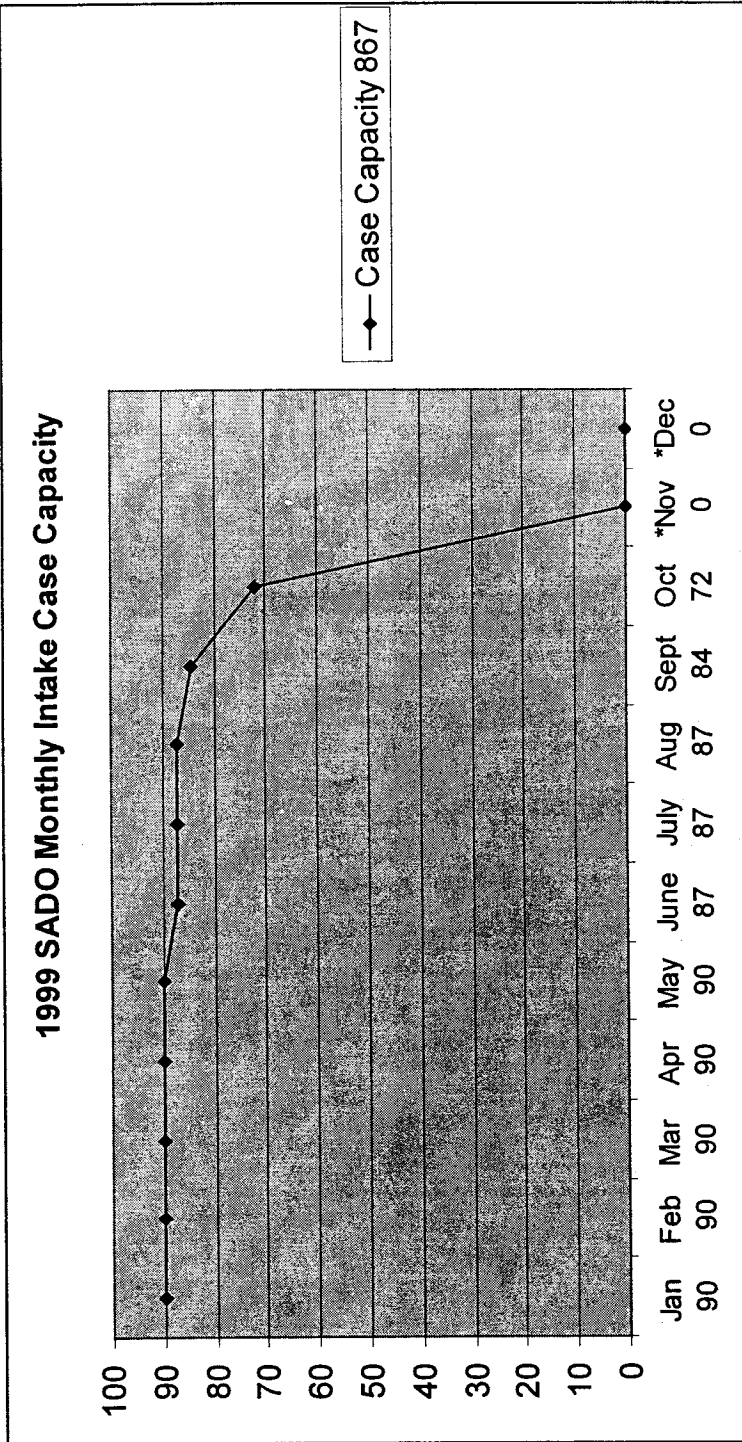
## SHARING WITH THE LEGAL SERVICES COMMUNITY

The LRP continued in 1999 to share its resources and expertise with others, including particularly Michigan's legal services community. Staff participated in the State Bar of Michigan's Technology Task Force, a large group designing and implementing the "Michigan Plan." This Plan is intended to unite legal services programs through technology, allowing more cost-effective sharing of resources and improved legal representation of clients. The LRP continued to provide a major service to that community by hosting the pleadings collection of the Michigan Poverty Law Program, creating a searchable database accessible via the web. The LRP also continued to field inquiries from other programs nationally, providing technical consulting.

The LRP's success in serving the appointed criminal defense bar is largely due to its relationship with a fully-functional law office, the State Appellate Defender Office. LRP staff interact constantly with SADO's practicing attorneys, developing expertise on substantive issues. The LRP's databases, particularly its brief bank, consist primarily of pleadings prepared during the normal course of SADO's business. Administrative support and overhead are shared, as are computer resources. Both SADO and appointed counsel benefit from the symbiosis, as both SADO and outside attorneys draw upon the collective expertise and work product. A freestanding support office would lose the cost-effectiveness of this relationship, which encourages re-use of pleadings and expertise.

## **CONCLUSION**

By the end of 1999, SADO had reduced its office budget and capacity by 20% while its workload continued unabated. The office was forced to close in November and December to new assignments while it absorbed the impact of the budget reductions.



