



APPELLATE DEFENDER COMMISSION

2003 ANNUAL REPORT

For the
MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM

And the
STATE APPELLATE DEFENDER OFFICE

2003 APPELLATE DEFENDER COMMISSION

Oliver C. Mitchell, Jr., Chairperson
State Bar Designee

Honorable Robert A. Benson, Vice-Chair
Michigan Judges Association Designee

Ernest J. Essad, Jr.
Supreme Court Designee

Allan S. Falk
Court of Appeals Designee

Donald E. Martin
Supreme Court Designee

Michael Pung
Governor's Designee

John E. S. Scott
State Bar Designee

James R. Neuhard, Director
State Appellate Defender Office

Thomas Harp, Administrator
Michigan Appellate Assigned Counsel System

APPELLATE DEFENDER COMMISSION

SUITE 3300 PENOBSCOT • 645 GRISWOLD • DETROIT, MICHIGAN 48226 • 313/256-9833 • FAX 313/965-0372

OLIVER C. MITCHELL, JR., Chair
STATE BAR DESIGNEE
DEARBORN

HONORABLE ROBERT A. BENSON,
Vice-Chair
MICHIGAN JUDGES ASSOCIATION DESIGNEE
GRAND RAPIDS

ERNEST J. ESSAD, JR.
SUPREME COURT DESIGNEE
ORCHARD LAKE

ALLAN S. FALK
COURT OF APPEALS DESIGNEE
OKEMOS



DONALD E. MARTIN
SUPREME COURT DESIGNEE
LANSING

MICHAEL J. BRYANTON
GOVERNOR'S DESIGNEE
HOLT

JOHN E. S. SCOTT
STATE BAR DESIGNEE
DETROIT

November 24, 2004

The Appellate Defender Commission is pleased to submit the 2003 Annual Report for the State Appellate Defender Office and the Michigan Appellate Assigned Counsel System.

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 2003 Annual Report. For additional information, please feel free to contact Thomas Harp, 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 black ink, appearing to read 'Oliver C. Mitchell, Jr.', written in a cursive style.

Oliver C. Mitchell, Jr., Chair 2003
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 criminal appeal and post-conviction 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 the MAACS minimum performance standards when representing their clients.

TABLE OF CONTENTS

Appellate Defender Commission 2003 Annual Report for the Michigan Appellate Assigned Counsel System And the State Appellate Defender Office

	<u>Page</u>
Mission Statements; Goals; Objectives	ii
History and Governance	v
 MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM	
Introduction.....	1
Developments	2
1. Maintaining the Roster.....	2
2. Coordinating Assignments.....	2
a. Methods.....	2
b. Statistics	4
3. Improving Attorney Performance	5
a. Training.....	5
b. Classification Reviews.....	6
c. Enforcement of Minimum Standards	6
4. Other Activities.....	7
 STATE APPELLATE DEFENDER OFFICE	
Litigation	9
Assignment Levels.....	10
SADO Staffing and Direct Client Services.....	12
Productivity.....	13
Special Unit for Pleas and Early Releases	14
2003 Goals and Objectives	16
 Criminal Defense Resource Center Services	17
Overview of Noteworthy Accomplishments	17
Services Delivered by Mail, Phone, and In-Person	19
Services Delivered by the Web.....	20
Direct Training Events.....	22
Sharing with the Legal Services Community	22

Appendices:

MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM

MAACS Organizational Chart.....1
Appellate Assignments 1986 - 20032
2003 Appellate Assignments3
2003 MAACS Statistics – Assigned Appeals by Case Type and Level4

STATE APPELLATE DEFENDER OFFICE

SADO Annual Report Summary Tables for 200310
Case Activity and Workload.....12
SADO’s Percent of Complex Appellate Assignments.....14
Assignment of Cases by Type.....15
Substitution Appointments.....16
Overall Relief Rates17
Dismissals and Withdrawals19
Geographic Representation of Subscriptions to Project Services.....20
Total User Sessions.....21
Forum Messages22
Forum Messages by Day of the Week23
Attorney to Attorney Support Services.....24
Federal Grant Report.....31

HISTORY 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. It 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 (1981).

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.

Both organizations are governed by Commission, which 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 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 on January 1, 2003 were: D. Joseph Olson (Chairperson) and Joseph P. Overton (Vice-Chair), Supreme Court designees; Honorable Robert A. Benson, Michigan Judges Association designee; John E.S. Scott and Oliver C. Mitchell, Jr., State Bar designees; and Mr. Olson's and Mr. Overton's terms expired on May 24, 2003, but they continued to serve until such time as their replacements were appointed by the Governor. On June 30, 2003, Mr. Overton was killed in a light-aircraft accident. On July 29, 2003, the Governor appointed Donald E. Martin, of East Lansing and Ernest E. Essad, Jr., of Orchard Lake, to the Commission, as designees of the Supreme Court. At the end of 2003 the Commission members were: Oliver C. Mitchell, Jr., State Bar designee (Chairperson); Honorable Robert A. Benson, Michigan Judges Association designee (Vice-Chair); Allan S. Falk, Court of Appeals designee ; Ernest E. Essad, Jr. and Donald E. Martin, Supreme Court designees; Michael W. Pung, Governor's designee; and John E.S. Scott, State Bar designee.

The State Appellate Defender Office maintains a web site at www.sado.org. Extensive resources for practicing criminal defense attorneys are maintained at this site along with biographies of the current Appellate Defender Commission.

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 at 1375 S. Washington Ave; Suite 300, Lansing, MI 48913. The MAACS Administrator is Terence R. Flanagan; Deputy Administrator is Thomas M. Harp. An Associate Administrator position remained vacant in 2003.

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 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’s representation to criminal, post-conviction cases assigned 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). Given the rise and fall of funding and number of appeals, the Appellate Defender Commission must monitor and match SADO’s case intake to its resources, taking into consideration 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 University Law School, and this year established such a course at the University of Detroit Mercy 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 SADO 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 and Chief Director Defender Norris J. Thomas are in the Detroit office. Deputy Director Dawn Van Hoek now manages the Lansing office as well as directing the Criminal Defense Resource Center.

THE 2003 ANNUAL REPORT OF THE MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM

INTRODUCTION

Indigent Michigan felony defendants who submit requests within certain time limits 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 indigents' 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. When fully-staffed, MAACS employs 10 people (see Appendices A & B, "Organizational Chart" and "Position Descriptions"). Eight positions are full-time salaried employees (FTEs) and two are part-time contract employees.

- The Administrator, Deputy Administrator and Associate Administrator (currently vacant), 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 (currently vacant), and

- A part-time file clerk (currently vacant).

In 2002, due to a reduction in appropriations to the office, MAACS was compelled to lay off personnel in the positions outlined above. For the same funding-related reasons, these positions remained vacant throughout 2003.

DEVELOPMENTS IN 2003

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. 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 continuing legal education (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.

In 2002, the Appellate Defender Commission amended the Regulations to better insure that roster attorneys continuing eligibility is periodically reviewed by the MAACS Administrator. Roster attorneys must now re-apply to be retained on the roster every three years. The Administrator, based on a review of the renewal application and the applicant's work on prior felony appeals, and the assessment of any supplementary materials, then notifies the re-applicant whether he/she will be retained at Level 1, 2 or 3 or not retained for good cause or for administrative reasons. An attorney who is not retained has the right to appeal the Administrator's decision to the Commission.

The initial re-application process took place between September 1 - October 31, 2002. Many attorneys did not re-apply to be retained (58); others were not retained (4); some were retained at a lower level at their own request (2); and others were retained at a lower level not of their own choosing (5). As of December 31, 2002, there were 160 attorneys on the statewide roster. Two of the lawyers not retained on the roster appealed the Administrator's non-retention decision to the Appellate Defender Commission in 2003. Both of these appeals were denied. As of December 31, 2003, there were 159 attorneys on the statewide roster.

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.¹ SADO may also be selected out-of-sequence for appointment 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. The final circuit (the 13th) came on-line in June, 2002 and the system is now 100% operational.

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, obtains 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 amounts of time, paper, and postage currently expended to share this information can be 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.

¹MAACS Regulation 2(2)(d)(i) requires that the Commission annually determine the formula for assigning cases to SADO based on the number of appeals for each level and type and the total number SADO is funded to accept. The Commission also may make adjustments to this formula as SADO funding and/or case-capacity circumstances change. Such adjustments occurred twice in 2003. At the conclusion of 2003 the Commission’s formula authorized that SADO receive 20% of Level 1 cases, and 25% of Level 2 and Level 3 cases.

b. Statistics

In 2003, appellate counsel was assigned in 3634 cases (each original order is counted as one case, regardless of subsequent substitutions of counsel). This figure represents a twelve per cent increase over the 3226 assignments in 2002². Of the total, 696 cases (19.2 %) were assigned to SADO.

The distribution of assignments by case type and level appears in the following chart.³ 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.

2003 APPELLATE ASSIGNMENTS			
	Total No. Percent of Grand Total	SADO No. Percent of Grand Total	SADO Percent of Total Case Type
Level 1 Total	1338 36.8 %	220 31.6 %	16.4 %
Level 2 Total	1519 41.8%	300 43.1 %	19.7 %
Level 3 Total	757 20.8 %	174 25.0 %	23.0 %
Motions for Relief (MCR 6.500)	3 0.1 %	0 0.0 %	0.0 %
Prosecution Appeals of Dismissals	11 0.3 %	1 0.1 %	9.1 %

² A chart summarizing the annual assignments from 1986 - 2003, including SADO's numbers and percentages, is attached as Appendix C.

³A more complete chart for 2003 appellate assignments, which includes breakdowns for case types at each level, is attached as Appendix D. Another chart, which lists the 2003 assignments for each circuit court by case level and type, is attached as Appendix E.

Miscellaneous	6 0.2 %	1 0.1 %	16.7 %
GRAND TOTAL	3634	696	19.2 %

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 2003 MAACS provided training through diverse means. Two were funded by grants from the Michigan Commission on Law Enforcement Standards.

- **Reference Manual**

In December, 2003, MAACS published the fourth edition of “Felony Sentencing in Michigan”, authored by State Appellate Deputy Defender Sheila R. Deming. Ms. Deming made extensive revisions to the third edition, also authored by herself, published in 1992. The manual is, essentially, a primer on Michigan sentencing law and post-conviction law and procedure. The manual describes an overview of the substance and procedure of Michigan sentencing law and practice and contains published opinions and statutory amendments relevant to sentencing issues through September of 2003, as well as a few unpublished opinions if those decisions represent analyses not found in published authority. It also includes extensive general analysis of the entire sentencing process and specific suggestions for applying the law to the sentencing facts of a practitioner’s particular case.

- **Training Seminars**

In September 2003 MAACS presented its live training to 131 attorneys in three separate locations around the state: “*MAACS Criminal Appellate Practice Refresher: Recent Developments in Law, Science and Procedure.*”

Experienced practitioners from MAACS and SADO, along with an expert in the scientific field of DNA evidence, as well as a professor of law, lectured on key topics of importance to appellate counsel including: the scientific and statistical analysis of DNA evidence, the evidentiary law as it relates to DNA and other scientific and/or “expert” evidence, and recent interpretations of MRE 404(b)–“similar acts evidence”–in the government and defense case. Finally, MAACS administrators offered updates and breaking news on current events in appellate defense. The programs were well-attended and received consistent “Excellent”

evaluations from the attendees.

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. The administrators also routinely field telephone and internet 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.

In 2003, seven MAACS roster lawyers requested reclassification to higher levels; four requested reclassification to Level 2 and three to Level 3. After preliminary reviews were conducted, two lawyers who had requested reclassification to Level 2 were informed they did not have the requisite number of appeals (18) within the previous three years, per Reg. 4(2), to allow such a reclassification. Four lawyers' requests for reclassification were granted; two at each Level. The remaining lawyer's request to be reclassified as a Level 3 lawyer was denied. Two other attorneys, formerly members of the MAACS roster, were allowed to rejoin at their original Level (1).

Ten 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 these applications and made specific recommendations regarding them to the Commission. The Commission decided:

- To permit six attorneys to join at Level 2, as requested, per MAACS' recommendation;
- To permit one lawyer to join at Level 1, per MAACS' recommendation;
- To deny three attorneys' requests to join at either Level 2 or 3, per MAACS' recommendation.

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 2003, MAACS resolved 23 formal complaints involving 16 different roster attorneys, 10 of whom were no longer on the roster. In 87% of the cases (20 of 23), 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 apprized 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. Requests for the appointment of substitute counsel were made in six of these 23 complaints where violations were found and the various trial courts granted all but one of 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 2003, 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, participate in discussions with the Court of Appeals concerning its delay-reduction efforts, 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.

