

**MICHIGAN  
APPELLATE ASSIGNED COUNSEL SYSTEM  
REGULATIONS**

*Adopted by the  
Appellate Defender Commission  
effective November 15, 1985  
amended through March 19, 2014*

**Section 1. Establishment of the Appellate Assigned Counsel System.**

- (1) The Appellate Defender Commission shall establish an Appellate Assigned Counsel System which shall be coordinated with but separate from the State Appellate Defender Office. The duty of this office shall be to compile and maintain a statewide roster of attorneys eligible and willing to accept criminal appellate defense 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.
- (2) An appellate assigned counsel administrator shall be appointed by and serve at the pleasure of the Appellate Defender Commission.
- (3) The appellate assigned counsel administrator shall:
  - (a) be an attorney licensed to practice law in this state,
  - (b) take and subscribe the oath required by the constitution before taking office,
  - (c) perform duties as hereinafter provided, and
  - (d) not engage in the practice of law or act as an attorney or counselor in a court of this state except in the exercise of his or her duties under these rules, or as permitted by the commission.
- (4) The appellate assigned counsel administrator and supporting personnel shall be court employees, not classified civil service employees.
- (5) The salaries of the appellate assigned counsel administrator and supporting personnel shall be established by the Appellate Defender Commission.
- (6) The appellate assigned counsel administrator and supporting personnel shall be reimbursed for their reasonable actual and necessary expenses by the state treasurer upon the warrant of the state treasurer.
- (7) Salaries and expenses attributable to the Appellate Assigned Counsel System shall be paid out of funds available for those purposes in accordance with the accounting laws of this state. The auditor general, under authority of Michigan Const 1963, art 4, Sec. 53, shall perform audits utilizing the same policies and criteria that are used to audit executive branch agencies.
- (8) Within appropriations provided by law, the Appellate Defender Commission shall

provide the Appellate Assigned Counsel System with suitable space and equipment at such locations as the commission considers necessary.

## **Section 2. Duties of the Appellate Assigned Counsel Administrator.**

The appellate assigned counsel administrator, with such supporting staff as the commission deems appropriate, shall:

- (1) After reasonable notice has been given to the members of the State Bar of Michigan, compile a roster of attorneys eligible under Sec. 4 of these regulations and willing to accept appointments to serve as appellate counsel for indigent criminal defendants.
  - (a) The roster shall contain an alphabetized listing by name of all attorneys in the state who are eligible and willing to accept criminal appellate assignments. The roster shall further contain the following information regarding each attorney listed: bar number, firm's name, business address and telephone, level of assignments for which the attorney is eligible, and jurisdictions from which the attorney desires assignments.
  - (b) The roster shall be continuously updated to reflect the addition and deletion of attorney names, and changes in eligibility levels and jurisdiction choices.
  - (c) Copies of the roster shall be provided to the clerks of the appellate courts and, upon request, to any interested party.
  - (d) An announcement specifying the procedure and eligibility criteria for placement on the roster shall be placed in the Michigan Bar Journal.
- (2) Provide to each circuit court a local list of attorneys eligible and willing to accept appellate assignments from that jurisdiction.
  - (a) Each local list shall contain the names, bar numbers, business addresses, telephone numbers and eligibility levels of all attorneys on the state-wide roster who have indicated a desire to receive assignments from the jurisdiction in question, except as local list membership may be limited by the Appellate Defender Commission, in its discretion, for the efficient administration of the system.
  - (b) Attorneys' names shall be placed on the local lists in the order in which the requests for such placement were received by the appellate assigned counsel administrator.
  - (c) Copies of the applications for the statewide roster filed by attorneys on each local list shall be provided with the list to each trial court.
  - (d) In each circuit court, appellate assignments shall be made to the State Appellate Defender Office in a specified sequence.
    - (i) The frequency with which assignments are made to the State Appellate

Defender Office shall be determined annually by a formula approved by the Appellate Defender Commission which shall account for the number of indigent criminal appeals of each level and type and the total number of assignments the State Appellate Defender Office is funded to accept.