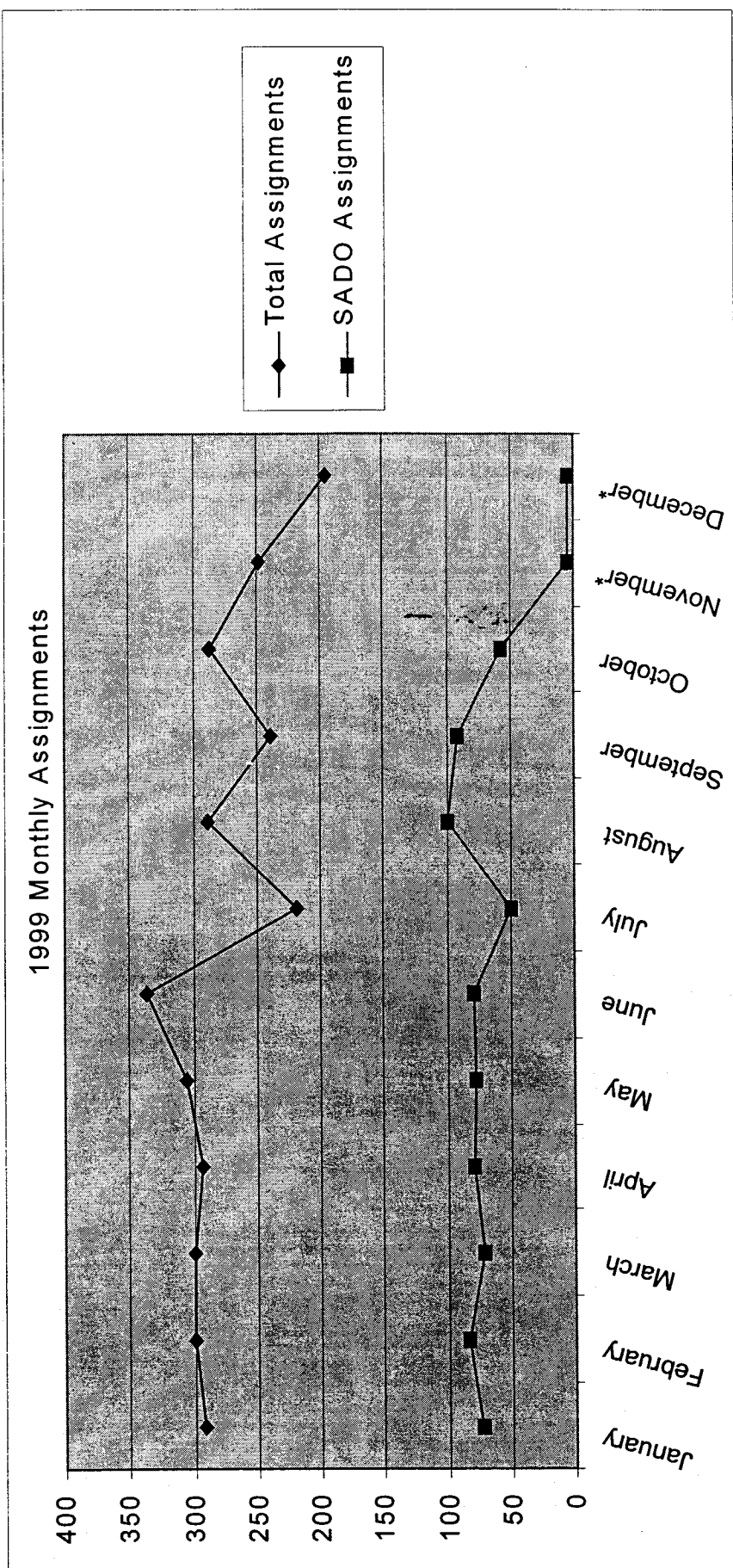
\*SADO shutdown to new assignments in November and December

