

**APPELLATE DEFENDER COMMISSION MEETING  
DRAFT MINUTES**

SEPTEMBER 18, 2019  
LANSING, SADO  
12:00 P.M.

PRESENT:

COMMISSIONERS: Chair Thomas Cranmer, Douglas Messing, and Thomas Adams. Via telephone, Judge Caprathe.

OTHERS PRESENT:

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

**Welcome**

**APPROVAL OF THE MINUTES FROM THE MEETING OF JUNE 19, 2019:**

***Commissioner Adams moved, seconded by Commissioner Messing, to approve the minutes of the June 19, 2019 meeting. Carried unanimously.***

**UPDATES:**

Budget: Mr. Sacks reported the budget is still unclear. The Supreme Court sent out a memo laying out procedures for a possible government shutdown on October 1 and SADO has a plan in place.

Hiring: SADO made decisions on 5 positions but only two positions were firm offers which will start in October and three more conditional offers, pending budget finalization. SADO is currently screening for mitigation specialists. SADO's plan also is to hire internally for a caseload Deputy Director.

Formula: Mr. Sacks reported based on pending appeals the public defender division is at 29% trials and 18% pleas. SADO is currently at 27% of pending appeals. and a total intake of 13.0%

Juvenile Lifer Unit: Mr. Mittlestat reported that SADO has had 5 Miller hearings with two resulting in term of years and two where the prosecutor agreed to drop "life without parole". He also reported that SADO currently has 7 open appeals and 6 Miller hearings scheduled for the remainder of the year.

## MAACS

Regional Map: Mr. Hall shared a new Regional map. Berrien adopted the Standard Fee Policy and was added August 1, 2019. Muskegon is expected to be added on October 1, 2019.

Mr. Hall reported that the revised MCR 6.425 went into effect on September 1 and requests for counsel received by MAACS are deemed filed on the date received by MAACS. MAACS is currently working on a web-based application that will date stamp the request once it is scanned and uploaded into the MAACS assignment system. He hopes to go live soon.

Mr. Hall also reported that the new voucher system is receiving good feedback from attorney focus groups and circuit courts. He hopes to go live at the beginning of the year.

Ms. Swedlow reported that MAACS currently has 120 active roster attorneys. She also reported that 38 attorneys were accepted to join the roster.

Court Rules: Mr. Hall reported that a packet of proposals was sent to the court and should be published in October or November for comment and hearings possibly in the Spring.

- Expand the prison mailbox rule to all types of filings by indigent individuals confined in all types of correctional institutions;
- Inform indigent defendants of the right to seek appellate review of a denial of appellate counsel;
- Expand the window for filing postjudgment trial court motions to coincide with the appellate briefing deadline, thereby protecting the parties' ability to create a full record for appeal and alleviating the need for most remand motions;
- Expand the restoration of appellate rights provision to ensure that indigent defendants do not lose their rights to appeal or appellate counsel due to errors by the courts or counsel, including in guilty plea cases; and
- Ensure that criminal defense counsel have a reasonable opportunity to attend presentence interviews with their clients, and that presentence investigation reports are accurately corrected, maintained, and available when necessary.

Training and Reentry: Ms. David-Martin reported the CDRC is busy with training the criminal defense community. The CDRC is receiving training requests from County Bar Associations and the Courts. She informed the Commission of upcoming training events in September and October.

Project Reentry, Ms. David-Martin reported that SADO has 50 juvenile lifer clients out and host monthly workshops to help facilitate a successful transition. She also provided the Commission with the most recent issue of their newsletter, the DRUM. Ms. David-Martin also indicated that they have an AmeriCorp Vista intern who will help SADO build community relationships.

Strategic Planning: Ms. David-Martin reported that the Committee continues to meet monthly to complete action items and has been making good progress.

Grants: Mr. Sacks reported on several grants. SADO was asked to submit a proposal for a Byrne Jag Grant. This grant is requesting funds to expand the Reentry Project. The DNA project is near completion but was recently given an extension. SADO requested 2 years but is still unclear how much of an extension it received. Lastly, SADO has submitted another for Wrongful Prosecution. This grant will allow SADO to look at cases in the early stages.

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

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

Mr. Hall summarized MAACS response to Mr. Dunn's petition for review and recommended that the Commission dismiss the petition. Discussion followed.

