



APPELLATE DEFENDER COMMISSION

2001 ANNUAL REPORT

For the
STATE APPELLATE DEFENDER OFFICE

And the
MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM

2001 APPELLATE DEFENDER COMMISSION

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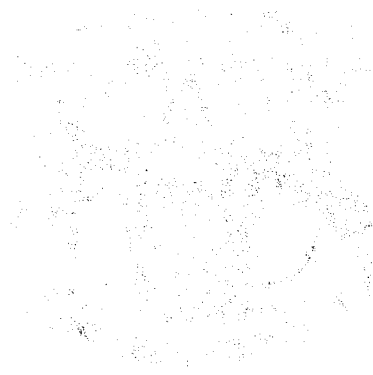
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APPELLATE DEFENDER COMMISSION

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GOVERNOR'S DESIGNEE
ALMA

April 8, 2003

The Appellate Defender Commission is pleased to submit the 2001 Annual Report for the Michigan Appellate Assigned Counsel System and the State Appellate Defender Office.

The Mission of the Appellate Defender Commission is to provide high-quality, efficient and effective, appellate defense services composed of a state-funded public defender office (State Appellate Defender Office) and an assigned counsel panel (Michigan Appellate Assigned Counsel System).

Thank you for the opportunity to submit our 2001 Annual Report. For additional information, please feel free to contact Terence R. Flanagan, Administrator of the Michigan Appellate Assigned Counsel System, James R. Neuhard, Director of the State Appellate Defender Office, or myself.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. Joseph Olson", is positioned above the typed name.

D. Joseph Olson, Chair 2002
Appellate Defender Commission

MISSION STATEMENTS

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. As an outgrowth of that representation, 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.

MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM: To compile and maintain a statewide roster of attorneys eligible and willing to accept criminal appellate assignments and to engage in activities designed to enhance the capacity of the private bar to render effective assistance of appellate counsel to indigent defendants.

STATE APPELLATE DEFENDER OFFICE GOALS

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

OBJECTIVES

- Maintain quality.
- Avoid unnecessary delay.
- Increase efficiency through innovation and automation.
- Reduce cost to counties (which pay for all appeals handled by private assigned counsel) by changing case allocation formula to assign SADO more costly, complex Level 3 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.

MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM GOALS and OBJECTIVES

To ensure that cases are assigned by appropriate methods to qualified lawyers; that these lawyers receive appropriate training and resource materials to enable them to provide effective representation for their clients; and that the lawyers comply with minimum performance standards when representing their clients.

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HISTORY, STATUTES, STRUCTURE and GOVERNANCE

The Appellate Defender Act was signed into law by Governor William G. Milliken in 1978 and created the Appellate Defender Commission within the office of the State Court Administrator (MCL 780.711 et. seq). The legislation directed the Commission to:

- Develop a system of indigent appellate defense services, which shall include services provided by the State Appellate Defender Office (SADO). MCL 780.712(4),
- Develop minimum standards to which all indigent criminal appellate defense services shall conform. MCL 780.712(5),
- Compile and keep current a statewide roster of private attorneys willing to accept criminal appellate appointments. MCL 780.712(6), and
- Provide continuing legal education for those private attorneys. MCL 780.712(7)

After a series of public hearings, the Commission determined that a mixed system of full-time defenders and assigned private attorneys would best serve the long-term interests of the entire system. The Commission promulgated regulations governing the system for appointment of counsel and minimum standards for indigent criminal appellate defense representation, which were approved by the Supreme Court in Administrative Order 1981-7. 412 Mich lxv, et. seq.

The Michigan Appellate Assigned Counsel System (MAACS) administers the assignment of all cases and the roster of private assigned appellate counsel. The State Appellate Defender Office (SADO) staff attorneys are state-funded and handle about 25% of the total appellate assignments. The remaining 75% are handled by MAACS roster attorneys who are appointed and paid by the counties.

In 2001 the Office of the Auditor General conducted its most recent performance audit of the Commission (the last audit occurred in 1992). The Auditor General concluded that the Commission's system for providing indigent appeal services through SADO and MAACS was "generally effective and efficient." Further audit details are set out in the separate sections for each agency that follow.

The Commission consists of seven members appointed by the Governor. Six Commission members are recommended for the Governor's appointment: two by the Supreme Court, two by the State Bar (one of which was vacant during 2001), one by the Court of Appeals, and one by the Michigan Judges Association. The seventh member is a non-lawyer selected by the Governor. The Commission members in 2001 were: D. Joseph Olson (Chairperson) and Joseph P. Overton (Vice-Chair), Supreme Court designees; Honorable Kenneth N. Sanborn, Michigan Judges Association designee; Allan S. Falk, Court of Appeals designee; John E.S. Scott, State Bar designee; and Bethany Goodman, Governor's designee.

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). The Supreme Court established the Appellate Defender Commission pursuant to Administrative Order 1970-1 and charged it with the duty to provide high-quality, cost-efficient legal representation of indigent criminal defendants in post-conviction matters.

In 1979, the Appellate Defender Act, 1978 PA 620, MCL 780.711 et seq., formally established the office. The legislation specifically limits SADO to any criminal, post-conviction cases that it is appointed to by a court. It cannot voluntarily accept cases, nor handle general civil lawsuits or sue the Department of Corrections (except technically in collateral criminal appeal matters such as federal habeas corpus and state mandamus to compel compliance with laws affecting appeals).

The Appellate Defender Act requires that SADO be assigned no less than 25% of all indigent criminal appeals, but limits the total cases the office accepts to "only that number of cases that will allow it to provide quality defense services consistent with the funds appropriated by the Legislature" (MCL 780.716(c)). Given the rise and fall of funding and number of appeals, the Appellate Defender Commission must monitor and balance SADO's case intake based on its resources, the overall assignment rate, and the projected number of appeals for any given year.

The principal office of SADO is at 645 Griswold, Suite 3300, Detroit, MI 48226. A 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. Lansing-based Defenders serve as adjuncts at the Cooley Law School.

SADO's Criminal Defense Resource Center began in 1977. It is located in SADO's Detroit office and provides a brief bank, newsletters, motion manuals, trial and sentencing books, recent case summaries, direct training events, a complete web-based version of its printed products with full-text search capabilities of its brief bank and additional support and training materials, and phone and legal information support for its staff attorneys and several thousand assigned counsel throughout the state.

SADO Director James R. Neuhard, Chief Deputy Defender Norris J. Thomas, Jr., and the Criminal Defense Resource Center Director Dawn Van Hoek are in the Detroit office. Deputy Defender Marty Tieber manages the Lansing office, where Special Unit Manager Sheila Robertson-Deming also is housed.

MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM

MAACS began to administer the appellate assignment process and maintain the roster of attorneys eligible for assignments in 1985. MAACS is charged with ensuring that cases are assigned by appropriate methods to qualified lawyers, that these lawyers receive appropriate training and resource materials, and that they comply with minimum performance standards when representing assigned appellate clients. It is also directed "to engage in activities designed to enhance the capacity of the private bar to render effective assistance of appellate counsel to indigent defendants." MAACS Reg. 1(1)

The offices of MAACS are located in Lansing, Michigan. The MAACS Administrator is Terence R. Flanagan; Deputy Administrator is Thomas M. Harp; and Associate Administrator is Priscilla Cheever.

ANNUAL REPORT OF THE STATE APPELLATE DEFENDER OFFICE FOR JANUARY 1, 2001 THROUGH DECEMBER 31, 2001

Over the years, two of the most important functions of the Appellate Defender Commission have been balancing SADO's workload with its funded capacity and allocating the caseload and workload between SADO and the roster attorneys in the Michigan Assigned Counsel System (MAACS). MAACS creates and manages the list of private attorneys accepting indigent criminal appellate assignments. Together, MAACS and SADO attorneys handle 100% of the assigned appeals for the State of Michigan.

The balancing and distribution of the workload between SADO and private assigned counsel is most often necessary when SADO is assigned more cases than it has capacity to handle. To address this issue, the Commission has employed several strategies attempting to meet the timing and quality demands of the Courts, the resources of SADO, the needs of the counties and the distribution and availability of qualified appellate counsel willing to accept appointments.

The number of assigned criminal appeals rapidly grew from the low 2,000's in the early 1980's to over 6,400 in 1993. This growth placed enormous strain on the entire appellate system – courts, court reporters, prosecution as well as the defense. During this period of growth, the state faced numerous budget crises and budget cuts. In addition, SADO's budget was reduced on several occasions. An additional stress was the Court of Appeal's delay reduction policies that included significant reductions in time or elimination of motions to extend time to file the appellant's brief. Failure to file timely resulted in potential forfeiture or waiver of meritorious issues and personal cost assessments on the attorneys handling the cases.

From time to time these pressures have forced the Commission to reduce SADO's case intake pursuant to its statutory mandate to "Accept only that number of assignments and maintain a caseload which will insure quality criminal defense services consistent with the funds appropriated by the state." [MCL] 780.716 ... (c). When its workload exceeds its case handling capacity, the Commission has closed the office to new assignments for short periods to match the caseload with the appropriations. While this method reduced the assignments in gross over a year period, it failed to offer predictability in the processing of appeals. Because of the unevenness caused by periodic closings during the chronic overload of the early 1990's, the Commission reduced SADO's percentage of cases from 25% to approximately 17%.

After the caseload peaked in 1993 and began to fall, SADO continued to increase its capacity through the use of automation and using funds from eliminated support positions to increase attorney positions. By 1996, SADO had eliminated its backlog. Subsequently, the Commission first returned SADO to its 25% share of the appeals. Then after reviewing the system's needs, ultimately changed the formula from a flat 25% of all assignments to 50% of the Level 3, 25% of the Level 2 and 20% of the Level 1 appeals. This new formula better harmonized the needs of the system at that time with the resources of SADO and MAACS.

CHANGE IN THE MIX OF CASES ASSIGNED TO SADO

In February 1999, the Appellate Defender Commission increased SADO's Level 3¹ appeals to 50%, and by the end of 2000, the formula had been fully implemented.

Table IV, page 5 of the Appendix, shows the percentages and number of Level 3 cases assigned to SADO since 1994. Even when SADO should have received only 25% of Level 3 cases, it consistently was assigned well over 25%. Moreover, when SADO's overall percentage of appeals had been reduced to 17% up until 1998, it often received over 35% of the Level 3 cases; twice the number it should have been assigned if the counties had strictly rotated the list. This practical reality drove the decision to change the formula to reflect the use and needs of the system. Unfortunately, due to budget reductions, the early retirement proposal that would further reduce staff reluctantly in 2002, and an overload of Level 3 cases, in July 2001 the Commission again needed to change the formula from 50% to 33% of Level 3 cases, 25% of Level 2 cases, and 20% of Level 1 cases. As a result, SADO received only 32.7 of the Level 3 cases in 2001. The office received 50% of the Level 3 cases through August and less than 15% for the rest of the year. The 3-month reduction in Level 3 assignments at the end of 2001 allowed the office to process some of the backlog accumulated from overload earlier in the year.

ASSIGNMENT LEVELS

According to the MAACS annual report, by the close of 2000 SADO had received 922 assignments. It had received 22.3% of Level 1; 24.7% of Level 2, and 45.7% of Level 3. At that time, the assignment formula was 20% of Level 1, 25% of Level 2 and 50% of Level 3.² In July of 2001, the assignment of Level 3 cases was dramatically reduced until the total intake of Level 3 cases at SADO was reduced to 33% of the total of all Level 3 cases averaged over the entire year. In effect, SADO received no more Level 3 cases until the end of the calendar year in 2001. This reduced SADO's assigned Level 3 total from 45.9% to 32.7%, or 1 in 3. This reduction in assignments to SADO for the last quarter of 2001 allowed SADO to file the overload from the start of the year. Figure 4 below shows that in January of 2002, the computer program that automatically assigns the cases to attorneys and SADO, again tried to readjust and catch up due to the low assignments to SADO in the preceding months. Once this was caught, the program was adjusted and assignments returned to a more even rate.

¹ Level 3 appeals are jury trials with sentences of 15 years or more and tend to be the longer, more complex and more costly appellate assignments.

² MAACS total assignment numbers vary from SADO's. MAACS counts one order of appointment only once, even if more than one lawyer has been appointed to handle the appeal, and regardless of the amount of work performed by either lawyer. So, while SADO's count includes cases it is substituted out of from, MAACS' does not.

Figure 4

Capacity vs. Office Assignments for 2000 through Sept. of 2002

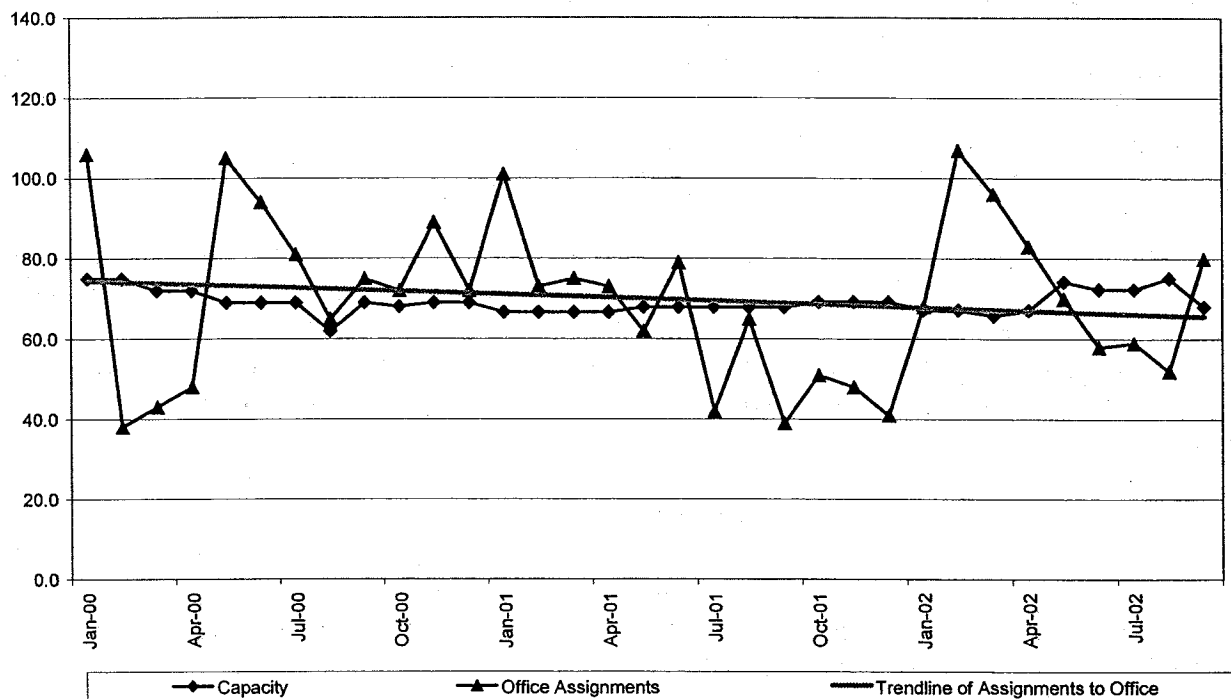


Figure 4 tracks the assignments to SADO over 2 and $\frac{3}{4}$ calendar years and parts of three budget years. This tracking over several years reveals the consistently fluctuating assignments by month and the overall trend of the workload that one year “snap shots” may not readily reveal. As can be seen, while the overall yearly percentage of assignments averages close to the 25% of the overall assignments, the peaks and valleys are severe when tracked against the office capacity month to month. The effect of these widely disparate rates per month is greatest on the office when transcripts are filed. This filing triggers the timing deadlines in the Court of Appeals. The research, client visits, investigation, writing and editing of the brief must be completed within very rigid timing deadlines in the Court of Appeals. The Commission’s effort to smoothen out SADO’s intake rate is on-going.