Jan - May - 27 attys

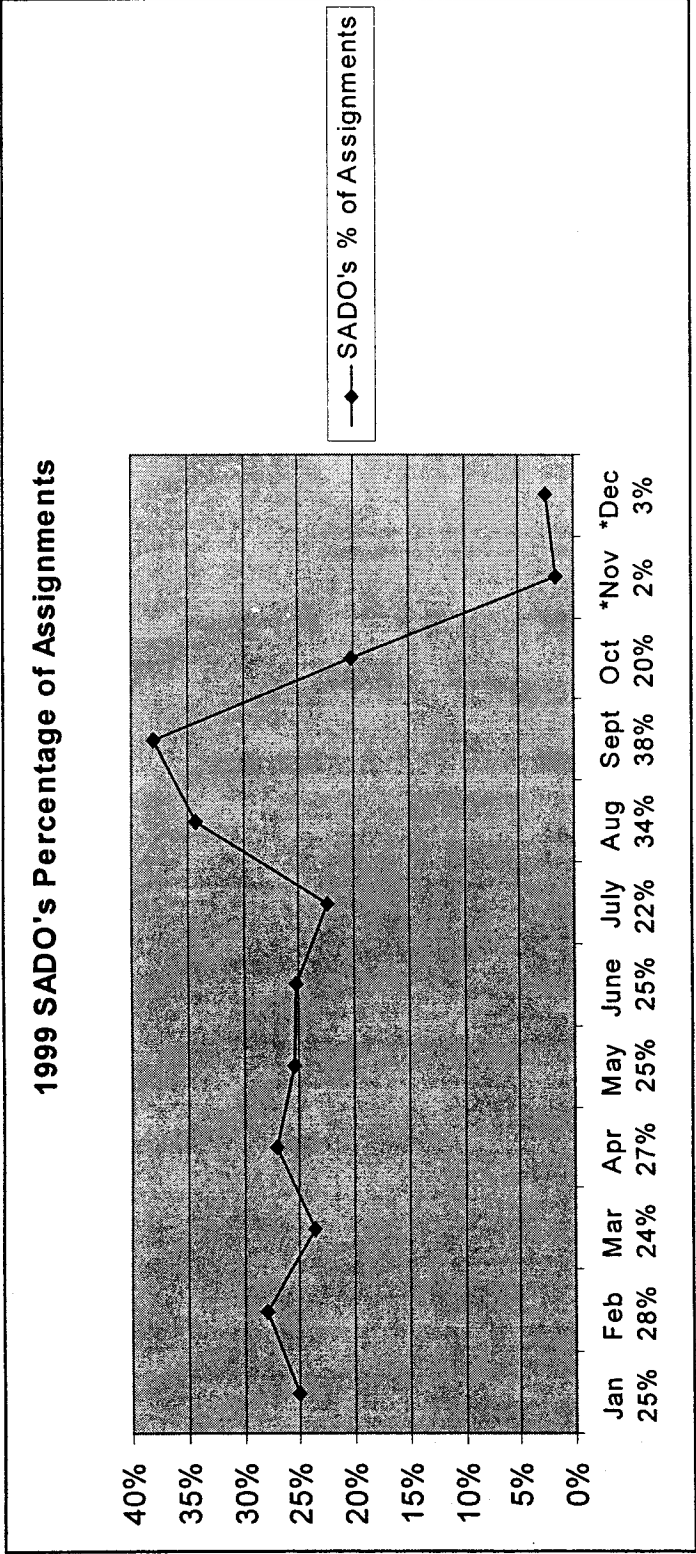
June - August - 26 attys (Weaver resigned)

Sept - 25 attys (Beckwith resigned)

Oct - Dec - 22 attys (Moran on lv; Pilette and Simpson resigned)



\* SADO closed to new assignments in November and December



\*SADO closed to new assignments in November and December

**STATE APPELLATE DEFENDER OFFICE ANNUAL REPORT  
FOR THE YEAR ENDED DECEMBER 31, 1999<sup>1</sup>**

Total New Assignments 1/1/99 to 12/31/99	852
Cases Open as of 12/31/99	1,540
Cases Closed 1/1/99 to 12/31/99	<u>942</u>
<b>TOTAL CASES PROCESSED 1/1/99 TO 12/31/99</b>	<b>2,482</b>
<b><u>Last Action on Cases Open as of 12/31/99<sup>1</sup></u></b>	
<b>I. TRIAL COURT</b>	
Pending	79
Due and Owing	30
Disposition <sup>2</sup>	50
Done (cases sent to closed files)	<u>72</u>
Total	231
<b>II. COURT OF APPEALS</b>	
Pending	20
Due and Owing (No Brief/App)	52
SADO Brief	103
Prosecutors Brief	235
Orals	90
Delayed Applications	41
Disposition <sup>2</sup>	178
Done (cases sent to closed files)	<u>69</u>
Total	788
<b>III. SUPREME COURT</b>	
SADO Application	120
Prosecutor Application	6
Motion for Rehearing	5
Brief Due	0
SADO Brief	2
Prosecutor Brief	1
Orals	4
Abeyance	4
Disposition <sup>2</sup>	138
Reopened	1
Done	<u>60</u>
Total	341
<b>IV. UNITED STATES COURT – DISTRICT/APPEALS/SUPREME</b>	
Pending	21
Orals	3
Disposition <sup>2</sup>	22
Done	0
SADO Brief	6
Prosecutor Brief	<u>3</u>
Total	55
<b>V. OPEN COURT</b>	
Due and Owing	<u>125</u>
Total	125
<b>TOTAL OPEN CASES:</b>	<b>1,540</b>

<sup>1</sup>This chart tracks the status of all cases on the 31<sup>st</sup> day of December 1999. "Open Court" cases are those where SADO was assigned but the choice of court in which to file the opening (first) pleading has not yet been made.

<sup>2</sup>Cases where there is a "disposition" will have either a "rehearing" filed, or application to the next highest court filed by defense or prosecution, or be closed.