- (ii) Upon request by the chief judge of a circuit, the Appellate Defender Commission may, in its discretion, temporarily increase the circuit's assignment rate to the State Appellate Defender Office.
- (3) Periodically review the eligibility of each attorney on the roster.
  - (a) Review shall be based on the criteria for continuing eligibility listed in Sec. 4(6) of these regulations.
  - (b) Where a periodic review reveals deficiencies in complying with any requirement for continuing eligibility, the administrator shall notify the affected attorney in writing of such deficiencies. The names of all attorneys who fail to correct deficiencies in their continuing eligibility within 60 days after the issuance of notice shall be removed from the roster, except that the administrator shall have the discretion to extend the deadline for correcting deficiencies by an additional 60 days where good cause is shown. Such extensions shall be requested and granted only in writing and shall include a summary of the pertinent facts.
- (4) Notify each jurisdiction of any change in the eligibility of any attorney on its local list within 20 days after the date on which a change occurs.
- (5) Investigate allegations of noncompliance by roster attorneys with the Minimum Standards for Indigent Criminal Appellate Defense Services and take appropriate action.
- (6) In conformance with MCL 18.1284-1292, maintain a file for each case in which private counsel is appointed which shall contain:
  - (a) the order of appointment and the defendant's request for counsel,
  - (b) a case summary which shall be completed by counsel on forms provided by the administrator and which shall contain information about filing dates, oral arguments, case disposition, fees requested and awarded, and such other pertinent matters as the administrator may require for statistical purposes.
- (7) Provide to the Legal Resources Project briefs filed by assigned counsel which have been selected for copying and placement in a centralized brief bank.
- (8) Select an attorney to be appointed for an appeal when requested to do so by an appellate court or by a local designating authority pursuant to Sec. 3(7).
- (9) Compile data regarding the fees paid to assigned counsel and take steps to promote the payment of reasonable fees which are commensurate with the provision of effective assistance of appellate counsel.

- (10) Provide, on request of an assigned attorney or an appointing authority, information regarding the range of fees paid within the state to assigned counsel.
- (11) Provide continuing legal education programs for all roster members, and an orientation training program for attorneys seeking to join the roster when the number of roster members falls below that necessary to provide effective representation in all the appeals assigned to roster attorneys. In determining the appropriate size of the roster, the administrator shall consider the total appointments available at each level, the number assigned to the State Appellate Defender Office, and the distribution of cases among roster members.
- (12) Take steps to promote the development and delivery of support services to appointed counsel.
- (13) Present to the commission within 90 days after the end of the fiscal year an annual report on the operation of the assigned counsel system which shall include an accounting of all funds received and disbursed, an evaluation of the cost-effectiveness of the system, and recommendations for improvement.
- (14) Perform other duties in connection with the administration of the assigned counsel system as the commission shall direct.

### **Section 3. Selection of Assigned Counsel.**

- (1) The judges of each circuit court shall appoint a local designating authority who may be responsible for the selection of assigned appellate counsel from the local list provided by the appellate assigned counsel administrator pursuant to Sec. 2(2) of these regulations and who shall perform such other tasks in connection with the operation of the list as may be necessary at the trial court level.
  - (a) The designating authority may not be a judge, prosecutor or member of the prosecutor's staff, public defender or member of the public defender's staff, or any attorney in private practice who currently accepts trial or appellate criminal assignments within the jurisdiction.
  - (b) Circuits which have contracted with an attorney or group of attorneys to provide representation on appeal for indigent defendants shall comply with these regulations within one year after the statewide roster becomes operational.
- (2) Appellate assignments shall be made by each trial court only from its local list or to the State Appellate Defender Office except pursuant to Sec. 3(7) of these regulations or an order of an appellate court.
  - (a) Each trial bench shall review its local list and, within 56 days of an attorney's appearance on that list, shall notify the appellate assigned counsel administrator if it has actual knowledge that the attorney has, within the last three years, substantially violated the Minimum Standards for Indigent Criminal Appellate Defense Services or the Rules of Professional Conduct. Each bench shall

thereafter notify the administrator of such violations by attorneys on its list within 56 days of learning that a violation has occurred.