ANNUAL REPORT OF THE STATE APPELLATE DEFENDER OFFICE FOR JANUARY 1, 2003 THROUGH DECEMBER 31, 2003

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 Appellate 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 in its attempts 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 1992. This growth placed enormous strain on the entire appellate system – courts, court reporters, prosecution and defense alike. During this period of growth, the state faced numerous budget crises and budget cuts, and 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 and severe restrictions on extensions of time allotted to file the brief on appeal. Failure to file timely resulted in loss of oral argument, potential forfeiture or waiver of meritorious issues and imposition of 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 ...]. When its workload exceeds its case-handling capacity, the Commission has reduced the total percentage of appeals accepted by the office, or closed the office to new assignments for periods necessary to match the caseload with the resources, or filed motions with the Court of Appeals to withdraw from cases currently assigned to the office. With the advent of the on-line MAACS assignment system, the Commission has been able to more efficiently match SADO's assignment rate to its current and projected capacity. While this method reduced the assignments in gross over a year period, it failed to offer predictability in the processing of appeals.

MANAGING SADO'S STATE FUNDED RESOURCES/WORKLOAD

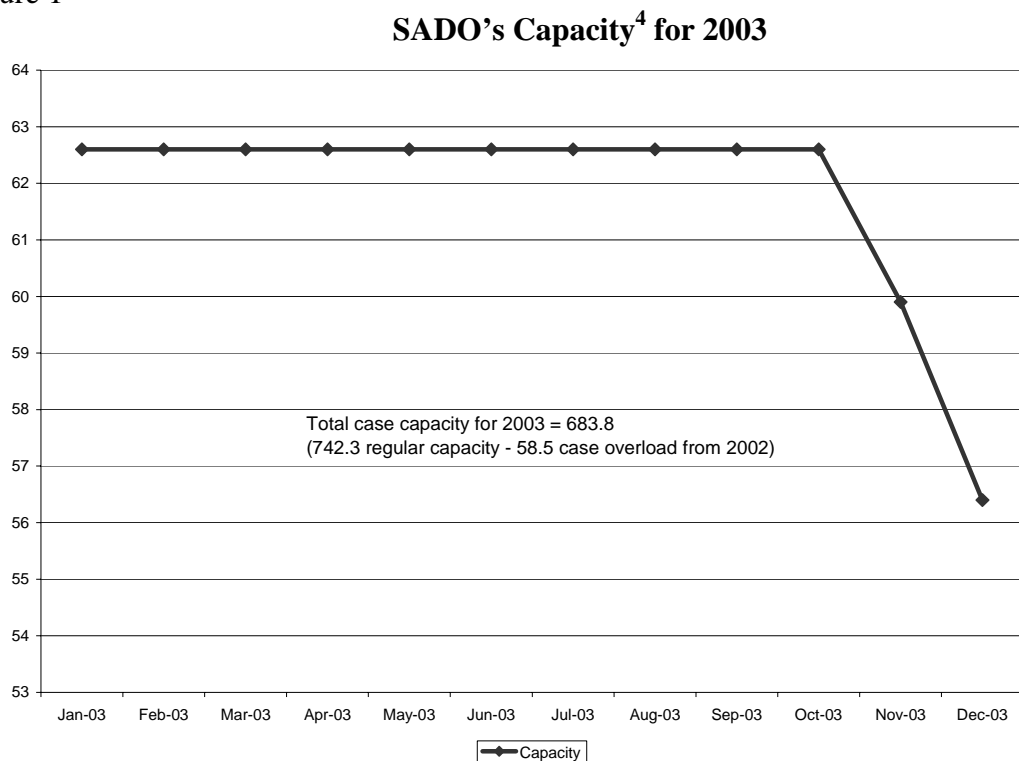
ASSIGNMENT LEVELS

As the year began, the formula for cases assigned to SADO was 20% of Level 1, 25% of Level 2, and 33.3% of Level 3 cases. This formula was designed to provide SADO with a larger quantity of the more complex Level 3 cases, while trying to average 25% of the total appellate assignments for the state. However, due to an increase in overall appeals and a decrease in SADO's staffing level, by mid February, the formula for Level 3 was adjusted down to 25% and remained there for the remainder of the calendar year.

Based on 2003 year-end data, overall SADO received 19.2% of the total appellate assignments – 16.4% or 220 Level 1 cases, 19.8% or 300 Level 2 cases, and 23.0% or 174 Level 3 cases – an amount still in excess of its capacity for the year.

Although SADO's assignment level for 2003 was approximately 20%, its capacity to handle the cases it receives is largely based on the number of staff attorneys it employs. Due to budget cuts and staff reductions, in 2003 SADO did not have the capacity to handle the 696 cases it received. Figure 1 below indicates that SADO's capacity for 2003 was 742.3. However, SADO entered 2003 with an overload of 58.5 cases from the previous year, further reducing the 2003 capacity level to 683.8. Consequently, SADO finished the year with 12.2 cases more than it had the capacity to handle.

Figure 1



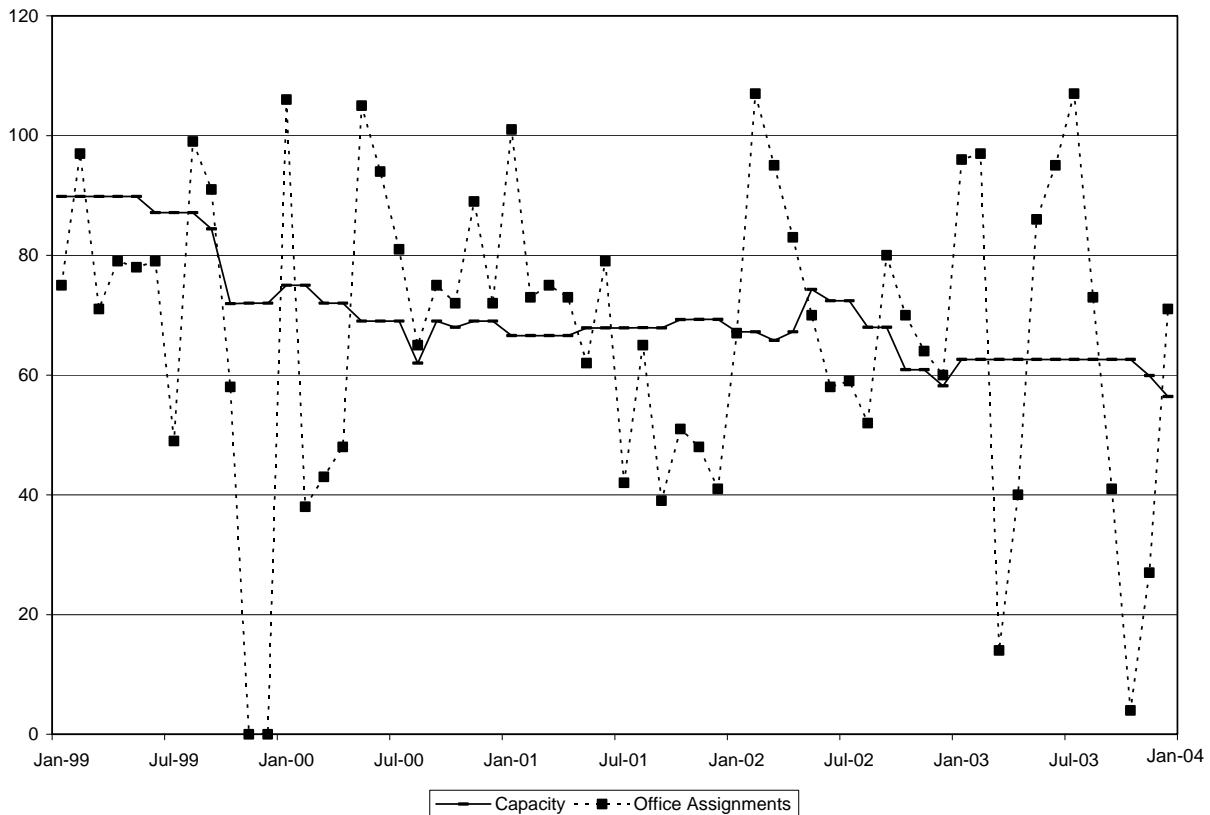
⁴ Capacity is the cumulative total of new cases all SADO attorneys can accept per month under established differential case weighting standards.

SADO's ability to process cases is also significantly affected throughout the year by the fluctuations in assignment levels. Figure 2 tracks the assignments to SADO over five calendar years. This tracking over several years reveals fluctuations in monthly assignments and the overall trend of the workload that one year "snap shots" may not readily reveal. With the severe restrictions of motions to extend time, work cannot be readily moved from such periods to lower assignment times.

As can be seen, while the overall yearly percentage of assignments averaged close to the 25% of the overall assignments, the peaks and valleys are severe when tracked against the office capacity month to month. These widely disparate rates per month severely hinder the ability to file timely because the transcript filing, which triggers the timing deadlines in the Court of Appeals, occurs in bunches, thus making many cases due at the same time. The research, client visits, investigation, writing and editing of the brief must be completed in a large number of cases within very rigid timing deadlines in the Court of Appeals. The Commission continues its vigilant work to resolve this workload problem.

Figure 2

**Capacity vs. Office Assignments⁵
For 1999 through 2003**



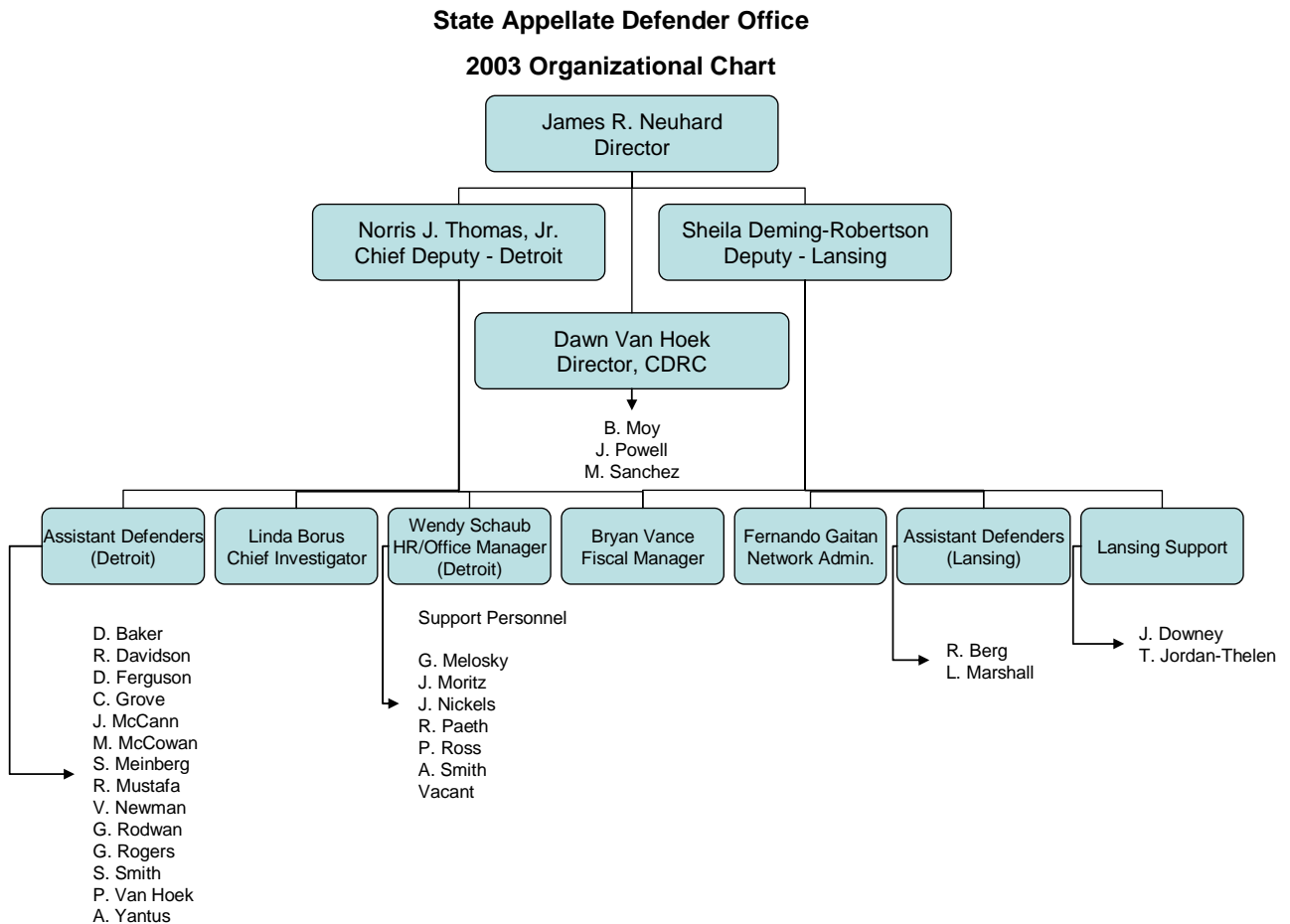
⁵ Assignments to the Office are cases assigned by the circuit courts to SADO either directly or by order of the appellate courts.