**STATE APPELLATE DEFENDER OFFICE ANNUAL REPORT  
FOR THE YEAR ENDED DECEMBER 31, 1999**

**Disposition of Cases Closed 1/1/99 to 12/31/99**

I.	TRIAL COURT	
	Motion Resentence/Credit/Presentence Report/ Granted/Denied	80
	Substitute Counsel Appointed/Retained	33
	Dismissed by Motion/Stipulation/Order	241
	Motion Vacate Plea/Sentence/Conviction Granted/Denied	0
	Motion New Trial/Withdraw Plea Granted/Denied	14
	Motion for Relief of Judgment/Granted/Denied	4
	Appeal Dismissed	0
	Other Disposition	1
	Closed Without Disposition <sup>1</sup>	58
	Total	431
II.	COURT OF APPEALS	
	Regular Disposition	92
	Appeal Dismissed By Stipulation/Motion/Guidance/Court	31
	Application Leave/Delayed Appeal Denied	100
	Appeal Dismissed	0
	Substitute Counsel Appointed/Retained	5
	Closed Without Disposition <sup>1</sup>	15
	Prosecutor App Denied	1
	Total	244
III.	SUPREME COURT	
	Leave Denied – SADO	253
	Leave Denied – Prosecutor	2
	Reversed, Remanded and Vacated	4
	Reversed – Prosecutor	0
	Affirmed	0
	Affirmed – Prosecutor	0
	Leave Granted – SADO (New Case Started)	4
	Appeal Dismissed by Motion/Stipulation	0
	Appeal Dismissed	0
	Total	263
IV	UNITED STATES COURTS – DISTRICT/APPEALS/SUPREME	
	Petition for Writ of Certiorari Denied	2
	Petition for Writ of Habeas Corpus Denied	1
	Motion Granted/Denied	0
	Reversed	0
	Affirmed	1
	Total	4
IV.	MISCELLANEOUS	
	No Disposition	0
	Total	0
	<b>TOTAL CLOSED CASES:</b>	<b>942</b>

<sup>1</sup>"Closed without Disposition" means closed without litigation or order.

**STATE APPELLATE DEFENDER OFFICE ANNUAL REPORT  
FOR THE YEAR ENDED DECEMBER 31, 1999**

**Filings by SADO 1/1/99 to 12/31/99**

TRIAL COURT	814
COURT OF APPEALS	1,711
SUPREME COURT	344
UNITED STATES COURTS	<u>105</u>
Total Filings:	2,974

**Major Filings by SADO 1/1/99 to 12/31/99**

TRIAL COURT	722
COURT OF APPEALS	766
SUPREME COURT	304
UNITED STATES COURTS	<u>48</u>
Total Filings:	1,840

**Assignments of SADO 1/1/99 to 12/31/99<sup>1</sup>**

PLEAS	394
Probation Violation Pleas	53
JURY TRIALS	318
BENCH TRIALS	47
Probation Violation Trials	9
PROSECUTOR APPEALS	7
RESENTENCING	20
LEAVE GRANTED – SADO	1
LEAVE GRANTED – OTHER	0
SC APPLICATION – OTHER	0
SPECIALS	<u>3</u>
Total:	852

<sup>1</sup> These are internal stats which may vary from MAACS' because SADO and MAACS still do not count cases exactly the same way



**TABLE I**  
**CASE ACTIVITY AND WORKLOAD**

	Average Staffing Level	Office Appointments	Attorney Assignments	Average Assignment Per Attorney <sup>3</sup>	Total Filings	Average Filing Per Attorney	Average Filing Per Case	Total Opening <sup>1</sup> Pleadings	Total Major <sup>2</sup> Filings	Average Major Filing Per Attorney	Average Major Filing Per Case
1993	23	1,078	1,127	49.0	4,581	199	4.0	1,167	1,492	64.86	1.32
1994	27	1016	907	33.6	4,083	151	4.5	1,083	1,638	60.66	1.61
1995	21	951	1,029	49.0	3,871	184	3.8	1,043	1,715	81.66	1.80
1996	25	874	1,071	42.84	3,699	148	3.5	944	1,554	62.16	1.77
1997	25	931	992	39.68	3,345	134	3.4	930	1,532	61.28	1.64
1998	27	1,033	1,125	41.66	2,993	110.8	2.08	885	1,786	66.14	1.59
1999	24	852 <sup>4</sup>	1,041	43.4	2,974	124	2.856	1,025	1,840	76.7	1.8

<sup>1</sup> An opening pleading seeks relief from a conviction or sentence – e.g., a brief on appeal, motion for peremptory reversal with supporting brief, motion for new trial or resentencing with brief/memo in support and motion for relief from judgment under Chapter 6 of the Michigan Court Rules, or dismissal or withdrawal from the case.

<sup>2</sup> Major filings include opening pleadings and all non-ministerial pleadings, such as motions to remand, motions to correct sentence or presentence report, motions for credit and motions for rehearing or reconsideration.

<sup>3</sup> Some national standards recommend that criminal appellate attorneys handle only 25 appeals a year. See National Advisory Commission on Criminal Justice Standards and Goals, Courts 13.12 (1973); ABA Special Committee On Criminal Justice In A Free Society, Criminal Justice In Crisis 43 (1989); ABA Standards for Criminal Justice – Providing Defense Services, Standards 5 – 5.3 Workload (3ed 1992).