- (b) Upon receiving notice from a trial court that an attorney has substantially violated the Minimum Standards or the Rules of Professional Conduct, the administrator shall promptly review the allegations and take appropriate action. Any determination that an attorney should be removed from the roster shall be made in compliance with Sec. 4(9) of these regulations.
- (3) Appellate counsel shall be assigned within 14 days after a defendant submits a timely request.
  - (4) In each circuit court, the chief judge shall determine whether appellate assigned counsel are to be selected by the chief judge or by the local designating authority.
    - (a) If the chief judge chooses to retain the discretion to select counsel, he or she shall personally exercise that discretion in all cases as described in Sec. 3(5).
    - (b) If the chief judge chooses to delegate the selection of counsel, the local designating authority shall, in all cases, rotate the local list as described in Sec. 3(6).
  - (5) The chief judge may exercise discretion in selecting counsel, subject to the following conditions:
    - (a) Pursuant to Sec. 2(2)(d), every third, fourth, or fifth assignment, or such other number of assignments as the Appellate Defender Commission may determine, shall be made to the State Appellate Defender Office. That office may also be assigned out of sequence pursuant to Sec. 3(13) or 3(15).
    - (b) All other assignments must be made to attorneys whose names appear on the trial court's local list.
      - (i) The attorney must be eligible for assignment to the particular case, pursuant to Sec. 4(2).
      - (ii) Where a Level I attorney has received an even-numbered amount of assignments and any other Level I attorney has less than half that number, an assignment shall be offered to each of the latter attorneys before any additional assignments are offered to the former.
      - (iii) Where a Level II or Level III attorney has received an even-numbered amount of assignments and any other Level II or Level III attorney has less than half that number, an assignment shall be offered to each of the eligible latter attorneys before any additional assignments are offered to the former.
      - (iv) If an order of appointment is issued and the attorney selected refuses the appointment for any reason not constituting a pass for cause as defined in Sec. 3(6)(c), the assignment shall be counted in the attorney's total.

- (6) When directed to select counsel by the chief judge, the local designating authority shall select the attorney to be assigned in the following manner:
  - (a) The local designating authority shall first determine whether assignment is to be made to the State Appellate Defender Office, to a particular attorney on the local list pursuant to Sec. 3(6)(f), 3(12), or 3(13), or by rotation of the local list.
    - (i) Pursuant to Sec. 2(2)(d), every third, fourth, or fifth assignment, or such other number of assignments as the Appellate Defender Commission may determine, shall be made to the State Appellate Defender Office. That office may also be assigned out of sequence pursuant to Sec. 3(13) or 3(15).
    - (ii) An attorney whose name appears on the local list may be selected out of sequence pursuant to Sec. 3(6)(f), 3(12), or 3(13). That attorney's name shall then be rotated to the bottom of the list.
    - (iii) All other assignments shall be made by rotating the local list.
  - (b) Local lists shall be rotated in the following manner:
    - (i) The local designating authority shall identify the first attorney on the list who does not have to be passed for cause and shall obtain an order appointing that attorney from the appropriate trial judge.
    - (ii) The name of the attorney appointed shall be rotated to the bottom of the local list.
    - (iii) The names of any attorneys passed by the local designating authority for cause shall remain in place at the top of the list and shall be considered for the next available appointment.
  - (c) An attorney's name must be passed for cause in any of the following circumstances:
    - (i) The attorney is not qualified at the eligibility level appropriate to the offense as described in Sec. 4(2). A Level II or III attorney may be assigned a Level I case only if no Level I attorney is available or when the attorney represents the defendant on a currently pending appeal of another conviction.
    - (ii) The attorney represented the defendant at trial or plea and no exception for continued representation as specified in Sec. 3(12) is to be made.
    - (iii) Representation of the defendant would create a conflict of interest for the attorney. Conflicts of interest shall be deemed to exist between codefendants whether they were jointly or separately tried. Codefendants may, however, be represented by the same attorney if they express a preference for such representation under Sec. 3(6)(f) of these regulations, provided that there is no apparent conflict of interest.

