

State Appellate Defender Office Evaluation Report

**Narratives of Post-Conviction Public Defense: How Attorneys, Clients,  
and Judges Experience the Indigent Criminal Appellate Process**

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## EXECUTIVE SUMMARY

In 1963, the United States Supreme Court ruled in *Gideon v. Wainwright* that all criminal defendants – regardless of their ability to pay – have a right to counsel. Yet more than 50 years later, the nation’s public defense system remains in a state of crisis, largely due to the lack of available resources. As part of this resource shortage, indigent defense systems have been slow to implement data collection and analysis systems. As a result, public defense agencies have been unable to use evidence-based research to improve their representation or advocate for additional resources.

In response, the current research project examines legal representation practices at the State Appellate Defender Office (SADO), an organization in Michigan responsible for providing assigned counsel services to clients who have been convicted at the trial court and seek relief through appeal. By mapping the legal landscape of appellate indigent defense through a prominent agency in one state, the project aims to not only help improve local representation in Michigan but also to establish broadly applicable evidence-based recommendations for other public defense attorneys and organizations.

The project draws upon a variety of methodological approaches to explore the personal journeys of stakeholders in the appellate system. Using a combination of site observation, focus groups, individual in-depth interviews, and written prompts, the researchers examine how public defenders, clients, and appellate judges conceptualize and experience the appellate process. By weaving together their stories, the project illuminates the complex and nuanced nature of appealing a criminal conviction.

The project’s findings are organized chronologically under the following eight subheadings: trial court conviction, initiating an appeal, first appellate steps, communication and expectation management, trial court strategy, appealing to the Court of Appeals, client-centered representation, and the personal journeys of SADO defenders. Several prominent themes surfaced repeatedly throughout the course of the research:

- ✦ Appellate clients experience trial court proceedings as traumatic events that determine their legal case outcomes while causing significant emotional distress.
- ✦ Clients have little agency in the trial court process, and for most clients, confusion and lack of control continue throughout the appellate process.
- ✦ Attorneys’ efforts rarely meet client expectations, with clients feeling lost, alone, and uninformed as they wait for their appeals to be heard.
- ✦ Attorneys are overwhelmed by systemic resource shortages and administrative setbacks that dictate caseload management and potentially impact case outcomes.
- ✦ Legal strategies differ across court jurisdictions and across individual attorneys.
- ✦ Attorneys, clients, and judges hold widely varying perspectives on the purpose of the appeal as well as on the potential for legal relief.
- ✦ SADO defenders engage in a wide range of self-care practices to sustain their work as public counsel.

The report concludes with a series of recommendations pertaining to trial court proceedings, the attorney-client relationship, case management, information sharing, database development, and public defender training.

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## INTRODUCTION

In 1963, the United States Supreme Court ruled in *Gideon v. Wainwright* that all criminal defendants – regardless of their ability to pay – have a right to counsel (*Gideon v. Wainwright*, 1963). Yet more than 50 years later, the nation’s public defense system remains in a state of crisis. With almost seven million people currently under the supervision of the adult correctional system (Glaze & Herberman, 2013) and between 60 and 90 percent of criminal defendants requiring publicly-funded attorneys (Beeman, 2012), indigent defense agencies struggle with inadequate funding, high caseloads and resource shortages. In turn, indigent defendants rarely receive sufficient advocacy and are often forced to accept rushed and unfair plea deals, resulting in disproportionately severe sentences and the perpetuation of inequality (Giovanni & Patel, 2013).

Largely due to the lack of available resources, indigent defense systems have been slow to implement data collection and analysis systems. As a result, public defense agencies have been unable to use evidence-based research to improve their representation or advocate for additional resources. Indeed, a recent report by the National Legal Aid and Defender Association identified the lack of evidence-based practice in indigent defense as a key factor in the struggle by public defense communities to achieve justice for their clients. In response, the report called for the increased use of research and data analysis in public defense systems (NLADA, 2013).

Scholarly literature on bureaucratic decision-making among other front line practitioners has offered additional evidence that systems evaluation is central to ensuring the fair and effective provision of services to clients. Research has suggested that front line practitioners exercise a tremendous amount of discretion in their work, increasing the

need for evaluation and the development of best practices (Lipsky, 1980; Maynard-Moody & Musheno, 2003). Such research has also demonstrated the importance of mapping and understanding systems based not only on quantifiable outcomes, but also based on the experiences and perspectives of relevant stakeholders (Danziger, Wiederspan, & Douglas-Siegel, 2013; Kissane, 2008). Although the front line practices of other justice-system agents (such as parole boards, judges, and prosecutors) have been subject to scholarly inquiry (Davis, 2007; Gottfredson & Gottfredson, 1988; Spohn, 2000; Tonry, 1996), public defense representation has been neglected in prior literature.

In response, the current research project examines legal representation practices at the State Appellate Defender Office (SADO), an organization in Michigan responsible for providing assigned counsel services to clients who have been convicted at the trial court and seek relief through appeal. By mapping the legal landscape of appellate indigent defense through a prominent agency in one state, the project aims to not only help improve local representation in Michigan but also to establish broadly applicable evidence-based practice recommendations for other public defense attorneys and organizations. The project draws upon a range of methodological approaches to explore the nuanced and personal experiences of stakeholders in the appellate system, combining site observation, focus groups, individual in-depth interviews, and written prompts. Findings offer important insight into indigent defense representation from the perspectives of attorneys, judges, and clients.

## **STUDY CONTEXT**

The State Appellate Defender Office (SADO) provides legal representation to indigent criminal defendants throughout the state of Michigan. SADO was originally

established in 1969 by the Michigan Supreme Court in an effort to provide consistently high-quality, efficient representation in post-conviction matters to indigent criminal defendants. As per the initial legislation, SADO is responsible for handling at least 25% of the statewide criminal appellate caseload. The remaining 75% of criminal appellate cases are handled by assigned private counsel and paid for by circuit courts and counties. Since its inception, the assigned counsel system has been administered by the Michigan Appellate Assigned Counsel System (MAACS). Due to SADO's success in providing quality counsel and obtaining legal relief for clients, SADO recently assumed management of the MAACS system and will now be responsible for managing assigned counsel appellate services across the state. SADO is also tasked with providing support services and training to assigned criminal defense counsel through its Criminal Defense Resource Center (CDRC), which has become a national resource for both trial and appellate level public defense practitioners.