The National Legal Aid and Defender Association rejects fixed numbers, opining that workload standards depend on the jurisdiction and type of work, but suggests from its surveys about a 22 weighted non-death penalty work unit limit. NLADA Indigent Defense Caseloads and Common Sense: An Update, pp 10-11, citing NLADA Standards and Evaluations Design for Appellate Defender Offenses, Standards I.F., I.H.; II.C. (1980).

Although the Commission officially increased SADO's new case intake for 1997, it simultaneously reduced the number of assignments to regular staff attorneys by two (2) weighted work units (from 28 to 26 per year), due to the reduced time to file briefs in the Court of Appeals and the penalties personally imposed by the Court on staff attorneys if their briefs are filed untimely.

<sup>4</sup> SADO closed assignment intake in November and December 1999. Otherwise assignments would have been approximately 1,000.

TABLE II

**SADO'S PERCENT OF COMPLEX (LEVEL III JURY TRIAL APPEALS)  
APPELLATE ASSIGNMENTS 1993-1998  
AS COUNTED BY MAACS**

	GRAND TOTAL	SADO'S PERCENT OF GRAND TOTAL <sup>1</sup>	LEVEL III CASES PERCENT OF TOTAL	SADO'S PERCENT OF LEVEL III CASES
1993	5,927	953 16.1%	824 13.9%	286 34.7%
1994	5,047	917 18.2%	698 13.8%	271 38.8%
1995	4,762	837 17.6%	636 13.4	241 37.9%
1996	4,287	763 17.8%	687 16.0%	235 34.2%
1997	4,080	832 20.4%	581 14.2%	199 34.3%
1998	3,983	948 23.8%	612 15.4%	216 35.3%
1999	3,362	776 23.1%	591 17.6%	217 36.7%

<sup>1</sup> The totals in this table differ from those in other tables because the numbers here are MAACS'. MAACS subtracts assignments if another attorney is substituted for the original attorney. SADO, however, counts those assignments and reconciles with MAACS at year's end. That is because these cases can have varying amounts of work done before the substitution. The original attorney may have done virtually all of the work. The "new" attorney still must do a significant amount of work to familiarize him/herself with the case, to correct any deficiencies and to complete the work. Thus, each attorney will want to count the assignment, even though MAACS only credits one of them.

In addition, judges assign appeals of pre-conviction rulings, not all of which are sent to MAACS for inclusion in the total number.

TABLE III

## ASSIGNMENT OF CASES BY TYPE (as counted by SADO)

	PLEAS	JURY TRIALS	BENCH TRIALS	OTHER	TOTAL
1993	577 <sup>1</sup> [53.5%]	412 [38.2%]	81 [7.5%]	8 [0.7%]	1078
1994	532 [52%]	412 [41%]	57 [6%]	15 [1%]	1016
1995	508 <sup>2</sup> (87) [53%]	378 [40%]	50 [5%]	15 [2%]	951
1996	441 (307) [50%]	356 [41%]	53 [6%]	23 [3%]	874
1997	539 (434) [58%]	315 [34%]	50 [5%]	27 [3%]	931
1998	618 [60%]	332 [32%]	68 [7%]	15 [1%]	1033
1999 <sup>3</sup>	462 (54%)	338 (40%)	47 (6%)	5 (1%)	852 <sup>4</sup>

<sup>1</sup> Bracket = Percentage of total assignments

<sup>2</sup> Parenthesis = Number of Proposal B Cases

<sup>3</sup> Office closed to new assignments in November and December; 20% budget cut and concomitant 20% reduction in staff

<sup>4</sup> The MAACS total count is 776, the difference is explained in the note to Table II.

**TABLE IV**  
**SUBSTITUTION APPOINTMENTS**

	APPOINTMENTS	SUBSTITUTIONS <sup>1</sup>
1993	1078	110
1994	1016	131
1995	951	95
1996	874	97
1997	931	107
1998	1033	124
1999	852	101

<sup>1</sup> Many of these cases are problematic. They often involve alleged ineffective assistance of private counsel, or MAACS, a court or the Attorney Grievance Commission removal of prior counsel. Many involve problematic clients (some have gone through many trial and appellate attorneys) and/or very complex issues. Sometimes private counsel are simply underpaid and/or overwhelmed by these cases and withdraw due to economic necessity.