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 landmark, high-profile, and most complex cases.

Due to a budget cut in the previous year, SADO reduced the size of its staff in 2001 by eliminating two attorney positions and several support staff. By the end of 2001, the Director, Chief Deputy Director, 21 Assistant Defenders and the Legal Resources Project Director were housed in the Detroit (main) office, and the Deputy Director, Special Unit Director and three Assistant Defenders were located in the Lansing office. One Paralegal/Secretary, five Legal Secretaries, and 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.

Two SADO lawyers were housed at and received secretarial/clerical and legal research support from the University of Michigan Law School while teaching the Criminal Appellate Practice Course. Two others 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.

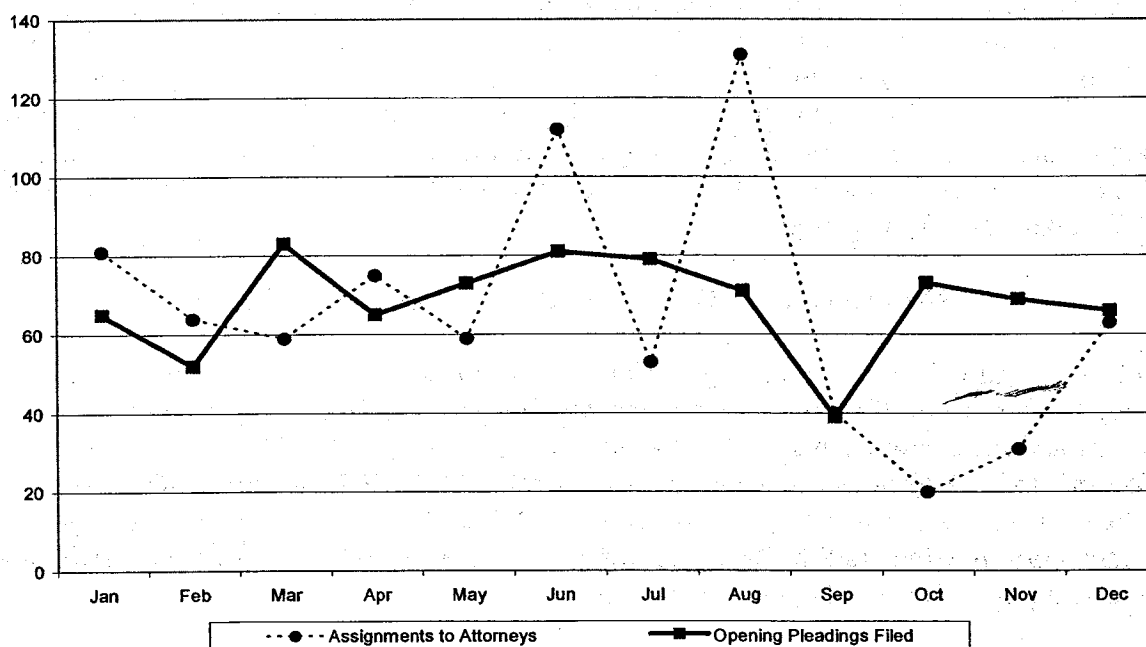
PRODUCTIVITY

In 2001, SADO Assistant and Deputy Defenders were assigned 839 cases and produced 2,817 filings, 927 of which were opening pleadings (Brief on Appeal or Motion for New Trial or Resentencing with a supporting brief). (See Table III, page 3 of the Appendix)

(See Page 22)

Figure 6

**Opening Pleadings Filed vs. No. of Assignments to Attorneys
for 2001**



The Unit Director and two attorneys in SADO's Special Unit for Pleas and Early Releases continue to expeditiously handle non-trial-based (mostly plea) appeals. An amendment to the Michigan Constitution and subsequent legislation limiting poor people's right to appointed counsel to appeal their guilty pleas and sentences continue to reduce the number of guilty plea appeals reaching the Court of Appeals. However, to date, there has only been a minimum reduction in the total number of assigned guilty plea appeals.

Figure 8 **Number of Plea Appeals Assigned to SADO by County for 2001**



SADO received an almost equal number in the following years, 539 (58% of the total assignments made to SADO) in 1997, 618 (60%) in 1998. Pleas dropped to 462 (54%) in 1999 due to the office closing to all new assignments for 2 months because of the 20% budget cut and loss of staff.³ They again rose to 587, (59%) in 2000 and dropped only slightly in 2001 to 457 assignments (54%).

SPECIAL UNIT FOR PLEAS AND EARLY RELEASES (PLEA UNIT)

Because of the large number of pleas assigned to the office, in the early 1980's SADO developed a Special Unit to process guilty plea appeals and cases with short sentences, where early action was required to avoid loss of potential sentencing relief. This differential case management allows the Unit attorneys to handle over 50% more clients and cases than attorneys handling randomly mixed caseloads. This in turn allowed the office to increase its case-handling average to over 47 cases per staff attorney in 2001 (see Table III, page 3 of the Appendix)

The Unit increases its efficiency not only through specialization, but also with increased client confidence in the judgement of the attorneys on the merit and risk/benefits that the client may face in the appeal. After Unit attorneys review the entire file and conduct preliminary research, they consult with and advise the client. As a result of this preparation, the Unit clients voluntarily dismiss between 38% to 42% of their cases.⁴ The Unit's overall relief rate⁵ 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 restricted office intake closure. Because of budget reductions and the increase in Level 3 trial appeals, there are now only three attorneys in the Unit. However, through special part-time assignment of non-Unit attorneys to work on plea appeals, the Unit was still able to handle 72% of SADO's 457 plea-based appeals.

INCREASED INNOVATION, INTERNAL EFFICIENCY AND CASE MONITORING

Over the years since 1978, through a series of grants and internal cost savings, SADO became one of the most automated law offices in America. Starting in 1980, the office automated brief production and management information systems. It now has automated its case-tracking system and integrated it into its word processing software. In addition, it has automated its brief bank and 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. Automation has allowed the office to eliminate typing and clerical positions, increase staff attorney positions, and increase office production, even when its budget

³ Numbers differ from those in previous reports because of technical corrections.

⁴ This percentage is quite significant, because voluntary dismissals markedly reduce work for the entire adjudicative system, since no pleadings are filed and, therefore, no oral argument or opinions are required.

⁵ On cases where relief is sought (excludes dismissals).

remained static or decreased. It also reduced costs paid to private counsel by making SADO-produced materials readily available to them at its web site.

INNOVATION AND AUTOMATION

As part of its continuing effort to provide high-quality, cost-efficient representation, in 1999, SADO created additional special work teams composed of four or five staff attorneys and one paralegal. The attorneys do virtually all of their word-processing and most 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.

CASE MONITORING - PRODUCTIVITY

Over the last three years, SADO has gone from a very good case-weighting 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 case-weighting, monitoring and supervision. Computer-generated reports now show the precise overall position of the office and the individual attorney caseloads at chosen intervals, permitting 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 compliant 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 was the first phase of a two-phase project that will streamline SADO's business applications.

Starting in 1999, the second phase streamlined SADO's business applications. The system converts existing boilerplates to templates (codes and all), creates master templates for all legal documents, merges templates with case management data from a live database, utilizes a familiar intuitive interface, and reduces overall training requirements. By 2000's end, the staff had their computers upgraded and had moved to using the new system.

COLLATERAL ATTORNEY SERVICES AND ACTIVITIES

As has historically been the case, SADO attorneys are expected to and continued in 2001 to serve as officers on boards and commissions, members of sections and committees of many national, state and local bar organizations and task forces, the Michigan Justice Training Commission, legislative workgroups, 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 served on committees for 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 also taught criminal law and procedure to law students, high school students, paralegals and prisoners. One co-authored the current West Publication on Michigan Criminal Procedure; others wrote practice and procedure manuals for both the bench and bar. Some volunteered to mentor pre-law and law students. Most remain deeply involved in civic and community-based activities.

AUDIT BY MICHIGAN AUDITOR GENERAL'S OFFICE

In 2001, a performance audit was conducted as part of the constitutional responsibility of the Office of the Auditor General and as a request of the Legislature in the Appropriations Act.

A. Audit Scope and Methodology

The audit work included examination of SADO and MAACS operations for the period of October 1, 1998 through June 30, 2001. The examination included researching applicable statutes, regulations, and Commission minutes to gain an understanding of the Commission's programs. Also, the auditors received financial records, personnel policies, agency caseload data, records related to circuit court case assignments, and attorney credentials and experience to assess the effectiveness and efficiency of the Commission's system for ensuring the quality of indigent appeal services provided by court-appointed attorneys.

The auditors researched the salaries of attorneys and supervisors in both public and private sectors by obtaining and evaluating salary surveys, pay schedules, and compensation plans. They obtained and evaluated documentation related to job duties and discussed attorneys' and supervisors' salaries with management and personnel.

B. Objectives

The audit had two objectives pertaining to the Appellate Defender Commission and SADO.

1. To assess the effectiveness and efficiency of the Commission's system for providing indigent appeal services through the State Appellate Defender Office (SADO).
2. To provide a comparative analysis of SADO, public sector, and private sector salaries for attorneys and supervisors.

C. Conclusions and Noteworthy Accomplishments

Conclusions:

- "The Commission's system for providing indigent appeal services through SADO was generally effective and efficient." There were no negative findings made.

- The auditors developed a comparative analysis of SADO, public sector, and private sector salaries for attorneys and supervisors. It revealed that SADO's staff attorneys are paid considerably less than those of the Attorney General's Office and all but one of the district prosecutor's offices."

Noteworthy Accomplishment: "SADO developed and implemented a relational database that is used to generate all reports necessary to monitor and track every appeal SADO is assigned. The database is fully integrated into SADO's case production and brief preparation. It has eliminated the need for repetitive data entry and for multiple proofing by both secretaries and attorneys. SADO has received inquiries from several other states as well as from Wayne County expressing an interest in obtaining the database."

"Over the years, automation has allowed SADO to reduce the number of support staff necessary for each staff attorney. Automated desktops and linking case production to the relational database have greatly reduced the need for support staff, which has allowed for the conversion of these positions to staff attorney positions. SADO has reduced the support staff from one secretary for two attorneys to one paralegal for four attorneys."

"SADO's website has won numerous awards for its design, usability, and richness of content. It is fully interactive and updated almost daily. The website contains all of SADO's publications, related website links, and a fully searchable brief bank. The website is available to both SADO and non-SADO attorneys throughout the State."

2001 GOALS AND OBJECTIVES

Absorb 20% Staff Reduction and Accept and Timely Process 50% of the Level 3 Appeals and 25% of the Total Assigned Appeals

SADO's principal goal at the start of 2000 was to absorb the impact of the 20% loss of staff due to the budget cut and review and adjust the distribution of appeals between SADO and MAACS roster attorneys. Early in 1998, SADO had eliminated its backlog and achieved an intake of 25% of all the cases and over 35% of the more lengthy and usually more difficult and time-consuming Level 3 appeals. While SADO should have received a strict 25% of Levels I, II and III, it was clear that many counties were over-assigning Level 3 appeals to SADO. The main reasons were: 1) 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 3 appeals and fewer attorneys would sign up on the lists of counties paying the worst fees; and finally 3) some counties lacked qualified attorneys willing to accept Level 3 appeals.

The Commission adopted new formula of 50% of Level 3, 25% of Level 2 and 20% of Level 1 cases compensated for this pattern of use. This new formula provided more equitable use of the state-funded resource. It also improved Court of Appeals docket management by having the full-time SADO staff handle more of the time-consuming and complex appeals from which private attorneys frequently withdraw. Nearly 14% of SADO's assignments in 2000 were substitution of SADO for lawyers who withdrew or were removed for failure to prosecute appeals. That dropped to 11% in 2001 (see Table VI, page 7 of the Appendix).

However, even though chronically still understaffed and under funded due to budget cuts, as in past years, SADO still has never been removed from any case for want of prosecution under MCR 7.217(A).

At its May 1999 meeting, the Commission adopted the new formula of 50% Level 3, 25% of Level 2 and 20% of Level 1 cases. At the same time, the Michigan Appellate Assigned Counsel System 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 3 and Level 1 percentages. The formula could be changed in the computer and SADO's appointments would be generated automatically along with the private bar's appointments. By the end of 2000, all but two circuits were either on-line or notifying MAACS of the need for an appointment and MAACS was generating the order of appointment. The 45.4% percent of Level 3 appointments for 2000 reflects the gradual ramping up to the new 50% formula.

However, when SADO's caseload became unmanageable the Commission changed the formula for the allocation of cases between SADO and private counsel back to 33.3% effective July of 2001. SADO's percentage of Level 3 cases dropped from 45.4% in 2000 to 32.2% in 2001. The 2000 goal of accepting 50% of these cases had to be abandoned because the density of work created by this larger intake of more difficult and complex cases resulted in an unexpected overload of work for the staff attorneys available to handle cases at that intake rate.

CRIMINAL DEFENSE RESOURCE CENTER SERVICES 2001

OVERVIEW AND GOALS ACHIEVED

Primary Goals for 2001: Increase quantity of support to the private and public defender bar, and increase access to services through the Web.

I. Overview of noteworthy accomplishments

The year 2001* marked the twenty-fifth year the Criminal Defense Resource Center (CDRC, formerly the Legal Resources Project) has served Michigan's criminal defense community with services essential to the competent practice of criminal law in Michigan. The CDRC's objectives for the year remained to deliver core services through traditional means, expand their delivery through web-based means, and directly train criminal defense attorneys on the resources available to them. Core services included publication of a monthly newsletter, and annual editions of the trial, sentencing and motions 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. The year also saw planning for a new resource slated for release in 2002; the Defender Habeas Book will join the Trial, Sentencing, and Motions Books as part of the set of essential practice manuals.

In addition to planning of a new book for the Defender Book series, the year was marked by resumption of a very important service. The Attorney-to-Attorney Support Service was launched in April of 2001 to connect criminal defense attorneys throughout the State of Michigan with experienced research attorneys hired by the CDRC. The project was funded by a grant from the Department of Justice's Bureau of Justice Assistance (BJA), following a competitive nationwide process. The CDRC's grant application was chosen from more than a thousand as the top project to be funded, and \$150,000 was awarded for the eighteen-month project. Six research attorneys were hired, trained, and started working in June, 2001 from two offices, the main Detroit SADO office, and an office within Wayne Circuit Court, Michigan's busiest criminal court. The six attorneys all were experienced attorneys who maintain their own private law practices, with each working one to two days per week on the project, amounting to the equivalent of two full-time positions. Using phone contact, e-mail or personal visitation, the CDRC research attorneys answered other attorney's questions about criminal law and procedure. This support service picked up from a gap lasting from October of 1999, when it was eliminated due to a state budget crisis, to resumption of the service in June of 2001. Before 1999, the service had been provided continuously for over twenty-three years, helping thousands of attorneys with matters of law and strategy. As a long-range goal, the CDRC is working toward state funding of this essential service.

* Due to reporting methods based on a subscription year, the time period covered by this report is October 1, 2000 to September 30, 2001.

Also significant during 2001 was the continuing enhancement of the CDRC's web services, provided through the gateway, www.sado.org. The site was redesigned to enhance navigation, and significant content was added to the online databases available to criminal defense attorneys. One database that received much development and subsequent use was that containing trial-level motions: several dozen pleadings were contributed by non-SADO attorneys, and were organized into full-text-searchable databases. Also, videotapes of training events were edited and linked to written materials, making it possible for attorneys to remain at their home or office computers and "attend" events that took place previously. Numerous valuable training sessions of the Criminal Defense Attorneys of Michigan were captured in this fashion. 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 CDRC 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 counsel might otherwise submit a bill.