To offer a sense of SADO's size and caseload, the organization is presently composed of 46 full and part-time staff members, including managers, attorneys, support staff. Employees work out of two offices, a larger office in Detroit and a satellite office in Lansing, but serve clients throughout the state. In 2014, the office was assigned 887 new cases and received a final disposition in 553 cases.

For many years, SADO has been a national model in its efforts to incorporate research and evidence-based practices into legal representation. As part of this mission, the organization partnered with a researcher (henceforth, "project PI" or "the research team") from the University of Michigan School of Social Work's Learning Community on Poverty and Inequality to evaluate SADO's current practices. The resulting project

explores how SADO staff members, former SADO clients, and judges from the Court of Appeals experience the appellate process and, specifically, the role played by SADO in advocating for clients' legal relief.

### ***SPOTLIGHT ON LEGAL RELIEF***

The phrase "legal relief" refers to an array of beneficial client outcomes that can come about through an appeal. Relief can include reductions in financial penalties or changes in sentencing, such as a resentencing or awarding of time credit. Occasionally, a new trial may be granted or some or all charges may be dismissed.

Legal relief can have a tremendous impact on clients, their families and their communities. For instance, sentence reductions mean that clients are able to return home from custody sooner than expected. In the quote below, one former SADO client describes his reaction upon learning that he would be getting out of prison early.

*"It was surreal. After four years, you don't know how, how much things have changed. Your kids is a little bit bigger, you a little bit more grayer, um, you may put on a few pounds here and there. Things have changed because when you incarcerated, time has a tendency to slow. Days get longer, nights are be getting longer. And when you free, everything is much fast-paced. So you playing catch up with everything – how you use this, how you use that? And it wasn't till recently that it actually sunk in that I am a free man. And I'm still dealing with that."*

Legal relief also has significant implications for taxpayers and government budgets. In 2014, for instance, appeals represented by SADO resulted in 225 years in sentence reductions, saving the state approximately \$7.5 million. This figure includes both savings attributable to sentence reductions (i.e., time that was never served) as well as savings attributable to money already spent on needless incarceration, such as where an individual was exonerated.

## **METHODS**

The analysis delved deeply into uncovering how three groups of stakeholders – SADO staff, SADO clients, and appellate judges – experience and create narratives for the appellate process.<sup>1</sup> Participants shared their experiences through a combination of

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<sup>1</sup> The project was originally designed as a mixed-methods analysis utilizing both administrative data and qualitative data, but only the qualitative findings are discussed in this report. The project PI drew data on all SADO cases whose final disposition date occurred in either 2013 or 2014 (n=1,024 cases). All data were drawn from SADO's case management system, an administrative database maintained by SADO employees. The database has the capacity to track an enormous amount of information, including

focus groups, interviews, and written prompts. The project PI also conducted site observation at the SADO office as well as the Detroit branch of the Court of Appeals.

The project launched with a series of three focus groups at the SADO Detroit office. Focus groups were designed to elicit staff perceptions of (1) best practices and common challenges in appellate representation, and (2) characteristics of clients, case types, and court jurisdictions that may shape case outcomes. The focus groups were also intended as a means of extracting staff opinions on the most critical directions for research. Attorneys and managers were placed in separate focus groups to allow each to explore their own experiences in a more informal and comfortable setting. The two attorney focus groups were composed of seven and six attorneys, respectively, who were randomly selected from the office's roster of staff attorneys (in total, 15 randomly identified attorneys were invited and 13 were able to attend). All four staff members that composed SADO's managerial team at the time – the Director, Deputy Director, Human Resources/Office Manager and Criminal Defense Resource Center Manager – attended the managers' focus group. Focus groups were led by the project PI and, in some cases, an additional researcher, and consisted of a series of semi-directed, open-ended questions that allowed SADO staff members to identify and explore issues that felt most salient. In addition to focus groups, the project PI conducted six interviews with attorneys and three interviews with other staff members (SADO's social worker, SADO's investigator, and one SADO paralegal). Interviews ranged from approximately 30 minutes to 2 hours. Seven were

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demographic information on clients, detailed information on trial court convictions, residential locations of clients, contact between SADO attorneys and clients, and appellate outcomes. However, as SADO managers have only recently started to place a high value on the careful tracking of this administrative data, many of the data fields are characterized by missing or inconsistently entered data. The project PI and SADO managers engaged in an iterative process of checking the accuracy of the data, but ultimately it was decided that these data require further inspection before being analyzed and presented accurately.



conducted in person at the SADO Detroit office and two were conducted by phone. Four additional attorneys who worked out of the SADO Lansing office participated over email through a series of directed writing prompts that allowed them to elaborate on central themes that had emerged throughout the course of earlier focus groups and interviews. Every full-time SADO manager and attorney participated through either a focus group, interview, or writing prompt, with several participating through multiple forums.

According to the original research plan, SADO clients were to be selected using purposive and systematic sampling, in which clients would be grouped into categories suspected to play an important role in the processing of criminal cases and then selected randomly from existing SADO databases. However, due to restrictions from the Institutional Review Board (IRB) that precluded interviews with incarcerated clients as well as the highly transient nature of this population, it became clear that SADO clients would need to be selected using a combination of convenience and random sampling. From an administrative list of clients whose cases had been closed between 2013-2014 (n=1,024), all clients were selected who, at the time of sampling, had been released from custody and were living in the community (n=149). From there, all clients who lived within two hours driving distance of the SADO office were identified, generating a final sample of 67 clients. In-person interviews were prioritized over video or phone interviews because of the sensitive nature of the interview topics. Although all of these 67 clients lived in Southeast Michigan at the time of the interview, they had been scattered throughout the state either in the community or in prison at the time of their appeal. Contact information for these 67 sample clients were provided by their respective SADO attorneys. The project PI reached out to sample clients using whatever type of

contact information was provided (mailing addresses, phone numbers, or email addresses). At least three attempts were made to contact each client, often through a combination of mail and phone. Given the highly transient nature of SADO's client population, many phone numbers were disconnected and many letters were returned as undeliverable. The project PI was able to make contact with 13 clients and 11 agreed to participate in an interview. Client meetings took place at a public location of their choosing, such as a diner or fast-food restaurant in their neighborhoods or in a private room at SADO's office. Interviews varied greatly in length depending on each client's willingness and interest in discussing the details of their case, from approximately 30 minutes to two hours. All clients were given \$20 as an incentive for participation.

