

**APPELLATE DEFENDER COMMISSION MEETING  
MINUTES**

SEPTEMBER 21, 2016  
DETROIT, SADO  
12:00 P.M.

PRESENT:

COMMISSIONERS: Chairperson Thomas Cranmer, Vice-Chair Tom McNeill, Hon. William Caprathe, Doug Mains, Douglas Messing, and Judith Gracey

OTHERS PRESENT:

SADO: Director Dawn Van Hoek, Deputy Director Michael Mittlestat, CDRC Administrator Marilena David-Martin, Juvenile Lifer Unit Project Leader Valerie Newman, Fiscal Manager Bryan Vance, and Human Resources Manager Wendy Dealca

MAACS: Administrator Brad Hall and Deputy Administrator Kathy Swedlow

**COMMISSION AGENDA**

**WELCOME AND INTRODUCTIONS**

Ms. Van Hoek welcomed newly appointed Commissioner Doug Mains.

**APPROVAL OF THE MINUTES FROM THE MEETING OF JUNE 15, 2016**

***Commissioner McNeill moved, seconded by Commissioner Caprathe, to approve the Minutes of the June 15, 2016 meeting. Carried unanimously.***

**ADC MEETING DATES AND LOCATIONS:**

December 14, 2016 (Detroit)  
March 15, 2017 (Detroit)  
June 21, 2017 (Detroit)  
September 20, 2017 (Lansing)  
December 13, 2017 (Detroit)

## SADO AGENDA

### BUDGET

Ms. Van Hoek reported that SADO received supplemental funding for training and juvenile lifer cases late in 2016, without enough time left in the year to spend it, but was able to encumber the money through 2017 by signing contracts for work projects with approval by the Commission. In 2017 and 2018, Ms. Van Hoek will ask for additional funding to handle the juvenile lifer cases assigned to SADO.

### HIRING/PROMOTION AT SADO:

SADO hired staff attorneys Angeles Meneses and Jason Eggert to replace two attorneys that retired during the course of the year.

Ms. Van Hoek added that Valerie Newman was promoted to lead the juvenile lifer project.

### CAPACITY / FORMULA / JLWOP UPDATE

Ms. Van Hoek reported to the Commission that there are approximately 355 juvenile lifer cases in Michigan. Unlike other states, Michigan prosecutors filed for life without parole in nearly 65% of those cases, deeming approximately 229 defendants hopelessly “incorrigible.” This is out of step nationally and is not what was intended by the US Supreme Court in *Montgomery*. Ms. Van Hoek reported that Michigan’s high filing rate will cause additional waiting for case resolution, result in significant additional litigation and costs, and will produce unjust outcomes for many juvenile lifers.

SADO has been appointed to about 205 juvenile lifer cases. Nearly half of those cases are conditional appointments. Ms. Van Hoek reported that SADO can only continue to handle conditional appointments if it can reduce its intake of regular appeals for approximately three years. Without a reduction of intake on regular appeals, SADO would have to turn back many of the juvenile lifer conditional appointments for substitution of counsel. Discussion ensued regarding the pros and cons of keeping the conditional appointments, including who is best equipped to handle the cases, what the clients would want and what is in their best interests.

***Commissioner Caprathe moved, seconded by Commissioner McNeill, to approve the conversion of conditional appointments to regular appointments and reduce SADO’s case intake to less than 25%, in response to the extraordinary need for qualified counsel to represent juvenile lifers in resentencing proceedings pursuant to the Montgomery decision. Case intake may be reduced to no less than 20% of the statewide total for a period of three years, the time estimated for resolution of the increased number of cases needing counsel. Carried unanimously.***

## **WAYNE COUNTY ASSIGNMENT PROJECT UPDATE**

Mr. Mittlestat reported that when Wayne County is ready to test their new online assignment project, SADO will serve as its guinea pig and will help them work out any kinks.

## **CASE HIGHLIGHTS**

Mr. Mittlestat provided a summary of SADO's case highlights to the Commission.

## **MAACS AGENDA**

### **REGIONAL PILOT PROJECT**

Mr. Hall surveyed the 14 circuits participating in the pilot project and provided the results to the Commission. All of the circuits are pleased with the project.

Mr. Hall provided the Commission with a copy of the Supreme Court order extending the pilot project for one more year, ending December 31, 2017. MAACS hopes to expand the project during the extension period.

### **PROPOSED REVISIONS TO MAACS REGULATIONS, SECTIONS 2, 4, 5**

Mr. Hall recommended that the Commission approve revisions to the MAACS regulations. A summary of the recommended changes follows:

#### **Section 1: Role of the Michigan Appellate Assigned Counsel System**

This section consolidates the prior Section 1 (Establishment of the Appellate Assigned Counsel System) and Section 2 (Duties of the Appellate Assigned Counsel Administrator). It has been renamed and rewritten to reflect the consolidation of MAACS and SADO, as well as the new oversight structure. The duties of the MAACS Administrator have been simplified without material changes.