The year also was noteworthy for the increased use of the CDRC's online discussion group, the "Forum," a group of approximately 550 attorneys who participate in this listserv. As more attorneys become familiar with the technology, both the quality and quantity of messages has increased. Many find it an invaluable "conference room," in which they can discuss cases and strategies, and share information with colleagues.

Delivery of certain publications in electronic form increased during 2001, advancing both timeliness and cost savings. The Criminal Defense Newsletter and the summaries of appellate decisions went out to nearly 500 subscribers to web services, delivered as attachments to e-mail messages.

CDRC operations were once again funded through a combination of SADO budgetary support, user fees, and grants from the Michigan Justice Training Commission, the Michigan State Bar Foundation, and the Bureau of Justice Assistance. 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. The grant from the Bureau of Justice Assistance funded the Attorney-to-Attorney Support Service operating statewide.

II. Services Delivered by Mail, Phone, and In-Person

During the report period, the CDRC provided the following services by mail, phone, and in-person.

A. Criminal Defense Newsletter.

This near-monthly newsletter (eleven issues published) delivered an average thirty pages of essential information to approximately 1,200 subscribers electing to receive hard copy (nearly 500 chose the electronic version). More issues were published this

year than last, which saw just nine released due to staff reductions; the increase was due to help from the new CDRC research attorneys and continuing technological advances. Each issue contained a lead article providing in-depth analysis of a legal 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 provided a comprehensive listing of issues covered during the year.

B. Summaries of Appellate Decisions.

A significant change in this service was marked this year, as the CDRC discontinued the mailing of hard copies of appellate decision summaries. As it made more and more resources available via the Web, the CDRC saw the opportunity to improve the delivery of time-sensitive information, by moving away from surface mail. During 2001, subscribers to the CDRC's web services received e-mail messages containing appellate summaries, delivered as soon as they were written. Sending the case summaries by e-mail saved at least two or three days in delivery time, as well as postage and staff time previously spent in posting a very large quantity of paper. During 2000, summaries of over 800 decisions were mailed to approximately 85 subscribers, for example. During 2001, a simple e-mail went out immediately to over 498 web subscribers, with easy-to-open electronic files attached. The change not only improved timeliness, but also allowed attorneys to store the summaries as electronic files and cut-and-paste them into other documents.

C. Defender Trial, Sentencing and Post-Conviction, and Motions 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 1900 pages of relevant information were delivered to users, covering developments through May of 2001. These three annually-updated looseleaf books contain well-organized summaries of the law on all aspects of criminal law and procedure, from arrest through appeal. In addition, the Defender Motions Book contains model pleadings (sample motions) that can be adapted for use in another case, as well as consulted as writing models. Summaries and analysis of case law, statutes, court rules and legal practice are also included. Users also receive a CD-ROM version of the books that contains the full text of any unpublished Court of Appeals decisions cited in the books. The books are installed on a user's own computer from the CD-ROM and bundled with a powerful search program that allows full-text search and retrieval of useful information. Asked in 2001 about how frequently they use the books, 13% of the users said daily, 60% said weekly, 22% said monthly and 5% said less than monthly. These results reflect heavy use, as in prior years. Approximately 66% said they use the books to browse a topic to learn the law, 85% used them to quickly identify a case, rule or statute, and 87% 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, 61% said they were indispensable, 39% said they were helpful and none said they were of minimal value. Many indicated that they found the CDROM version of the books extremely useful: 41% found them indispensable, and 59% found them helpful.

D. Defender Habeas Book.

In development during 2001 and set for release in 2002, the Habeas Book will become part of the four-volume set of practice manuals published by SADO's CDRC. It will contain detailed information about how and when to file habeas petitions in federal court, how to appeal adverse decisions or respond to the government's appeals, and how to preserve federal constitutional issues in state trial courts. Like the Defender Motions Book, the Defender Habeas Book will contain sample pleadings that can be adapted for use in a particular case, as well as text discussing when and how to file them.

E. Attorney-to-Attorney Support Service.

Following a nearly two-year hiatus, legal support for Michigan's criminal defense bar returned in the form of the federally-funded Attorney-to-Attorney Support Service. The Bureau of Justice Assistance (BJA) awarded \$150,000 for the 18-month project, one of the largest awards nationally. Six research attorneys were hired, trained and started work in June, 2001, working in the Detroit SADO office and an office located within the Wayne Circuit Court. As each research attorney also maintained a private law practice, each worked one or two days a week, making up a full time position in each office. Training time was minimized by this model, which took advantage of expertise the attorneys had already developed as active practitioners. Scheduling of work, work performed, and reporting were web-based and captured in databases. The CDRC research attorneys handled intake through phone calls, e-mail messages and personal visitation, and generally responded within one day. They answered questions of law and procedure, providing citations, pleadings, and a sounding board for issues of strategy. During the first four months of the project, June of 2001 through September of 2001, the research attorneys assisted 204 attorneys in 388 individual contacts. The Detroit SADO office handled primarily phone intake, coming from most counties in the state, while the Wayne Circuit Court office handled primarily in-person intake. Inquiries tended heavily toward trial issues, running about 3 to 1 on inquiries about appellate issues.

III. Services Delivered by the Web

A. Databases

The year 2001 saw steady and increasing use of the CDRC's web-based database resources, signifying that more and more attorneys realized the potential of performing online legal research. The databases available at www.sado.org included appellate and trial level pleadings, resumes of expert witnesses, full text of the

Defender Books, full text of the Criminal Defense Newsletters, summaries and full text of appellate court decisions, both state and selected federal, and much more. In addition, several of the databases (particularly the Defender Books) were made available in "Palm" format, allowing attorneys to store full text of these resources on their handheld devices. The amount of information available to attorneys through the CDRC's site made it possible to minimize use of expensive fee-based alternatives (such as Westlaw or Lexis). 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 2001, content was added to 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. New for 2001 was the addition of videotaped training events of the Criminal Defense Attorneys of Michigan (CDAM). Video from selected events was edited and linked to written materials, making it possible to listen to a speaker and review related documents, such as the speaker's handout, or appellate decisions. This significant enhancement makes it possible to obtain training on an as needed, or as possible basis, facilitating continuing review of a topic as well. Among the video training topics posted to the site were sessions on difficult judges, "junk" science, and DNA evidence, all hot topics of considerable interest to the bar.

The value of the site to users was demonstrated by the number of web site hits and user sessions, all of which continued to climb. The most revealing statistic tracked, user sessions, grew from approximately 14,000 per month to approximately 17,000 per month during the year.

B. Listservs

(1) The Forum, an online discussion group for criminal defense attorneys

The CDRC continued to operate the Forum, the popular listserv for criminal defense attorneys. With approximately 600 members, the Forum proved a lively place to exchange ideas and information. Attorneys posed questions on topics ranging from particular judge's sentencing practices to the most recent grants of leave by the Michigan Supreme Court, often sharing their own pleadings or lending encouragement to a colleague. During the report period, usage of this technology increased, from approximately 600 messages per month to nearly 850 per month. As the Forum is not actively moderated, messages go out to the entire group as soon as sent by a member, no matter what time of day or night. Members are particularly active at night and on the

weekends, reaching each other at times otherwise difficult by phone. Forum members often receive help from several other members, as well as from the CDRC research attorneys, who closely monitor Forum traffic. Graphs on Forum use accompany this report (see Figures 10-11, pages 20-21).

(2) Electronic summaries of appellate decisions, Criminal Defense Newsletter

To save mailing costs and increase the timeliness of delivery, a shift from hard to electronic copy of appellate decision summaries was made this year. Once a week, summaries of that week's appellate decisions were sent via e-mail to the 498 subscribers to the CDRC's web services. The summaries cover all criminal decisions of the Michigan Court of Appeals and Michigan Supreme Court, significant orders of those courts, selected unpublished Michigan Court of Appeals decisions, and selected decisions of Michigan's federal district courts, the Sixth Circuit Court of Appeals and the United States Supreme Court. Most of these summaries are linked to the full text of the decision. Several hundred summaries were delivered through this listserv. The same 498 subscribers to web services also received electronic copy of each month's Criminal Defense Newsletter, again, long before it would otherwise arrive by "snail mail."

IV. Direct Training Events

With funding support from the Michigan Justice Training Commission and State Bar of Michigan Foundation, the CDRC once again offered statewide training events on the subject of Automated Research and Writing for Criminal Defense Attorneys. Twenty-three events took place, each three hours long, reaching a total of 230 trainees. The average size of the group trained was ten, 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. Attorneys were trained in twelve separate communities, statewide.

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 CDRC 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. Increased use of the CDRC's web site is largely attributable to this direct training, as well.

Evaluations of the direct training events showed their great value to practicing attorneys. Surveys revealed that nearly 66% of trainees increased their use of the Web for legal research after receiving the training. Asked how often they use the Web for legal research, 18.8% said daily, 25.9% said three times a week, 29.5% said once a week, 14.3% said rarely, and 8.9% said not at all. Asked how often they include the CDRC site in a research session, most (63.4%) said that they use it at least once a week. Trainees also were asked how much research time was saved by using the CDRC online databases: 16.1% said more than 10 hours monthly, 24.1% said between

5 and 10 hours monthly, and 12.5% said under 5 hours monthly. Asked if they would continue to use the SADO site for research and writing purposes, nearly 100% gave an affirmative answer. In addition, a majority of those responding said that they had contacted SADO's Webmaster for assistance, with virtually all indicating that he was "very helpful."

V. Sharing with the Legal Services Community

The LRP continued in 2001 to share its resources and expertise with others, including particularly Michigan's legal services community. Staff continued to participate in the State Bar of Michigan's Technology Task Force, a large group 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 CDRC 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 CDRC also continued to field inquiries from other programs nationally, providing technical consulting.

During 2001, the CDRC also provided major technical support to Michigan's Attorney Discipline Board. The CDRC's webmaster helped the agency to organize its resources into databases provided online, and SADO continued the hosting of its web site. Similar services were provided to the Detroit Metropolitan Bar Association.

The CDRC'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. CDRC staff interact constantly with SADO's practicing attorneys, developing expertise on substantive issues. The CDRC'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. In 2000, the Appellate Defender Commission changed SADO's intake formula to reflect the level of cases the counties assigned to SADO. By the close of 2000, SADO had accepted about 50% of the costly, complex Level 3 cases and reduced its intake of Level 1 cases. Unfortunately, budget reductions for 2001 forced the Commission to begin the process of again adjusting SADO's intake downward to reflect the loss of personnel.

THE 2001 ANNUAL REPORT OF THE MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM

INTRODUCTION

Indigent Michigan felony defendants who submit timely requests are entitled to have publicly funded counsel appointed to represent them on appeal. The overall system for providing indigent appellate felony defense is governed by the seven-member Appellate Defender Commission pursuant to MCL 780.711 et seq. The system has two components: about 25% of the indigent appeals are handled by the State Appellate Defender Office (SADO), the state-funded appellate level public defender office established in 1969; the other 75% are handled by private attorneys who are appointed and paid by the counties.

The Michigan Appellate Assigned Counsel System (MAACS) was established by the Commission in 1985 to administer the appellate assignment process and to maintain the roster of private attorneys eligible for assignments. MAACS is charged with ensuring that cases are assigned by appropriate methods to qualified lawyers, that these lawyers receive appropriate training and resource materials, and that they comply with minimum performance standards when representing assigned appellate clients. It is also directed "to engage in activities designed to enhance the capacity of the private bar to render effective assistance of appellate counsel to indigent defendants." MAACS Reg. 1(1).

In Administrative Order 1981-7, the Supreme Court approved the regulations, developed by the Commission, that govern which private attorneys are eligible to receive appellate assignments and how counsel is to be selected for each individual case. The Supreme Court also approved the 20 minimum performance standards—the Minimum Standards for Indigent Criminal Appellate Defense Services—with which all assigned appellate attorneys, including SADO, must comply. Those standards have been in effect since February 1, 1982.

The administrative design has three primary components. First, MAACS maintains the statewide roster of attorneys eligible and willing to receive assignments. Second, MAACS oversees the assignment process, ensuring that cases are appropriately matched to qualified lawyers and that they are correctly distributed between roster attorneys and SADO. Third, MAACS attempts to improve the quality of representation by providing roster attorneys with training and other forms of assistance, and by resolving complaints about noncompliance with the Minimum Standards. MAACS also performs numerous other ancillary tasks. The MAACS staff currently consists of 10 people (see Appendices A & B, "Organizational Chart" and "Position Descriptions"). Eight are full-time salaried employees (FTEs) and two are part-time contract employees:

- The administrator, deputy administrator and associate administrator, all of whom are experienced appellate attorneys.
- Five full-time support personnel (a roster manager, an administrative assistant/office manager, an assignment coordinator, a systems/financial manager and a legal secretary)

- A part-time paralegal, and
- A part-time file clerk.

DEVELOPMENTS IN 2001

1. **Maintaining the Roster.** Attorneys who wish to receive appellate assignments file an application to join the statewide roster with MAACS. The applicants specify the circuits from which they want appointments. With certain limited exceptions, attorneys may obtain appointments from any circuit in the state.

MAACS classifies roster attorneys into three eligibility levels, depending on their qualifications. Reg. 4(2). Level 1 attorneys are restricted to the simpler types of cases and those with lower maximum sentences. Only Level 3 attorneys can be assigned to jury trials for life maximum offenses. Entry level attorneys must complete a two-day orientation program. All roster attorneys are required to complete seven hours of relevant CLE each year. Those who seek reclassification to a higher level must meet experience requirements and submit samples of their work for evaluation.

From the statewide roster, MAACS breaks out local lists containing the names of roster members who want to receive assignments from each circuit. Attorneys advise MAACS when they wish to join or leave local lists, as well as when their addresses or phone numbers change. MAACS notifies the trial courts of all changes to their respective local lists.

As of December 31, 2001, there were 240 attorneys on the statewide roster:

120 at Level 1
70 at Level 2
50 at Level 3

In 2001, five (5) attorneys were added to the roster and 44 left.

2. **Coordinating Assignments.**

a. **Methods**

While the statute specifies that appellate counsel are to be appointed by the trial courts, the MAACS Regulations require nonjudicial personnel to select the lawyer to be appointed according to standardized procedures. The “local designating authority” (LDA) is the person in each circuit court who is given the responsibility for preparing the orders of appointment. An eligible attorney may be passed over only for specified causes, such as a conflict of interest or the fact that another eligible attorney is already representing the defendant on an active appeal. The name of the appointed attorney drops to the bottom of the list. SADO is slotted into the rotation in a specified sequence.⁶ SADO may also be selected out-of-sequence for appointment

⁶ MAACS Regulation 2(2)(d)(I) requires that the Commission annually determine the formula for assigning cases to

in unusually large or complex cases.

For years MAACS ensured compliance with the assignment process through a cumbersome manual mechanism. That is, the trial court LDAs supplied MAACS with monthly log sheets that tracked the process by which lawyers were selected. MAACS then reviewed the log sheets for compliance with its Regulations and rotated the list of attorney names to reflect the assignments that had been made. MAACS then returned the log sheets to the LDAs for use in the next month.

The assignment system has since been greatly streamlined by means of an on-line appointment system. This system began in the fall of 1999 with a pilot project involving three large circuits (Wayne, Oakland and Genesee). After a few months were spent refining the system, MAACS began to add additional circuits throughout 2000 and 2001. By December 31, 2001, 56 of the state's 57 circuits were participating.

