

**APPELLATE DEFENDER COMMISSION MEETING
MINUTES**

DECEMBER 16, 2020
ZOOM MEETING
12:00 P.M.

PRESENT:

COMMISSIONERS: Chair Thomas Cranmer (Oakland County), Judith Gracey (Oakland County), Douglas Messing (COA office Wayne County), and Darryl Woods (Wayne County).

OTHERS PRESENT:

SADO/MAACS: Director Jonathan Sacks, SADO Deputy Director Marilena David-Martin, Direct Appeals Managing Attorneys Katherine Marcuz and Jessica Zimbelman, Juvenile Lifer Managing Attorney Tina Olson, MAACS Administrator Brad Hall, MAACS Deputy Administrator Kathy Swedlow, and Commission Secretary MariaRosa Palmer.

Guests: SADO Staff: Lisa Lamarre, Patricia Maceroni, Jackie Ouvry, Erin Van Campen; and UAW Representative: Sammy Wright

Welcome

Mr. Sacks welcomed and made introductions.

PUBLIC COMMENT

No public comment was made.

APPROVAL OF THE MINUTES FROM THE MEETINGS OF SEPTEMBER 16, 2020:

Commissioner Messing moved, seconded by Commissioner Woods to approve the minutes of September 16, 2020. Carried unanimously.

UPDATES:

Direct Appeal Leadership: Mr. Sacks reported a change in the leadership structure at SADO. SADO is shifting from one Deputy Director to two managing attorneys. The goal for this new structure is to provide greater guidance, feedback and more personalized and supportive supervision. Mr. Sacks thanked Mr. Mittlestat for serving as the Deputy

Director for the past 6 years and his many contributions. Mr. Mittlestat will transition to a senior attorney.

Katherine Marcuz and Jessica Zimbelman were introduced as SADO's new managing attorneys for direct appeals.

Budget: The Michigan budget remains in crisis due to COVID-19. With support from the State Budget Office, SADO submitted a Current Services Baseline request for both Juvenile Lifer Unit funding and complete restoration of the general fund.

Grants: SADO has received two grants: COVID-19 emergency funding (Jail Release Program) and the Wrongful Conviction grant.

Hiring: SADO has hired two new mitigation specialists for the Juvenile Lifer Unit. The Wrongful Conviction grant will add an attorney and an investigator. Budget dependent, SADO also hopes to add three more positions.

Union: Mr. Sacks reported that he had an informal meeting with the Union to discuss SADO's promotion process, diversity and inclusion. SADO awaits formal bargaining proposals.

New Center: SADO has formally moved to the New Center but remains a remote workplace. Essential SADO staff are going into the office, but during the current emergency, limited to 1-3 people a day.

Formula: Mr. Sacks reported that SADO is staying above the 25% of pending appeals – 33.2% trial appeals and 17.5% plea appeals.

MDOC: Mr. Sacks updated the Commission on the status of the MDOC and COVID 19. He shared a letter received from a SADO client describing his situation in prison. As previously reported, SADO submitted to the MDOC its results and recommendations from a survey it conducted. SADO will continue to advocate for improvements to mail and visit procedures and request an Independent Health Monitor.

Juvenile Lifer Unit: Tina Olson reported that 8 more cases were resolved with a term of years and 2 clients were recently paroled. Ms. Olson acknowledged the work of the full Juvenile Lifer Unit team and the work of Project Reentry.

MAACS

Ms. Swedlow reported that MAACS currently has 126 active attorneys and 36 attorneys who are on voluntary standby. MAACS will also be adding 20 new attorneys to the roster.

Ms. Swedlow updated the Commission on *Haywood* and *Nino*. These cases were prosecutor appeals where the defendant had retained counsel, but counsel did not assist in their appeals and no attorney was appointed. MAACS was successful in advocating for appointment of counsel. Mr. Haywood and Mr. Nino now have representation. Mr. Hall added that an amendment to MCR 6.005 is forthcoming which makes it clear that a trial attorney is responsible for either handling the prosecutor appeal or ensuring that an attorney is appointed.