Finally, five judges from the Michigan Court of Appeals were randomly selected for individual interviews using an online sorting program that randomly ordered the full panel of 26 judges. The first seven judges on the list were contacted via phone or email, and the first five judges to respond were interviewed. Judges were interviewed either in their personal chambers or in a conference room at the Court of Appeals. Interviews ranged from one to two hours.

With the exception of interviews with one client and one judge, all interviews and focus groups were audio recorded and transcribed verbatim. Themes from the two unrecorded interviews were captured by handwritten notes as per the participants' requests. All transcripts as well as written prompts were analyzed using an iterative qualitative content analysis approach, in which themes were extracted and categorized through repeated readings of the transcripts and then further explored in future focus groups, interviews, and prompts.

Throughout the first six months of the project, the project PI also conducted site observation at the SADO office and the Detroit Court of Appeals. This portion of the research included casual conversations with SADO staff in their offices and in common spaces, attendance at SADO staff meetings, and observation of appellate court proceedings (both hearings that involved SADO attorneys as well as those involving other attorneys). Site observation offered insight into themes that had emerged in prior focus groups and interviews while simultaneously offering important directions of inquiry for future focus groups and interviews.

## **RESULTS**

This section of the report uses qualitative data from focus groups, interviews, writing prompts, and site observation to describe the respective experiences of SADO staff members, clients, and judges from the Michigan Court of Appeals as they move through the appellate process. The narrative starts with a brief description of the study participants and then moves chronologically through the appellate process, discussing eight themes that surfaced most frequently in observation and conversations with stakeholders.

In total, 11 former SADO clients, 27 SADO employees (also referred to as “SADO defenders”), and five appellate judges participated in the qualitative portion of the study through either focus groups, interviews, or written prompts. Of the 11 SADO clients, eight were convicted through trial and three through plea deals on charges ranging from minor drug charges to first-degree murder. Some clients were sentenced to probation while others had spent more than 25 years behind bars. Four of the 11 client participants had obtained some form of legal relief working with SADO during the appeals process.

As discussed above, almost every full-time SADO employee participated in the

research project in some capacity, and so the employees represented a wide range of experiences and expertise. SADO staff members worked both on plea and trial cases and included brand new, relatively experienced, and senior attorneys. Court of Appeals judges were randomly selected from Michigan's Court of Appeals panel and represented a variety of political affiliations and areas of expertise.

### **Trial Court Conviction**

The appeal process directly follows and is shaped by trial court proceedings, and so it is not surprising that the clients, defenders, and judges who participated in the study spoke at length of their experiences at the trial level. However, it became clear that many appellate clients experienced trial court proceedings as traumatic events that not only determined their legal case outcomes but also caused high levels of emotional distress. Much of this distress was related to clients not feeling like their attorneys had the financial resources or time to put sufficient effort into their cases. *"I don't think [my trial attorney] spent a lot of time on my case, I don't think she did her research, I don't think she really cared."* In the eyes of clients, trial court attorneys rarely believed their innocence and, as a result, paid little attention to clients' unique circumstances. *"For the attorneys, too, it's like the stigma is that they're so jaded because they done heard it, they been through it all, they're just like, okay, plead guilty. It's like a revolving door."*

Clients also expressed a great deal of confusion about the process and felt that they were offered little guidance. *"How do you plead? They gave the choices, I think one of them was guilty, not guilty, or mute. And I didn't know what to do so I said, 'I'll stay mute. I need help, I need legal help.' ... It was nothing but a mess."* Another client relayed that his court date was repeatedly changed at the last minute and that he appeared

in front of a different judge each time. These unexplained inconsistencies were stressful and disorienting. Phrases such as, “*I don’t understand how that happened*” and “*I didn’t have a clue what to do*” were frequently used by clients in describing their trial court experiences.

In the same vein, clients explained in great detail how little agency they possessed in shaping their court outcomes. “*He [the court-appointed attorney] probably worked hard, but he didn’t do what I wanted him to do, he did what he wanted to do in my life, and I just don’t like somebody else deciding that for me.*” Another client relayed that although she begged her attorney to bring in a certain expert witness to testify on her behalf, the attorney never contacted the witness, and she did not feel able to take that step on her own: “*I wasn’t privy to do that. I couldn’t overstep him or anything like that.*” Several clients felt railroaded into taking unwanted pleas. “*I wanted to go to trial and, you know, my court-appointed kind of refused to do so. He was like, you know, I got you this plea, take it or find a new lawyer, so I took it and he handed me the appeals thing cause he knew I wasn’t all that happy about it.*”

Clients who self-identified as either racial or ethnic minorities attributed much of this lack of agency to systemic racism. They frequently referenced racial dynamics as they recounted their stories to denote the differences between themselves and people in positions of authority. Phrases such as “*my white attorney*” and “*the white guys who hooked me up for my polygraph*” suggested the sense of otherness that pervaded the process. For these clients, race impacted not only the way they were treated but also their legal outcomes. “*I kinda feeled [my attorney] was kinda racist, and he wasn’t really trying to help me.*” And, “*I was guilty before I was convicted just because of the way I*

*look.*” Yet at the same time, clients were reluctant to assertively draw this connection in interviews, prefacing many of their comments with statements such as, *“I hate to throw race into it again, but...”* and *“I’m not trying to say it’s just a race thing, but...”*. From both legal and emotional standpoints, the traumas experienced by clients in the trial courts set the stage for the impending appellate process.

### **Initiating An Appeal and Requesting Assigned Appellate Counsel**

Both clients and SADO defenders painted a disconcerting picture of how clients are given (or not given) information about the possibility of appeal and the request for appellate counsel. When a defendant is found guilty, the Michigan Court Rules dictate the advice to be given on the record for either an appeal of right or leave to appeal (Michigan Court Rules 6.425(F)). Anecdotally, judges often skim over this critical step, as explained here by a SADO attorney. *“They’re [defendants] given a 10 second or 5 second spiel during their sentence that says ‘here’s your form, acknowledge it, you have the right to appeal, turn it back in.’ And that’s it.”* Although neither clients nor SADO defenders reported judges directly discouraging appeal or intentionally misleading clients about the request for appellate counsel, judges may only quickly mention the possibility or subtly dissuade defendants. One SADO manager reflected on this dynamic.