This system has significantly simplified and improved the appointment process. Trial court LDAs now can prepare orders of appointment by getting directly on-line to MAACS. Once basic information is entered in response to prompts, the computer rotates the circuit's local list and presents the correct name for appointment. The LDA then prints the order at the trial court's end, obtain a judge's signature, and distributes copies. Since the trial courts no longer are able to make selection errors, the need to monitor the rotation of assignments by exchanging log sheets has been eliminated. If something unique about a case requires it, the automated selection process can be overridden by MAACS.

The increased automation has created substantial efficiencies for MAACS as well. Since attorney address, telephone, and level changes are accessible to the trial courts through MAACS' database, the large amount of time, paper, and postage currently expended to share this information is saved. Even more importantly, MAACS opens manual and computer files on every assignment. Data that MAACS previously posted to its computer after receiving hard copies of the orders of appointment now enter the database when the orders are created.

b. Statistics

In 2001, appellate counsel was assigned in 3076 cases (each original order is counted as one case, regardless of subsequent substitutions of counsel). This figure represents a 1% decrease over the 3396 assignments in 2000⁷. Of the total, 785 cases (25.5%) were assigned to SADO.

SADO based on the number of appeals for each level and type and the total number SADO is funded to accept. The Commission's current formula is that SADO receive: 20% of Level 1 cases; 25% of Level 2 cases; and 33 1/3% of Level 3 cases.

⁷ A chart summarizing the annual assignments from 1986 - 2001, including SADO's numbers and percentages, is attached as Appendix C.

The distribution of assignments by case type and level appears in the following chart.⁸ Level 1 includes appeals from plea-based and bench trial-based convictions with statutory maximum sentences up to 10 years and from jury trial-based convictions with maximum sentences up to 5 years. Level 2 includes appeals from plea-based and bench-trial-based convictions with maximum sentences over 10 years, and jury trial appeals with sentences between 5 and 15 years. Level 3 includes appeals from jury-trial-based convictions with statutory maximums over 15 years. The “plea” categories include probation violation hearings and resentencings.

2001 APPELLATE ASSIGNMENTS

	Total No. Percent of Grand Total	SADO No. Percent of Grand Total	SADO Percent of Total Case Type
Level 1 Total	1164 37.8%	251 32.0%	21.6%
Level 2 Total	1359 44.2%	355 45.2%	26.1%
Level 3 Total	549 17.9%	177 22.6%	32.2%
GRAND TOTAL	3076	785	25.5%

3. **Improving Attorney Performance.** MAACS uses three methods to improve the quality of representation roster attorneys provide to their indigent clients. MAACS:

- Provides training programs, reference materials, and update memos, as well as one-on-one assistance in individual cases.
- Reviews in depth the work of each attorney seeking to be classified at Level 2 or 3.
- Resolves allegations that roster members have violated the Minimum Standards.

a. Training

In 2001 MAACS provided training through three diverse means. All three ~~were funded~~ by grants from the Michigan Commission on Law Enforcement Standards (formerly the Michigan Justice Training Commission).

⁸ A more complete chart for 2001 appellate assignments, which includes breakdowns for case types at each level, is attached as Appendix D. Another chart, which lists the 2001 assignments for each circuit court by case level and type, is attached as Appendix E.

- **Plea Seminar**

A day-long seminar on issues relating to plea-based appeals was presented in three locations around the state (Novi, Lansing and Gaylord). Because the bulk of appellate assignments are from pleas, it is crucial that MAACS roster attorneys receive training in this area. Three speakers lectured on the mechanics of handling these appeals. The more than 100 trainees also participated in identifying and discussing potential issues in hypothetical cases which were later discussed and analyzed by the speakers.

- **Expert Lecture Series**

MAACS produced a recording, presented in a four-CD boxed set, of eight lectures using expert speakers on topics of importance to appellate counsel (including issue selection, effective oral arguments, sentencing, attorney client relationships and avoidance of grievances). Written materials were also provided. The intent was to have educational materials available to the attorneys as they drove or at home. The recordings were well received and plans for a sequel lecture series are being made.

- **2001 Bench Bar Conference**

The Appellate Bench Bar Foundation, made up of judges, court staff and civil and criminal appellate practitioners, presented the third Bench Bar Conference in Lansing the spring of 2001. MAACS provided full scholarships, worth \$240 each, to 25 roster attorneys so they could attend this multi-day conference free of charge. The trainees were able to learn first hand from appellate court judges and staff about how court rules and policies are applied and about ongoing changes in the briefing requirements, timing deadlines, and internal operating procedures. The scholarship recipients were selected by MAACS based on their skills, experience, quality of work and leadership potential. The knowledge they gained will ultimately be shared with other roster members as the attendees joined MAACS' pool of qualified instructors for future programs MAACS itself presents.

MAACS also conveys information in less formal ways. It periodically sends memos to the entire roster explaining the impact of court rule changes, major appellate decisions, and Michigan Department of Corrections policies that affect attorney/client communication. Six such memos were distributed in 2001. The administrators also routinely field telephone inquiries from roster members about a wide range of subjects.

- b. **Classification Reviews.**

An attorney wishing to be classified at Level 2 or 3 must undergo an in-depth performance review. A sampling of briefs is read in conjunction with the prosecution reply briefs and appellate opinions. Issue analysis, writing skills, and legal knowledge are assessed, and written feedback is given to the lawyer. Fee vouchers and Court of Appeals records are checked for any indication of problems, such as late filings, failures to conduct prison visits, or an excessive number of motions to withdraw as counsel.

During 2001 two roster attorneys were reclassified to the next level—one from Level 1 to 2 and the other from Level 2 to 3. Both attorneys had completed the requisite number of appeals within the previous three years, per Reg. 4(2)—9 cases for Level 2 and 18 cases for Level 3. After the review was conducted, both requests were approved. Another former Level 3 attorney, who had been off the roster for five years, was permitted to rejoin at Level 2.

Five non-roster attorneys also asked to join the roster at Level 2 or 3 under the “exceptional circumstances” provision of Reg. 4(3). This regulation permits the Commission to waive the normal requirements if it “determines that an applicant has acquired comparable experience”. MAACS reviewed their applications and recommended that all but one of the requests be granted. The Commission decided:

- To permit three attorneys to join at the level they requested, per MAACS’ recommendation;
- To deny two attorneys’ request to join at either Level 2 or 3, per MAACS’ recommendation.

On December 31, 2001, there were nine attorneys whose reclassification requests remained pending.

c. Enforcement of Minimum Standards.

The second, far more time-consuming method of performance evaluation involves the processing of complaints. MAACS receives several hundred letters each year, primarily from defendants, regarding the conduct of roster members. While upon examination many of these do not state facts that indicate a violation of the Minimum Standards may have occurred, about 30% require MAACS to contact the lawyer. Action may range from a letter warning counsel to write the client promptly to the initiation of a formal complaint. Where appropriate, problems may be resolved without a formal complaint, as when the attorney has already resigned or been removed from the roster, but the defendant needs substitute counsel appointed or forms to file a Supreme Court application.

When a formal complaint is issued, the lawyer is asked to respond to the allegation that specific Minimum Standards have been violated. The client is given the opportunity to respond to any answer the attorney provides. MAACS conducts any independent investigation that may be necessary, then determines whether a substantial violation of the Standards has occurred.

In 2001, MAACS resolved 53 formal complaints involving 35 different roster attorneys, 20 of whom are no longer on the roster. In 66% of the cases (35 of 53), the matter was resolved within nine months of the complaint inquiry being sent to the attorney. In 93% of the cases (49 of 53), MAACS found violations of the Minimum Standards. Although the nature of these violations varies widely, by far the most common were failures to process appeals in a timely manner, failures to interview clients before filing briefs, and failures to keep clients apprised of what was happening with their cases. Depending on the circumstances, a finding that the Standards have been violated may have consequences ranging from a warning to substituting new counsel.

MAACS requested the appointment of substitute counsel in 13 of these 49 complaints where violations were found and the various trial courts granted all the requests.

4. Other Activities

Because of its central position in a network that includes the trial and appellate courts, roster attorneys, SADO, and defendants, MAACS is able to perform a number of other functions important to the ultimate goal of providing high quality indigent appellate defense. In 2001, MAACS continued to perform these functions:

- a. It responded to defendant inquiries about counsel requests that had not been processed by the trial court. In numerous cases where the request was misfiled or overlooked, MAACS' intervention prompted the appointment of counsel.
- b. It provided form pleading packets to defendants who wanted to appeal a trial court's denial of a request for appellate counsel.
- c. It collected, analyzed and disseminated annual data, not available from other sources, about the volume and type of appellate assignments, and their distribution to roster attorneys and SADO.
- d. It responded to hundreds of inquiries from defendants and their families seeking information about postconviction remedies or assistance with problems outside MAACS' bailiwick.
- e. It compiled information about appellate assigned counsel fees, attempted to promote the payment of reasonable fees, and urged the Department of Management & Budget to have the state assume some or all of the costs of indigent appellate defense.
- f. It served as a spokesperson for the interests of roster attorneys and their clients in various forums and by various methods. For instance, MAACS provided comments on proposed court rules, testified at Supreme Court public hearings regarding those proposals, resolved administrative concerns with the Department of Corrections, and testified before legislative committees. The administrator and deputy administrator also served on numerous committees, commissions, boards, and task forces.

5. Audit

As previously noted the Office of the Auditor General conducted a performance audit in 2001. As to MAACS, the Auditor General concluded that the "Commission's system for evaluating the quality of indigent appeal services provided by MAACS roster attorneys was generally effective and efficient." The Auditor General did, however, make three "Findings" relating to investigation of complaints, performance reviews and continuing legal education (CLE). The Commission agreed that MAACS should strive to resolve complaints regarding roster attorneys in a timely manner, to conduct routine performance reviews of newly appointed and newly reclassified roster attorneys, and to maintain better documentation to substantiate that roster

attorneys comply with the regulations governing annual CLE. The Commission also noted that it would continue to seek funding for additional personnel to assist in performing these tasks.

STATE APPELLATE DEFENDER OFFICE

APPENDICES

TABLE I**STATE APPELLATE DEFENDER OFFICE ANNUAL REPORT
FOR THE YEAR OF 2001**

Total New Appointments to SADO 1/1/01 to 12/31/01	839
Total Cases Assigned to Staff Attorneys 1/1/01 to 12/31/01	964
Total Filings by SADO 1/1/01 to 12/31/01	2817
Cases Closed (not Done*) 1/1/01 to 12/31/01	42
Cases Officially Closed (Done*) 1/1/01 to 12/31/01	850
Total Cases Closed 1/1/01 to 12/31/01	892
Total Cases Open as of 12/31/01	1911

* "Done" are those cases that are officially closed by the attorney and the file sent to storage.

TABLE II

STATE APPELLATE DEFENDER OFFICE ANNUAL REPORT FOR THE YEAR OF 2001

FILINGS by SADO 1/1/01 to 12/31/01

Trial Court	747
Court of Appeals	1,683
Supreme Court	298
Federal Courts	89
Total FILINGS	2,817

MAJOR FILINGS by SADO 1/1/01 to 12/31/01

Trial Court	673
Court of Appeals	688
Supreme Court	276
Federal Courts	51
Total MAJOR FILINGS	1688 = 59.92% of all filings

ASSIGNMENTS of SADO 1/1/01 to 12/31/01

Pleas	378
Probation Violation Pleas	64
Jury Trials	281
Bench Trials	69
Probation Violation Trials	24
Prosecutor Appeals	6
Resentencing	14
Leave Granted – SADO	1
Leave Granted – OTHER	1
SC Application – OTHER	0
Specials	1
Total ASSIGNMENTS	839*

* Again, this 839 cases assignment total differs from MAACS' 789 total because SADO must count cases differently than MAACS to take workload into account. See comments to Table IV.

TABLE III
CASE ACTIVITY AND WORKLOAD

YEAR	Average Staffing Level	Office Appointments	Attorney Assignments	Average Assignment Per Attorney***	Total Filings	Average Filing Per Attorney	Average Filing Per Case	Total *Opening Pleadings	Total **Major 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+ +	1,041	43.4	2,974	124	2.856	1,025	1,840	76.7	1.8
2000	21.5	1,000	957	44.5	2,546	118	2.66	810	1,498	69.67	1.6
2001	20.5	839	964	47	2,817	137.4	2.92	927	1,688	82.34	1.75

* 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.

** 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.

*** 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 in 1997, it simultaneously reduced the number of assignments to regular staff attorneys by two (2) weighted work units, 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.

++ SADO closed assignment intake in November and December 1999. Otherwise, assignments would have been approximately 1,000.

TABLE VI
SUBSTITUTION APPOINTMENTS

YEAR	APPOINTMENTS	SUBSTITUTIONS
1993	1078	110
1994	1016	131
1995	951	95
1996	874	97
1997	931	107
1998	1033	124
1999	852	101
2000	1000	138
2001	839	92

- * Many of these cases are problematic. They often involve alleged ineffective assistance of private counsel, or MAACS, a court or the Grievance Commission removal of prior counsel. Many involve unmanageable clients (some going through as many as 5 trial and appellate attorneys) and/or very complex issues. Sometimes private counsel are simply underpaid and/or overwhelmed by these cases and needed to withdraw due to economic necessity.

TABLE VII
SADO OVERALL RELIEF RATES* 1993-2001

	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
2000	678	562 (83%)	89 (13.0%)	25 (3.76%)	16.76
2001	656	513 (78.2%)	114 (17.38%)	29 (4.42%)	21.8

* 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 brief in People v Bulger, 462 Mich 495 (2000).

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.

TABLE VIII

DISMISSALS AND WITHDRAWALS

YEAR	TOTAL DISPOSITIONS	DISMISSALS*	WITHDRAWALS **
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%)
2000	922	189 (20%)	32 (3%)
2001	968	247 (26%)	52 (5%)

* Dismissals usually occur 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, thus, saving the justice system at the state and local levels a large 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.