***Commissioner Adams moved, seconded by Commissioner Messing to dismiss Mr. Dunn's petition for review. Carried Unanimously.***

### **Policy Updates**

Mr. Sacks informed the Commission that SADO updated the Employee Handbook.

#### **Technical updates:**

- a. "Appellate Defender" replaced with "Director;"
- b. "Deputy Director" replaced with "supervisor;"
- c. "Christmas party" replaced with "holiday party;"
- d. "Attorneys" replaced with "employees" in policies that were applicable to all employees
- e. "Paid personnel" replaced with "employee;"
- f. Removed references to policies by number and used policy title instead;
- g. Introduction - added our mission statement as the first sentence;
- h. Annual Leave Policy - updated to reflect new accumulation caps since implementation of SIGMA.

***Commissioner Adams moved, seconded by Commissioner Messing to approve the proposed revisions. Carried unanimously.***

#### **Minor policy updates & updates to meet legal requirements:**

- a. Equal Employment Opportunity Policy – removed language about affirmative action to comply with Article I, Sec. 26 of the Michigan Constitution, 2006;
- b. Anti-Discrimination/Anti-Harassment Policy - included the Commission Secretary as a manager
- c. ID Cards Policy – updated process for obtaining state ID cards;
- d. Office Closure Policy – removed reference to voicemail message notice of closure;
- e. Outside Employment Policy – added an exception for law school clinics where students work on SADO cases;

- f. Classification and Compensation Policy – updated to reflect that the Human Resources Manager and Director are responsible for classification and compensation reviews and approvals;
- g. Overtime – updated to reflect current practice/process;
- h. Fringe Benefit Policy – updated to show that insurance benefits are available to employees working 30 hours or more per week rather than just “full-time” employees. The Affordable Care Act defines full-time as 30 hours;
- i. Sick Leave Policy – updated to comply with Michigan’s Paid Medical Leave Act;
- j. Leave of Absence – simplified payroll deduction language

***Commissioner Adams moved, seconded by Commissioner Messing to approve the changes in the Employment Manual. Carried unanimously.***

Substantive policy changes:

- a. Office Presence Policy - Revised to limit employees to working outside of the office to two days per week in addition to days in which normal work takes place outside of the office for client visits, court, training, or other off-site work commitments.

***Commissioner Adams moved, seconded by Commissioner Messing to approve the revised office presence policy. Carried unanimously.***

- b. Lobbying and Advocacy Policy
  - i. Revised due to Open Meetings Act implications;
  - ii. Revised to make more workable with court rule proposal comments and other time sensitive requests;
  - iii. Revised to allow the Director discretion as to SADO advocacy, while making clear that the Director may not speak on behalf of the Commission without approval.

***Commissioner Messing moved, seconded by Commissioner Adams to approve the lobbying/advocacy policy. Carried unanimously.***

#### **Authorization for Parole Appeal**

In 2009, the Commission approved that SADO could accept appointments of prosecutor appeals from parole board decisions with prior approval from the Commission. Mr. Sacks requested the Commission authorize SADO to accept these assignments without prior Commission approval and provide the Commission with a status update in one year.

***Commissioner Messing moved, seconded by Commissioner Adams to authorize SADO to accept prosecutor parole appeals without prior Commission approval and provide a status update in 6 months. Carried unanimously.***

**Contract Approval: Criminal Defense Resource Center Services - John Zelvaking**

Mr. Sacks requested the Commission authorize SADO to implement contract in Fiscal Year 2020.

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

**MAACS – Exploration of Appointed Counsel Pilot Projects**

Mr. Hall shared with the Commission with the success of the MAACS Assignment system and the Voucher System. There is an increased interest with MAACS helping courts set up their process for district court to circuit court appeals, trial court appointments, and to possibly expand the system to Child Welfare cases. Mr. Sacks noted if opportunities move quickly and make sense, the Commission will be notified and may require a special commission meeting.

**Wayne County**

Mr. Hall reported that a meeting was held, and Wayne Circuit Court was very receptive to adoption of the Standard Fee Policy. Mr. Hall rewrote the Wayne report to focus on the fees and will request a meeting with County Administrators.

**The meeting was adjourned at 2:17 p.m.**

Respectfully submitted,

MariaRosa J. Palmer  
SADO

APPELLATE DEFENDER COMMISSION

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