

**APPELLATE DEFENDER COMMISSION MEETING  
DRAFT MINUTES**

JUNE 19, 2019  
DETROIT, SADO  
12:00 P.M.

PRESENT:

COMMISSIONERS: Chair Thomas Cranmer, Douglas Messing, and Judith Gracey. Via telephone, Thomas Adams, Judge Caprathe and Doug Mains.

OTHERS PRESENT:

SADO/MAACS: Director Jonathan Sacks, SADO Deputy Director Michael Mittlestat, MAACS Administrator Brad Hall, MAACS Deputy Administrator Kathy Swedlow, Training Director Marilena David-Martin, and Commission Secretary MariaRosa Palmer.

**Welcome**

**APPROVAL OF THE MINUTES FROM THE MEETING OF MARCH 13, 2019 AND APRIL 8, 2019:**

***Commissioner Adams moved, seconded by Commissioner Gracey, to approve the minutes of the March 13, 2019 and April 8, 2019 meetings. Carried unanimously.***

**UPDATES:**

Budget: Mr. Sacks reported the budget is still unknown but that after the House and Senate conference committee meets, SADO should know more.

Hiring: SADO has offered two positions for entry level attorneys which will start in October and three more conditional offers, pending budget finalization.

Structural changes: Mr. Sacks reported on structural changes at SADO. SADO is continuing to demonstrate a unified office with MAACS, Ms. Tina Olson was introduced at a past meeting as the Juvenile Lifer Manager and recently Marilena David Martin was promoted to Deputy Director. Ms. David Martin has been as asset with training initiatives, project reentry and promoting better external relationships.

Mr. Sacks also indicated that he hopes to add another Deputy Director for SADO caseloads, but this position is budget dependent.

Formula: Mr. Sacks reported based on pending appeals the public defender division is at 29% trials and 16% appeals. SADO is currently at 27% of pending appeals and a total intake of 14.3%

Juvenile Lifer Unit: Mr. Mittlestat updated the Commission with the status of SADO's juvenile lifer cases.

## MAACS

Regional Map: Mr. Hall shared a new Regional map. Mecosta and Osceola were recently added. 43 of the 57 circuits have now adopted the Standard Fee and Regional Lists. He also informed the Commission that several circuits are currently waiting for county approval.

Mr. Hall updated the Commission on Admin Order 2017-2. The Supreme Court adopted the court rule change and the new process will be effective on September 1, 2019. Clients may now tender their completed form at sentencing and the trial court must give an opportunity to do so. Defendants can still mail in the form and if the form comes to MAACS, it will now be deemed filed once received. Once MAACS can add staff the form will change to reflect the court rule. Mr. Sacks indicated that once the current budget is completed, he will seek a supplement in October and approach the Court to help seek the additional funding.

Mr. Hall also reported that SADO, The Appellate Practice Section and the Court of Appeals will submit a proposal to change MCR 7.205 to the Michigan Supreme Court. He indicated that the practice doesn't conform to what the rule states and hopes the change will making training new attorneys easier.

Mr. Hall shared the AIP report with the Commission. Ms. Zimbelman is a permanent presence for MAACS roster attorneys and has had great attendance for case rounds and great feedback.

Ms. Swedlow reported that MAACS currently has 141 roster attorneys, with 120 listed as active. Applications are being accepted until August 30, 2019.

She also noted the Court of Appeals has added the recordings for oral arguments on its docket sheets. Ms. Swedlow is aware of MAACS attorneys not appearing for oral arguments or waiving. She is handling this and hopes it will not be an issue in the future.

Training and Reentry: Ms. David-Martin reported on trainings that have taken place and upcoming trainings at SADO. She also informed the Commission that CDRC has been approached by a few circuits to provide training for their trial attorneys. Ms. Martin, Ms. Swedlow and Mr. Hall will host a writing training on Friday, June 21 at Washtenaw County and in July, Ms. Martin will host a Sentencing Mitigation training in St. Clair County. Commissioner Gracey congratulated Ms. Martin and CDRC for being sought out by other agencies for training.

For Project Reentry, Ms. David-Martin reported on the recent release of Scott Davis. The judge in his case relied on his reentry plan and now Mr. Davis is home in Florida with his family. Ms. David-Martin shared that Project Reentry continues to do monthly workshops and publishing the Drum and have expanded the program to include SADO direct appeals clients where a reentry plan may be helpful.