- (d) An attorney's name may be passed for cause if the defendant has been sentenced only to probation or incarceration in the county jail, and the attorney's office is located more than 100 miles from the trial court.
  - (e) If the attorney selected thereafter declines appointment for reasons which constitute a pass for cause, the attorney's name shall be reinstated at the top of the list. If the attorney selected declines the appointment for any other reason, his or her name shall remain at the point in the rotation order where it was placed when the order of appointment was issued.
  - (f) When the defendant expresses a preference for counsel whose name appears on the local list, and who is eligible and willing to accept the appointment, the local designating authority shall honor it.
- (7) Where a complete review of the local list fails to produce the name of an attorney eligible and willing to accept appointment in a particular case, the local designating authority shall refer the case to the appellate assigned counsel administrator for selection of counsel to be assigned from the statewide roster.
  - (8) When an attorney has declined to accept three consecutive assignments for which the attorney was eligible under these regulations, the local designating authority may request the appellate assigned counsel administrator to remove the attorney's name from the jurisdiction's local list.
  - (9) The trial court shall maintain, on forms provided by the Appellate Assigned Counsel System, records which accurately reflect the basis on which all assignments have been made, whether by the chief judge or the local designating authority, and shall provide duplicates of those records to the Appellate Assigned Counsel System at regular intervals specified by the administrator.
- (10) The local designating authority shall provide copies of:
    - (a) each order appointing appellate counsel,
    - (b) written evidence of each defendant's request for counsel, including any waiver executed pursuant to Sec. 3(12), and
    - (c) each case summary submitted by appellate assigned counsel, after the order for payment has been signed.
  - (11) All assignments other than those made to the State Appellate Defender Office shall be considered personal to the individual attorney named in the order of appointment and shall not be attributed to a partnership or firm.
  - (12) When the defendant specifically requests the appointment of his or her trial attorney for purposes of appeal and the trial attorney is otherwise eligible and willing to accept the assignment, the defendant shall be advised by the trial judge of the potential consequences of continuous representation. If the defendant thereafter maintains a preference for appellate representation by trial counsel, the advice given and the

defendant's waiver of the opportunity to receive new counsel on appeal shall appear on a form signed by the defendant. Appropriate forms shall be supplied to the trial courts by the Appellate Assigned Counsel System.

- (13) Where counsel represents the defendant on a currently pending appeal of another conviction, or represented the defendant on appeal of a prior conviction for the same offense, the designating authority may select that attorney out of sequence to conduct a subsequent appeal on the defendant's behalf if that attorney is otherwise eligible and willing to accept the additional appointment.
- (14) Where the trial judge determines that a Level I or II case is sufficiently more complex than the average case of its type to warrant appointment of an attorney classified at a higher level than required by Sec. 4(2), the judge shall provide to the chief judge or the local designating authority a written statement of the level believed to be appropriate and the reasons for that determination. The local designating authority shall, and the chief judge in his or her discretion may, select counsel accordingly.
- (15) When, in exceptional circumstances, the complexity of the case or the economic hardship the appeal would cause the county makes the selection of private assigned counsel impractical, the State Appellate Defender Office may, after confirmation of that office's ability to accept the assignment, be selected for appointment out of sequence. When such an out-of-sequence assignment is made, it shall be treated as a substitute for the next in-sequence assignment the State Appellate Defender Office would have otherwise received.

#### **Section 4. Attorney Eligibility for Assignments.**

- (1) An attorney who wishes to receive appointments as appellate counsel for indigent defendants shall file with the Appellate Assigned Counsel System an application for the statewide roster. Beginning September 1 - October 31, 2002, and every three years thereafter, those attorneys already on the roster shall be required to re-apply to remain on the roster. Both the initial and renewal applications shall be on forms promulgated by the appellate assigned counsel administrator.
  - (a) The initial application to join the roster shall contain information regarding the attorney's prior criminal appellate experience, the jurisdictions from which the attorney wishes to receive appointments, a writing sample, and such other pertinent matters as the Appellate Defender Commission deems appropriate. Applicants shall verify their prior appellate experience by providing such documentation as the appellate assigned counsel administrator requests. The writing sample shall consist of a brief or memorandum of law, on any subject, personally prepared by the applicant. A writing sample prepared in law school will suffice if no other is available.
  - (b) The renewal application shall contain similar information but no writing sample. The appellate assigned counsel administrator may request such additional information

as deemed warranted.