Mr. Hall reported that Programmer Eric Buchanan has been working on a correspondence intake system for MAACS and should be ready to launch soon. The voucher system has rolled out and has received positive feedback. He also added that MAACS is continuing to successfully host video visits for MAACS roster attorneys on Tuesdays and Thursdays. He hopes this video visit method will remain in the future instead of attorneys going to Detroit or Lansing to use the Polycom.

Court Rules: Mr. Hall provided a summary of several court rules: Restoration of Appellate Rights, an expanded timeline for trial court motions, MCR 7.205 changes streamlining the process for leave applications, and a new rule which will grant attorneys to respondents in prosecutor appeals of parole decisions. He also hopes that the Mailbox Rule will be expanded to apply to all filings by any incarcerated individuals.

Training and Reentry: Ms. David-Martin shared an update of the Criminal Defense Resource Center (CDRC). The CDRC provided over 60 hours of complimentary online training. In October, training was held almost every day. This method was very successful and received positive feedback. In November and December, Sentencing Mitigation training was offered which included national speakers and had attendees from around the country. The CDRC will also provide training on the Presentence Interview in light of a court rule change. In December it will be offered to defense attorneys and then in the future, SADO will offer the training to judges and probation officers. Training videos are available on the SADO website.

For reentry, Ms. David-Martin shared the different workshops that were offered in September through December. She also reported that Jose Burgos has been invited to present at the State Bar Criminal Law Section Conference and has received positive feedback. Commissioner Gracey commended the efforts of the reentry group.

Legislation: Mr. Sacks and Ms. Zimbelman provided an update on SADO's legislative efforts. SADO was invited to present about pretrial and jail sentences before the Michigan Joint Task Force on Jail and Pretrial Incarceration. Ms. Zimbelman also reported that along with CDAM, SADO provided comments on the Child Abuse Registry and testified before a committee on the Sex Offender Registry.

Case Highlights: Ms. Marcuz, Ms. Zimbelman and Ms. Swedlow provided a summary of case highlights to the Commission.

MAACS Workload Strategies

Mr. Hall provided the Commission with a summary of MAACS efforts to meet the new workload adjustments which will shift to the MAACS roster: 1) Encourage MAACS compliance with the MAACS Regulation II(D)(3) and take on additional appeals; 2) Review Level 1 roster attorneys for promotion to Level 2; and 3) Expand the Regional Assignments Lists.

COVID-19 Grant – District Court Appointments

As authorized by the Commission in June, SADO has received Coronavirus Emergency Supplemental Funding grant for our Jail Release Project. This funding allows

SADO to formalize what had been a volunteer project. Seven contract attorneys throughout Michigan will advocate for jail release of already sentenced, currently unrepresented individuals. SADO seeks authorization to accept District Court appointments and represent people serving misdemeanor sentences for purposes of the COVID-19 Jail Release project.

Additionally, some courts may choose not to appoint SADO for jail release litigation. This lack of an appointment does not preclude SADO's contract attorneys, all private practitioners, to enter an appearance for individual clients after those clients provide permission. It is a shift from the planned model of the grant, but allows for the same work and results.

Commissioner Messing moved to approve authorization to accept District Court appointments and to permit contract attorneys to choose to represent individual clients and advocate for their early release from jail, regardless of SADO appointments, as recommended by Mr. Sacks, seconded by Commissioner Woods. Carried.

Penobscot Lease

SADO would like to proceed with settlement negotiations with the Penobscot Building and continue with retention of counsel, Lawrence Shoffner to handle the lease termination and settlement negotiations.

Commissioner Messing moved to approve cancellation of the Penobscot lease and authorize proceeding with settlement negotiations and authorize SADO to continue with retained counsel for an amount up to \$20,000, seconded by Commissioner Woods. Carried.

2021 Meeting Dates

March 17, 2021
June 16, 2021
September 15, 2021
December 15, 2021

The meeting was adjourned at 2:24 p.m.

Respectfully submitted,

MariaRosa J. Palmer
SADO

APPELLATE DEFENDER COMMISSION

BY: _____
Thomas W. Cranmer, Chair