**TABLE V**  
**SADO OVERALL RELIEF RATES 1993-1999<sup>1</sup>**

	TOTAL	NO RELIEF GRANTED	RELIEF GRANTED	PARTIAL- RELIEF GRANTED	RELIEF RATE COMBINED %
1993	712	531 (74.5%)	139 (19.5%)	42 (5.9%)	25.4
1994	819	633 (77%)	145 (17.7%)	141 (5%)	22.7
1995	802	641 (79.9%)	112 (13.96%)	49 (6.11%)	20.07
1996	800	649 (81.1%)	107 (13.37%)	44 (5.5%)	18.87
1997	929	776 (83.5%)	119 (12.8%)	34 (3.65%)	16.45
1998	763	643 (84.2%)	108 (13.76%)	25 (3.27%)	17.03
1999	676	553 (81.8%)	97 (14.35%)	26 (3.84%)	18.2

<sup>1</sup> Cases where relief sought – excludes dismissals, death, cases closed without litigation and withdrawals. MAACS' analysis of a 5.6% random sampling of 5,255 post conviction cases assigned in 1990 (including SADO appointments) produced the following results in the 93% of the cases that had reached disposition by October 1993:

<u>TOTAL</u>	<u>AFFIRMED</u>	<u>DISMISSED</u>	<u>RELIEF</u>
Pleas (N = 185)	87 (47.0%)	75 (40.5%)	23 (12.4%)
Trials (N = 103)	73 (70.9%)	12 (11.7%)	18 (17.5%)
Total (N = 288)	160 (55.6%)	87 (30.2%)	41 (14.2%)

"While data on appellate relief rates, in criminal and civil cases, is scarce, these rates are within the 10-20% range reported nationally. Notably, when the cases dismissed without any decision on the merits are excluded, the relief rate in plea cases rises dramatically. Among the plea appeals left after assigned counsel have screened for merit and risk, 21% bring relief in the trial court or the Court of Appeals."

Source: A Decade of Challenges, Report of the Michigan Appellate Assigned Counsel System April 1985 – April 1995, pp. 20-21, updated for amicus brief in People v Bulger.

The decline in relief rate over recent years is caused by several factors: better training of the bench and bar, standardized jury instructions, refined sentencing guidelines, clarification of existing law and broadened use of harmless error doctrines. See e.g., People v Carines, 460 Mich 750 (1999).

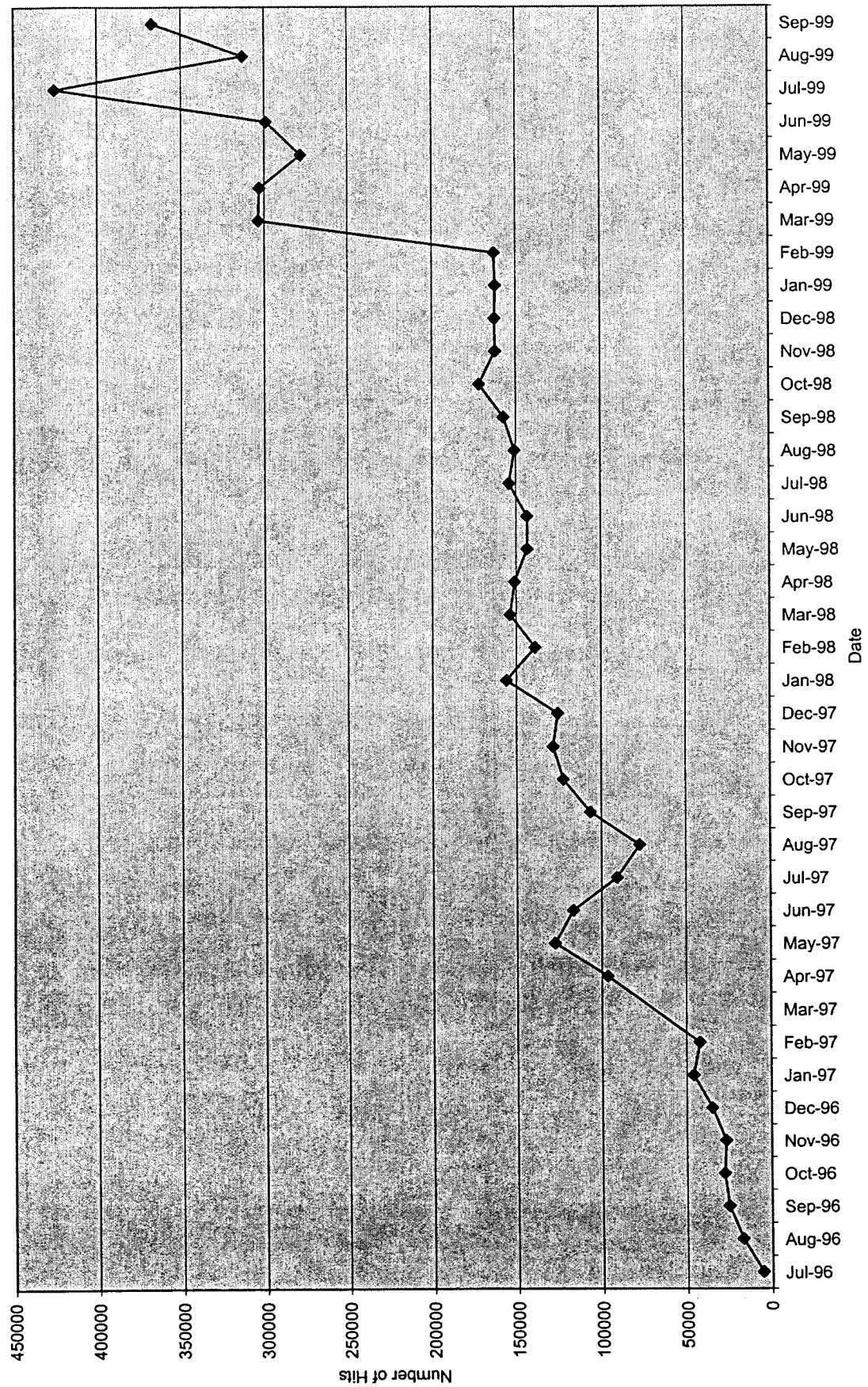
**TABLE VI**  
**DISMISSALS AND WITHDRAWALS**

