

**APPELLATE DEFENDER COMMISSION MEETING
MINUTES**

March 19, 2014
Lansing MAACS
12:00 P.M.

PRESENT:

Commissioners: Chairperson John Nussbaumer, Judge William Caprathe and Douglas Messing. Judith Gracey via telephone.

Others Present: For MAACS: Administrator Thomas Harp and Deputy Administrator Lyle Marshall and Administrative/Fiscal Manager MariaRosa Juarez Palmer

For SADO: Director Dawn Van Hoek, Deputy Director Jonathan Sacks, Fiscal Manager Bryan Vance, Human Resources Manager Wendy Schaub, and CDRC Manager Marla McCowan

Guest: Mr. and Mrs. Lawrence Katz

Commission Agenda

Barbara R. Levine Award Presentation

Chairperson Nussbaumer welcomed Mr. Katz to the meeting. Mr. Harp spoke a few words about Mr. Katz's dedication to his clients and practice and presented Mr. Katz with the Barbara R. Levine Award. Mr. Katz thanked the Commission and accepted the award on his behalf and his colleagues on the MAACS roster. He also acknowledged Mr. Harp and Mr. Marshall's work and mentorship they provide the roster on a daily basis.

Approval of Minutes of the December 18, 2013.

Commissioner Messing moved, seconded by Commissioner Gracey, to approve the minutes of December 18, 2013. Carried.

Lobbying Policy

Mrs. Van Hoek discovered that SADO was operating and commenting on court rule changes, etc., without the approval of the Commission which is currently required under the lobbying policy. Mrs. Van Hoek would like to address this by changing the language to separate when SADO or MAACS are asked to comment and when the Commission is asked to comment. If SADO or MAACS are commenting to show their support, then they do not need Commission approval. However, if they are asked for the

Commission's opinion/comment, then the Commission would have to approve the response first.

Commissioner Messing, moved, seconded by Commissioner Caprathe, to approve the amendment to the Lobbying policy.

Complaint Protocol involving SADO Director or MAACS Administrator

Mr. Harp informed the Commission that Ms. Schaub received a complaint from a defendant against the MAACS administrator regarding his handling of the defendant's complaints involving his appellate representation. This complaint was received through the State Appellate Defender website via the Commission link. Mr. Nussbaumber felt the Commission needed a policy to deal with complaints filed against the administrators of MAACS or SADO.

Mr. Harp and Mrs. Van Hoek worked together on language for the complaint protocol which allows the chairperson to review the complaint and decide whether the administrators should handle it or if the complaint needed to be brought to the Commission.

Commissioner Caprathe moved, seconded by Commissioner Messing, to approve the Complaint Protocol. Carried.

Reclassification of MAACS Roster Attorneys

Roster Attorneys Jeffrey Chip and Jon Hummel have requested to be reclassified from a Level I to a Level II attorney. Mr. Marshall provided the Commission with a brief background for each attorney and recommended that they both be reclassified as Level II attorneys.

Commissioner Messing moved, seconded by Commissioner Caprathe, to accept Mr. Marshall's recommendation and reclassify both Mr. Chip and Mr. Hummel to Level II. Carried.

MAACS Regulation

Mr. Harp indicated that the Regulations were not consistent when using the word "attorney" or "lawyer". Mr. Harp would like to choose one and change the others for uniformity. Mr. Harp would also like the Commission to add language in the regulations which would give him the authority to remove an attorney from a particular circuit list if the statistics are showing a high volume caseload. Chairperson Nussbaumber stated that this is a good change which will allow MAACS to monitor the roster caseload.

Commissioner Caprathe moved, seconded by Commissioner Messing, to add language to the regulation which will allow the MAACS administrator to remove

an attorney from individual circuit lists if the statistics are showing a high volume caseload. Carried.

Mr. Harp further indicated that by allowing the temporary removal on individual circuits, the language which allows a roster attorney to appeal should be removed because the temporary removal may occur often and it may lead to a lot of appeals. After some discussion, Commissioner Caprathe suggested that roster attorneys could use the new complaint protocol if that attorney had a problem with Mr. Harp's decision.

Commissioner Caprathe moved, seconded by Commssioner Gracey, that the Commission eliminate the appeal process, and that MAACS notify the roster of its removal since MAACS had already notified the roster of the appeal process and to refer them to the complaint policy. Carried.