Trial Public Defender Offices: Ms. David Martin reported that SADO has about 10 volunteers who will help answer inquiries from trial attorneys at Michigan's trial level defender offices. These volunteers will provide information, sample pleadings and strengthen the relationship between SADO and public defender offices.

Case Highlights: Mr. Mittlestat and Ms. Swedlow provided a summary of case highlights to the Commission.

### **MAACS Minimum Standard Comments**

Ms. Swedlow provided the Commission with a summary for each standard and noted what changes were made to the comments. She indicated that most of the changes were editing and updating case references. However, the following comments were expanded to reflect expectations for MAACS roster attorneys:

**Standard 2 (timely client consultation):** Proposed new Comment includes expanded discussion of client privacy and discourages use of attorney-agents for client consultation.

**Standard 4 (pro per supplemental briefs):** Proposed new Comment includes discussion of Standard 4 briefs in leave cases and directs counsel to advise client about risks associated with these briefs in habeas corpus proceedings.

**Standard 5 (client abandonment):** Proposed new Comment adds discussion about concluding representation on the record and within deadlines and suggests possible courses of action when counsel and client disagree about the merits of an appeal. Proposed comment also expresses MAACS's disfavor of *Anders* briefs.

**Standard 6 (preservation of oral argument):** Proposed new Comment includes expanded discussion about waiver of oral argument and directs counsel to inform the client if oral argument has not been preserved or is waived.

**Standard 9 (accepting fees from client):** Proposed comment suggests that counsel seek fees for Supreme Court work from appointing authority, before accepting fees from client.

***Commissioner Messing moved, seconded by Commissioner Adams to adopt and approve revisions as referenced by Ms. Swedlow. Carried unanimously.***

### **Robert Dunn – Petition for review removal from the roster**

Mr. Sacks recommended that the Commission request the Administrator to respond to Mr. Dunn's petition and give Mr. Dunn an opportunity to reply. Once both have been reviewed, the Commission can either reach a decision at the September meeting or decide to have a hearing.

***Commissioner Messing moved, seconded by Commissioner Adams to accept the recommendation made by Mr. Sacks and request a response from the Administrator to the petition. Carried Unanimously.***

### **New Fee Voucher System**

Mr. Hall and Ms. Swedlow gave a demonstration on the new fee voucher system. MAACS hopes to go live in the Fall.

### **Wayne County**

Mr. Sacks shared a report prepared by Mr. Hall. Mr. Hall's report summarizes the crisis in Wayne County and the factors that contribute to the lack of roster attorneys willing to accept cases from that court. Mr. Sacks would like to schedule a meeting this summer with Wayne to discuss this report.

### **Strategic Planning**

Ms. David Martin shared the Center for Court Innovation Site Visit report issued in April with the Commission. The report provided an action plan for SADO and a committee meets monthly to address the priorities.

### **Annual Report**

Mr. Sacks shared the Annual Report with the Commission and noted the new mission statement on its cover. The report is published on the SADO website and in the future, it could be used as a public relations document.

***Commissioner Messing moved, seconded by Commissioner Adams to approve the Annual Report. Carried unanimously.***

### **Juvenile Post-Disposition Grant**

Mr. Sacks informed the Commission that after further review and discussion SADO felt it was best to wait another year before applying for this grant.

### **Authorization for Parole Appeal**

In 2009, the Commission approved that SADO could accept appointments of appeals from parole board decisions with prior approval from the Commission. SADO has recently received an inquiry to represent Mr. Ronald Irwin. Mr. Irwin was granted parole in 2017, the Macomb County Prosecutor Office appealed to the Circuit Court and it reversed the Parole Board's decision. Mr. Irwin appealed to the Court of Appeals which was denied without opinion and later appealed in the Michigan Supreme Court. The Michigan Supreme Court remanded to the Court of Appeals with instructions. Mr. Mittlestat asked the Commission to approve SADO's representation of Mr. Irwin for the remainder of his appeal, in the event a request for appoint of appellate counsel made.

**Chairperson Cranmer moved to approve SADO's representation of Mr. Irwin for the remainder of his appeal. Carried unanimously.**

**The meeting was adjourned at 2:03 p.m.**

Respectfully submitted,

MariaRosa J. Palmer  
SADO

APPELLATE DEFENDER COMMISSION

BY: \_\_\_\_\_  
Thomas W. Cranmer, Chair

DRAFT