*“There can be subtle ways that a judge can discourage someone from appealing. And I’ve sat in Wayne Circuit and heard advice of rights at sentencing from some judges and thought, boy, that really, you know, that’s not right. That would discourage me if I were standing there being sentenced.”*

The advice of rights can also be given at inopportune times, such as when it occurs during plea proceedings. As described by one SADO attorney, *“I don’t want to say coercive but it’s, you know, they’ve gotten to this point, they want to get to the next point, so what do you do? You accept all the little cookies that go in the row.”* Some clients

reported that judges gave them a form to fill out with no explanation: “*Yeah, they gave me a piece of paper, the appeal paper... [The judge] just gave it to me and after they sentenced me, he just left. He didn't say nothing about no appeal or nothing, he just gave me a piece of paper and walked away.*”

According to SADO attorneys and managers, judicial practices surrounding the advice of rights are largely dictated by local policy and norms. Their experiences suggest that there are significant county-level differences in the rate of appeal that can be attributed to a combination of formal and informal differences across court systems. One manager explained,

*“You would think that the rate of appeal would be fairly constant from county to county. But there are some where it drops to zero and you're left wondering, is it because nobody there is interested, or that there's fair proceedings (no reason to appeal?) or is the judge not advising them properly? I think it's really significant to the pipeline of work and access to justice for our clients.”*

Attorneys observed that one county has been more successful than the others in helping defendants successfully file their request for appellate counsel, thanks to a standardized form that offers explicit guidelines for initiating the process. Attorneys noted that clients from this county tend to be better informed about appeal. The impact of variation in the actual form – as well as the impact of more subtle practices – across counties and even courtrooms warrants further investigation in future research.

Some clients recalled learning that they could not only appeal but also request assigned appellate counsel from their court-appointed trial attorney rather than their judge. Clients overwhelmingly described these conversations as hopeful, where their attorneys explained that the appeal would be an opportunity to get the conviction overturned. After being convicted for his first felony, a client lamented, “*I was*

*devastated, I just saw my whole life, career, everything, just go out the window. So, you know, I was crying in the courtroom and [the court-appointed attorney] was like, well it's not over, you can appeal it. But she didn't state to me that the chances of that were narrow to none.*" SADO defenders echoed this sentiment, explaining that some trial court attorneys use the possibility of appeal as a way to diffuse the disappointment attached to a conviction. Others believe that trial attorneys have misconceptions about the power of appeal and, as a result, portray it as a simple fix to trial court errors.

Offered no resources by either their judge or trial attorney, several clients were left to navigate the appeal on their own. Resourcefully, they found information in the law libraries in jail or prison or through other inmates. One client explained that he learned about the appeal process entirely through conversations with other detainees. *"That's all they talk about...you know, the laws and what they think they can do."* Clients who were in the community often turned to the internet to learn about options for overturning a conviction and came across information – sometimes accurate and other times misleading – on how to appeal. Another client realized he could appeal after reading a notice hanging on the wall of his probation office.

Regardless of how clients learned about appeal, the experience was almost always fraught with confusion and urgency. SADO defenders pointed to the many holes in how requests for appellate counsel are presented, explained, and processed. As they explained, some clients are handed the form at sentencing and they sign it immediately; other times it ends up in the hands of the trial attorney, who may or may not process it correctly; and other times clients leave the courtroom with the form in hand, forcing them to keep track of it as they are transported back to custody and then figure out how to mail it to the



court. Defendants are required to sign two lines in order to appeal, one that acknowledges the right to appeal and a second that verifies their request for counsel, and the difference between these lines is rarely made clear. *“I signed some papers, I don’t even know what it was.”* The window during which clients can submit their request for counsel is not open-ended, and some jurisdictions strictly enforce deadlines. Several clients thought they had successfully submitted their request for counsel and then sat in custody, waiting for follow-up on an form that was never processed. Other clients were surprised to receive a phone call from SADO, not realizing that they had submitted a request. One SADO attorney encapsulated the confusion: *“I would have difficulty even saying these are people pursuing appeal. I don’t know that they even know they’re pursuing appeal at that point.”*

### **First Appellate Steps**

How do clients and SADO defenders respectively experience the period of time between when the request for appellate counsel is filed and attorneys first make contact with their new clients? The project revealed a systemically-driven disconnect during this time, wherein SADO managers, support staff, and attorneys have all hands on deck as they attempt to obtain necessary materials and triage cases, while clients feel ignored and out of control while they wait to hear from their attorneys.

Through focus groups and interviews, SADO defenders outlined the process by which the appeals are put into motion. According to SADO managers, cases that *“go right”* arrive at the office shortly after a defendant has submitted a request for counsel, ideally within one week. *“When things go wrong,”* administrative holdups – cases sitting in the circuit court or in a judge’s office – can delay the arrival of the case for several weeks or

even months. *“There's that process before it gets to us where administrative court problems can have a real impact and can make the appeal harder to do as effectively as possible because of the time limit that's there.”* From a legal perspective, these delays are most problematic in plea cases, which have inflexible jurisdictional deadlines. Even when case outcomes are not affected, administrative delays mean that clients are waiting in custody or being supervised on probation for more time than may be necessary.

Once cases are assigned to SADO, attorneys and support staff begin collecting case materials. Although lower court transcripts are relatively easy to obtain, the process of collecting “off the record” materials is often characterized by red tape and administrative setbacks.<sup>2</sup> In large part, the delays are county-dependent, as each county has its own (usually informal) guidelines to obtaining materials. For example, one attorney described how his Freedom of Information Action requests to the City of Detroit Police Department had been outstanding for two years.

*“They've never been denied and never been granted. If I want to go file suit against the city in Wayne County Circuit Court, knock yourself out, you'll get a judgment but they won't pay it because they're in bankruptcy and most importantly, they can't find the file, they can't find the records or they don't have the manpower to do it.”*

SADO defenders also struggle to acquire trial court materials such as police reports and witness statements from trial attorneys who are under no enforceable timeline for the

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<sup>2</sup> Michigan's unified appeal system makes it critical for attorneys to obtain “off the record” information. In appeals in all jurisdictions, mistakes are limited to information that is “on the record,” which includes any testimony, exhibits, motions and arguments that were presented to the trial court. Evidence can only be made part of the record in the trial court, not the appellate court. In most jurisdictions, the opportunity to put evidence into the record ends once the appeal is started. However, in Michigan, appellate defenders can raise so-called “off the record” issues by adding the necessary evidence to the record, either directly through the trial court or through a motion to remand at the Court of Appeals. As a result, while appeals in other jurisdictions involve very little investigation, appeals in Michigan require a significant amount of effort on the part of appellate defenders to search for relevant “off the record” issues. This system vastly heightens the importance of compiling as many materials as possible to increase the likelihood of obtaining legal relief for clients.

provision of documentation. Prosecutors, too, are often either slow or reluctant to respond to requests for materials. For SADO attorneys and managers, but especially for support staff, juggling the unique and ever-changing demands of counties, courts, and trial attorneys requires patience and organization. Although support staff sometimes share “*tips and tricks*” for obtaining files, they largely work independently, creating systems that work for themselves.