** 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 these withdrawals is for overload.

STATE APPELLATE DEFENDER OFFICE

Organization Chart 2001

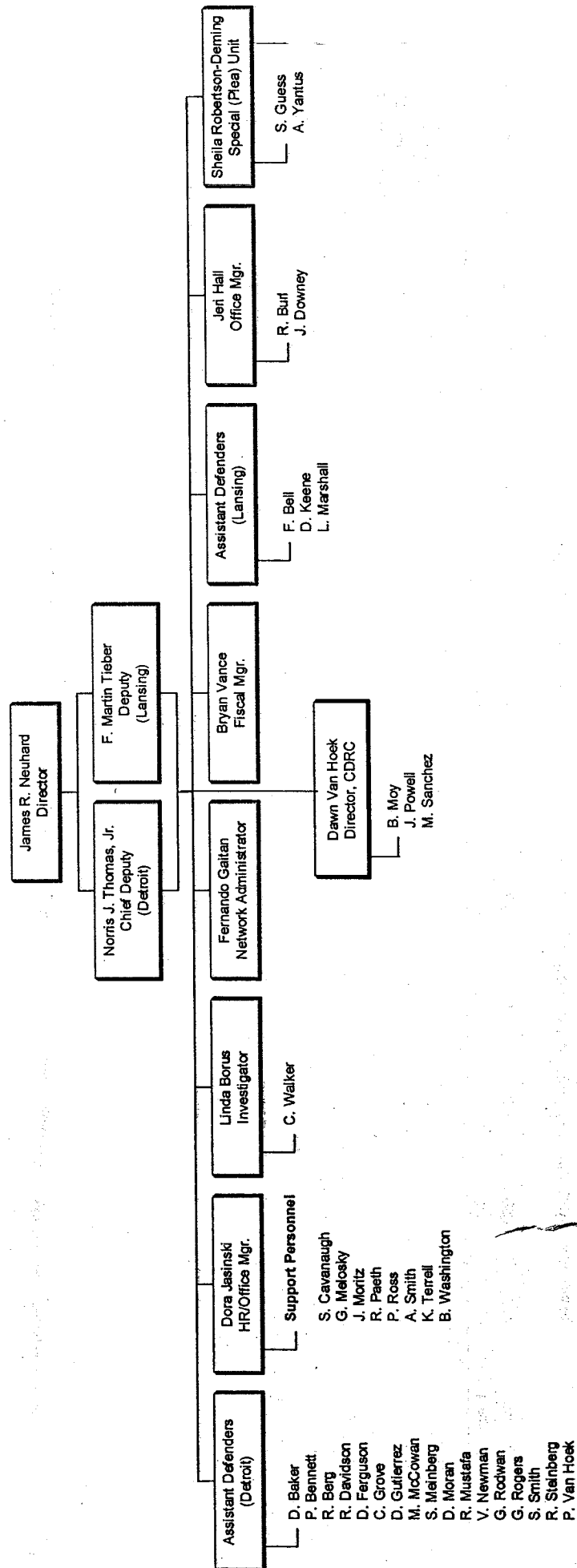
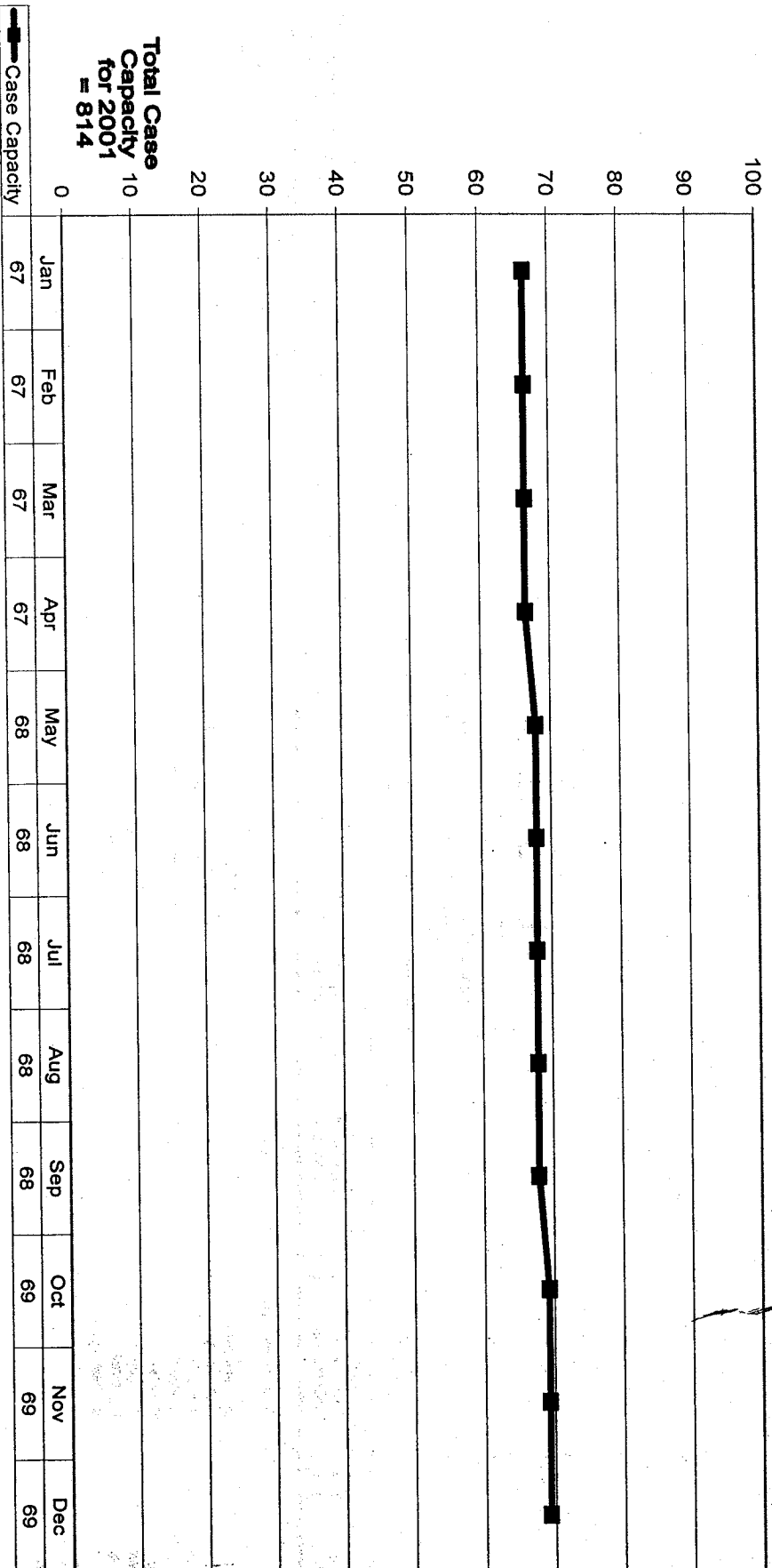


Figure 1

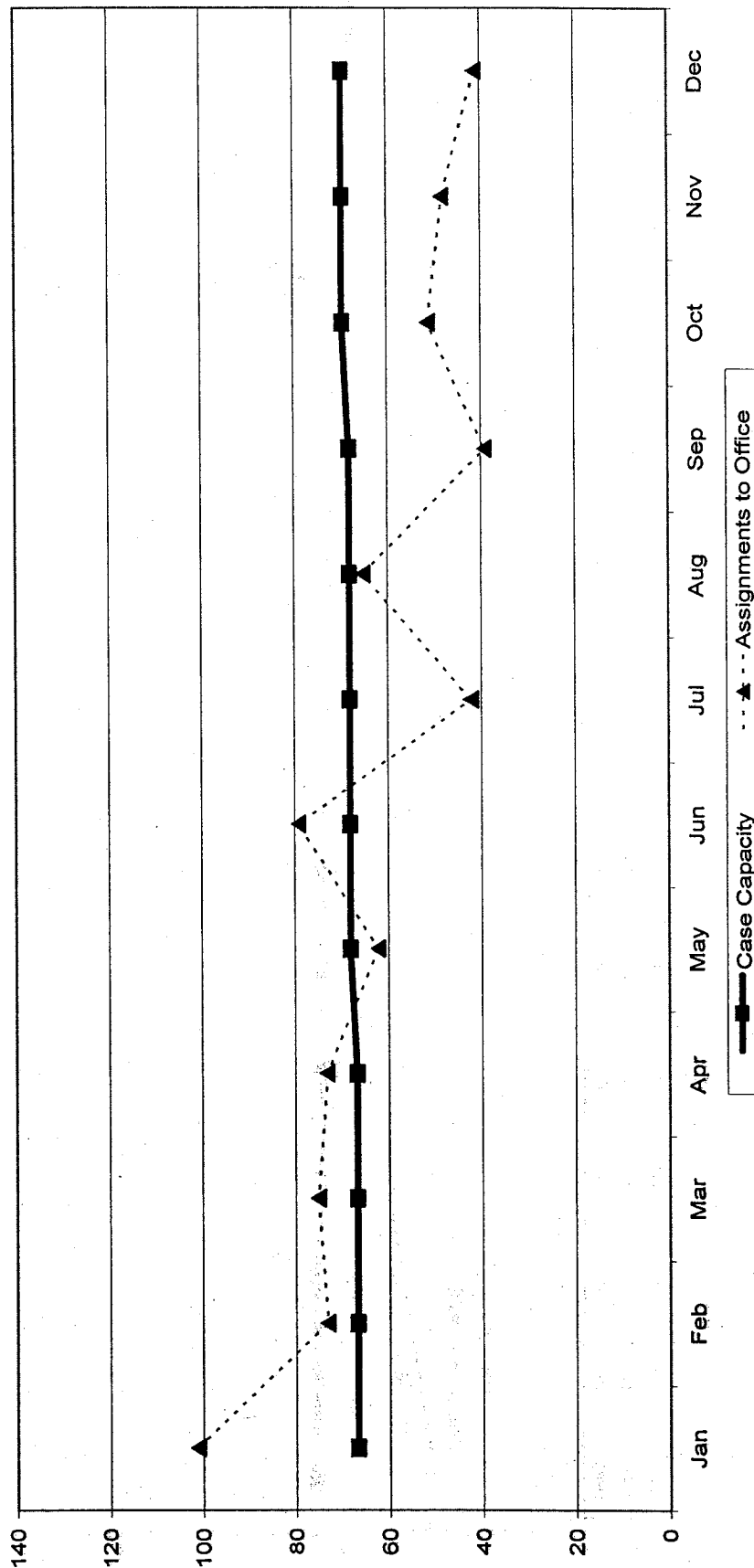
SADO's Capacity for 2001



- Capacity is the cumulative total of new cases all SADO attorneys can accept per month under established differential case weighting standards.
- Capacity increased in May when one staff attorney returned from a leave of absence on a part-time basis. In October it increased again when that staff attorney returned to full-time.

Figure 2

SADO's Capacity v. Number of Assignments to Office for 2001



- Assignments to the Office are cases assigned by the Circuit Courts to SADO either directly or by order of the appellate courts.
- The formula change in July reduced Level 3 assignments (the most serious cases) from 50% to 33 1/3%. To reach 33 1/3% for the entire year, the MAACS computer underassigned Level 3 cases for the last two quarters of 2001. The MAACS final assignment total for Level 3 cases was 177.