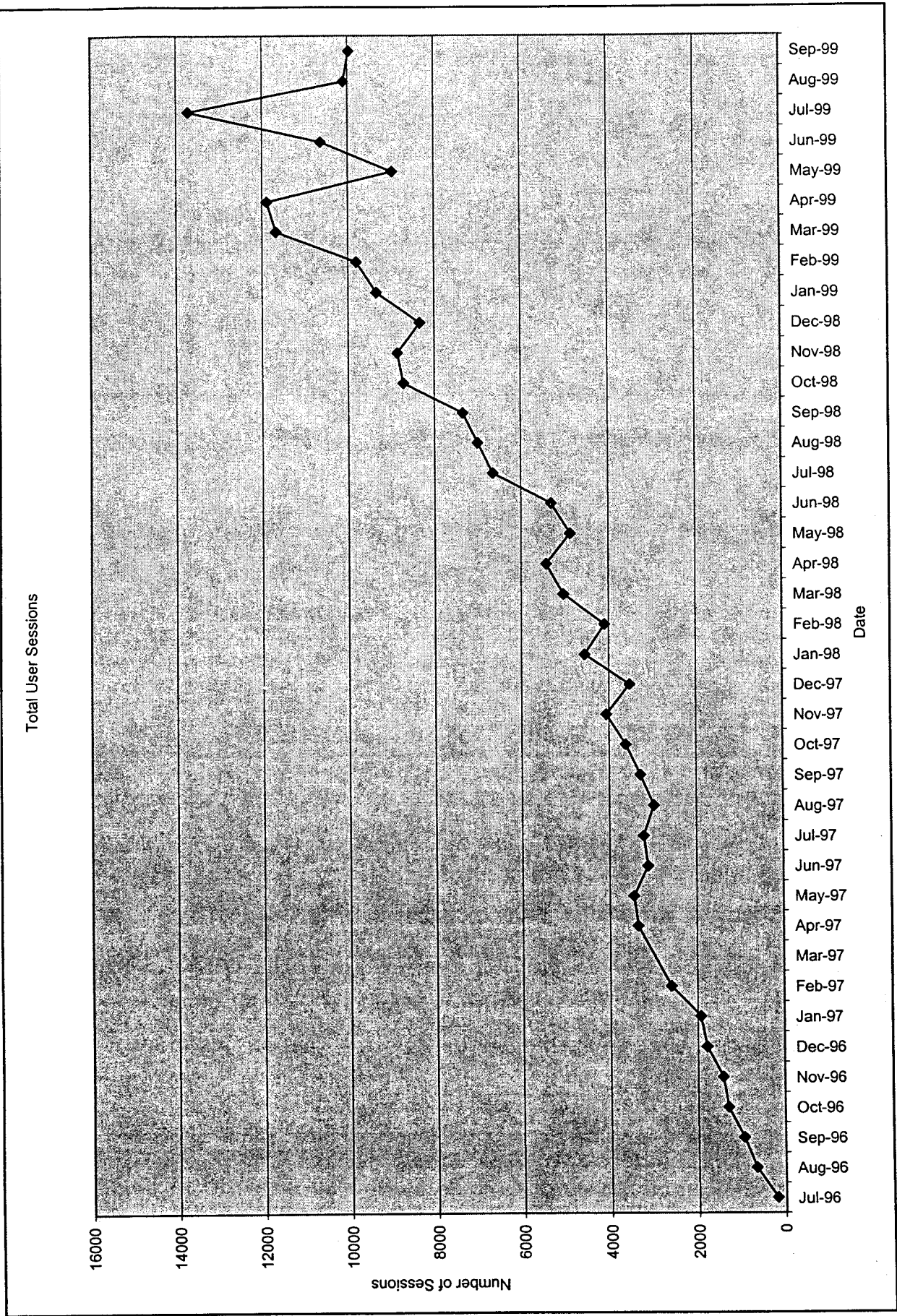
	TOTAL DISPOSITIONS	DISMISSALS <sup>1</sup>	WITHDRAWALS <sup>2</sup>
1993	1005	224 (24.27%)	69 (6.86%)
1994	1086	231 (21.27%)	36 (3.3%)
1995	1011	175 (17.31%)	34 (3.36%)
1996	1051	221 (21.02%)	30 (2.85%)
1997	1224	266 (23.66%)	24 (2.36%)
1998	1063	216 (20%)	32 (3%)
1999	1075	284 (26%)	39 (4%)