SADO STAFFING AND DIRECT CLIENT SERVICES

Due to budget cuts, early retirements, and turnover, SADO reduced the size of its staff in 2003 from 39 to 35 full-time employees by eliminating three attorney positions and one support staff position. By the end of 2003, the Director, Chief Deputy Director, 14 Assistant Defenders and the Criminal Defense Resource Director were housed in the Detroit (main) office; and the Deputy Director and two Assistant Defenders were located in the Lansing office. One Paralegal, three Legal Secretaries, and the Chief Investigator directly supported the legal staff. The Office Managers in the Detroit and Lansing offices, Fiscal Manager, Network Administrator, Webmaster, Administrative Assistants, Clerk, and Receptionist assisted the administration and provided secondary support to the legal staff.

Below is an organizational chart that illustrates the composition of SADO's staff by the end of 2003.

Figure 3



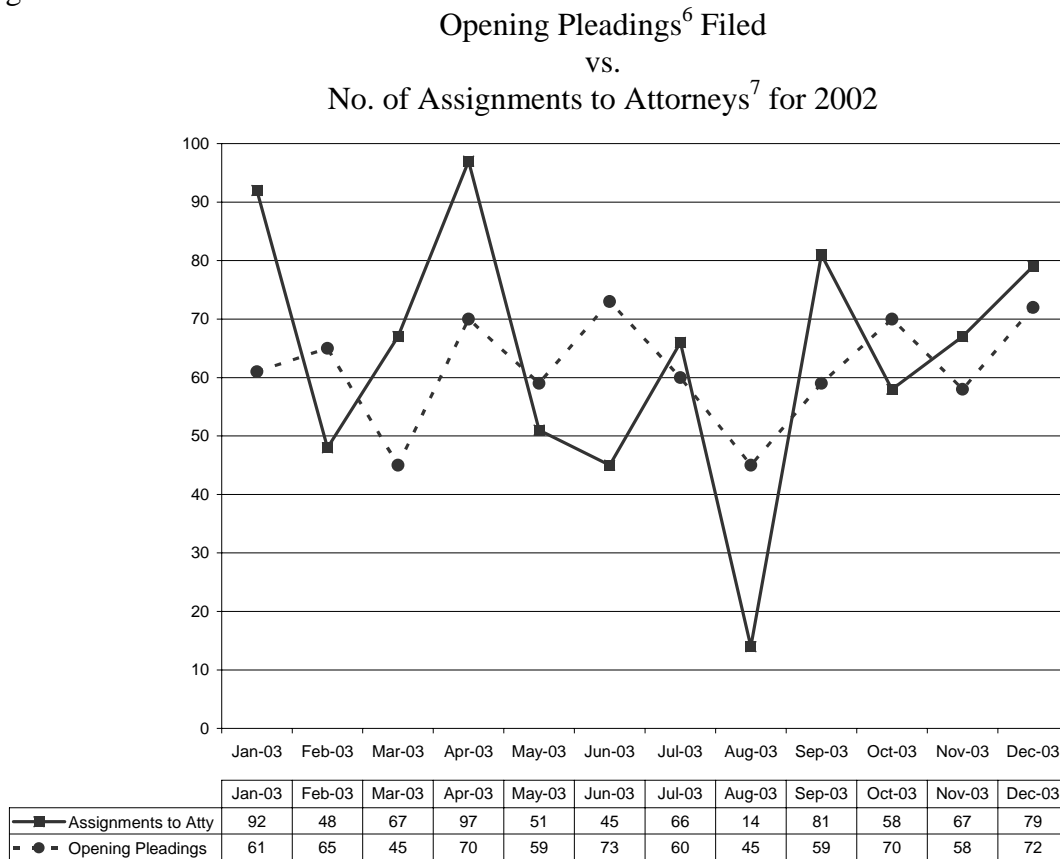
Two SADO lawyers were housed at and received secretarial/clerical and legal research support from the University of Michigan Law School while teaching the Criminal Appellate Practice Course. Two others taught the other SADO-established Criminal Appellate Practice Course at the Wayne State University Law School and one taught the University of Detroit Mercy Law School course. These courses enjoy excellent reputations among both students and faculty, provide excellent client representation, and a recruiting pool for future SADO lawyers.

PRODUCTIVITY

In 2003, SADO Assistant and Deputy Defenders were assigned 936 cases and produced 2,501 filings, 824 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)

Figure 4 tracks the opening pleading. This pleading meets the filing deadlines the case might have by either filing in a court or closing the case through dismissal of the appeal (See Table VIII, page 10 of the Appendix).

Figure 4



⁶ 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.

⁷ Assignments to Attorney – when a SADO staff attorney takes responsibility for a case assigned to SADO

Filings in the Court of Appeals are the most critical, because late Court of Appeals filings may have penalties assessed, including cost assessments against the attorney, remand and assignment of a new attorney, resulting in further delays to the client and expense to the system, or loss of oral arguments in the case. Finally, the more thorough it is, the less likely it will be that the client will need to file another brief later in the process to exhaust their remedies in the Michigan System. These pro se briefs place a significant burden on local courts and the appellate system. Figure 4 essentially tracks actual attorney intake and output. Differential case management and case weighting standards determine maximum attorney and overall office intake capacity. These sophisticated management and measuring tools are designed to achieve the operational goal of matching output to intake.

SPECIAL UNIT FOR PLEAS AND EARLY RELEASES (PLEA UNIT)

Because of the large number of plea appeals assigned to the office, in the early 1980's SADO developed a Special Unit to process plea-based appeals and trial-based appeals with short sentences, where early action was required to avoid loss of potential sentencing relief. This differential case management allowed the Unit attorneys to handle twice as many clients and cases than attorneys handling randomly mixed caseloads. This in turn allowed the office to increase its case-handling average from generally suggested standards of 25 to 30 cases per staff attorney to 55.1 cases per staff attorney in 2003 (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 judgment of the attorneys on the merits and risk/benefits analysis in the appeal. After Unit attorneys review the file, conduct research and fact investigation, consult with and advise the client, their clients voluntarily dismiss between 38% and 42% of their cases.⁸ The Unit's overall relief rate⁹ exceeds 32%, with a relief rate of over 75% in the cases presented on the merits to trial courts. In 2003 there were only three full-time staff attorneys and the Deputy Director, who carried only a partial case load. However, with special part-time assignment of a non-Unit attorney to work on plea appeals, the Unit was still able to handle 78% of the plea-based appeal assignments to attorneys.

SADO's Special Unit for Pleas and Early Releases continues to expeditiously handle primarily plea-based appeals. A 1994 amendment to the Michigan Constitution (Proposal B) 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 minimal reduction in the total number of assigned guilty plea appeals.

⁸ 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.

⁹ On cases where relief is sought (excludes dismissals).

2003 GOALS AND OBJECTIVES

Absorb Staff Reduction and Timely Process As Close to 25% of the Total Assigned Appeals As Resources Will Permit.

Over the past years, the Appellate Defender Commission has expanded or constricted SADO's caseload to reflect funding and staffing realities. SADO's principal goal at the start of 2003 was to handle as close to 25% of the total appellate assignments as resources would permit. However, SADO suffered from a staff reduction in 2003, and therefore, had the ability to process approximately 20% of the appeals, as opposed to 25%. Of particular note, even though SADO is chronically understaffed and under funded due to budget cuts, it still has never been removed from any case for want of prosecution under MCR 7.217(A) in spite of accepting 20% or more of the cases and absorbing the caseloads from the loss of fifteen staff attorney positions over the last eight years.

Criminal Defense Resource Center 2003 Annual Report*

Primary Goals for 2003: Increase quantity of support to the private and public defender bar, increase access to services through the Web, continue training on web-based resources, obtain funding for Attorney-to-Attorney service.

I. Overview of noteworthy accomplishments

The year 2003* marked the twenty-seventh 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. 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 CDRC's 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.

CDRC operations were once again funded through a combination of SADO budgetary support, user fees, and grants from the Michigan Commission on Law Enforcement Standards, the Bureau of Justice Assistance, and the Michigan State Bar Foundation. User fees supported a portion of the costs of books, newsletters, copying, and operation of the SADO web site. Grants from the MCOLES supported a portion of the costs of books and direct training events. Grants from the Bureau of Justice Assistance and Michigan State Bar Foundation funded the Attorney-to-Attorney Support Service operating statewide.

While operations are described below, several activities during 2003 are noteworthy:

- The "Attorney-to-Attorney" Support Service obtained "bridge" funding from the Michigan State Bar Foundation, following the end of a federal grant. The Service connects criminal defense attorneys with the CDRC's experienced research attorneys, working from two locations, providing legal research, advice, pleadings and training. Funded by a grant from the Department of Justice's Bureau of Justice Assistance, the Service was the top awardee following a nationwide competition. The 18-month, \$150,000 award funded the six attorneys, all experienced private attorneys working one or two days per week, from either the main SADO office (e-mail and phone intake) or an office inside Wayne Circuit Court (in-person intake). 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 with federal grant funding. Before 1999, the service had been provided continuously for over twenty-three years, helping thousands of attorneys with matters of law and strategy. Toward the middle of 2003, as the federal

* Due to reporting methods based on a subscription year, the time period covered by this report is October 1, 2002 to September 30, 2003.

grant ended, the Michigan State Bar Foundation responded to the CDRC's request, awarding "bridge" funding in the amount of \$27,000. As a long-range goal, the CDRC is working toward state funding of this essential service.

- Renovation of space within the Detroit SADO office allowed the CDRC to offer "in-person" access to the Attorney-to-Attorney Service. To supplement the service offered statewide via phone and e-mail, and the service offered from Wayne Circuit Court, the CDRC opened its doors in Detroit's Penobscot Building. During the year, approximately 186 persons came in to use online databases or to consult with a research attorney.
- The CDRC's web databases grew significantly in content and value. The CDRC's web site was increasingly used as the state's main portal for criminal defense attorneys, containing its own large research databases of unique material. No other Michigan-focused web site contains both trial and appellate pleadings, full text of practice manuals (the Defender Books), collections of witness testimony, and videos from actual training events; all CDRC databases are searchable and downloading of useful material is facilitated. One area of the site was targeted for development during 2003: archives were created for all prior editions of the Defender Books, and all prior issues of the Criminal Defense Newsletter. Users of the web site may now search these significant historical collections.
- Forum traffic saw new highs in early 2003. The Forum, the CDRC's online discussion group of over 600 criminal defense attorneys, set new records for messages exchanged during a month. In April of 2003, over 1400 messages were exchanged on a wide variety of legal topics. Attorneys post messages 24/7, asking questions about practice and procedure, sharing pleadings and suggestions for strategy. Messages are collected in a searchable database, providing a rich resource of advice that can be used over and over.
- Delivery of certain publications in electronic form again proved popular during the year, advancing both timeliness and cost savings. The Criminal Defense Newsletter and the summaries of appellate decisions went out to nearly 650 subscribers to web services, delivered as attachments to e-mail messages.
- The first edition of the Defender Habeas Book was well-received by users. Written by expert attorneys David Moran and Amy Neville, the 2003 edition provided criminal defense attorneys with virtually everything needed to preserve federal constitutional issues at the trial level, and present them effectively at the appellate level, including model pleadings.
- The CDRC partnered with West on two projects. First, West trainers joined John Powell in several training events focusing on effective online legal research. As Powell trained attorneys on the wealth of largely free resources available to criminal defense attorneys, the West trainers demonstrated how WESTLAW can be used to access historical legal collections. Second, the CDRC obtained a discount on West publications for its own subscribers, allowing them to save \$15 on publications and WESTLAW subscriptions.
- The CDRC sent defense attorneys to national skills colleges, funded by a grant from the Michigan Commission on Law Enforcement Standards. For the first time, MCOLES funding covered training that has been offered for years to prosecutors. Five criminal defense attorneys, all public defenders, attended the two-week Trial Practice Institute offered by the National Criminal Defense College. In late 2003, three appellate defenders attended the one-week Appellate Advocacy Institute offered by the National Legal Aid and Defender Association.

