

**APPELLATE DEFENDER COMMISSION MEETING
MINUTES**

MARCH 17, 2021
ZOOM MEETING
12:00 P.M.

PRESENT:

COMMISSIONERS: Chair Thomas Cranmer (Blufton, South Carolina), Judith Gracey (Keego Harbor, Michigan), Doug Mains (Lansing, Michigan) Douglas Messing (Oakland County), Thomas McNeill (Detroit, MI), 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, Angeles Meneses, Sofia Nelson, and Jackie Ouvry.

Welcome

Mr. Sacks welcomed and made introductions.

PUBLIC COMMENT

No public comment was made.

APPROVAL OF THE MINUTES FROM THE MEETINGS OF DECEMBER 16 AND DECEMBER 23, 2020:

Commissioner Woods moved to approve the minutes of December 16 and December 23, 2020, seconded by Commissioner Messing. Carried unanimously.

UPDATES:

Budget: Mr. Sacks shared SADO's accomplishments this past year and acknowledged and thanked SADO staff for all their hard work. He also reported that SADO submitted two budget priorities, to restore its funding base and the continued funding for the juvenile

lifer cases with the hope that it will eventually be part of the SADO's general fund. The Governor has supported this request and several hearings have occurred. It is anticipated that the legislature will submit their recommendations in the upcoming months.

Grants: SADO currently has 3 active grants: The Covid Jail Release grant which currently has 7 active contract attorneys addressing early jail release due to the pandemic, the Byrne/Jag grant which deals with reentry initiatives; and the Wrongful Prosecution Grant which allows for pre-screening of cases and is currently in the hiring process for an attorney and an investigator.

Hiring: Mr. Sacks shared the job postings for the attorney and investigator for the Wrongful Prosecution Grant and further indicated that he is hopeful that SADO will be able to hire 2 general fund attorneys and 1 IT position.

Case Statistics/Intake: Mr. Sacks reported that SADO is handling 35% of pending appeals. In 2020 SADO handled 60% of trial appeals and 15% of total appeals. Appeals are down overall due to the pandemic, but once courts start to open, the statistics will change. He added that according to the State Court Administrative Office a much larger than usual percentage of felonies await disposition, which means there will be a significant increase in appeals once jury trials return. Strategies for the expected increase in appeals will be presented at the June Commission meeting.

MDOC: Mr. Sacks updated the Commission on the status of the MDOC and COVID 19. By the first week in April everyone in the MDOC will have access to the vaccine. He also reported that in-person visits have resumed.

Juvenile Lifer Unit: Tina Olson shared the successes the unit has had including David Bennett who was sentenced to life without parole a second time and then through an appeal with a MAACS roster attorney was resentenced to a term of years and recently released. Ms. Olson also provided information about the work that the Unit's mitigation specialists do for their clients.

MAACS

Mr. Hall provided an update of the MAACS Regional Assignment List. A memo sent to some remaining circuits by the State Court Administrative Office led to new meetings. Ingham recently agreed to anchor the Mid-Michigan region, a meeting is scheduled with Clinton/Gratiot and Mr. Hall had a good conversation with Judge Lisznyai in Hillsdale. Mr. Hall also noted that he, along with Chairperson Cranmer, had a very encouraging meeting with Wayne County.

Ms. Swedlow reported the current roster status and noted that recruitment efforts will begin in the Spring/Summer. She also informed the Commission about the monthly MAACS virtual writer roundtable that allows roster attorneys to discuss briefs and do real-time editing. The roundtable has received excellent feedback. Lastly, Ms. Swedlow informed the Commission about the Defender Appellate Manual.

Juvenile Defense Grant: Mr. Hall shared that a grant application is almost complete and MAACS is seeking to implement and oversee a statewide juvenile appellate indigent

defense roster. The materials include a letter of support from the Michigan Supreme Court.

Court Rules and Legislation: Ms. Zimbelman reported that SADO submitted 4 comments on rules changes to the Michigan Supreme Court. She also noted that discussion is currently taking place regarding the waiving of the right to be present in-person at hearings.

Training and Reentry: Ms. David-Martin shared an update of the Criminal Defense Resource Center (CDRC). She highlighted several trainings that have occurred and noted the upcoming 3-day appellate writing workshop. Ms. David-Martin also spoke about a 2-day in-house leadership training SADO staff attended where one of the goals was to facilitate better communication.

For reentry, Ms. David-Martin indicated that they are still holding virtual workshops and shared the January issue of the Drum.

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

Advocates of the Year

Mr. Hall and Ms. Swedlow nominated Rachel Helton to receive the Barbara R. Levine advocacy award. They noted that she is a tremendous attorney who is willing to take on complicated assignments. Ms. Helton has also served as a trainer and is currently a Level 2 attorney.