- (2) Based on the information contained in the applications, the assessment of any supplementary materials, and review of the applicants' work on prior felony appeals, attorneys who are members in good standing of the State Bar of Michigan will either be classified on the statewide roster at Level I, II or III or be notified by the administrator that they will not be retained on the roster for good cause to be specified on the notice or administrative reasons.
  - (a) A Level I attorney:
    - (i) must complete an orientation training program, and
    - (ii) may only represent a defendant who was convicted at a jury trial of an offense carrying a statutory maximum sentence of 5 years or less, or by plea or at a waiver trial of an offense carrying a statutory maximum of 10 years or less.
  - (b) A Level II attorney:
    - (i) must have conducted through submission for decision on the merits separate appeals of at least nine felony convictions, at least two of which arose from trials, including one jury trial, in Michigan or federal courts, during the three years immediately preceding the date of application, and
    - (ii) may, subject to the provisions of Sec. 3(6)(c) (i), only represent a defendant who was convicted at a jury trial of an offense carrying a statutory maximum sentence greater than 5 but not greater than 15 years, or by plea or at a waiver trial of an offense carrying a statutory maximum sentence greater than 10 years.
  - (c) A Level III attorney:
    - (i) must have conducted through submission for decision on the merits separate appeals of at least eighteen felony convictions, at least six of which arose from trials, including four or more jury trials, in Michigan or federal courts, during the three years immediately preceding the date of application, and
    - (ii) may, subject to the provisions of Sec. 3(6)(c) (i), represent defendants convicted at trial or by plea of any felony, but may elect to represent only those convicted at trial.
  - (d) Any attorney seeking classification at Level II or III who has conducted the requisite total number of appeals but lacks the requisite number of appeals from trial-based convictions may substitute cases in which he or she represented the defendant at trial through decision by the fact-finder. Conduct of two jury trials shall count as the equivalent of one jury trial-based appeal. Conduct of two bench trials shall count as the equivalent of one bench trial-based appeal.

Verdicts in the trials must have been entered during the three years immediately preceding the date of application.

- (3) In exceptional circumstances, the Appellate Defender Commission may waive the requirements for Level II or III when it determines that an applicant has acquired comparable experience or otherwise demonstrated to the satisfaction of the Appellate Defender Commission sufficient quality for membership on the roster at either Level II or Level III. Attorneys who join or serve on the roster under this section may be required to attend an orientation program.
- (4) A roster attorney who desires reclassification to a higher eligibility level shall forward a written request for reclassification to the administrator. The request shall specify the cases being relied upon to establish the relevant experience requirement.
- (5) Attorneys who are employed full time by the State Appellate Defender Office at or above the status of assistant defender may not individually appear on the statewide roster as eligible for accepting assignments during the course of their employment.
- (6) In addition to demonstrating eligibility for a particular level of practice, attorneys who wish to maintain their names on the roster shall, by the filing of an application, agree to comply with the following regulations:
  - (a) Each attorney shall meet and shall strive to exceed the Minimum Standards for Indigent Criminal Appellate Defense Services approved by the Supreme Court and adopted by the Appellate Defender Commission.
  - (b) Each Level II and Level III attorney shall demonstrate continued participation in the field of criminal appellate practice by conducting through submission for decision on the merits at least four assigned felony appeals in each calendar year.
  - (c) Each attorney appointed in an appeal by leave shall forward to the appellate assigned counsel administrator copies of the following when they are filed in the trial court:
    - (i) any trial court motion on the merits unless an application for leave to appeal has been filed in the Court of Appeals, and
    - (ii) any trial court motion to withdraw as counsel, or motion, or stipulation, to vacate the order of appointment and any trial court orders resulting from such motions or stipulations.
  - (d) Each attorney shall timely forward to the appellate assigned counsel administrator copies of briefs and memorandums filed in the defendant's behalf:
    - (i) in the first two cases with briefs filed after classification or reclassification,
    - (ii) in cases relied on for reclassification under Sec. 4(4),
    - (iii) when selection for the centralized brief bank may be appropriate, and