<sup>1</sup> Dismissals usually occur only after complete review of the case and consultation with the client. This generally involves much substantive work for the defense attorney, but only minor or no work for the courts and prosecution. SADO only does voluntary dismissals. These save the system a tremendous amount of resources. SADO does not use the laborious and time- consuming dismissal of appeals without the approval of the client required by United State Supreme Court ruling in Anders v California, 386 US 738 (1967): See also MCR 7.211(C)(5) on Michigan's procedure for "Anders" withdrawal. Counseling clients on dismissals also prevents many from pursuing unnecessary, time-consuming and potentially harmful appeals.

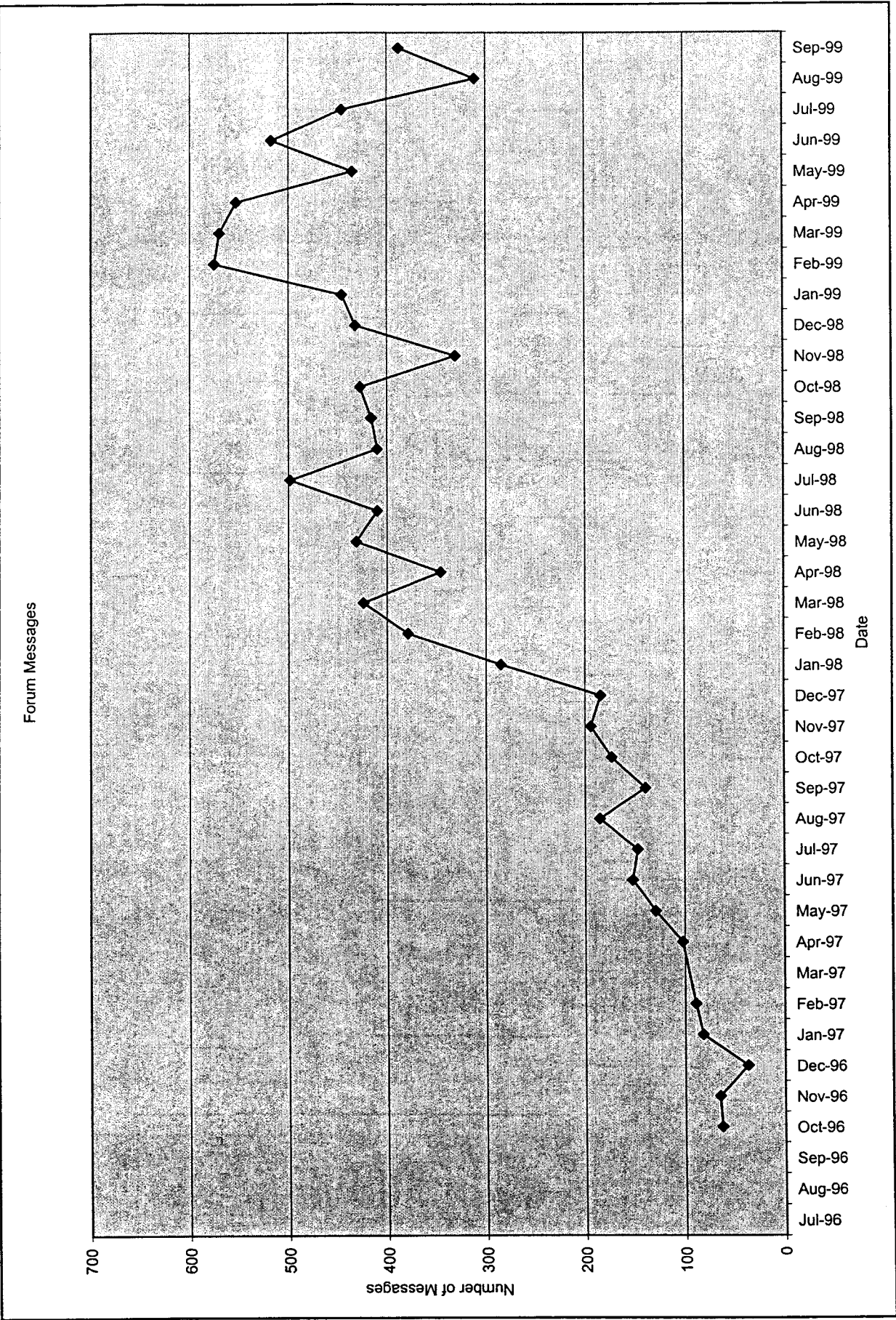
<sup>2</sup> Withdrawal can occur before any substantial work is done, for example, in known conflict of interests cases, or at any point thereafter, even after full briefing and oral argument. None of SADO's withdrawals is for overload.

Total Number of Hits









# APPELLATE DEFENDER COMMISSION