Due to administrative delays and incomplete case materials, attorneys are often unable to build the strongest possible cases for their clients. While it is difficult to ascertain precisely whether and how case outcomes would differ with more time or the addition of missing materials, the possibility for more relief always exists. A member of SADO’s support staff described a case for which she has spent the last year trying to get police reports from the trial court defense attorney, the trial court prosecutor, and the City of Detroit Law Department. In total, she had made more than fifteen unsuccessful attempts just to obtain police records for this single case. “*They still did the appeal but without those records. It may have helped. It may not have but it may have helped them get a better understanding of what happened in the case.*” As “*everything moves slow*” due to administrative delays, clients suffer the consequences. The SADO social worker described another case that took two years to move from the initial sentencing to the appeal due to bureaucratic delays. The client had originally been sentenced to prison but was resentenced to probation during appeal. It was unclear whether he would have been given probation from the outset or whether the judge considered the two years he already spent behind bars as part of his new sentence, but regardless, clients are “*not getting their lives back when [the sentences] are overturned.*”

As SADO support staff compile the relevant materials, the attorneys triage each case, familiarizing themselves with the details, identifying complex issues, and making decisions about the case's timeline. According to attorneys, they would ideally read a case, meet with the client, investigate outstanding issues, and write the pleading between when the case arrives at SADO and the first filing deadline. However, due to high caseloads and administrative delays, work flow tends to be deadline-driven. One attorney explained that she would like to prioritize plea cases based on clients' earliest release dates in order to have the most impact. However, *"in terms of prioritizing, I typically attend to whatever fires need to be put out."*

For SADO defenders, there is never enough time. For SADO clients, conversely, time drags by as they submit their request for appeal and wait to hear from their attorneys. Although most clients could not remember how long they waited between requesting appellate counsel and hearing from SADO, they all expressed sentiments similar to, *"It felt like it took forever."* During this time, they reported having no sense of what was happening or when they would hear from their attorney. Even for clients who had appealed previous cases, this period of time was characterized by uncertainty and confusion. *"You sit there, waiting. It's the hardest thing you ever have to do."* And,

*"They need to let you know more. They really do. I mean, I know that it's their time, and I understand we're in prison so we have time on our hands. But when you sit there and you don't know anything and you're seeing all these people getting released six months early, you know, they're going home, and you're going, oh my god, I have a chance, this could happen and then you don't hear nothing for months and months."*

Clients explained that they felt helpless and unable to advocate for themselves during this waiting period, either because they did not know whom to contact or did not have the money to make phone calls or send letters. While the stress of waiting is severely

exacerbated for clients who are incarcerated, all clients – regardless of their legal status following sentencing – expressed feelings of concern and uncertainty during this time.

### **Initial Communication and Expectation Management**

As SADO defenders gather case details, they also make initial contact with their new clients. Some attorneys follow the office’s introductory letter with their own more personalized letter while other attorneys prefer to make the first contact in person. “*My trial guys, I just explain it in person cause it’s way over their heads.*” The purpose of this first contact is always to explain the purpose of the appeal, the necessary steps to pursue the appeal, and the inherent opportunities and limitations. Across the board, attorneys reported that clients have very little understanding of how the process works. “*Even the ones that say they understand it, really don’t... They say, ‘Well, when am I going to get the appeal?’ and I say, ‘This is the appeal.’*”

As a result of clients’ immense confusion, attorneys spend a significant amount of time managing expectations. When asked to describe their initial understanding of the appeal, every client in the study explained that they thought the appeal represented a second chance. “*I thought that I got a second chance to tell your story, I didn’t know exactly what it meant if it would be a trial, or... but I knew it was important for me to turn [the request for appellate counsel] in on time so I had the choice.*” Other clients expressed that their trial attorneys gave them “*false hope*” and, as a result, they were “*very optimistic about the appeal,*” not realizing how rarely convictions are overturned. Attorneys echoed the rampant misconceptions held by clients. “*They very, very often – and sometimes you can’t disabuse them of it, no matter how hard you try – they very, very often think the appeal is some kind of an opportunity to retry the case.*” Another

attorney explained, *“We need to bring them down to earth as to what the appeals process is like. It is not a redo of the trial and is not a second bite at the apple. It is a review of the facts.”*

In response to clients’ lack of understanding about the process, attorneys described the painstaking steps they take to explain the appeal. *“My goal in every case is to clearly describe the process and explain what arguments we can and cannot make.”* Another attorney uses sports analogies, comparing the appeal to video review in a game. Other attorneys focus on the legal details of their convictions to increase their understanding.

*“And when you explain the elements of the offense, they’re like, ‘oh, okay, I get it.’ ... No one has really sat down and explained, ‘alright, these are the elements of the offense. This is how the law works. You might just have been in the car but because somebody died and you knew that they were going to do this, that makes you just as guilty.’ People don’t get that. And we should not be getting them on appeal with such fundamental misunderstandings.”*

Overall, clients reported that their SADO attorneys were extremely clear that their chances of getting convictions overturned or sentences reduced were quite low. *“That was the best part about it, dealing with her, is that she broke it down from the very first time... ‘Hey look, this might go south, but it might be something good for you, you know what I mean?’ So I wasn’t expecting a lot.”*

Several of the clients explained that they were confident in their understanding of the appeal because they played an active role in educating themselves. *“I would read it 15 times if I had to to understand every issue that he was bringing up. Then I’d go look at the law and see what he was talking about.”* Yet most clients felt confused throughout the process. *“I mean, it made sense, though I just couldn’t understand what he was saying. And I didn’t have enough time to really talk to him about what I really needed to talk to him about.”* In the following written prompt, one attorney summarized why clients may

not understand the appellate process despite the best efforts of attorneys.

*“On the attorney’s side, it is not always easy to simplify what can be very complex. Clients, on the other hand, sometimes fail to communicate when they do not understand something. Additionally, many clients have unrealistic expectations about what can be gained from the appellate process, and they are sometimes less willing to listen to what they do not wish to hear.”*

Expectation management is critical from the outset and, as will be further detailed below, remains an essential component of the client-attorney relationship throughout the process.