Commissioner Messing's Term

Chairperson Nussbaumer informed the Commission that Commissioner Messing's term expires in May, 2014 and that he contacted Commissioner Messing about continuing on the Commission. Commissioner Messing indicated that he would like to continue and spoke with the assistant to the Chief Judge at the Court of Appeals. Commissioner Messing has not heard back but does not anticipate any problems with his request to continue with the Appellate Defender Commission. Chairperson Nussbaumer asked Commissioner Messing to let him know when he hears anything and that Mrs. Van Hoek knows the appointment process and has contact information to pass along to Commissioner Messing and the Court of Appeals.

Annual Reports

Mrs. Van Hoek informed the Commission that SADO's report is almost complete. Once complete, SADO will provide Chairperson Nussbaumer with a copy to review. If Chairperson Nussbaumer sees an issue, then it will be brought to the full Commission. If no problem, then the report will be distributed and available on the SADO website.

Mr. Harp indicated that the case statistics are complete and the report will be completed by the June Commission meeting.

Support project with the Attorney Discipline Board and the Attorney Grievance Commission

Mrs. Van Hoek reported that SADO has started a support project with the Attorney Discipline Board and the Attorney Grievance Commission. SADO is working to provide attorneys who are facing discipline with a year of free access to SADO's web-based services. This access will serve as a tool for the attorney and assist them in the areas they need help. Ms. McCowan will be involved with the project and provide training. Mrs. Van Hoek will keep the Commission informed on the status of the project and it will appear in the SADO Annual Report.

Two-Year Timeline Progress Report

Shared Space

Mrs. Van Hoek reported she, Mr. Harp, Mr. Marshall and staff from SADO and MAACS toured three different locations with her rental agent, Mr. Rosekranz. The locations included SADO's current location at the Comerica Building, the Business and Trade Center and the Hollister Building. Mrs. Van Hoek indicated that there were not as many office spaces available to tour as the market in downtown is improving. However, she does not foresee the locations that SADO and MAACS are considering to be an issue. Mrs. Van Hoek added that the space they toured will accommodate MAACS, SADO and the MIDC. She stated that she expects the MIDC to be appointed within the next week since they have received funding for this fiscal year. Once the Commission is selected, the Commission will hire its Director and the three agencies can move forward in selecting office space.

Chairperson Nussbaumer asked about the cost of the locations and about a time frame for the move. Mrs. Van Hoek responded that the costs of the locations were all fine and that SADO could go month to month at her current location if it needed to. Mr. Harp however could not say for certain if month-to-month is an option for MAACS. They both indicated that their offices would move without the MIDC.

IT Plan

Mrs. Van Hoek reported that SADO has contracted with Manisha Manupatra with CW Services, formerly CompuWare. Because Steve Hartmann, the current developer and manager of the MAACS assignment system, was not available, the Judicial Information Services suggested SADO contract a developer through CW Services.

Chairperson Nussbaumer asked if funds will be available past October. Mrs. Van Hoek indicated that if SADO receives their budget request they will be able to continue with the contract or hire an additional IT employee. However, if SADO does not receive the funding on October 1st and MAACS still has available funds, then the contract will be covered with MAACS funds.

Training

Mrs. McCowan informed the Commission that SADO offered all new MAACS roster attorneys a free one-year subscription to the SADO website. She has received positive and appreciative feedback from the new roster attorneys.

Mrs. Van Hoek also reported that there will be a training event for both SADO and MAACS attorneys.

Roster

Mr. Harp reported that he provided the roster with a copy of the Regulations with the changes that were made at the December Commission meeting. He also reported that he sent out a certification affidavit to 26 roster attorneys that were identified as having a high volume caseload. The affidavit asked the attorneys to certify the number of hours they devote to their MAACS practice. He has received all of them and the information will help with the process of addressing the issue of high volume caseloads.

Mr. Harp also reported that he is still in contact with the Court of Appeals and is pleased with the report he receives from them. However, there is still information he would like to see but knows that Mr. Zimmer is very busy and has not spoken to him about the added information. Mrs. Van Hoek suggested that she and Mr. Harp speak before he talks to the Court of Appeals.

Mr. Harp informed the Commission that MAACS added 55 new Level I attorneys after the orientation held in December. He also reported that Mr. Marshall approved the reclassification of three current roster attorneys from Level I to Level II and one attorney from Level II to Level III. Mr. Marshall also reached out to Level II attorneys to persuade them to reclassify to Level III. He was able to persuade one attorney to submit the paperwork to do so. Mr. Marshall also indicated that he contacted attorneys that have not been on the roster and former SADO attorneys in an attempt to have them join the roster at Level III. Of the 8 he contacted, he received one who would submit his application and one maybe.