Figure 3

Trendline of Number of Assignments to Office for 2001

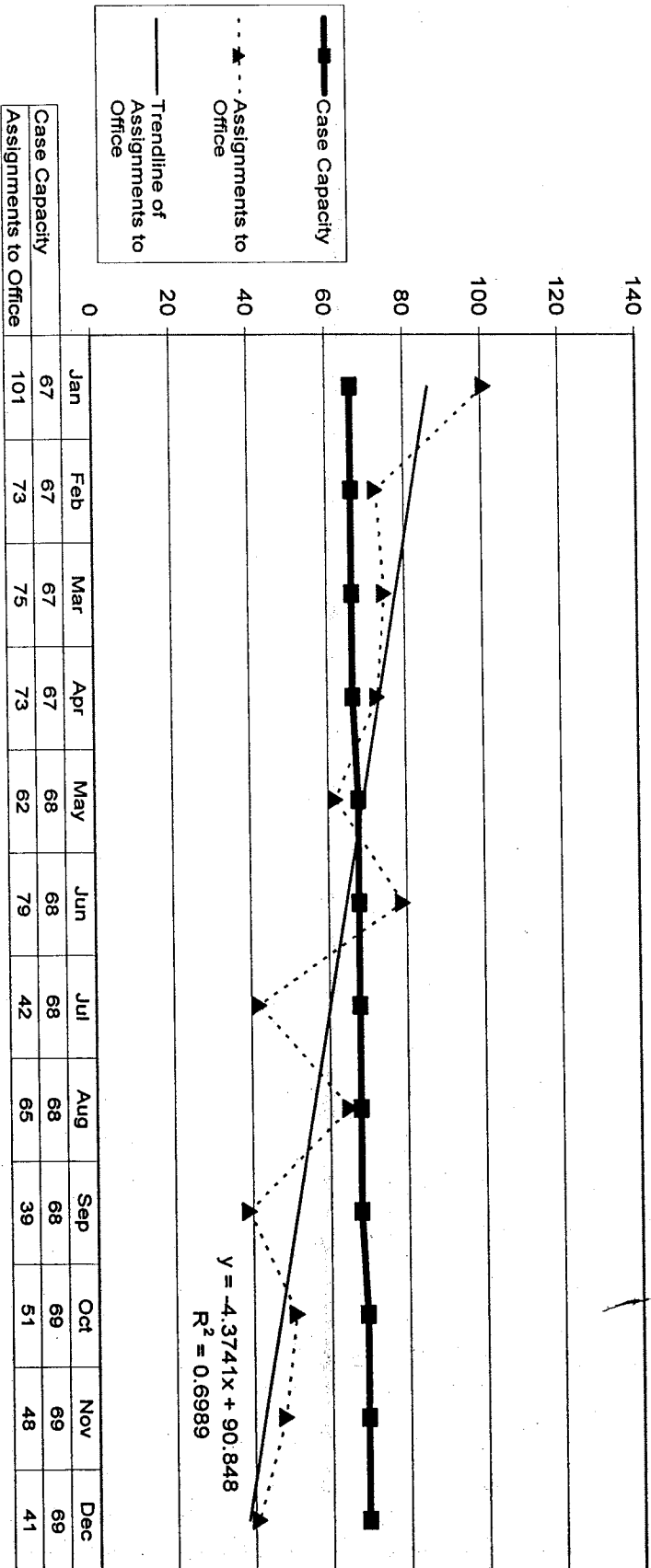


Figure 4

**Capacity vs. Office Assignments
for 2000 through Sept. of 2002**

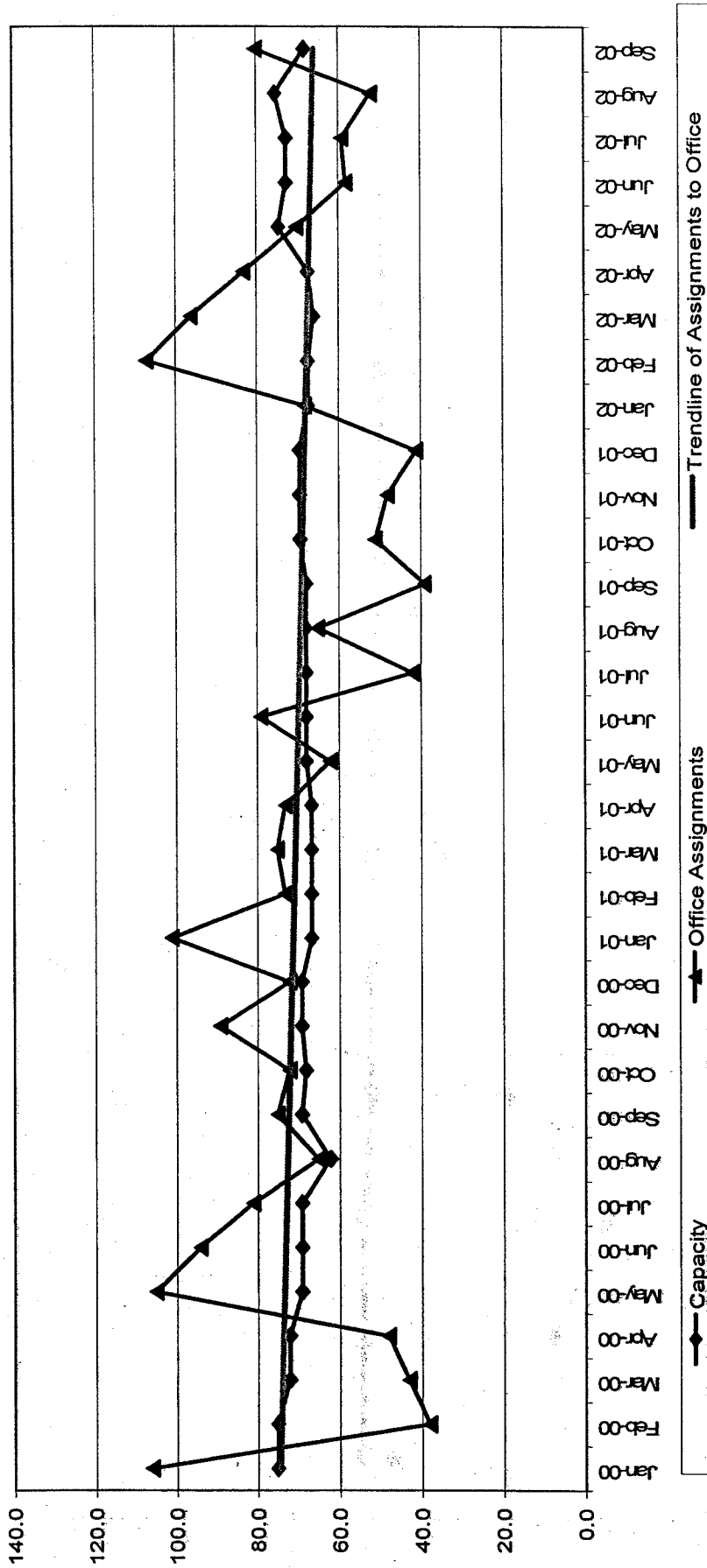
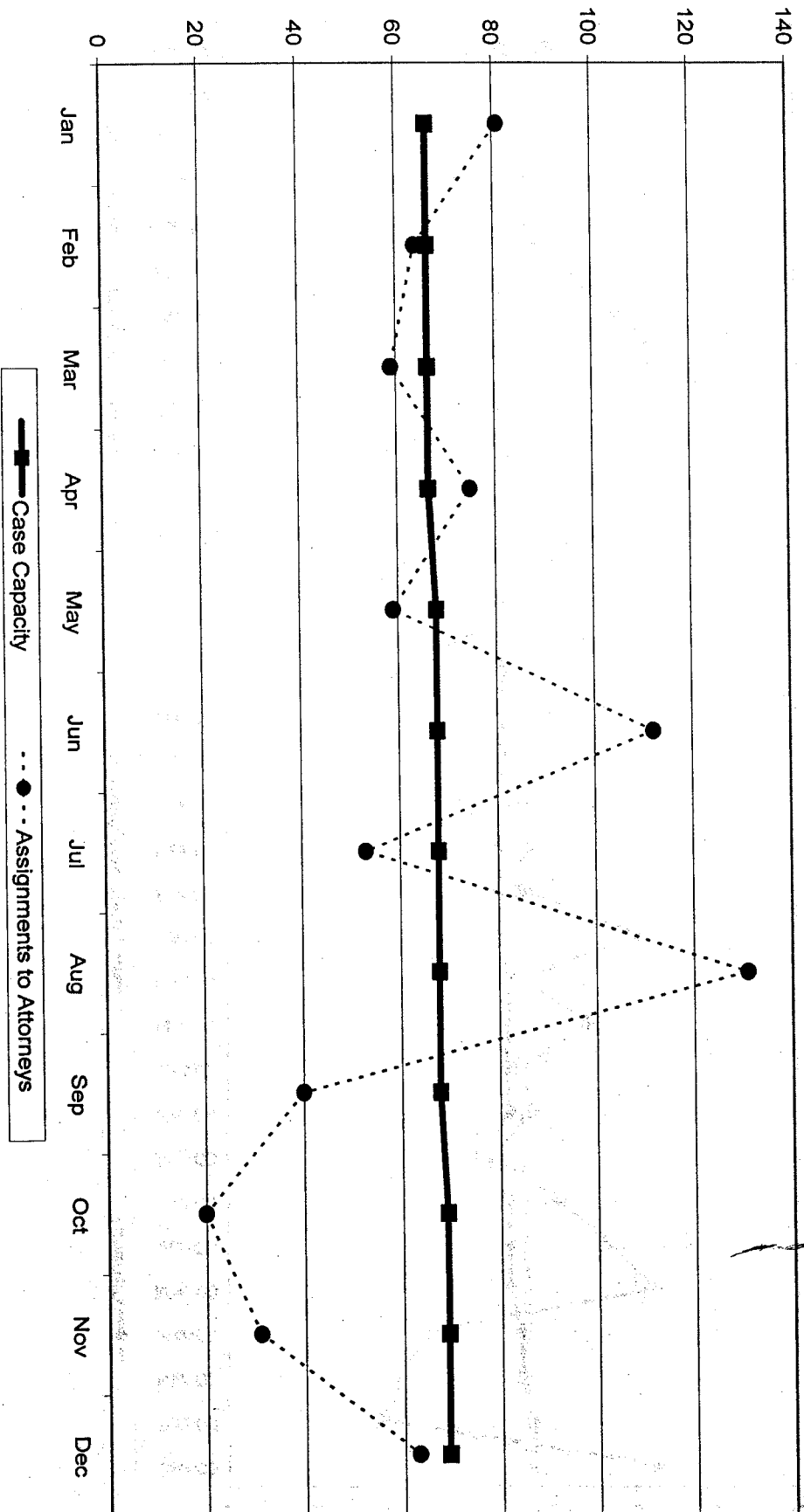


Figure 5

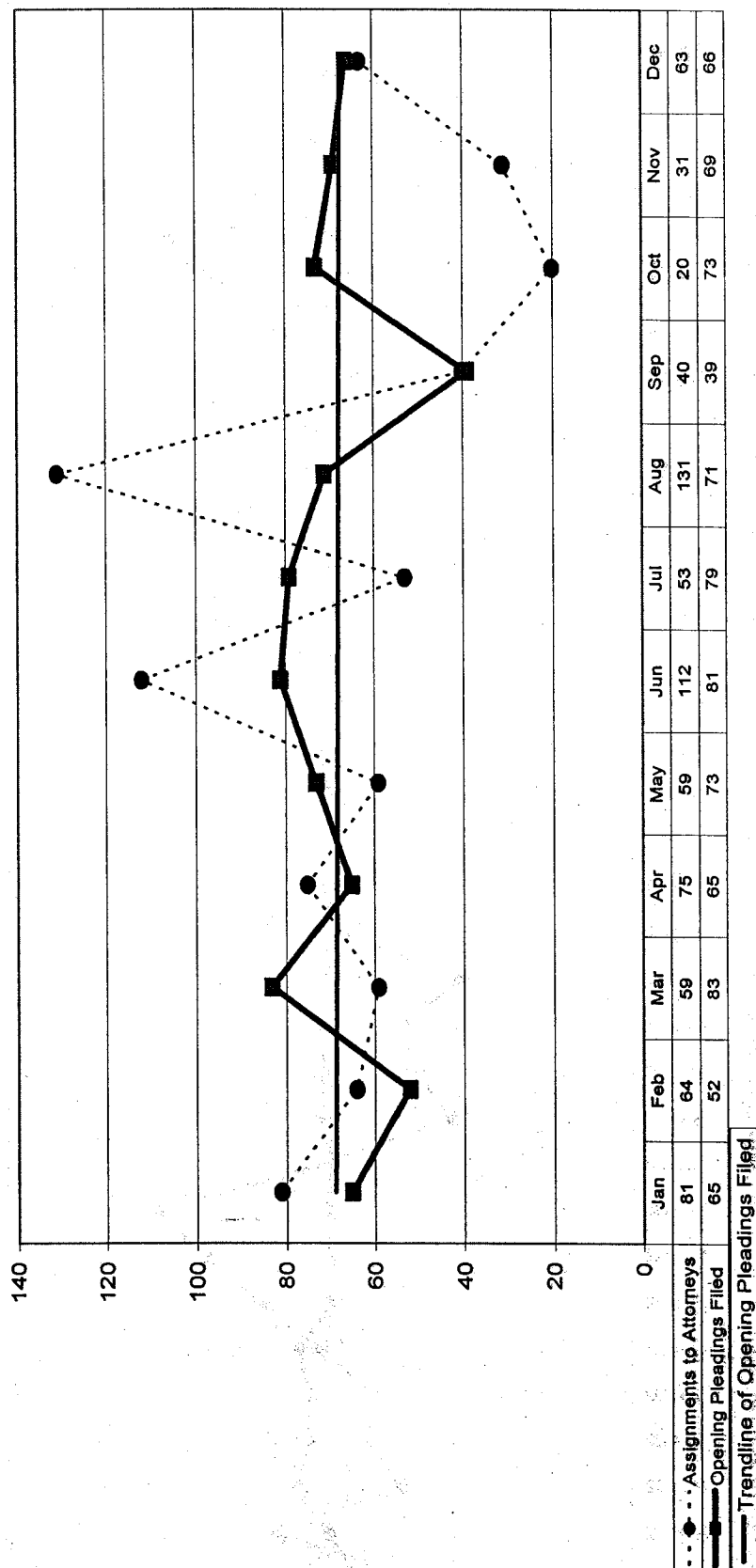
SADO's Capacity v. Number of Assignments to Attorneys
for 2001



- Assignments to Attorney – when a SADO staff attorney takes responsibility for a case assigned to SADO.

Figure 6

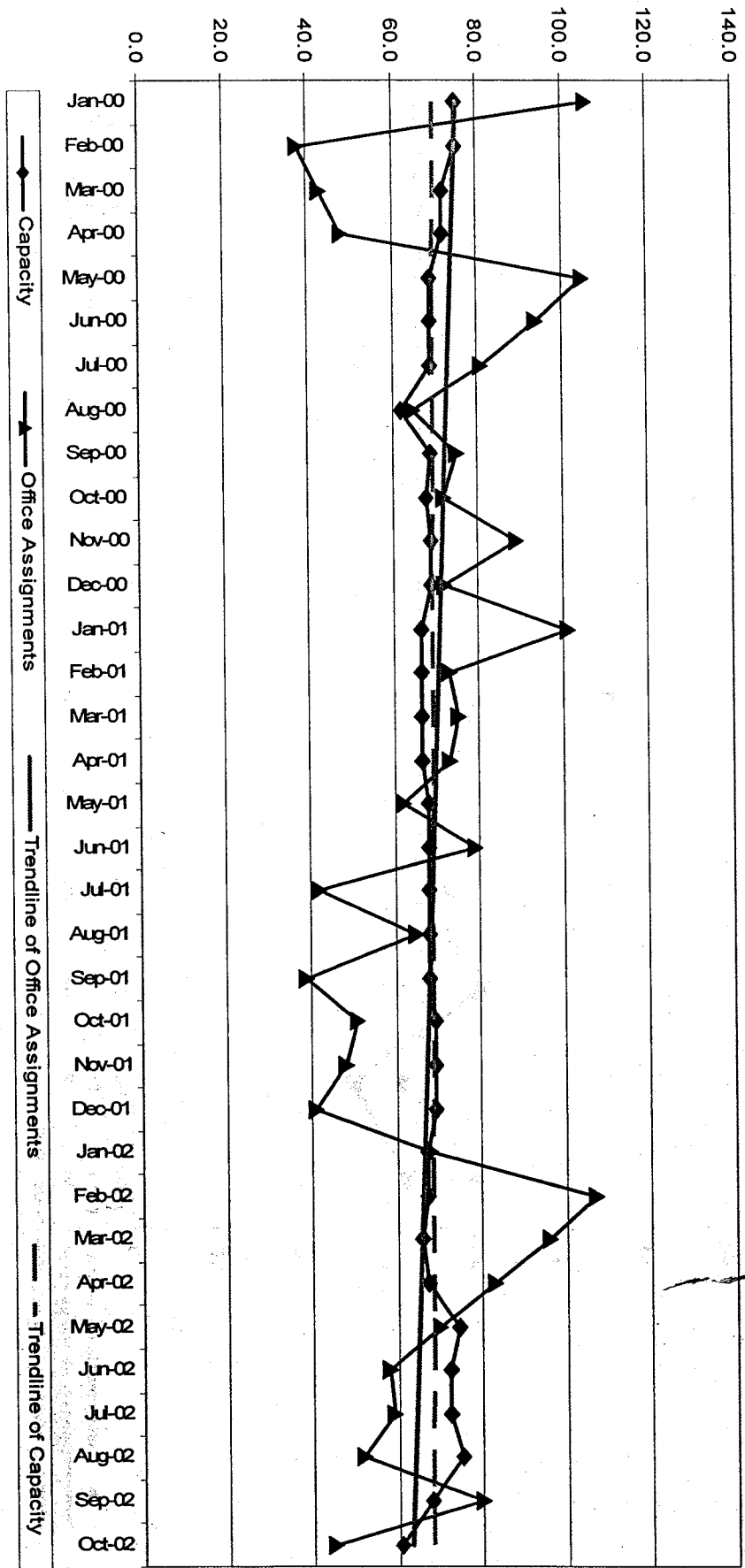
Opening Pleadings* Filed vs. No. of Assignments to Attorneys for 2001



* 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.

Figure 7

Capacity vs. Office Assignments 2000 through Oct of 2002



- Office will lose capacity in 2002-2003 due to the early retirement program.