### **Returning to Trial Court: SADO Defender Voices on Strategy**

Although SADO defenders choose to take some cases exclusively to the Court of Appeals, other cases return to the trial court in an effort to expand the record. When asked about making strategic decisions at the trial court, SADO attorneys focused almost exclusively on *“knowing their audience.”* Veteran attorneys and SADO’s social worker, in particular, spoke at length about crafting arguments that appeal to judges. One senior attorney explained that the key to success is giving judges a roadmap that includes not only the legal arguments but also the consequences of prior court actions and potential implications of a new decision. *“You can read a file and see that there was a mistake in the guidelines scoring. But if you can write an argument for how the error affected the client and how it could be different, you will be more successful.”* Another attorney echoed this strategy, elaborating that arguments should present the facts *“in such a way so that you are showing the judge where you want them to go.”* SADO’s social worker has been particularly effective in helping attorneys tell clients’ stories, a strategy that has played a central role in resentencings.

In addition to more generic strategies for presenting well-received arguments, attorneys emphasized the importance of developing *“local knowledge”* of judges,

prosecutors and courthouses. This tactic is less relevant at the Court of Appeals, but trial court judges are “knowable” and also exercise more discretion in their decisions. In turn, veteran attorneys place a high value on crafting arguments specifically for the judge on their case. *“A lot of colleagues come to my office to discuss arguments they are considering making. I always ask who the judge is. I always ask whether they think the judge will buy that argument.”* And,

*“There are some judges where you know you need to write a very short and concise argument. If you knew that about the judge, you would cut down what you are writing. If you knew a judge knew a particular area well, that would be an argument they would be interested in. You may have more leeway there to make an extension-of-the-law argument. If I know I am going in front of a very conservative judge who is heavy into punishment and less interested in rehabilitation, I’ll play up legal arguments more. Whereas if I was going in front of a judge who was a big proponent of rehabilitation, I would probably make an effort to play up the background of the offender and the things that make the offender more sympathetic.”*

Similarly, knowing how a judge has ruled on certain issues in the past may inform an attorney’s decision to either present a different issue or present the same issue from a different perspective. This information can also help manage client expectations. One of the attorneys described this strategy in the following:

*“There’s one particular judge in [a local] County that I’ve had the same issue come up with three times in three months probably... And I already know how the judge is gonna rule. And I can tell a client, this is going to the Court of Appeals. If you want to pursue it, I will file this, but you should be prepared that we are going to lose... It does at least help prepare the client for that because clients get very invested in the case. And so when you can tell them, listen, I unfortunately have a little bit of experience here, this what you can expect, it does help.”*

Such knowledge can further guide caseload management, preparing attorneys for whether they should invest time primarily at the trial or appeals court on a given case.

Local knowledge can also shape courtroom etiquette, which, according to attorneys,



is less tangible but no less important in developing good rapport with the judge. “*You certainly don’t want to irritate a judge before ever stepping foot in the courtroom by doing something that is a pet peeve of that judge.*” Examples ranged from knowing what time a judge gets to the bench to what type of clothing he or she deems most appropriate. Attorneys relayed stories of being criticized for wearing the colors of a local football rival or walking into the courtroom in an overcoat. Gender plays an important role as well, as female attorneys are often held to different standards. “*Some judges don’t like women attorneys, so that’s good to know as a woman attorney before I go in there. And I can adjust, you know, maybe I act less assertively.*” Although some of the younger attorneys paid less attention to courtroom norms, the more seasoned attorneys repeatedly referenced their importance.

Knowledge of local norms can also assist in developing relationships with trial court judges and prosecutors, another strategy used by attorneys to obtain relief for their clients. Because SADO attorneys are “*always the visiting team,*” these relationships can be important for several reasons. For instance, “*you might get invited into judge’s chambers before hearing*” or “*you may have better footing on which to negotiate for your client.*” Through more informal discussions that occur outside of the hearings, SADO defenders and prosecutors may reach compromise. The advantages of being perceived as more of an insider can be particularly important in counties that attorneys describe as “*good ol’ boys clubs,*” which are often characterized by “*a circling of the wagon where the judge is defending the defense attorney, the prosecutor is defending the judge, etc.*” Even when local relationships do not directly affect relief, they can still make the process easier for attorneys to navigate. For example, “*a good working relationship with a*

*prosecutor's office results in reasonableness with deadlines and that sort of thing,"* such as being able to file an uncontested placeholder motion while attorneys obtain transcripts.

SADO defenders seek local knowledge through a variety of avenues. Most often, they send out emails to other attorneys in the office asking for advice. Members of the plea unit, in particular, have a wealth of local knowledge due to the frequency with which they go to court. Some attorneys utilize the Forum, an listserv for the local defender community, but most find it tedious and unhelpful. Others review transcripts in the SADO database for information on local differences or reach out to other attorneys from the county in which they are appearing. Veteran attorneys generally have the richest relationships with contacts around the state, as do attorneys who were previously employed as trial defenders or with state agencies. During interviews and focus groups, SADO defenders lamented their lack of access to local knowledge yet stated their reluctance to input their own experiences into a database. One attorney suggested that SADO concentrate on networking with trial counsel in order to build the relationships that will ultimately lead to this localized knowledge. *"I have a murder case. Attorney did a fabulous job. Appointed counsel, top notch job. And I just called him to tell him. I said, 'This was an incredible trial to read, you did fabulous work.' No agenda. And he was so grateful."*

While SADO defenders are confident that good relationships with prosecutors and judges lead to better legal outcomes, clients are often wary over what they view as friendship or camaraderie between their attorneys and other agents of the system.

*"Me and my wife was at Fishbones downtown eating lunch. So all the same people from the courtroom was all eating lunch together – the judges, the prosecutors, the lawyers. I'm like, how in the hell am I gonna get a fair trial if the prosecutors, they friends with the judge? You think they're gonna listen to*

*me over them? It don't make sense. They was all down there eating together, sitting right next to me... How can anybody get a fair trial if these people are friends?"*

Attorneys reassure clients with explanations such as, *"I explain that I am just being collegial and that I do not have a personal relationship with anyone else involved with the case."* Yet despite attorneys' efforts to explain their intentions, clients' observations of good will between their attorneys, prosecutors and judges tended to heighten their perceived lack of agency and hopelessness about the justice system.