Mr. Harp also shared with the Commission his proposal to address the problem of attorneys with a high volume caseload. He has identified 24 attorneys with high volume caseloads and the staff will be monitoring these attorneys on a daily basis. Once they have reached a determined monthly weighted cap, the attorney will be placed on inactive status on circuits that have sufficient attorneys to handle the caseload. Mr. Harp indicated that MAACS does not see a problem in Level I cases because MAACS currently has a sufficient number of attorneys to handle the Level I caseload. However, this is not the case in Level II and Level III. MAACS may be limited in what it can do because MAACS does not have enough Level II and III attorneys. Mrs. Van Hoek suggested that, in the future, SADO may be able to help in Wayne where Level III has no back up.

Chairperson Nussbaumer asked how much help SADO can give in Level II and III but just not in Wayne. Mrs. Van Hoek responded they can provide some assistance if SADO juggles their formula. Mr. Sacks noted that if they adjusted the formulas then SADO would fall below the statutory target of 25% overall. However, Ms. Schaub indicated that SADO has done this before where SADO took 40% of Level III cases.

Chairperson Nussbaumer also shared his concerns about the 22 roster attorneys that had high caseloads in 2013 and asked Mr. Harp how much can be done with them and how quickly. Mr. Harp responded not much can be done quickly. Mr. Marshall noted

that the system needs SADO to take more cases or the roster needs to add more high quality attorneys and receive better pay from the circuits.

Mrs. Van Hoek stated that addressing the high volume caseload issue is going to be a process and gradual. She suggested that MAACS set a goal for the 22 attorneys and cut them to 150% of the national caseload. Then in a year cut the caseload to 125%. Mr. Harp should start looking at the numbers and the two of them can work together to see where SADO can provide assistance. Chairperson Nussbaumer is encouraged to see a plan in place, even if it is small steps. He would like Mrs. Van Hoek and Mr. Harp to work together on a solution for Level II and Level III and for Mr. Harp to implement his current proposal.

MAACS Agenda

Budget

Mr. Harp reported that he felt the hearings went well for FY 2014-15.

MAACS Roster Case Highlights

Mr. Harp indicated that Mr. Marshall compiled the case highlights of MAACS roster attorneys and that they were distributed in the meeting materials. Chairperson Nussbaumer expressed his gratitude and indicated that they are useful.

SADO AGENDA

Budget

Mrs. Van Hoek reported to the Commission that the budget is currently at the Senate hearing phase. She is optimistic about the increase SADO has requested which would give them a permanent social worker and an additional IT person. Mrs. Van Hoek thanked the Commission for their support and help she received with the SADO budget.

Capacity and Formula

Mr. Sacks reported that SADO is close to working at its full capacity and if SADO does not make changes to take more cases in Level II and III, SADO will finish the year close to 24 – 25%. Chairperson Nussbaumer indicated that if SADO needed to change the formula to assist in the levels that need it, the Commission would approve the change. He also understands that whatever needs to be done needs to be done with caution and would like to see Mr. Harp and Mrs. Van Hoek work together.

Grants

Mrs. Van Hoek shared that the Crime Lab grant is nearly complete and indicated that SADO received an award from Criminal Defense Attorneys Association for their work.

SADO is currently working on the DNA grant which will be looking at cases where a defendant was convicted without a test of the kit. She indicated that it is a lengthy process. Mrs. Van Hoek anticipates she will need to apply for additional federal funding to complete the project.

Mrs. Van Hoek also reported that she is encouraged that SADO may have access to Byrne JAG grant funds.

Sentencing Reform Update

Mrs. Van Hoek reported that the Michigan Law Revision Commission was meeting and will have recommendations soon. SADO has been involved in the process of developing the recommendations. She indicated that there will be some major changes in sentencing this fall.

Juvenile Lifer Update

Mr. Sacks informed the Commission that oral arguments took place two weeks ago on the issue of retroactivity. SADO was invited to participate. Mr. Sacks felt that it went well but it will be a couple of months before a decision is known. Chairperson Nussbaumer stated that if *Miller* is retroactive and SADO needs to represent former juvenile lifer clients, it may necessitate SADO adjusting their caseload.

Court Rule proposals: MCR 6.302

Mrs. Van Hoek reported that SADO has submitted their position opposing the change, along with the State Bar Association. Chairperson Nussbaumer approved SADO's position.

Case Highlights

Mrs. Van Hoek noted that the handout was included in the Commission materials.

December Commission Meeting Date


The next Commission meeting will be June 18, 2014 at the SADO Detroit office.

ADJOURNMENT

The meeting was adjourned at 2:50 p.m.

Respectfully submitted,
MariaRosa Juarez Palmer

APPELLATE DEFENDER COMMISSION

BY: 
John Nussbaumer, Chair