#### **Section 2: Membership and Classification on the MAACS Roster**

This section takes place of the prior Section 4 (Attorney Eligibility for Assignments) and Section 5 (Confidential Files and Records). Its placement before Section 3 (pertaining to the assignment process) is a more logical fit. There are several significant changes to roster management and review.

Re-ordering of sub-sections: Reflects an attorney's chronological association with the roster, including application, classification, consultation, performance reviews, re-classification, and separation.

Classification of attorneys: Reclassifies roster attorneys into three levels: less-than-life plea appeals (Level 1); life-plea and trial appeals (Level II); and trial appeals only (Level III). This is intended to simplify roster administration, even the workload, and provide an incentive for attorney advancement.

Attorney work product review: Expands on the existing retention review process by establishing two types of review occurring at three different stages. First, MAACS will review the work of new roster attorneys through a proactive “consultation” during attorneys’ first two assigned appeals, ensuring the adoption of best practices and identifying areas of concern. Second, MAACS will review the work of all roster attorneys through a “performance review” after completion of the first ten appeals at either level and every three years thereafter. The self-selection of work product for review will not be allowed.

Attorney re-classification: Adopts an active re-classification process based on measures of quality rather than pure quantity. Performance reviews may result in re-classification, retention, extended monitoring, or suspension/removal. Levels II and III will require a threshold level of experience, and the Commission will retain its role of assessing “extraordinary circumstances,” but classification will no longer depend entirely upon the number of prior appeals. Rather, the Administrator will exercise re-classification discretion based upon the overall quality of roster attorney work product.

Attorney resignation, suspension, and removal: Permits suspension under a wide variety of circumstances that raise concerns about quality of representation, and establishes a process to move from suspension to removal. Rather than looking only to the number of Minimum Standards violations, the proposed procedure focuses on the overall quality and integrity of an attorney’s work product.

Requirements for continued membership on the roster: Increases the annual training requirement from 7 to 12 hours, consistent with the forthcoming MIDC minimum standards.

Review by the Appellate Defender Commission: Replaces the de novo appeal of right with a petition process, whereby attorneys may ask the Commission to review a decision by the Administrator to decline admission or remove an attorney from the roster.

### Section 3: Selection of Assigned Counsel

This section is unmodified with the exception of cross-references to other sections.

***Commissioner Caprathe moved, seconded by Commissioner Gracey, to approve the revisions to the MAACS regulations as presented by Mr. Hall. Carried unanimously.***

## **PRO BONO APPELLATE PROJECT**

Mr. Hall proposed that MAACS, in conjunction with SADO, would like to partner with several Michigan law firms and experienced criminal defense practitioners interested in providing pro bono legal representation to indigent criminal defendants on direct appeal in the Michigan courts. Mr. Hall provided the Commission with a detailed written proposal for their consideration and approval.

***Commissioner McNeill moved, seconded by Commissioner Caprathe, to support the Pro Bono Appellate Project. Carried unanimously.***

## **APPLICATIONS TO JOIN MAACS ROSTER AT LEVELS 2 & 3**

***Commissioner Gracey moved, seconded by Commissioner Caprathe, to approve requests for John Minock to join the roster as a Level 3 attorney, Stephanie Farkas to join as a Level 2 attorney, and Art Weiss to join as a Level 3 attorney for juvenile lifer cases. Carried unanimously.***

## **APPELLATE INVESTIGATION PROJECT UPDATE**

Mr. Hall provided the Commission with statistics collected from the Appellate Investigation Project indicating that the project has been successful. MAACS is waiting to hear if it will be awarded the grant again to continue the project for a second year.

## **ROSTER PERFORMANCE EVALUATION UPDATE**

Ms. Swedlow reported that there have been 3 resignations from the roster since the last Commission meeting, all stemming from MAACS addressing performance concerns. MAACS also sent out notices of non-retention to several roster attorneys, some of who may appeal a non-retention decision to the Commission. There was consensus among the Commissioners that they would permit non-retained roster attorneys to appear at a regularly scheduled Commission meeting for a short period of time to present their appeal of MAACS' decision. Ms. Swedlow believes she will have the entire roster evaluated by the end of the year.

## **JLWOP UPDATE**

MAACS has about 41 roster attorneys who are handling juvenile lifer cases.

## **MAACS ORIENTATION / TRAINING / APPELLATE WRITING WORKSHOP / IAC TRAINING**

Ms. David-Martin stated that 22 new roster attorneys will go through orientation this fall. Additionally, fall training for the entire roster will be held at Auburn Hills and Lansing the following day. The 3-day Appellate Writing Workshop will be held on October 27<sup>th</sup>-29<sup>th</sup>.

Additionally, in February there will be training to help MAACS roster attorneys develop IAC claims.

### **CASE HIGHLIGHTS**

Mr. Hall provided a summary of recent roster attorney successes to the Commission.

**The meeting was adjourned at 2:55 p.m.**

Respectfully submitted,  
Wendy Dealca  
SADO

APPELLATE DEFENDER COMMISSION

BY:   
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Tom McNeill, Vice-Chair