### **Pursuing Relief at the Court of Appeals**

SADO defenders may file motions at the Court of Appeals either before, after, or in lieu of returning to the trial court. SADO attorneys articulated a unique set of challenges that arise at the Court of Appeals. A combination of interviews with SADO attorneys and judges from the Michigan Court of Appeals offered rare, "behind-the-scenes" perspectives from the stakeholders responsible for pursuing and deciding appeals in this jurisdiction. This section examines two themes that emerged these conversations: judicial principles and judicial recommendations for attorneys.

#### *Judicial Principles*

How do judges describe the operation of the criminal justice system? Interviews suggested that judges differ tremendously in their perceptions of the system's fairness, differences that fell largely along political lines. Judges who self-identified as more conservative offered shorter, simpler statements on the effectiveness of the system. In response to a question about whether the system functions in ways that are fair, one judge explained, *"Most of the time. Yeah. Well, certainly not perfect. But within reasonable parameters."* Judges who tended to vote and rule more progressively described at length

their concerns about the system. *“So the system is broken from its inception all the way through to the highest courts. There’s no question it’s broken.”*

Two judges also described in great detail the racial, economic, and geographic inequalities that exist in the system. One explained that some people may argue that *“everybody is treated the same in the justice system,”* but *“that’s bologna. That’s not true. It’s just not true.”* This is due in large part to the fact that *“money can buy justice,”* with prosecutors cutting deals with more affluent and politically-connected clients. He offered the following hypothetical situation:

*“Now, in Detroit, take a kid who’s coming from a predominately urban area, doesn’t have any support system, no ties to the system, no connections, if you will. And they come to him and say, ‘You’ve been ID’d in an armed robbery’... Let’s take a different kid, say, in an affluent – in Bloomfield Hills, who’s got access to top-level legal representation, he’s got parents who are politically connected, and the cops come and say, ‘You’re tied to an armed robbery.’... Assuming the kid from Bloomfield Hills did it and the kid from Detroit did it...the kid from Bloomfield Hills is ultimately gonna end up with a better deal.”*

Racial and economic disparities are tied, in part, to geographic-based differences. Not surprisingly, judges expressed concern with the justice system in cities such as Detroit.

*“You know, in the bigger cities, they have docket issues. And they gotta move it along, because the trial courts are getting their necks breathed on by the state court administrator’s office, and they’re told, ‘Move this along.’... So they’re putting the pressure on the lawyers to settle the cases, and that creates sometimes people pleading guilty to things that they may not be guilty of.”*

At the same time, small counties with limited resources face their own set of problems.

Another judge explained, *“If [a hypothetical county] has 10 murder trials a year, and that’s all the prosecutor’s office handles, they’re not going to be as used to doing murder trials as Wayne County. If they have one judge, that judge is gonna...have a lot on his plate and may not be the world’s greatest criminal judge.”* One SADO defender disagreed, explaining that while judges might not be as experienced, the quality of

investigation tends to be much higher in smaller counties. *“When you get a case, like a homicide or something, you get eight by ten glossies, measurements that you’d never even dream anyone was doing.”* Due to the intense nature of bigger courts, the SADO defender also observed that trial attorneys in smaller counties tend to be less defensive and more cooperative with appellate investigation. Such local characteristics not only affect trial outcomes but can play out at the Court of Appeals, affecting timeliness, the quality of the briefs received, and the quality of the oral arguments.

However, even judges who express concern about the overall operation of the criminal justice system or local disparities in trial quality concede that although the system is not perfect, trials tend to be *“fair enough”* to meet current guidelines. *“The issue for me and for any judge is did this person get a fair trial? And what constitutes a fair trial under the current standards, employed by our supreme court and by the United States Supreme Court, is woefully deficient... But, as a constitutional officer, I have to follow precedent.”* Another judge explained the difference between error-free and harmless error. *“Most trials are fair in this country. Our job is to identify the ones that aren’t. But we, I have to recognize that most of the time, the defendants can get not necessarily an error-free trial but one that I would consider to be fundamentally fair. Fair enough to affirm a conviction.”*

The differences between error-free and harmless error surfaced primarily during discussions of the claims of prosecutorial misconduct and ineffective assistance of counsel (henceforth, “IAC”). Across the board and regardless of political beliefs, judges echoed the sentiment that the central issue is not whether a defendant had an error-free trial but whether the error(s) that occurred surpassed the threshold of harm, at which

point the error(s) fundamentally changed the course of the process and likely the outcome. In other words, would a defendant still have been convicted had the error not occurred? *“I’m not saying that prosecutors don’t do stuff they shouldn’t do, I know they do, frequently, and the problem is the threshold for relief is so high. They have to prove that, but for that, they wouldn’t have been convicted, well that’s a very high threshold to get over.”* Judges relayed story after story of trial court errors – sometimes quite egregious – that did not meet the second prong of the IAC claim and thus did not prove prejudice. *“Our job is not to give people new trials every time there’s an error...but to understand that the process isn’t 100% perfect...I’m sure we could find an error in every case... But the ultimate question is, if we want to do over every case, the system is going to come to a grinding halt. So we have to pick the ones that made a difference.”*

Exploration of the IAC claim illustrated the extent to which judges perceive their hands to be tied in regard to opinions. Unlike trial court judges, they are beholden to the standards of review. In areas in which the law is *“settled,”* meaning that higher courts have already sorted out controversial issues, appellate judges are simply responsible for following precedent. Judges unanimously agreed that the law has become more settled over the last two decades, further limiting their discretionary power. *“The law is...you know, we’re not reinventing the wheel here most of the time so, the law is pretty straightforward.”* Judges also reported feeling immensely constrained by the frequency with which the lower court record is not sufficiently developed, leaving both attorneys and judges unable to prove prejudice. *“Well, okay, it’s ineffective, we know that. But how do I prove prejudice? Because there was no meaningful cross-examination here. So I say that by no meaningful cross-examination it’s ineffective, but yet I can’t prove prejudice,*

*because nobody freaking made the prosecutor put their case on trial, so to speak.”*

However, despite the insistence of all five judges that their discretion is extremely limited, there was wide variance in each judge’s perspective on the scope of judicial responsibility and, as such, their actual exercise of discretion. These differences were highly dependent on whether judges viewed the court as an “*error-correcting court*” – meaning that they are responsible for reviewing errors or abuses that occurred in the trial court – or a “*justice-seeking court*,” wherein judges have a “*responsibility to see that justice is served*.” Judges falling into the latter camp explained that “*no lawyer, no human being, should tolerate an injustice of any nature*,” and as a result, they cannot say, “*I have no duty or no obligation to right this wrong*.” These judges put a significant amount of energy into pondering systemic disparities and their subsequent roles in addressing injustice. Although issue-spotting (raising arguments that were not in the brief) is generally not encouraged, these judges were more likely to engage in this practice: “*I do it when basically I think someone has really screwed up...and I do it unhesitatingly*.” In contrast, other judges reported never or rarely straying outside of the briefs, believing that their job is to rule solely on the issues raised. “*I do not feel compelled to chase down every alley that I think could have been or should have been pursued*.” And,