- (iv) upon request.
  - (e) Each attorney shall respond promptly to notice from the appellate assigned counsel administrator that defects in the attorney's eligibility exist or that complaints about the attorney's performance have been received. Deficiencies in eligibility must be corrected within 60 days subject to the grant in writing of one 60-day extension by the administrator for good cause shown.
  - (f) Each attorney shall annually complete seven hours of continuing legal education in subjects relevant to criminal appellate advocacy. Attendance at training programs offered by the Appellate Assigned Counsel System shall automatically satisfy this requirement. The commission may, upon request, approve fulfillment of this requirement by proof of attendance at a comparable training program.
  - (g) Each attorney wishing to remain on the roster shall apply for retention every three years, effective September 1 - October 31, 2002.
- (7) Subject to the provisions of Sec. 2(2), each attorney on the statewide roster will automatically be placed on the local list of the jurisdiction(s) the attorney has designated on his or her application.
- (a) Upon written notice to the administrator, attorneys may leave the statewide roster at any time. To rejoin the roster, attorneys must reapply in accordance with Sec. 4(1) and may be required to complete all or part of the current orientation training program.
  - (b) Upon written notice to the administrator, roster attorneys in good standing may join or leave local lists at any time. Attorneys may not rejoin a particular local list sooner than six months after leaving it.
  - (c) Attorneys may decline to accept appointments in particular cases, subject to the provisions of Sec. 3(8). An attorney who has not declined three consecutive appointments from any single jurisdiction but who has consistently declined appointments from multiple jurisdictions for more than six months may be removed from the roster.
- (8) The administrator shall temporarily suspend all future assignments to a roster attorney, pending a complete review of the attorney's performance on past assignments and final resolution of any removal proceedings, where:
- (a) it appears that, during the preceding 18 months, the attorney has substantially violated Standard 5 by:
    - (i) neglecting to file required pleadings in at least three cases for at least three months each, or
    - (ii) twice failing to meet the jurisdictional deadline in a leave case, and
  - (b) the attorney has received notice of the violations from MAACS and has failed

to provide a satisfactory explanation.

- (9) An attorney who fails to comply with these regulations may be removed from the roster by the administrator. The administrator must give the affected attorney 30 days' notice that removal from, or non-retention on, the roster is contemplated. The attorney shall have a de novo appeal of right from the administrator's removal, or non-retention, decision to the Appellate Defender Commission. The administrator's decision and the commission's findings shall be in writing.
- (10) Any attorney whose name is removed from, or who has not been retained on, the roster for a reason other than a finding of substantial violation of the Minimum Standards for Indigent Criminal Appellate Defense Services shall complete his or her work on any cases pending at the time of removal and shall be entitled to voucher for fees in those cases in the usual manner. Where removal is predicated on a finding of substantial violation of the Minimum Standards, the appellate assigned counsel administrator shall, where appropriate, move the trial court for substitution of counsel, with notice to the defendant, in any pending case assigned to the attorney affected. If substitution of counsel is granted, the trial court shall determine the amount of compensation due the attorney being replaced. No attorney may accept indigent criminal appellate defense assignments after such time as removal of his or her name from the roster has become final.
- (11) Any attorney whose name has been involuntarily removed from, or who has not been retained on, the roster may apply for reinstatement at any time after a period of twelve months from the removal date has elapsed and may be reinstated. Refusals to reinstate by the administrator are appealable de novo to the commission. The reasons for the administrator's refusal and the commission's findings shall be in writing.
- (12) Any attorney formerly eligible for assignments at Level II or III who has allowed his or her eligibility to lapse solely for failure to meet the continuing participation requirement of Sec. 4(6)(b) may, on application, be reinstated at the former level if the administrator finds on review of the circumstances that reinstatement at a lower level is not required to protect the quality of representation received by defendants.
- (13) If, in the discretion of the MAACS Administrator, a roster attorney's number of assignments or certified hours devoted to MAACS cases raises a significant quality control concern, the MAACS Administrator may temporarily move the attorney to inactive status to receive new assignments on the MAACS roster.
- (14) If, in the discretion of the MAACS Administrator, a roster attorney's number of assignments or certified hours devoted to MAACS cases raises a significant quality control concern, the MAACS Administrator may temporarily remove the attorney from membership on any circuit court local list.