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 650 chose the electronic version). 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.

B. Defender Trial, Sentencing and Post-Conviction, Motions, and Habeas 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 2300 pages of relevant information were delivered to users, covering developments through May of 2003. These four 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 and the Defender Habeas Books contain model pleadings 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 2003 about how frequently they use the books, 22.58% of the trainees said daily, 48.39% said weekly, 25.27% said monthly and 3.76% said less than monthly. These results reflect heavy use, as in prior years. Approximately 59% said they use the books to browse a topic to learn the law, 73% used them to quickly identify a case, rule or statute, and 71% used them to browse a topic to refresh their memories. Many indicated that the books provide a useful starting point in research. Asked about the value of the books to their practices, 69% said they were indispensable, and 30% said they were helpful.

C. Attorney-to-Attorney Support Service.

Legal support for Michigan's criminal defense bar continued in the form of the popular 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 life of the federally-funded project (2001 - 2003), the research attorneys responded to 4415 requests for help. 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. The final report on the federally-funded project is included with this annual report.

With the expiration of the federal funding in mid-2003, the CDRC obtained funding from the Michigan State Bar Foundation (MSBF) intended to bridge the gap to other funding. The MSBF awarded \$27,000, and the service continued into late 2003 at a reduced staffing level. At year's end, funding requests were pending with the Michigan Commission on Law Enforcement Standards and the Wayne County Criminal Defense Attorneys Association.

III. Services Delivered by the Web

A. Databases

The year 2003 again 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, opinion summaries and full text of appellate court decisions, both state and selected federal, testimony of selected police witnesses, and much more. 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 2003, content was added to both the public and subscriber-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 2003 were additional 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. Also newly in 2003 were all previous editions of the Defender Books and all prior issues of the Criminal Defense Newsletter, posted as databases on the web site. As appeals often relate back to prior versions of the law, access to the older Defender Books is particularly valuable.

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, averaged more than 25,000 per month during the report period (an increase from last year's average of about 18,000).

B. E-mail Groups

(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 650 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 averaged over 1000 messages per month. In April of 2003, the Forum also set a new record for traffic, with approximately 1500 messages exchanged. 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 appear in the appendix to this report.

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

To save mailing costs and increase the timeliness of delivery, the CDRC again encouraged users to read electronic copies of appellate decision summaries, in lieu of mailed hard copies. Once a week, summaries of that week's appellate decisions were sent via e-mail to the 650 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 decisions. Several hundred summaries were delivered through this listserv. The same 650 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 Council on Law Enforcement Standards, 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 171 trainees. The average size of the group trained was approximately 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. 2003 was particularly noteworthy for the ability of trainers to use computer labs; most trainees were able to work at their own computer, with live web access, greatly enhancing the learning experience.

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.

Evaluation of the direct training events showed their great value to practicing attorneys. Asked how often they use the web for legal research, 20% said daily, 42.8% said three times a week, 24.2% said once a week, 5.7% said rarely, and 4.3% said not at all. Asked how often they include the SADO site in a research session, 8.5% said they use it daily, 17.1% said three times a week, 34.3% said they used it once a week, 21.4% said they used it rarely, and the remainder (12.9%) not at all. Use of the SADO site is significant because it contains the most content of any legal research site available to Michigan's assigned counsel. Trainees also were asked how much research time was saved by using the SADO online databases: 15.9% said more than 10 hours monthly, 34.1% said between 5 and 10 hours monthly, 25% said under 5 hours monthly, and 4.5% said no time was saved. Asked if they would continue to use the SADO site for research and writing purposes, virtually all (98.5%) gave an affirmative answer. Asked to rate SADO's trainer, John Powell, 98.8% responded that he was either "excellent" or "very good."

V. Sharing with the Legal Services Community

The CDRC continued in 2003 to share its resources and expertise with others. During the year, the CDRC continued to provide 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.

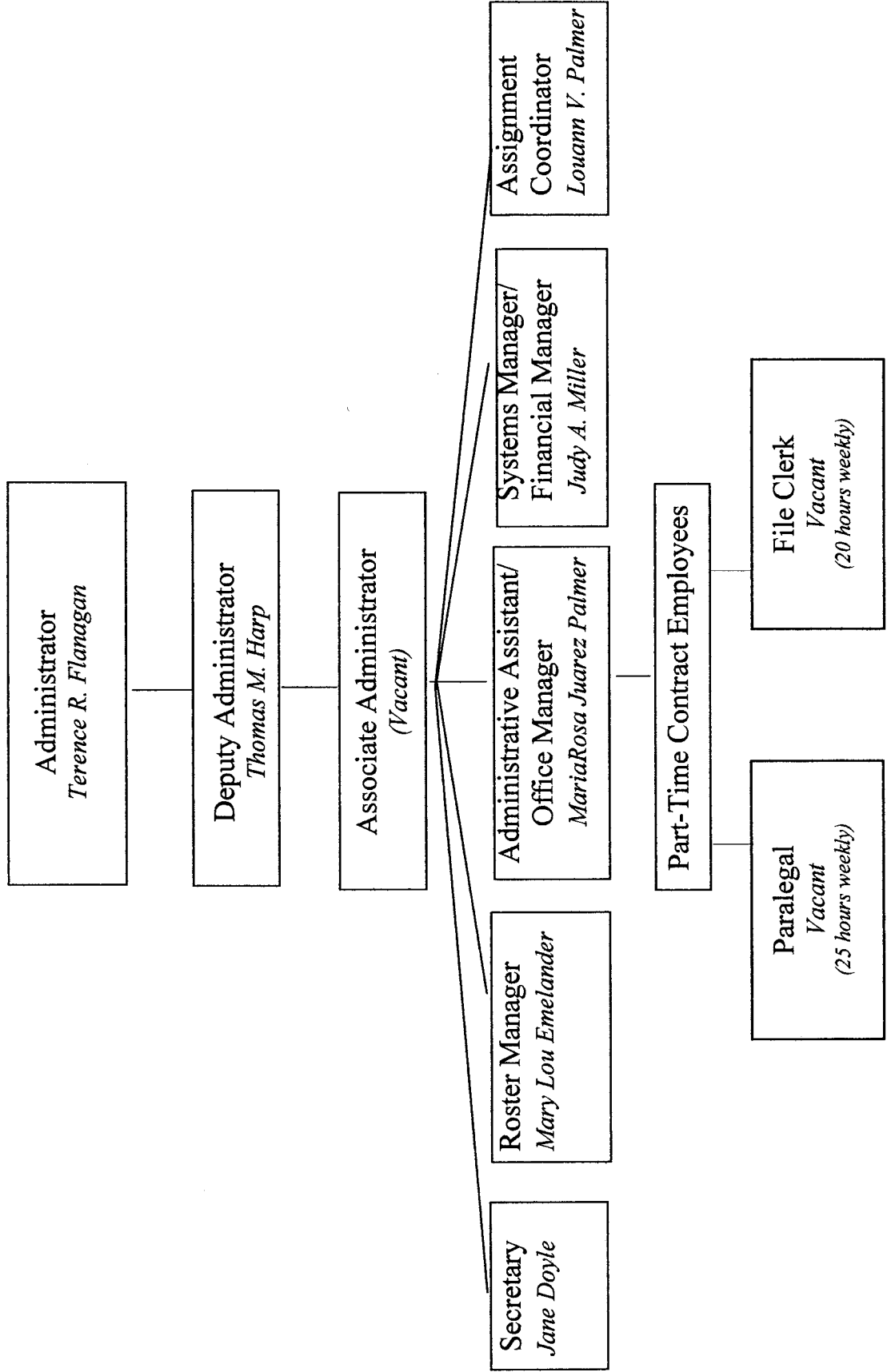
The CDRC's success in serving the appointed criminal defense bar is largely due to its relationship with a fully-functional law office, the State Appellate Defender Office. CDRC staff interacts constantly with SADO's practicing attorneys, developing expertise on substantive issues. The CDRC's databases, 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.

**MICHIGAN APPELLATE
ASSIGNED COUNSEL SYSTEM
APPENDICES**

JANUARY, 2003

MAACS ORGANIZATIONAL CHART



APPELLATE ASSIGNMENTS**1986-2003**

	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%
2002	3226	2346	880	27.3%
2003	3634	2938	696	19.2%

**APPELLATE ASSIGNMENTS
JANUARY 1, 2003 TO DECEMBER 31, 2003**

	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	1047 28.8%	159 22.8%	15.2%
Waiver Trial/INT/6.5/PPO Evidentiary Hearing	115 3.2%	18 2.6%	15.7%
Jury Trial	176 4.8%	43 6.2%	24.4%
Level I Total	1338 36.8%	220 31.6%	16.4%
<u>Level II</u>			
Plea/PV/Resentencing	1161 31.9%	212 30.5%	18.3%
Waiver Trial/INT/6.5/PPO Evidentiary Hearing	143 3.9%	36 5.2%	25.2%
Jury Trial	215 5.9%	52 7.5%	24.2%
Level II Total	1519 41.8%	300 43.1%	19.7%
<u>Level III</u>			
Jury Trial	757 20.8%	174 25.0%	23.0%
Level III Total	757 20.8%	174 25.0%	23.0%
Motions for Relief	3 0.1%	0 0.0%	0.0%
Prosecution Appeals of Dismissals	11 0.3%	1 0.1%	9.1%
Miscellaneous	6 0.2%	1 0.1%	16.7%
GRAND TOTAL	3634	696	19.2%

**2003 MAACS STATISTICS
ASSIGNED APPEALS BY CASE TYPE AND LEVEL**

Circuit	MISC.	MOTION/ PROSEC.		PLEA/PV/ RESENTENCING		BENCH/ EVIDENTIARY HEARING/6.5/INT.			JURY			Grand Total	
		RELIEF APPEALS	1	2	Total	1	2	Total	1	2	3		Total
1st Hillsdale	0	0	13	1	14	0	0	0	1	1	1	3	17
2nd Berrien	0	0	6	4	10	0	1	1	2	2	12	16	27
3rd Wayne	5	1	357	401	758	98	95	193	89	86	357	532	1498
4th Jackson	0	0	20	18	38	0	6	6	9	5	9	23	67
5th Barry	0	0	5	6	11	0	0	0	1	0	2	3	14
6th Oakland	0	0	80	155	235	4	18	22	14	27	98	139	396
7th Genesee	0	0	87	97	184	1	0	1	0	4	26	30	215
8th Ionia/Montcalm	0	0	1	0	1	0	0	0	1	1	2	4	5
9th Kalamazoo	0	0	7	12	19	1	0	1	3	2	11	16	36
10th Saginaw	0	0	7	19	26	0	0	0	2	7	24	33	59
11th Alger/Luce Schoolcraft Mackinac	0	0	1	0	1	0	0	0	1	0	0	1	2

**2003 MAACS STATISTICS
ASSIGNED APPEALS BY CASE TYPE AND LEVEL**

Circuit	MOTION/ PROSEC.			PLEAPV/ RESENTENCING			BENCH/ EVIDENTIARY HEARING/6.5/INT.			JURY			Grand Total	
	MISC.	RELIEF	APPEALS	1	2	Total	1	2	Total	1	2	3		Total
12th Baraga/Houghton/ Keweenaw	0	0	0	0	1	1	0	0	0	0	1	0	1	2
13th Antrim/Grand Traverse/Leelanau	0	0	1	24	10	34	0	0	0	4	1	2	7	42
14th Muskegon	0	0	0	37	81	118	4	2	6	0	4	24	28	152
15th Branch	0	0	0	2	6	8	0	0	0	0	0	0	0	8
16th Macomb	0	0	0	84	72	156	0	2	2	6	7	20	33	191
17th Kent	0	2	0	5	11	16	1	4	5	5	6	29	40	63
18th Bay	0	0	0	24	21	45	0	0	0	2	0	3	5	50
19th Benzie/Manistee	0	0	0	4	2	6	0	0	0	0	0	0	0	6
20th Ottawa	0	0	0	5	7	12	0	3	3	1	1	8	10	25
21st Isabella	0	0	0	4	9	13	0	1	1	1	0	4	5	19
22nd Washtenaw	0	0	0	22	16	38	1	0	1	2	2	17	21	60