Ms. Marcuz noted that this year SADO has two nominees for the Norris Thomas advocacy award – Lindsey Ponce and Jackie Ouvry were selected. Ms. Marcuz indicated that Ms. Ponce has had an incredible year; carries a mixed caseload; is fun, generous, and well-loved by her colleagues. Ms. Olson shared that Ms. Ouvry also had great success for her direct appeal and juvenile lifer clients. Mr. Ouvry has also taken on parole appeals.

Commissioner Woods moved to approve the advocates of the year nominations, seconded by Commissioner Messing. Carried Unanimously.

Non-Attorney Award (Moritz-Paeth)

SADO seeks authorization to create the Moritz-Paeth Award for non-attorney staff members. The name of the award was selected in recognition of two former employees, Joanne Moritz, retired from SADO after 40 years and Ruth Paeth, worked at SADO for 30 years and passed away last year.

Commissioner Gracey moved, to authorize SADO to create the Moritz-Paeth Award for non-attorney staff members, seconded by Commissioner Messing. Carried.

Diversity, Equity, and Inclusion

Mr. Sacks would like authorization to retain Timothy Overton of Dickinson Wright to conduct a Diversity, Equity, and Inclusion audit and provide training on implicit bias. He expects Mr. Overton to begin in a few weeks and complete his work in a few months.

Commissioner Woods moved to authorize SADO to retain Timothy Overton to conduct a training and audit on Diversity, Equity, and Inclusion issues at SADO, seconded by Commissioner Messing. Carried. Commissioner McNeill abstained.

Ms. Martin-David shared information regarding SADO's Racial Injustice Initiative which was launched in July 2020 by Ms. Martin-David and Ms. Zimbelman. The goal is to have open conversations about systemic racism within the criminal justice system and to increase diversity, equity, and inclusion at SADO. An action plan has been developed which will focus on several categories.

Workload Study Authorization

Last year the Commission authorized an adjustment to the workload for SADO attorneys since the current weight system does not consider certain objective events. The workload memos submitted by SADO and MAACS demonstrated the need for an independent workload study. Mr. Sacks believes that SADO will have a surplus in its budget this year, but the amount is still unclear. Mr. Sacks would like authorization to complete an RFP and send to potential vendors and have more information to report at the June meeting.

Commissioner Messing moved to authorize SADO to release an RFP or otherwise explore a contract with an independent expert to perform a SADO/MAACS workload study, should the FY 21 budget surplus allow, seconded by Commissioner Gracey.

COVID 19 Policies

Mr. Sacks updated the Commission on SADO's current COVID 19 policies and proposes the following amendments:

- SADO will continue to use Local Administrative Orders and the Supreme Court Return to Full Capacity Guide to push local courts to meet safety standards through informal or formal inquiry and litigation if needed.
- With the advent and availability of vaccines for SADO attorneys, where it is in the interest of our clients, we should attend court.
- SADO understands the need to be flexible and agree it is best to approach situations on a case-by-case basis taking our guidelines into account; there will not be a uniform approach that applies across the board to all clients or staff.
- Attorneys may continue to inquire as to our client's COVID status and symptoms (information that our client may choose not to share) but will not otherwise request adjournment or a Zoom hearing because our clients have been in proximity to "sick or symptomatic individuals."
- For the safety of the incarcerated, we will continue to discourage in-person client visits in local jails or the Michigan Department of Corrections unless necessary, approved by a supervisor, and the person entering the facility has tested negative and otherwise followed our guidelines.

- SADO will make sure our clients have a voice in this decision-making process.
- To comply with DHHS and MIOSHA regulations we will clarify that Phase 2 of SADO reopening, Limited Operations, will apply only to people who cannot feasibly work remotely each day.

Commissioner Woods moved to adopt the amendments to the COVID 19 polices as outlined by Mr. Sacks, seconded by Commissioner Messing. Carried unanimously.

Executive Session

Commissioner Messing moved to proceed to Executive Session, seconded by Commissioner Gracey. Roll call vote was done. Carried unanimously.

The Commission returned from Executive Session.

Mr. Sacks would like authorization for up to an additional \$20,000, if needed, to continue to retain Lawrence Shoffner.

Commissioner McNeill moved to authorize SADO to continue to retain Lawrence Shoffner, seconded by Commissioner Gracey. Carried. Commissioner Mains abstained.

The meeting was adjourned at 2:20 p.m.

Respectfully submitted,

MariaRosa J. Palmer
SADO

APPELLATE DEFENDER COMMISSION

BY: _____
Thomas W. Cranmer, Chair