*Approved December 1, 2005*

**Section 5. Confidential Files and Records**

- (1) Unless otherwise specified in these Regulations, the files and records of an investigation, the work-product of an investigation and/or any determination made by the Administrator or other MAACS staff in response to a complaint about, or concerning, the performance of a MAACS roster lawyer, or with regard to a decision concerning the retention or classification of a lawyer on the MAACS roster, shall be considered confidential and may not be made public or otherwise disclosed.
- (2) Any final complaint determination or result of an investigation conducted in response to a complaint about the performance of a MAACS roster lawyer shall be made known, equally, to the complainant and the lawyer.
- (3) Any final complaint determination(s) relied upon by the Administrator which results in either the removal from or the non-retention on the roster of a MAACS lawyer, and which removal or non-retention is thereafter appealed by that lawyer to the Appellate Defender Commission, shall be considered a public record, along with any material submitted on appeal by the lawyer and any response to such material from the Administrator or MAACS staff.
- (4) At the roster lawyer's option, final disposition of a complaint or suggestion for removal or non-retention which does not result in disciplinary action, removal or non-retention may be made public.
- (5) Hearings before the Commission or one of its subcommittees shall be open to the public, but not Commission or subcommittee deliberations.
- (6) Any written findings made by the Commission in response to an appeal by a lawyer of a removal or non-retention of that lawyer from the MAACS roster shall be considered a public record.
- (7) Notwithstanding any prohibition against disclosure set forth in these Regulations, the Administrator or MAACS staff may disclose to the Courts, by order of the Court affirmatively abrogating this confidentiality policy for a case-specific purpose, or as approved by the Appellate Defender Commission, the general substance of information in the possession of MAACS which may have relevance to any request by MAACS that:
  - a) a MAACS roster lawyer be removed from a circuit's list of counsel eligible to accept appellate assignments, and/or

- b) a circuit court grant a MAACS request or motion to order the appointment of substitute counsel in place of a lawyer who is the subject of a MAACS investigation.
  
- (8) Notwithstanding any prohibition against disclosure set forth in these Regulations, the Administrator or MAACS staff may disclose to the Attorney Grievance Commission, the State Bar of Michigan Client Security Fund, the State Bar of Michigan Committee on Judicial Qualifications, and to any court-authorized attorney disciplinary or admissions agency, upon request, the general substance of information in the possession of MAACS which may have relevance to an investigation being conducted regarding a current or former MAACS lawyer by such commission, fund, committee, or agency.
  
- (9) Other files and records of the Appellate Defender Commission, MAACS, the administrator and the staff of each may not be disclosed to anyone except:
  - a) the Appellate Defender Commission,
  - b) the MAACS Administrator,
  - c) authorized employees of MAACS for the purpose of fulfilling their job responsibilities,
  - d) the Supreme Court,
  - e) the Office of Management and Budget, or
  - f) other persons who are expressly authorized by the Appellate Defender Commission or the Supreme Court. If a disclosure is made to the Supreme Court or to other persons expressly authorized by the Appellate Defender Commission, a duplicate disclosure, specific to each person, shall also be provided to persons whose confidential information has been so disclosed.
  
- (10) On making any disclosure pursuant to subsections (7), (8), or (9)(f), a cover sheet shall be attached, indicating the otherwise confidential nature of the information, stating that the information is being provided pursuant to an exception to the Commission's confidentiality policy for a limited purpose, requesting that the information not be further disclosed except in furtherance of that limited purpose, and warning that further disclosure may result in the Commission restricting or eliminating the recipient's access to information in the Commission's possession.
  
- (11) For purposes of evaluating the efficacy and wisdom of this Rule on an ongoing basis, upon making any disclosure under this Rule without prior express approval of the Commission, MAACS or SADO shall promptly report the disclosure to the Commission.