**2003 MAACS STATISTICS
ASSIGNED APPEALS BY CASE TYPE AND LEVEL**

Circuit	MISC.	MOTION/ RELIEF		PROSEC. APPEALS	PLEA/PV/ RESENTENCING			BENCH/ EVIDENTIARY HEARING/6.5/INT.			JURY			Grand Total
		1	2		Total	1	2	Total	1	2	3	Total		
													1	
23rd Alcona/Alpena/ Iosco/Oscoda	0	0	0	1	2	3	0	0	0	1	1	3	5	8
24th Sanilac	0	0	0	5	1	6	0	0	0	0	0	1	1	7
25th Marquette	0	0	0	4	4	8	0	0	0	1	1	3	5	13
26th Alpena/ Montmorency	0	0	0	0	2	2	0	0	0	0	0	2	2	4
27th Newaygo/Oceana	0	0	1	10	10	20	0	2	2	0	4	3	7	30
28th Missaukee/Wexford	0	0	0	6	3	9	1	0	1	0	0	0	0	10
29th Clinton/Gratiot	0	0	0	12	3	15	0	0	0	2	1	2	5	20
30th Ingham	0	0	0	36	27	63	1	3	4	3	3	13	19	86
31st St. Clair	0	0	0	18	17	35	1	1	2	5	2	7	14	51
32nd Gogebic/Ontonagon	0	0	0	1	0	1	0	0	0	0	0	0	0	1
33rd Charlevoix	0	0	0	1	3	4	0	0	0	0	1	0	1	5

**2003 MAACS STATISTICS
ASSIGNED APPEALS BY CASE TYPE AND LEVEL**

Circuit	MOTION/ PROSEC.			PLEA/PV/			BENCH/			Grand Total				
	MISC.	RELIEF	APPEALS	RESENTENCING		EVIDENTIARY		JURY	Total					
				1	2	Total	1				2	Total		
34th Ogemaw/ Roscommon	0	0	0	6	4	10	0	1	1	1	1	5	7	18
35th Shiawassee	0	0	0	0	1	1	0	0	0	1	1	3	4	5
36th Van Buren	0	0	0	2	2	4	0	1	1	1	1	4	6	11
37th Calhoun	0	0	0	39	27	66	0	0	4	7	19	30	96	29
38th Monroe	0	0	0	11	8	19	0	0	0	4	6	10	21	3
39th Lenawee	0	0	0	9	4	13	0	0	1	2	5	8	3	12
40th Lapeer	0	0	0	3	0	3	0	0	0	0	0	0	3	28
41st Dickinson/Iron Menominee	0	0	0	6	3	9	0	0	1	0	2	3	8	26
42nd Midland	0	0	0	10	8	18	1	1	3	3	2	8	4	26
43rd Cass	0	0	0	13	9	22	0	0	0	3	1	4	26	

2003 MAACS STATISTICS
 ASSIGNED APPEALS BY CASE TYPE AND LEVEL

Circuit	MISC.	MOTION/ PROSEC.		PLEA/PV/ RESENTENCING		BENCH/ EVIDENTIARY HEARING/6.5/INT.		JURY			Grand Total			
		RELIEF APPEALS	APPEALS	1	2	Total	1	2	Total	1		2	3	Total
44th Livingston	0	0	0	8	12	20	0	0	0	1	1	3	5	25
45th St. Joseph	0	0	0	6	1	7	0	0	0	1	3	4	8	15
46th Crawford/Kalkaska Otsego	0	0	0	5	3	8	0	1	1	2	4	3	9	18
47th Delta	0	0	0	2	0	2	0	0	0	2	2	0	4	6
48th Allegan	0	0	0	10	17	27	0	0	0	0	4	3	7	34
49th Mecosta/Osceola	1	0	0	3	3	6	0	0	0	0	1	1	2	9
50th Chippewa/Mackinac	0	0	0	6	6	12	1	0	1	0	0	3	3	16
51st Lake/Mason	0	0	0	2	4	6	0	0	0	0	1	1	2	8
52nd Huron	0	0	0	0	2	2	0	0	0	0	0	0	0	2
53rd Cheboygan/ Presque Ilse	0	0	0	3	4	7	0	0	0	0	0	1	1	8

**2003 MAACS STATISTICS
ASSIGNED APPEALS BY CASE TYPE AND LEVEL**

Circuit	MISC.	MOTION/ RELIEF		PROSEC. APPEALS	PLEA/PV/ RESENTENCING		BENCH/ EVIDENTIARY HEARING/6.5/INT.			JURY			Grand Total		
		0	0		1	2	Total	1	2	Total	1	2		3	Total
54th Tuscola	0	0	0	0	2	5	0	0	0	2	5	2	9	14	
55th Clare/Gladwin	0	0	0	1	0	1	0	0	0	0	0	0	0	1	
56th Eaton	0	0	0	6	14	20	0	0	0	0	2	5	7	27	
57th Emmet	0	0	0	4	7	11	0	0	0	1	0	1	2	13	
ALL CIRCUITS	6	3	11	1047	1162	2208	115	142	257	176	215	757	1148	3634	

TOTALS 0.2% 0.08% 0.3% 28.8% 32.0% 60.8% 3.2% 3.9% 7.1% 4.8% 5.9% 20.8% 31.6%

Level 1	1338	36.8%
Level 2	1519	41.8%
Level 3	757	20.8%

Total 3614

**STATE APPELLATE DEFENDER OFFICE
LITIGATION APPENDICES**

TABLE I
STATE APPELLATE DEFENDER OFFICE ANNUAL REPORT
FOR THE YEAR OF 2003

Total New Appointments to SADO 1/1/03 to 12/31/03	749
Total Cases Assigned to Staff Attorneys 1/1/03 to 12/31/03	936
Total Filings by SADO 1/1/03 to 12/31/03	2501
Cases Closed (not Done*) 1/1/03 to 12/31/03	73
Cases Officially Closed (Done*) 1/1/03 to 12/31/03	964
Total Cases Closed 1/1/03 to 12/31/03	688
Total Cases Open as of 12/31/03	921

- "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 2003

SADO FILINGS 1/1/03 to 12/31/03

Trial Court	594
Court of Appeals	1557
Supreme Court	317
Federal Courts	33
Total FILINGS	2501

MAJOR FILINGS 1/1/03 to 12/31/03

Trial Court	547
Court of Appeals	695
Supreme Court	296
Federal Courts	6
Total MAJOR FILINGS	1544 = 62% of all filings

SADO APPOINTMENTS BY CASE TYPE 1/1/03 to 12/31/03

Pleas	347
Probation Violation Pleas	36
Jury Trials	290
Bench Trials	44
Probation Violation Trials	7
Prosecutor Appeals	7
Resentencing	15
Leave Granted – SADO	3
Leave Granted – OTHER	0
SC Application – OTHER	0
Specials	0
Total ASSIGNMENTS	749*

* Again, this 939 cases assignment total differs from MAACS' 880 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
2002	19.5	939	949	48.7	2489	127.6	2.62	898	1585	81.28	1.67
2003	17	749	936	55.1	2501	147.1	2.67	824	1544	90.8	1.65

- 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 briefing time in the Court of Appeals and the penalties that court personally imposes on staff attorneys who file untimely.

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

TABLE IV
SADO'S PERCENT OF COMPLEX (LEVEL III JURY TRIAL APPEALS)
APPELLATE ASSIGNMENTS 1993-2003
AS COUNTED BY MAACS

	GRAND TOTAL	SADO'S PERCENT* OF GRAND TOTAL*	LEVEL III CASES PERCENT OF TOTAL	SADO'S PERCENT OF LEVEL III CASES
1993	5,927	953 16.1%	824 13.9%	286 34.7%
1994	5,047	917 18.2%	698 13.8%	271 38.8%
1995	4,762	837 17.6%	636 13.4%	241 37.9%
1996	4,287	763 17.8%	687 16.0%	235 34.2%
1997	4,080	832 20.4%	581 14.2%	199 34.3%
1998	3,983	948 23.8%	612 15.4%	216 35.3%
1999	3,362	776 23.1%	591 17.6%	217 28%
2000	3393	917 27.0%	533 15.7%	242 45.4%
2001	3076	785 25.5%	549 17.9%	177 32.2%
2002	3217	861 26.8%	595 18.5%	208 24.2%
2003	3625	696 19.2%	755 20.8%	174 23.0%

- The totals in this table differ from those in other tables because the numbers here are MAACS'. MAACS subtracts assignments if another attorney is substituted for the original attorney. SADO, however, counts those assignments and reconciles with MAACS at year's end. That is because these cases can have varying amounts of work done before the substitution. The original attorney may have done virtually all or none of the work. The "new" attorney, no matter how much work was done by the previous attorney, must still do a significant amount of work, client visits, read the transcripts and court records, and review all pleadings in the case to correct any deficiencies and complete the work. Thus, each attorney will want to count the assignment, even though MAACS only credits one of them.

In addition, judges assign appeals of pre-conviction rulings and "special" appeals (e.g., mandamus, superintending control), not all of which are sent to MAACS for inclusion in the total number.

**TABLE V
ASSIGNMENT OF CASES BY TYPE**

YEAR	PLEAS	TRIALS	BENCH	OTHER	TOTAL
1993	577 *[53.5%]	412 [38.2%]	81 [7.5%]	8 [0.7%]	1078
1994	532 [52%]	412 [41%]	57 [6%]	15 [1%]	1016
1995	508 **(87) [53%]	378 [40%]	50 [5%]	15 [2%]	951
1996	441 (307) [50%]	356 [41%]	53 [6%]	23 [3%]	874
1997	539 (434) [58%]	315 [34%]	50 [5%]	27 [3%]	931
1998	618 [60%]	332 [32%]	68 [7%]	15 [1%]	1033
1999***	462 (54%)	338 (40%)	47 (6%)	5 (1%)	852
2000	587 (59%)	357 (36%)	49 (5%)	7 (1%)	1000
2001	457 (54%)	308 (37%)	69 (8%)	5 (1%)	839
2002	515 (55%)	346 (37%)	56 (6%)	22 (2%)	939
2003	393 (52%)	305 (41%)	44 (6%)	7 (1%)	749

- Bracket = Percentage of total assignments

** Parenthesis = Number of Proposal B Cases (i.e. plea appeals after the 1994 constitutional amendment eliminating appeal by right from plea convictions.)

*** Office closed to new assignments in November and December; 20% budget cut and concomitant 20% reduction in staff

**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
2002	939	105
2003	749	80

- Many of these cases are problematic. They often involve alleged ineffective assistance of private counsel, or MAACS, court or Grievance Commission removal of prior counsel. Many involve unmanageable clients (some going through several trial and appellate attorneys) and/or very complex issues. Sometimes private counsel are simply underpaid and/or overwhelmed by these cases and withdraw because of personal or economic hardship.

**TABLE VII
SADO OVERALL RELIEF RATES* 1993-2003**

	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
2002	618	500 (81%)	95 (15.37%)	23 (3.72%)	19.09
2003	759	582 (77%)	139 (18.31%)	38 (5%)	23.31

- Cases where relief sought – excludes dismissals, death, cases closed without litigation and withdrawals. The most recent published analysis of post-conviction relief rates, done by MAACS in 1993, when there was still an appeal of right in plea cases found relief granted in 12.4% of plea appeals and 17.2% of trial appeals, for a combined rate of 14.2%

<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%)

Nationally reported appellate relief rates in criminal and civil cases is in the 10-20% range. The relief rate in assigned Michigan plea appeals decided by trial and appellate courts on the merits was 21%.