Figure 8
Number of Pleas Assigned to SADO by County for 2001

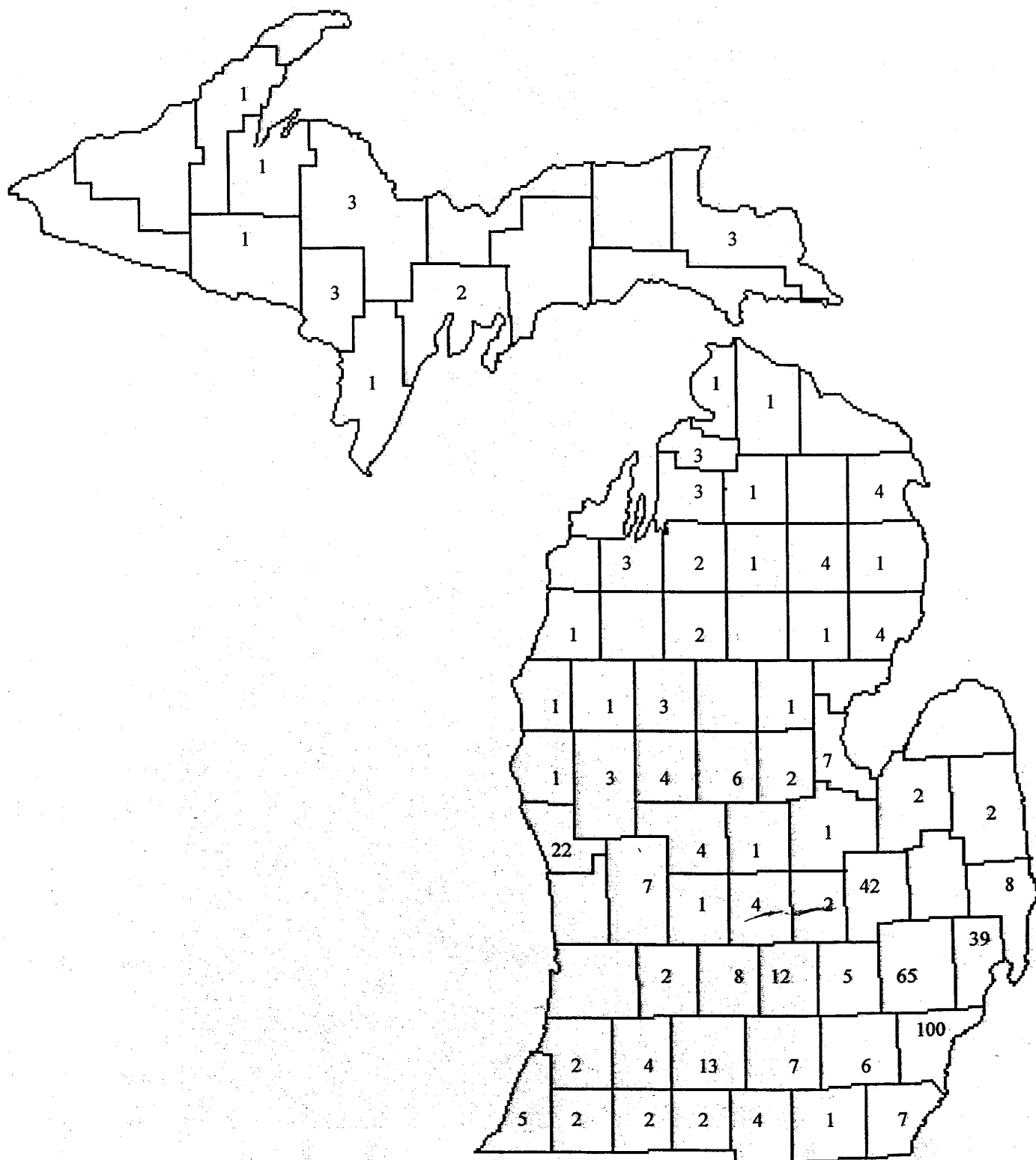


Figure 9

Total User Sessions

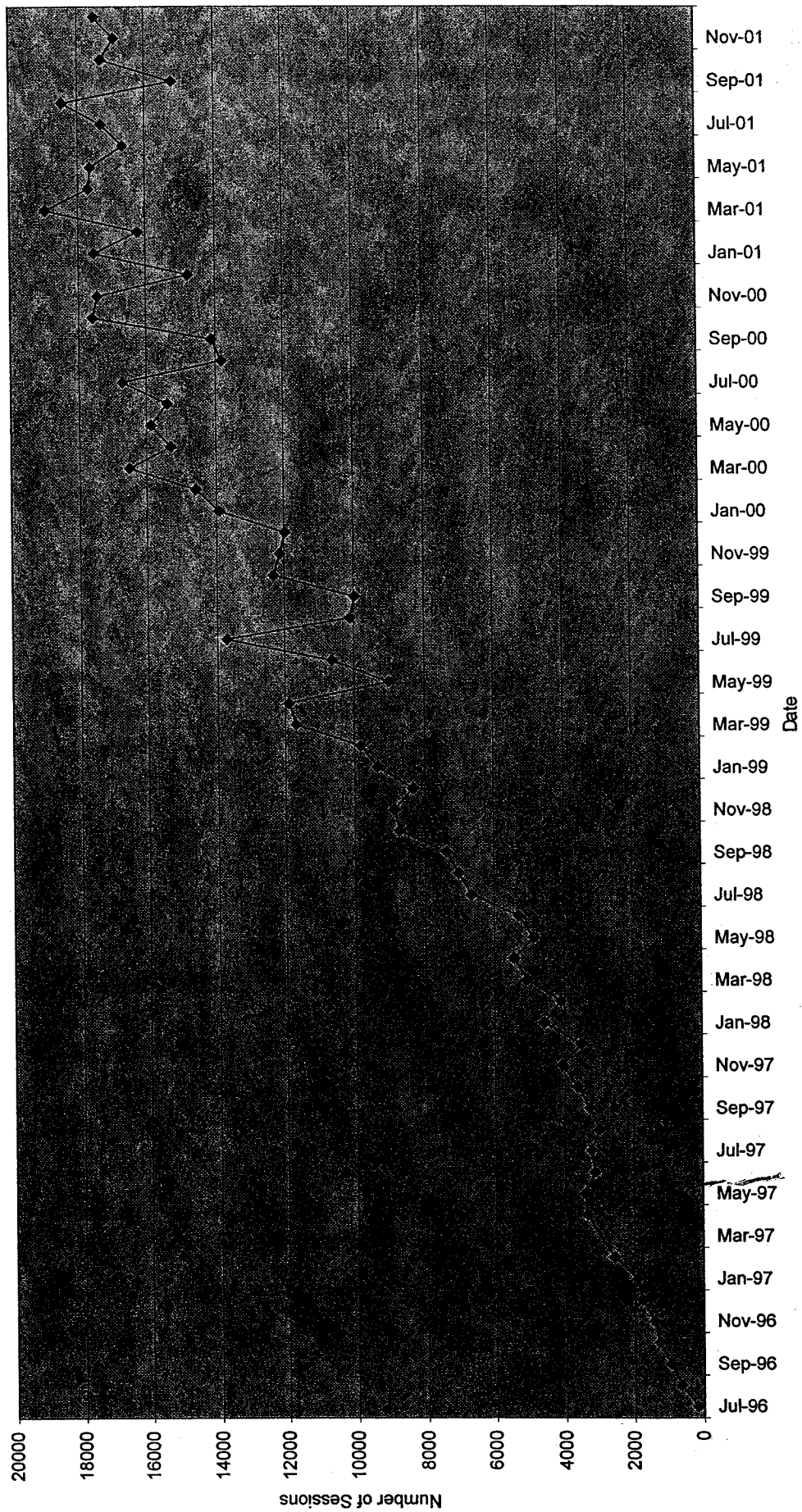


Figure 10

Forum Messages

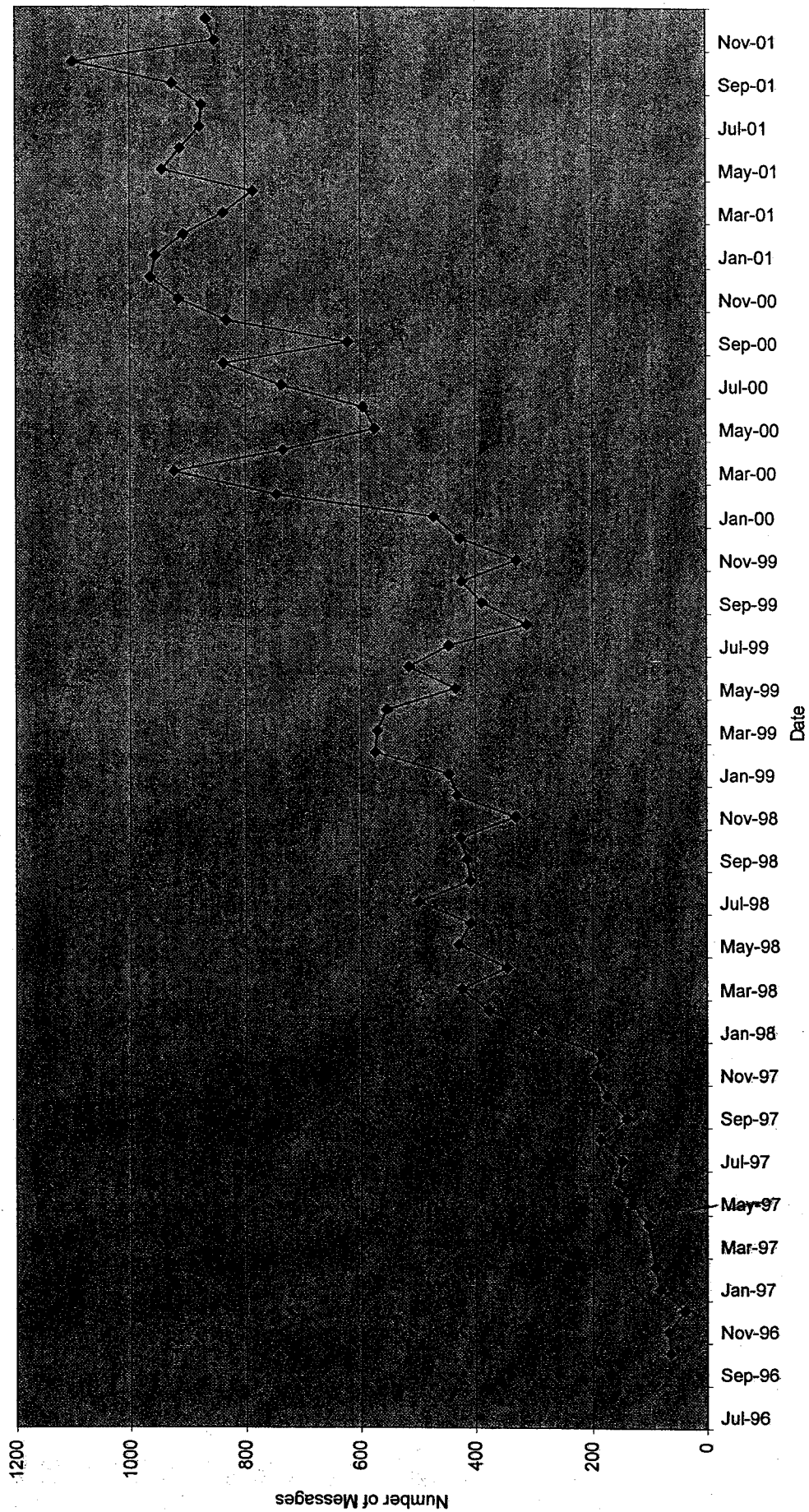


Figure 11

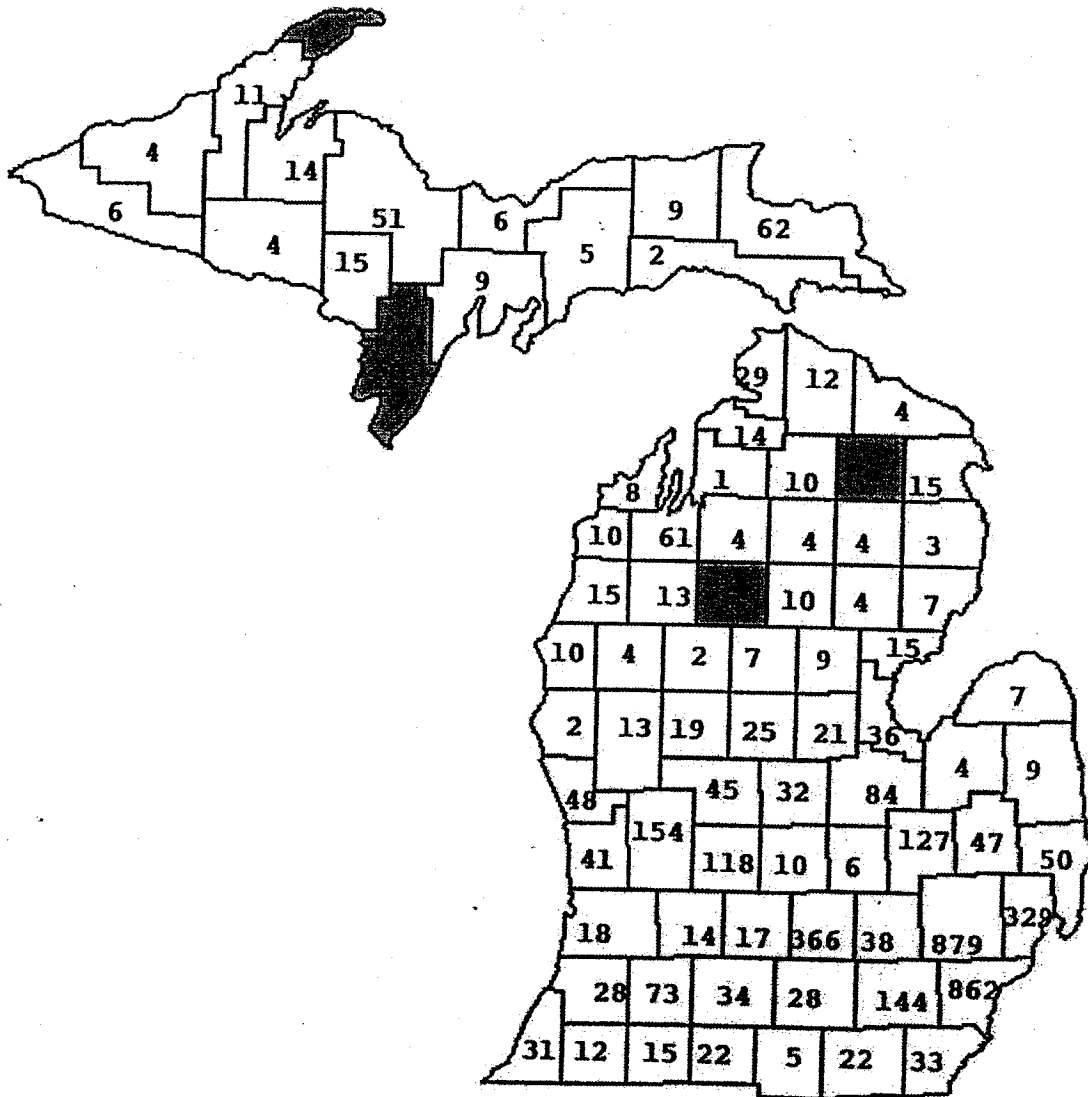
**Forum Messages by Day of Week
October, 2000 - September, 2001**

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	
October, 2000	60	160	171	154	125	102	59	
November, 2000	41	108	127	224	241	115	58	
December, 2000	67	145	174	163	138	192	84	
January, 2001	56	153	215	208	146	134	44	
February, 2001	80	154	157	174	152	125	63	
March, 2001	27	147	170	147	148	138	60	
April, 2001	35	135	136	157	156	116	50	
May, 2001	23	105	179	232	229	135	40	
June, 2001	27	143	186	195	174	162	25	
July, 2001	38	129	201	180	170	110	48	
August, 2001	13	102	116	251	198	161	33	
September, 2001	25	119	178	210	189	167	38	
Totals	492	1600	2010	2295	2066	1657	602	
Total Messages Sent	10722							

Figure 12

Geographic Representation of Subscriptions to Project Services*

October 1, 2000 – September 30, 2001



79 Counties
250 Cities

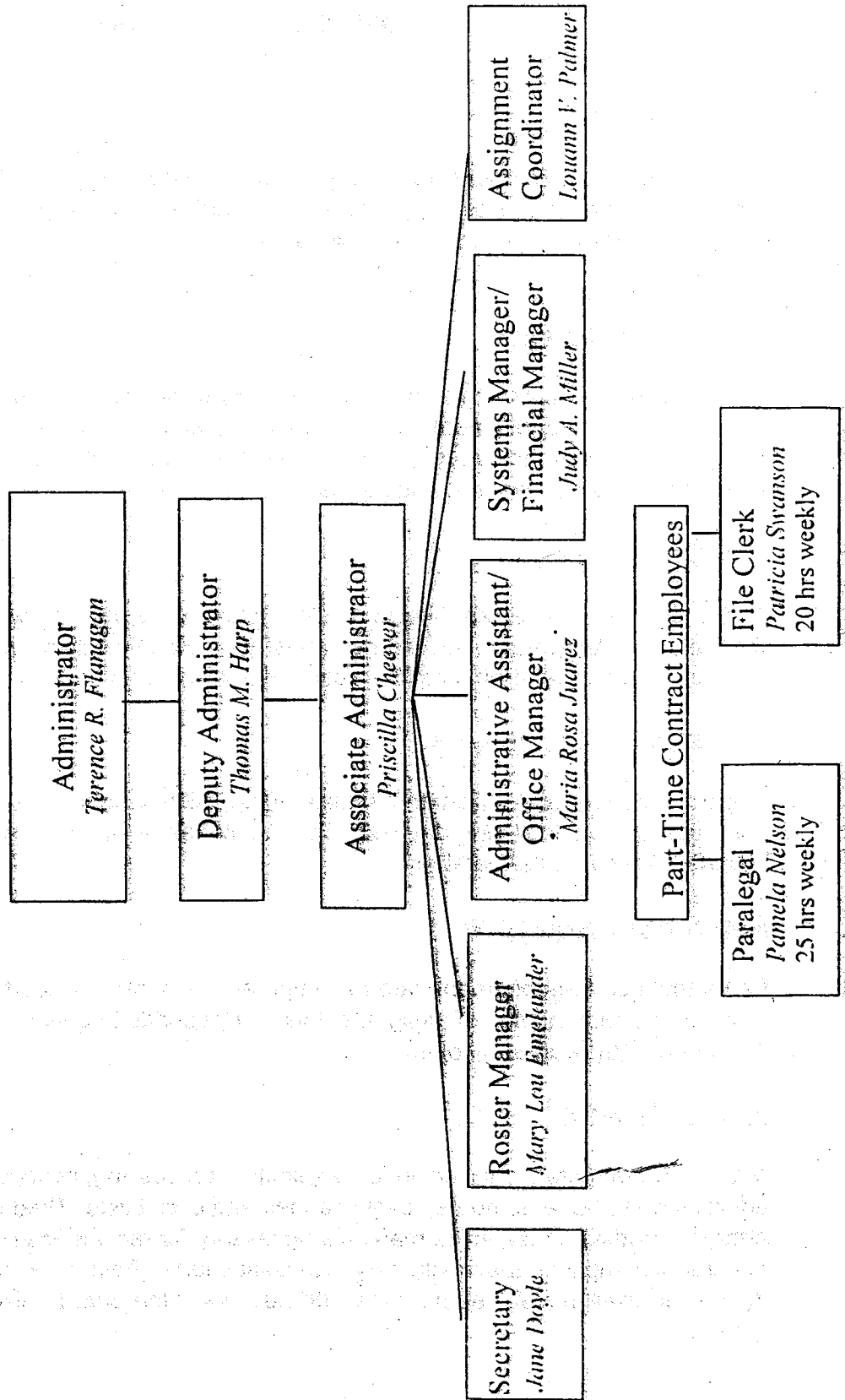
* Each number represents a subscription to the Defender Books, Criminal Defense Newsletter or Web Services.

MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM

APPENDICES

December, 2001

MAACS ORGANIZATIONAL CHART



POSITION DESCRIPTIONS

ADMINISTRATOR

Responsible for office administration/personnel/policy, budget, and external relations. Prepares and conducts training programs. Handles data analysis, attorney payment issues, legislative advocacy, and amicus briefs.

DEPUTY ADMINISTRATOR

Processes complaints about roster attorney performance and conducts major investigations. Troubleshoots case-related problems. Answers roster attorney questions. Acts as the Attorney Grievance Commission liaison and monitors changes in Court of Appeals rules and procedures.

ASSOCIATE ADMINISTRATOR

Processes attorney reclassifications. Conducts routine attorney work-product evaluations. Answers roster attorney questions. Handles client correspondence, counsel assignment problems, file closing questions, and training.

SYSTEMS/FINANCIAL MANAGER

Responsible for budget planning, bookkeeping, bill payment and payroll. Manages computer system including development, maintenance, and in-house training. Produces reports from computer database.

ASSIGNMENT COORDINATOR

Posts trial court appointment data to computer. Reviews trial court monthly log sheets to insure correct rotation of assignment lists. Responds to questions from trial court personnel. Back-up on phones.

ROSTER MANAGER

Maintains the roster, which includes application processing, changes in attorney address and phone numbers, level changes and circuit lists. Produces individual attorney profiles. Assembles materials necessary for reclassification requests. Maintains complaint and involuntary dismissal charts. Posts training attendance and tracks information received from the Attorney Discipline Board. Also acts as back-up typist.

ADMINISTRATIVE ASSISTANT/OFFICE MANAGER

Processes personnel changes. Handles building/parking issues and attends meetings with building management company. Administers training grants. Arranges training programs and prepares materials. Responsible for office supplies and non-computer equipment. Tracks sales of office publications. Assists administrators with special projects. Also acts as back-up typist.

SECRETARY

Typist for 3 attorneys. Maintains general office files, answers phones, sorts and distributes mail, closes files.

PARALEGAL

Screens and tracks client correspondence. Obtains information from trial courts. Answers routine prisoner inquiries and sends out form materials. Maintains library and acts as back-up on phones.

FILE CLERK

Maintains office files. Assists in mailing, photocopying, and other miscellaneous activities.

Appendix C

APPELLATE ASSIGNMENTS 1986 - 2001

	TOTAL	MAACS NUMBER	SADO NUMBER	SADO PERCENTAGE
1986	3627	2872	755	20.8%
1987	3831	2991	840	21.9%
1988	4230	3341	889	21.0%
1989	5224	4135	1089	20.8%
1990	5550	4616	934	16.8%
1991	5297	4443	854	16.1%
1992	6469	5454	1015	15.7%
1993	5927	4974	953	16.1%
1994	5047	4130	917	18.2%
1995	4763	3926	837	17.6%
1996	4287	3524	763	17.8%
1997	4080	3248	832	20.4%
1998	3983	3035	948	23.8%
1999	3362	2586	776	23.1%
2000	3396	2474	922	27.2%
2001	3076	2291	785	25.5%

e:\charts\assigns_maacs_sado_8601.qpw

Appendix D

2001 APPELLATE ASSIGNMENTS

	Total No. --- Percent of Grand Total	SADO No. --- Percent of SADO Total	SADO Percent of Total Case Type
<u>Level I</u>			
Plea/PV/Resentencing	938 30.5%	189 24.1%	20.2%
Waiver Trial/INT/6.5/PPO Evidentiary Hearing	104 3.4%	25 3.2%	24.0%
Jury Trial	122 4.0%	37 4.7%	30.3%
Level I Total	1164 37.8%	251 32.0%	21.6%
<u>Level II</u>			
Plea/PV/Resentencing	1044 33.9%	256 32.6%	24.5%
Waiver Trial/INT/6.5/PPO Evidentiary Hearing	152 4.9%	48 6.1%	31.6%
Jury Trial	163 5.3%	51 6.5%	31.3%
Level II Total	1359 44.2%	355 45.2%	26.1%
<u>Level III</u>			
Jury Trial	549 17.9%	177 22.6%	32.2%
Level III Total	549 17.9%	177 22.6%	32.2%
Prosecution Appeals of Dismissals	3 0.03%	2 0.3%	66.7%
Miscellaneous	1 0.02%	0 0.0%	0.0%
GRAND TOTAL	3076	785	25.5%

2001 MAACS STATISTICS
ASSIGNED APPEALS BY CASE TYPE AND LEVEL

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Appendix E

Circuit	MOTION PROSEC.		PLEA/PV/		BENCH/ EVIDENTIARY			JURY			Grand Total	
	RELIEF APPEALS		RESENTENCING		HEARING/6.5/INT.							
	1	2	1	2	1	2	Total	1	2	3		Total
1st Hillsdale	10	7	17	--	--	--	--	--	1	3	4	21
2nd Berrien	12	12	24	1	1	2	--	--	0	9	9	35
3rd Wayne	194	274	468	89	111	200	39	43	184	266	937	
4th Jackson	28	21	49	2	3	5	2	4	9	15	69	
5th Barry	4	4	8	--	--	--	1	--	--	1	9	
6th Oakland	85	171	256	7	7	14	22	30	66	118	388	
7th Genesee	93	96	189	--	2	2	1	7	43	51	243	
8th Ionia/Montcalm	9	7	16	--	--	--	1	4	4	9	25	
9th Kalamazoo	10	9	19	--	5	5	2	1	11	14	38	
10th Saginaw	0	4	4	--	2	2	4	3	24	31	37	
11th Alger/Luce Schoolcraft	2	1	3	--	--	--	--	2	--	2	5	

Appendix E

Circuit	MISC. RELIEF APPEALS	MOTION/PROSEC.			PLEA/PV/ RESENTENCING			BENCH EVIDENTIARY HEARING/6.5/INT.			JURY			Grand Total
		1			2			1			2			
		Total			Total			Total			3			
12th Baraga/Houghton/Keweenaw		1	2	3										3
13th Antrim/Grand Traverse/Leelanau		15	9	24							2	5	7	31
14th Muskegon		44	53	97	1	2	3	1				11	12	112
15th Branch		2	2	4		1	1			1			1	6
16th Macomb		96	69	165	1	3	4	5	3			36	44	213
17th Kent		13	16	29	2	1	3	3	6		41		50	82
18th Bay		11	20	31				2	1		1		4	35
19th Benzie/Manistee		7	1	8							1		1	9
20th Ollawa		2	5	7	2		2		3		2		5	14
21st Isabella		8	12	20				3	1		2		6	26
22nd Washtenaw		11	11	22		1	1		2		6		8	31
23rd Iosco/Oscoda		5	3	8		1	1				2		2	11

Circuit	MISC. RELIEF APPEALS	MOTION/PROSEC.			PLEA/PV/RESENTENCING			BENCH EVIDENTIARY HEARING/6.5/INT.				JURY			Grand Total
		RELIEF APPEALS			RESENTENCING			HEARING/6.5/INT.				JURY			
		1	2	Total	1	2	Total	1	2	Total	1	2	3	Total	
24th Sanilac		5	2	7	--	--	--	--	--	--	--	--	--	7	
25th Marquette		4	1	5	--	--	--	--	--	--	1	--	1	6	
26th Alpena/Alpena/Montmorency/Presque Isle		--	3	3	--	--	--	1	2	1	4	1	4	7	
27th Newaygo/Ocean		6	7	13	--	--	--	--	--	--	1	1	1	14	
28th Missaukee/Wexford		8	3	11	--	--	--	2	1	--	3	--	3	14	
29th Clinton/Gratiot		16	9	25	--	--	--	2	1	1	4	1	4	29	
30th Ingham		35	30	65	--	--	--	2	4	11	17	11	17	82	
31st St. Clair		17	14	31	--	1	1	--	2	10	12	10	12	44	
32nd Gogebic/Ontonagon		1	--	1	--	--	--	--	--	--	--	--	--	1	
33rd Charlevoix		10	4	14	--	1	1	2	--	--	2	--	2	17	
34th Arenac/Ogemaw Roscommon		--	3	3	--	1	1	1	1	1	3	1	3	7	
35th Shiawassee		5	3	8	--	--	--	--	1	1	2	1	2	10	

Circuit	MISC.	MOTION/PROSEC. RELIEF APPEALS		PLEA/PV/ RESENTENCING		BENCH EVIDENTIARY HEARING/6.5/INT.			JURY		Grand Total		
		1	2	Total	1	2	Total	1	2	Total			
36th Van Buren		1	6	7	--	1	1	1	--	--	2	2	10
37th Calhoun		43	19	62	--	1	1	1	8	11	10	29	92
38th Monroe		18	17	35	--	--	--	--	--	3	8	11	46
39th Lenawee		4	8	12	--	--	--	--	1	1	1	3	15
40th Lapeer		2	--	2	--	--	--	--	--	2	3	5	7
41st Dickinson/Iron Menominee		13	6	19	--	--	--	--	1	1	2	4	23
42nd Midland		3	6	9	--	--	--	--	2	1	2	5	14
43rd Cass		8	3	11	--	--	2	2	--	3	6	9	22
44th Livingston		15	19	34	1	--	1	1	1	3	2	6	41
45th St. Joseph		3	11	14	--	1	1	1	2	2	5	9	24
46th Crawford/Kalkaska Osego		9	7	16	--	--	--	--	2	2	3	7	23
47th Delta		3	2	5	--	--	--	--	2	--	2	4	9

Circuit	MISC.	MOTION/PROSEC. RELIEF APPEALS		PLEA/PV/ RESENTENCING			BENCH EVIDENTIARY HEARING/6.5/INT.			JURY			Grand Total	
		1	2	Total	1	2	Total	1	2	3	Total			
48th Allegan		--	3	3	--	--	--	--	--	1	1	2	5	
49th Mecosta/Osceola		7	5	12	--	--	--	1	--	--	2	3	15	
50th Chippawa/Mackinaw		7	3	10	--	--	--	--	--	1	1	2	12	
51st Lake/Mason		8	3	11	--	1	1	2	1	3	6	18		
52nd Huron		--	--	--	--	--	--	1	--	1	2	2		
53rd Cheboygan		2	1	3	--	--	--	--	2	--	2	5		
54th Tuscola		6	6	12	--	--	--	--	--	--	--	12		
55th Clare/Gladwin		5	4	9	--	--	--	1	--	3	4	13		
56th Eaton		16	20	36	--	1	1	2	3	5	10	47		
57th Emmet		1	2	3	--	--	--	--	--	--	--	3		
ALL CIRCUITS	0	1	3	943	1039	1982	106	150	256	122	164	548	834	3076

TOTALS 0.00% 0.03% 0.10% 30.7% 33.8% 64.4% 3.5% 4.9% 8.3% 4.0% 5.3% 17.8% 27.1%

Level 1 1171 38.1%
Level 2 1353 44.0%
Level 3 548 17.8%

Total 3072

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SADO ASSIGNED APPEALS BY CASE TYPE AND LEVEL

Circuit	MISC. RELIEF APPEALS		MOTION/ PROSEC. APPEALS		PLEA/PV/ RESENTENCING		BENCH/6.500/ EVIDENTIARY HEARING		JURY		Grand Total
	1	2	1	2	1	2	1	2	1	2	
1st Hillsdale	--	--	--	2	3	--	--	--	1	1	5
2nd Berrien	--	--	--	3	4	2	1	3	--	3	10
3rd Wayne	--	--	2	39	68	17	29	46	9	10	229
4th Jackson	--	--	--	5	5	1	1	2	1	1	17
5th Barry	--	--	--	1	2	--	--	--	1	--	3
6th Oakland	--	--	--	17	41	1	4	5	5	7	93
7th Genesee	--	--	--	18	24	--	--	--	1	1	58
8th Ionia/Montcalm	--	--	--	3	2	--	--	--	1	1	8
9th Kalamazoo	--	--	--	2	2	--	1	1	--	3	8
10th Saginaw	--	--	--	--	1	--	1	1	2	2	15
11th Alger/Luce	--	--	--	--	--	--	--	--	--	1	1
Schoolcraft	--	--	--	--	--	--	--	--	--	--	--
12th Baraga/Houghton/Keweenaw	--	--	--	1	1	--	--	--	--	--	2

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Circuit	MISC.	RELIEF	PROSEC.	PLEA/PV/ RESENTENCING			BENCH/6.500/ EVIDENTIARY HEARING			JURY			Grand Total	
				1	2	Total	1	2	Total	1	2	3		Total
13th Antrim/Grand Traverse/Leelanau	--	--	--	4	2	6	--	--	--	--	--	2	2	8
14th Muskegon	--	--	--	7	12	19	1	1	2	1	--	3	4	25
15th Branch	--	--	--	1	1	2	--	1	1	--	--	--	--	3
16th Macomb	--	--	--	18	16	34	2	--	2	2	1	11	14	50
17th Kent	--	--	--	2	5	7	1	--	1	--	1	15	16	24
18th Bay	--	--	--	3	5	8	--	--	--	1	1	1	3	11
19th Benzie/Manistee	--	--	--	1	1	2	--	--	--	--	--	1	1	3
20th Ottawa	--	--	--	--	--	--	1	--	1	--	1	--	1	2
21st Isabella	--	--	--	3	3	6	--	--	--	3	1	1	5	11
22nd Washtenaw	--	--	--	2	3	5	--	1	1	--	1	1	2	8
23rd Iosco/Oscoda	--	--	--	2	2	4	--	1	1	--	--	--	--	5
24th Sanilac	--	--	--	2	--	2	--	--	--	--	--	--	--	2