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%)
2002	923	250 (27%)	34 (4%)
2003	1014	193 (19%)	35 (3%)

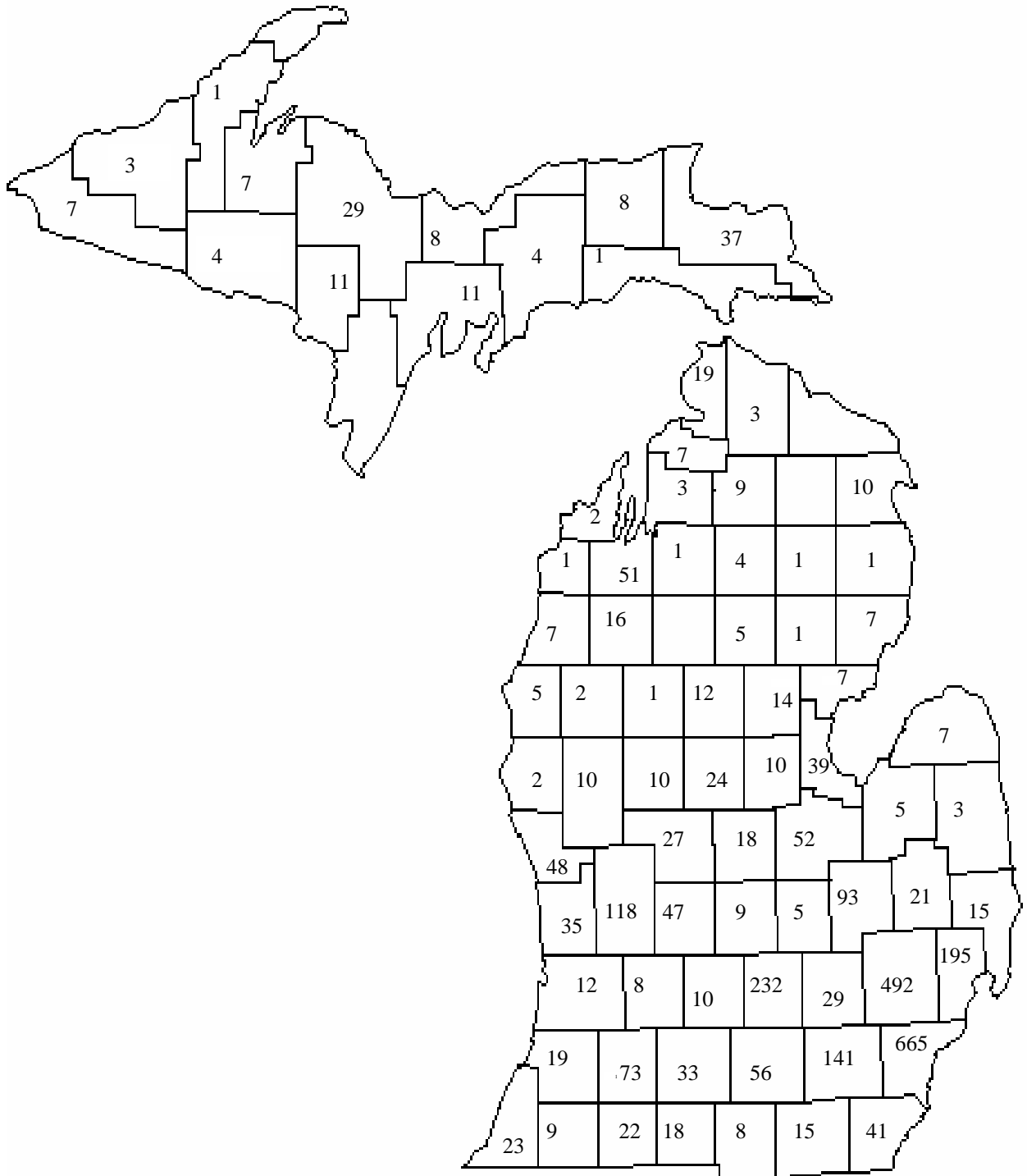
- Dismissals usually occur after complete review of the case and consultation with the client. This generally involves much substantive work for the defense attorney, but only minor or no work for the courts and prosecutors, and, thus, conserves scarce justice system resources. SADO does not use the non-consensual, laborious, and time-consuming appeal withdrawal procedure required by United State Supreme Court ruling in Anders v California, 386 US 738 (1967). See also, MCR 7.211©(5) (Michigan’s so-called “Anders” procedure. SADO’s dismissals and withdrawals are all voluntary. Counseling clients on voluntary dismissals 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
CRIMINAL DEFENSE RESOURCE CENTER
APPENDICES**

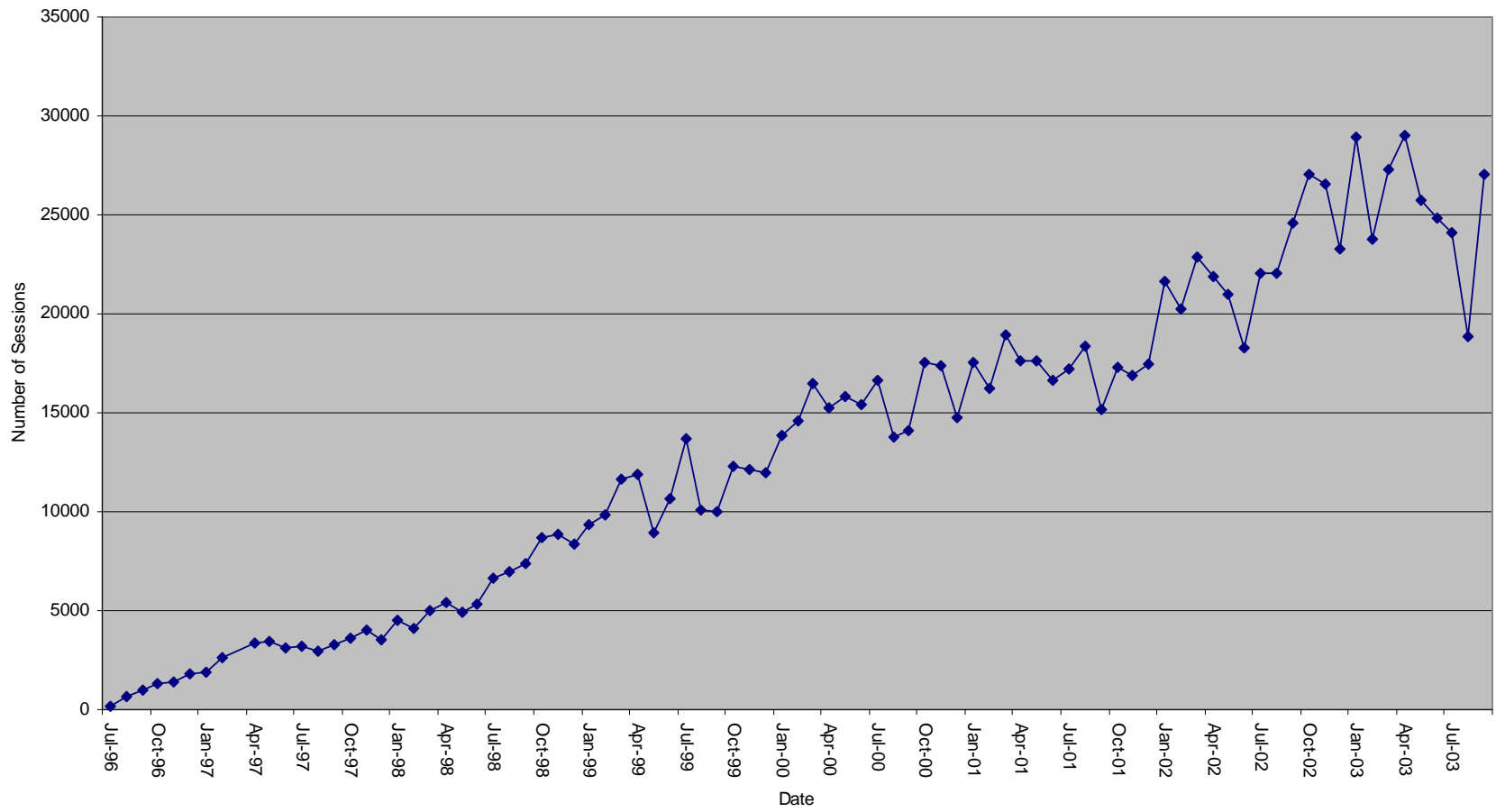
**Geographic Representation of
Subscriptions to Project Services¹⁰**

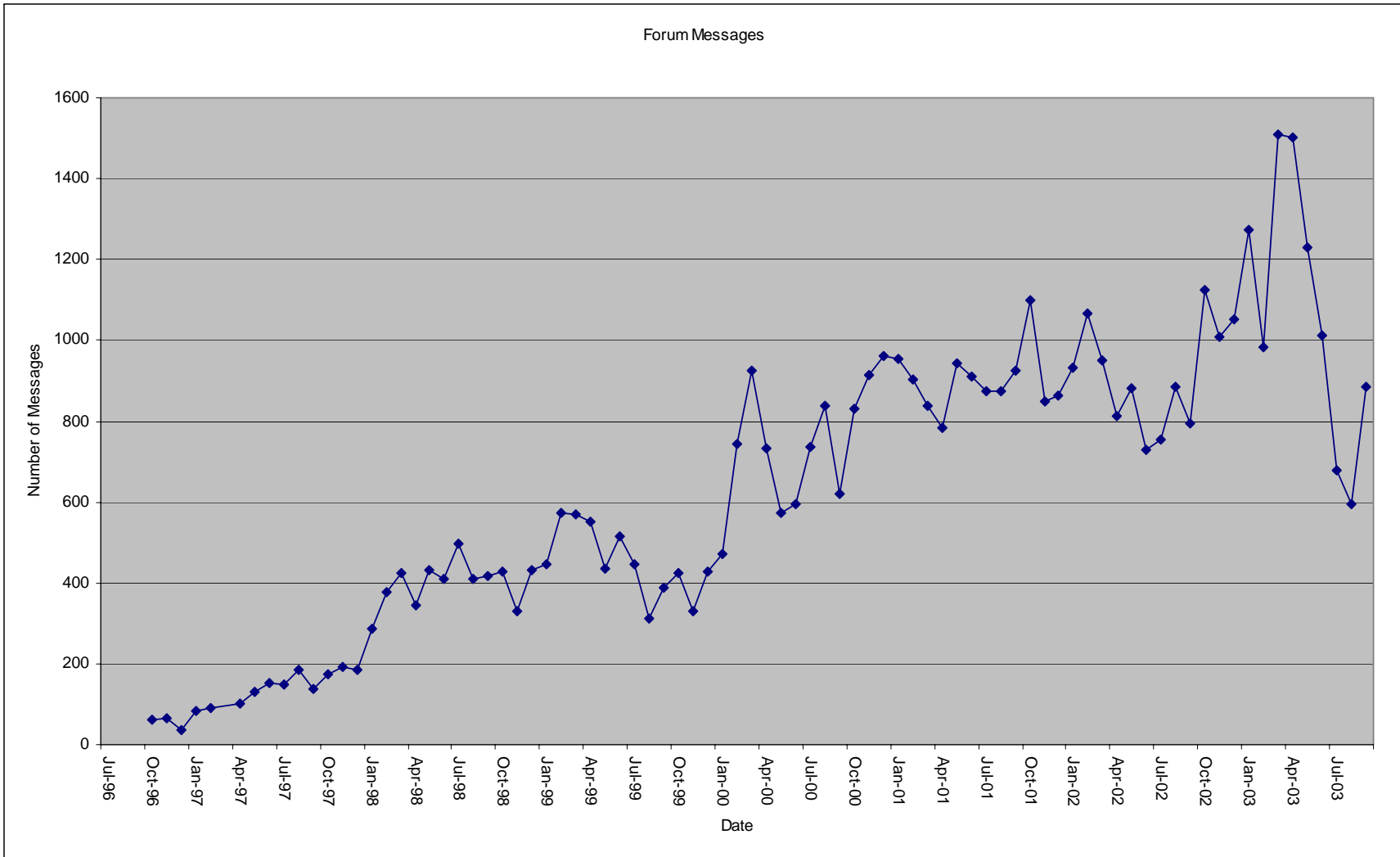
October 1, 2002 - September 30, 2003



¹⁰ Each number represents a subscription to the Defender Books, Criminal Defense Newsletter or Web Services.

Total User Sessions
CDRC Web Site





**Forum Messages by Day of Week
October, 2002 – September, 2003**

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
October, 2002	31	168	211	248	211	177	79
November, 2002	49	141	142	233	179	189	77
December, 2002	77	203	174	157	194	203	44
January, 2003	52	224	177	227	248	248	98
February, 2003	56	181	175	213	180	133	47
March, 2003	99	299	228	252	246	247	137
April, 2003	48	222	279	375	264	227	86
May, 2003	58	141	195	261	273	247	55
June, 2003	47	158	197	175	218	177	41
July, 2003	27	123	103	146	146	112	20
August, 2003	26	70	107	140	100	122	30
September, 2003	46	176	165	129	155	160	53
Totals	616	2106	2153	2556	2414	2242	767
Total Messages Sent	12854						

Attorney-to-Attorney Support Service

Categorical Assistance Progress Report FY 1999 Open Solicitation Grant Program July 1, 2002 - December 31, 2002

State Appellate Defender Office #2001DDBX0026

A. Project Status

Staffing. The project remained fully staffed by six contract research attorneys during the reporting period. Each provided one or two days of assistance per week, in either of the project's two locations. Due to the number of contractors involved, and use of the web for scheduling, it was generally possible to fill in scheduling gaps created by sickness or vacations. Both locations were staffed on a nearly full-time basis.

Location. The project's locations remained open as planned in the grant application. One location is within the State Appellate Defender Office's Detroit office, the host agency providing representation in approximately 25% of Michigan's indigent appeals. Research attorneys in this location serve attorneys statewide. The second location is within the Wayne County Circuit Court's Frank Murphy Hall of Justice, the busiest criminal court in Michigan. Research attorneys in this location serve attorneys practicing in this court.

Operations. Operations began in both locations in June, 2001. During that month, attorneys were trained and reporting programs were fine-tuned. Announcements regarding the "Attorney-to-Attorney" were made, statewide. Intake began via phone calls, e-mail, and person-to-person contact. Since that time, the following are the principal operational milestones:

- | | |
|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| July, 2001 | Announcements of service appear statewide and in Wayne Circuit Court, and intake increases. Open House hosted in courthouse location.

Project staff meet to fine-tune procedures. |
| Aug., 2001 | Announcements made in statewide newsletter and on SADO listserv (the "Forum"). Database operation and remote computer access refined. Project staff hold meeting. |
| Sept., 2001 | Project staff train 250 Wayne County assigned counsel at CAP program, explaining project operations. |
| Oct., 2001 | Project staff meet, announcements continue in newsletter and listserv. |
| Nov., 2001 | Major presentation at conference of Criminal Defense Attorneys of Michigan, reaching approx. 300 criminal defense attorneys. |

Dec., 2001	Project staff meet, continue to refine intake and work-sharing between locations.
Jan., 2002	Survey mailed to all users of service. Database reports compiled and analyzed. Announcement to all Michigan circuit and district court judges.
Feb., 2002	Major presentation at conference of Criminal Defense Attorneys of Michigan, reaching approx. 300 criminal defense attorneys.
March, 2002	Project staff meet, solve problems and consider ways to improve service. User survey results compiled.
April, 2002	Three noontime seminars presented at courthouse location, training attorneys on computer/web legal research and writing.
May, 2002	Project-staff meet, discuss results of user surveys.
June, 2002	Service promoted to trainees attending statewide seminars on web-based legal research and writing. Research attorneys take responsibility for web pages containing resources relating to certain legal issues, a product of frequent - questions from those using the service.. Titled "Practice Notes," the pages collect information, links, documents and more that are commonly distributed to callers.
July-Sept 2002	Numerous seminars throughout the state provide opportunities to inform attorneys about the service, as John Powell trains on web-based legal research.
Oct., 2002	Major presentation at conference of Criminal Defense Attorneys of Michigan, reaching approx. 300 criminal defense attorneys.

Project Time Line. The original project time line provided for a finish date reached 18 months after start-up, assuming full staffing in both locations. A slight extension in that time line was needed since some weeks finish with less than full-time staffing (full time amounts to a weekly total of 80 hours, between the two locations). Also, an extension was made possible by reallocation of the project's supplies budget to staffing needs (with the sponsoring agency, SADO, picking up the supplies expense). The project director consulted with BJA staff and received approval of the adjustment. The additional money for staffing will allow extension of the project until September, 2003, at a reduced service level. The reduced service level is planned to "bridge the gap" between grant funding and state funding for the service (see "Plans to Sustain Project," below).

Collaboration. Collaborative efforts continue with the original partners, the Wayne County Circuit Court, Recorder's Court Bar Association (now the Wayne County Criminal Defense Bar Association), and Criminal Advocacy Program. The project's director has negotiated space within the Wayne Circuit Courthouse, with the Court also contributing an Internet connection and telephone. The Recorder's Court Bar has contributed equipment (computers and a printer), and a portion of the space within the courthouse. The Criminal Advocacy Program devoted one of its fall seminars to the topic of web-based legal research, and the project's services were highlighted. Additional collaboration has occurred with the Criminal Defense Attorneys of Michigan, which conducts training events for attorneys twice a year: announcements about the service were made at the November, 2001 event, and were repeated in February, 2002 and October, 2002.

Plans to Sustain Project. The project director is making every effort to secure state funding of the project after federal funding ends, and added the Attorney to Attorney Support Service to a budget request for the sponsoring agency (SADO) for fiscal year 2003-2004. That funding is unlikely, in light of a state budget crisis that is expected to continue well into that fiscal year. The director also requested funding from the Michigan Council on Law Enforcement Standards (MCOLES) as part of an umbrella Defense Training Grant for 2003. This funding request was denied by MCOLES in December, 2002, due to intense competition for funds and a determination that the project did not qualify as "training." In addition, the director is exploring the possibility of continued federal funding, either through another Open Solicitation process or earmarked funds.

The project will be sustained beyond its original end date of January, 2003, due to "bridge" funding from two sources. The first is the grant adjustment applying supplies to staffing, within this grant, discussed above. The second is an award of \$27,000 from the Michigan State Bar Foundation.. This Foundation emphasized that its award is one-time only, intended as bridge funding. The "bridge" made possibly through these two means is not a complete one, as it provides less than half the amount currently allocated each month, if spread out from January 1, 2003 to October 1, 2003 (start of state fiscal year). Rather than spend the money quickly, at full staffing levels and leaving a gap in service during the summer of 2003, a decision was made to reduce the service level by half, allowing it to operate until the beginning of the state fiscal year (October, 2003). Starting January of 2003, project staff alternate between the two service locations, with one office staffed each day of the week. If state funding is obtained for fiscal year 2003-2004, there would be no gap in service.

Technical Assistance Needs. The project director has discussed technical assistance with both the project manager and evaluation technical assistance provider, and does not believe that technical assistance is needed at this time. The host agency (SADO) has provided technical support, and the data collection/reporting process is functioning well at this time. A suggestion made by the Senior Research Scientist assigned to the project was incorporated into data collection, and allows even greater analysis of project impact.

B. Goals and Intended Outcomes.

Saving time and money for assigned counsel, and improving the quality of defense representation, throughout the State of Michigan. The two goals identified in the grant application are equally, served by the project's activities, as well as nearly inseparable. Criminal defense attorneys accepting assignments contact the project's research attorneys when they do not already have the answer to a legal question, or when they do not have research materials or pleadings on a given topic. Virtually every contact with the grant-funded service saves time and money, while improving the quality of the work done- for a-client. The project responded to 1386 requests for assistance during the report period, through research attorneys working at the two project locations. Reports compiled for the period reveal that support is being given in all of the anticipated subject areas, from trial, through sentencing and appeal. Good geographic spread also has been established, and many users take advantage of e-mail to communicate their needs.

The user survey conducted in early 2002 provided considerable feedback on whether the project is saving time and money for users, and whether the quality of defense representation is positively affected. Asked about how much research time was saved by using the service, respondents replied:

6.1%	saved more than 100 hours
14.3%	saved 50 to 100 hours
67.3%	saved 1 to 50 hours
4.1%	saved no time

Asked about impact on quality of representation, respondents replied:

2.9%	major positive impact
49%	some positive impact
3.1%	no impact
0%	negative impact

Project staff has met regularly during the six-month report period, and have revised intake procedures and manuals. A very useful by-product of the service also was launched during early 2002: practice notes are prepared and maintained on the web by the project's research attorneys, who draw on the questions posed by users of the service. Announcements about the support service are made regularly, as planned, in printed media (newsletters), in a popular e-mail discussion group (listserv), at seminars, and on the host agency's heavily-used web site, www.sado.org.

C. Data Collection.

Hours of Service Availability. The project's services have been available for all of the hours anticipated, with minor exceptions. In the Detroit SADO office, a research attorney is available between 9:00 a.m. and 5:00 p.m., from Monday through Thursday; in the Frank Murphy Hall of Justice office, a research attorney is

available between 8:00 a.m. and 4:00 p.m., from Monday through Friday. These are normal business hours for the communities served. Altogether, research attorneys provided approximately 1510 hours of support services during the report's six-month time frame.

Number of Research Attorneys. During the six-month report period, the project was fully staffed at six research attorneys.

Additional Data. A separately attached report, drawn from the project's database, collects the additional data requested:

- number of contacts with service;
- number of attorneys using service;
- method of contact;
- nature of presenting issues; and solutions provided, in summary form.

Qualitative Outcomes. A number of qualitative outcomes also have been requested, including:

- changes in time required for research by assigned counsel;
- changes in accuracy in legal advice, documentation, courtroom performance; and
- changes in quality of client representation.

Very positive outcomes were revealed by the user survey conducted in early 2002. A majority of attorney users said that they saved research time, and that the service had a positive impact on the quality of the representation offered to clients. In particular, 76.5% said that they reduced research time, 58.2% said that they improved the quality of research, and 45.9% said that they improved the result for the client. Detailed survey results were provided as an attachment to the previous interim report.

This survey will be repeated in early 2003.

D. System Changes and/or Program Effects.

It is expected that the project will improve the criminal justice system in two primary ways; first, by helping criminal defense attorneys to improve the quality of their client representation and second, by helping criminal defense attorneys to save time spent on legal research. With the support of the project, defense attorneys can ' save court time and ' resources otherwise wasted when legal errors occur, errors which often necessitate retrials or continuances. Defense attorneys are able to provide accurate and timely answers to the legal questions that arise in a criminal case, with the project's support. That empowerment makes it easier for courts to reach just decisions on pre-trial motions or trial evidentiary rulings, makes it easier for prosecutors to depend on the accuracy of a legal position taken by the defense, and also makes it easier for clients to evaluate the

value of plea bargains or defenses. These outcomes are difficult to measure, but survey results and anecdotal feedback show that attorneys greatly value the support they receive. Significantly, virtually all (99%) wish to continue using the service.

Other Information.

Courthouse seminars. While they were not funded by the grant, courthouse seminars were presented on the subjects of computer tips for word processing and web-based legal research. The noontime sessions focused on questions commonly posed by attorneys using the service, and were both well-attended and appreciated. A summary of subjects covered in the seminars were attached to the previous interim report.

Anecdotal feedback. Examples of anecdotal feedback received from users of the service from July 1 to December 31, 2002 include the following:

- "BTW, you guys do a great job down there! Keep up the good work!"
- "In these times of so little reward, you have no idea how much your regards are appreciated. Thank you for helping to make what we do worthwhile."
- "I have been very favorably impressed with all of SADO's resources - they have been very helpful to me, and I am awestruck at the intelligence, commitment and knowledge of everyone at SADO."
- "To be serious for a moment at a time when the rest of the United States is taking a sojourn to celebrate turkey weekend I would like to take this opportunity to thank you for all of the help you continuously give to me and I am sure others."
- "It is very comforting to know that whether it be a time of calm, which occurs seldomly or crisis which is the norm you are available to give help. Sometimes it is to act as a sounding board, sometimes a recent case and sometimes an entire brief. In any event I want to thank you."
- "Thank you for the small brief. Judge told me to file a motion to quash. He said he considers it a case of well timed discipline and was sort of upset with the prosecutor."
- "And the earlier compliment was just the truth. I wish I had 10% of your talent for hiring good people (not to mention directing and keeping them)."
- "I forgot to thank you for pointing me in the direction of the 28 day *misdemeanor rule*: I really appreciate your fine work! Thanks!!"
- "Thank you for your prompt response. It was of great help in discussing this with my Client this morning."
- "Can you say, "Motion to suppress granted"? That's okay if you can't, Judge

Brown said it yesterday. He agreed that the affidavit for the search warrant did not have any information about the anonymous tippers and that getting the search warrant to arrest the guy with a bench warrant out against him was just a pretext to get into my client's room."

- "Thank you very much for the timely response - the work you guys / gals are doing over there is greatly appreciated. I think a regular visit during the normal hours will accomplish everything I need."

Federal Grant Report
Attorney-to-Attorney Support Service
July 1, 2001 through September 30, 2003

1. Number of contacts with service

Total	SADO	FMHJ
5442	2227	3215

2. Number of attorneys using service:

Total	SADO	FMHJ
4485	1716	2769

3. Number of individuals using service:

Total	Attorneys	Non-Attorneys
1608	965	643

4. Method of contact:

	SADO	FMHJ
E-mail	477	551
Telephone	1492	195
In-Person	154	2412
Mail	10	0
Other	94	57

5. Nature of presenting issues:

Total	SADO	FMHJ
Trial	882	1603
Appellate	584	302
Plea	37	59
Sentencing	239	320
Web	20	40
Software	0	0
Forum	70	100
Research	125	172
Other	270	619

6. Geographical spread of research provided:

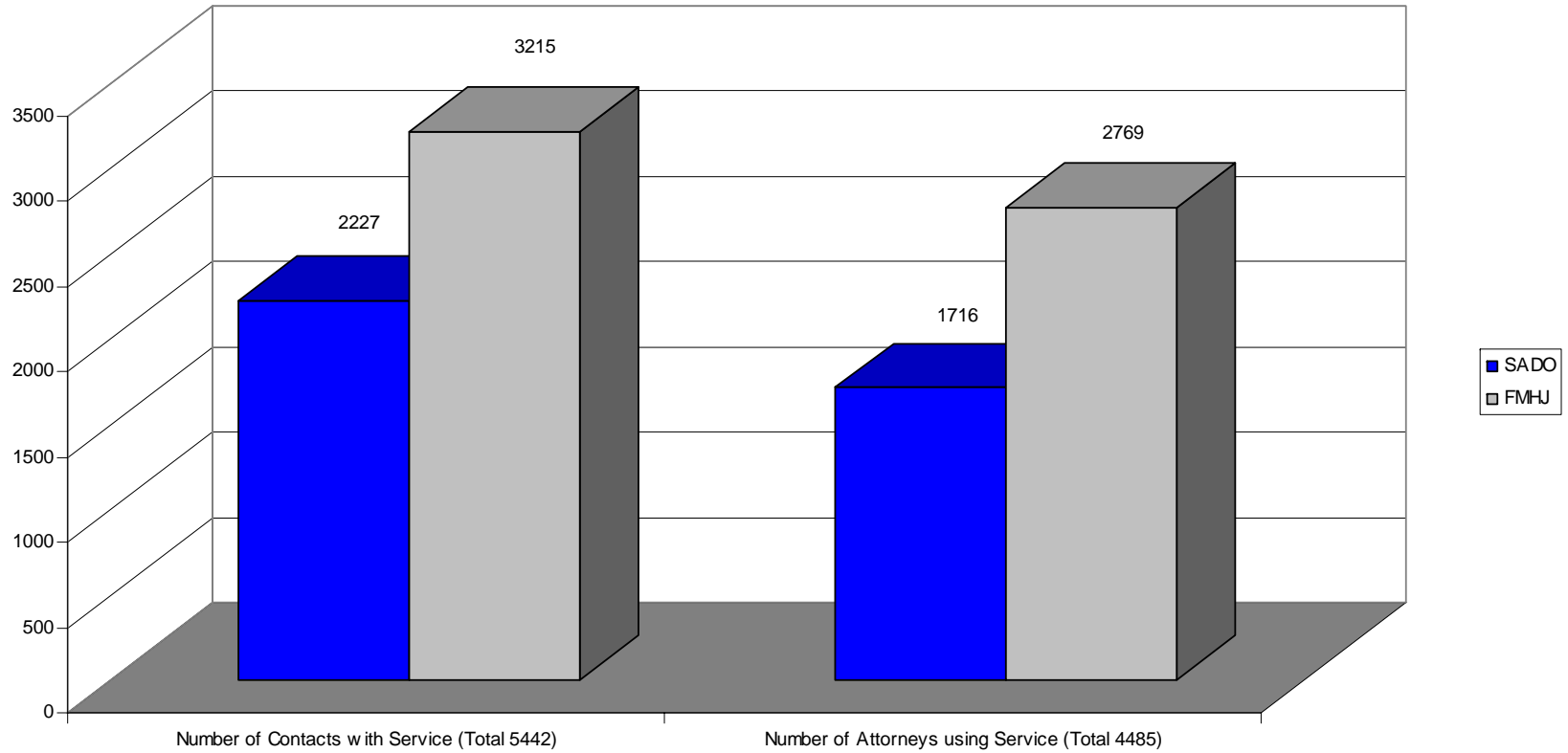
County	No of Requests		
ALGER	6	KALAMAZOO	41
ALPENA	1	KENT	60
ARENAC	7	LAKE	1
BARAGA	1	LAPEER	6
BARRY	5	LEELANAU	7
BAY	29	LENAWEE	4
BENZIE	12	LIVINGSTON	8
BERRIEN	4	LUCE	5
BRANCH	6	MACOMB	341
CALHOUN	14	MANISTEE	5
CASS	2	MARQUETTE	27
CHARLEVOIX	2	MECOSTA	8
CHEBOYGAN	1	MENOMINEE	4
CHIPPEWA	2	MIDLAND	3
CLARE	7	MONROE	25
CLINTON	1	MONTCALM	8
CRAWFORD	3	MUSKEGON	23
DELTA	10	NEWAYGO	1
DICKINSON	5	OAKLAND	802
EATON	6	ONTONAGON	2
EMMET	4	OTSEGO	2
GENESEE	30	OTTAWA	10
GOGEBIC	2	ROSCOMMON	5
GRAND TRAVERSE	15	SAGINAW	23
GRATIOT	1	ST. CLAIR	7
HILLSDALE	3	ST. JOSEPH	2
HURON	16	TUSCOLA	2
INGHAM	87	VAN BUREN	9
IONIA	4	WASHTENAW	101
IRON	1	WAYNE	2793
ISABELLA	18	WEXFORD	11
JACKSON	16		

6. Nature of solutions provided: *

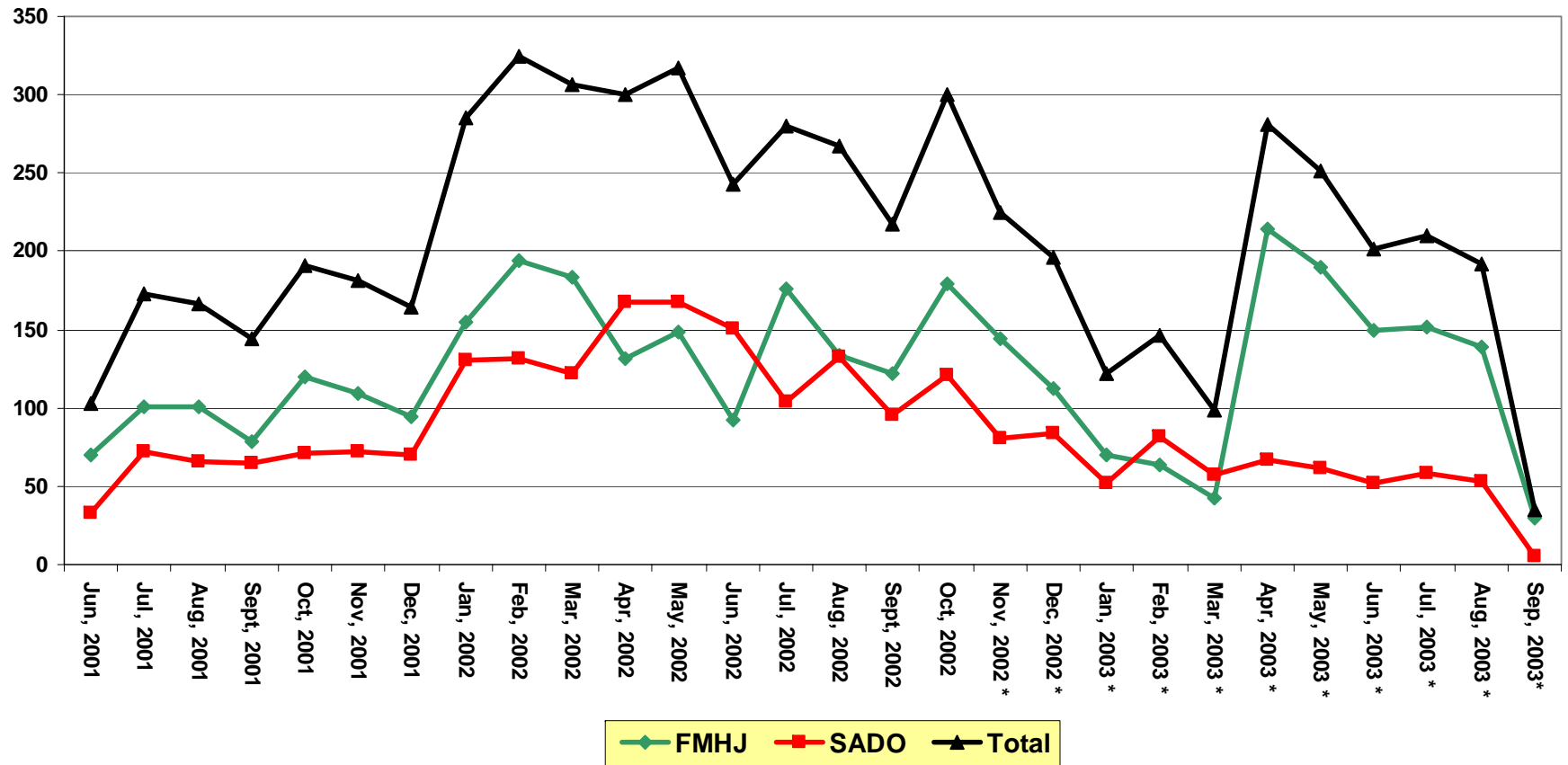
Identify/discuss legal issues:	1524
Discuss strategy	716
Discuss procedure	506
Provide pleadings (from our databases, including packets)	455
Provide legal research (including citations & experts)	2865
Train on web research	506
Troubleshoot technical problem	71
Provide forms (other sources, SCAO, CJI)	76
Referral to another agency or attorney	326
Other	416

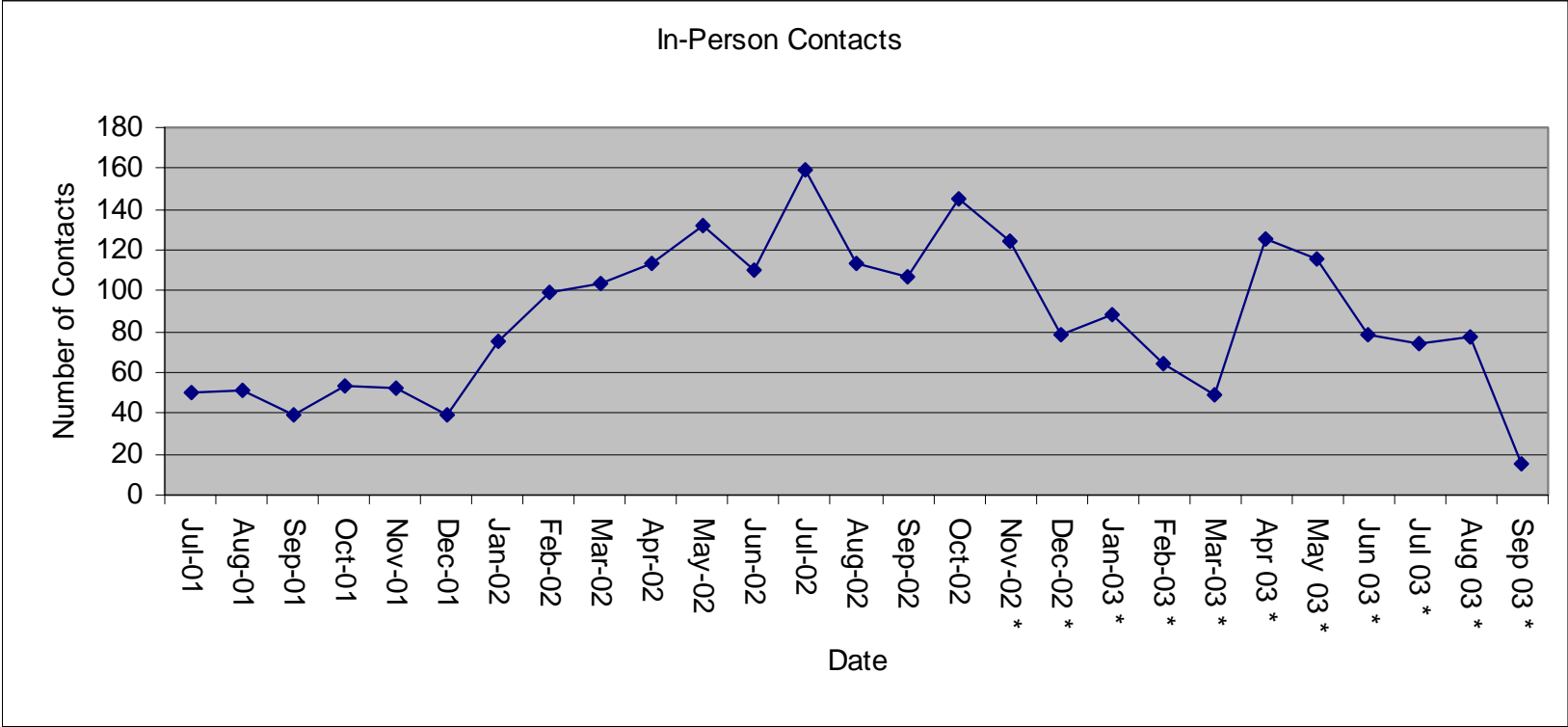
* some contacts involve solutions in two categories.

1. Number of Contacts with Service
2. Number of Attorneys using Service
(July 1, 2001 - September 30, 2003)



Number of Contacts Per Month





Telephone Contacts