*“Well sometimes, the temptation is just overwhelming. Even though that issue was not preserved, even though the appellate did not raise it, even though they didn't even argue it to our court, to say well it's so blindingly obvious that this should be the decision based on this other principle that nobody ever mentioned. I don't do that. It's the principle of parsimony. If they don't raise it, we don't decide it. That's the way I think we have to operate. Otherwise we're just roaming around in the legal landscape, you know, Sir Gallahans, fighting evil and correcting wrongs here and there and everywhere.”*

SADO attorneys articulated similar frustration with the lack of record development at

the trial level but disagreed with the lack of discretion perceived by judges. For instance, with regard to the claim that the second prong of IAC is difficult to prove, one attorney retorted, *“That’s nonsense. They choose not to rule favorably upon it.”* She continued, *“There is this mantra that the system works, we have a great system of justice.. and so they and the law are predisposed to affirming every single case that comes up there... The law is drastically not in our favor. But there seems to me to be an inability or unwillingness to say, something clearly went wrong here.”* Another attorney explained that judges at the Court of Appeals feel constrained because they are an intermediate appellate court. *“Their mantra is ‘we are an error-correction court. That’s all we can or should be doing.’ I don’t disagree with that, they are an error-correcting court. But there is a lot more they could be doing. They are still the first-step guardians of the system.”* Attorneys as well as clients also expressed concern over the *“different political tugs on judges”* that encourage the court to uphold convictions.

Judges admitted that they each approach their work with a different philosophy and distinct political beliefs. *“We see the world through different prisms.”* And, *“Every judge has a background that informs how a judge approaches a case.”* However, they argued that their Court rarely makes decisions along political lines. *“There is no republican version of the law or democratic version of the law, the law is the law.”* They also believe that these differences rarely affect outcomes. For example, *“[Although we may have different definitions of justice]...there’s nowhere to go. The trial, as I said, was basically fair...most of the time those definitions are wide enough or broad enough so that we can find common ground.”* And, *“I’ve been on the court 17 years, I’ve decided thousands of cases, voted on thousands of cases, written thousands of opinions. If I’ve written 50*



*dissents, I'd be surprised. Most of the time, we're unanimous.*” That said, they do allude to the political pressures mentioned by SADO attorneys and clients. One judge recounted a conversation with another judge that occurred with soon after he was elected to the bench. *“I voted to overturn a conviction. And I’ll never forget...one of the judges saying to me, ‘You do that, you’ll get beat in an election.’”* Another judge explained that in his time on the bench, he had made two unsuccessful attempts to write about a highly controversial issue related to race. *“Both times, I got reversed by the Supreme Court.”* Over time, even the most politically extreme judges tend to move toward the center. As one SADO attorney summarized,

*“They are so surrounded by [a conservative] mentality. Even if they come in there like [name of an extremely liberal judge]. When he was put on the bench, out the gate with these strong dissents. But you lose credibility as a judge when you go too far afield. But you don’t see that anymore from him... When you get there, you are outraged and then your outrage diminishes and diminishes, till it’s almost gone except for the most truly objectionable cases.”*

By and large, clients had very little to say about the Court of Appeals, likely a reflection of how removed they tend to be from this part of the process. The few clients who referenced the Court of Appeals expressed this very sentiment, describing their desire to play a more central role in the appeal. *“I did so much research, I had all this stuff written down that I was going to say with all these legal, lawyer type of words. I just read online. I googled things that had something to do with this situation that I was in.”* Another client attended the oral argument in his case and was distressed at how little time they spent discussing his appeal. *“I just really wish I could have expressed myself at the court. But then again, they barely listened to a lawyer, I know I barely stand a chance.”* Later in this interview, it became clear that the client had assumed that the oral argument was the *“entire appeal,”* not realizing that a brief had been submitted as well. Despite his

perception that the court had spent so little time considering his case, he stated that the most predominant feeling he had about the process was resignation. This client's experience suggests that confusion and lack of agency are not only present for clients in the early stages of system involvement but continue throughout the appeal.

#### *Judicial Recommendations for Appellate Attorneys*

Overall, judges spoke glowingly of SADO attorneys, expressing that they are strategic, thorough, and respectful. *"I have very positive opinions of SADO, and I think that the bench as a whole has a very positive opinion of SADO."* They also conveyed how, in their view, SADO attorneys – through no fault of their own – often have very few avenues on which to pursue an appeal. *"But by the time they get to us, their options are very limited. The standard of review is stacked against them. They have very few issues on which they can proceed."*

In expressing the challenges faced by SADO attorneys, the judges also reaffirmed their perspectives on the relative fairness of the justice system. Here, two of the more liberal judges on the bench explained that SADO's stellar legal representation is typically not enough to overcome clients' guilt. *"What they have to understand from my perspective is they're not losing because they're bad lawyers; they're losing because their clients are guilty and they got a fair trial."* In a separate interview, another judge repeated this statement almost verbatim. *"But most of [the attorneys] that I've met and spoken to are really devoted to the work. They understand the reality. They understand that most of these people are guilty. They understand most of them got a basically fair trial."*

Despite overwhelmingly positive feedback on SADO's performance combined with a

lack of optimism about SADO's overall chances of success, the judges relayed the following suggestions to help appellate attorneys improve their briefs and oral arguments. Briefs. In interviews, judges reiterated the centrality of the brief in the appeal. "*I'm gonna pound the table eighty-thousand times and say, 'It's the brief, it's the brief, it's the brief.'*" Several judges outlined the "*ABCs of brief writing: accuracy of procedure and facts, brevity, and clarity.*" In terms of actual format, they strongly suggested organizing briefs according to the court rules, with an introduction up front followed by the statement of issues, statement of facts, argument, and prayer for relief. Even attorneys who structure their briefs using the correct format may not follow the rules within each section. The most common frustration cited by judges was that briefs are often prepared as chronological stories of trial testimony. "*That's not a story of the case. That's a story of the trial.*"

Briefs should be concise and to the point, weaving a story about the facts and the main legal issues. Judges want to know at the outset what they should be looking for throughout the brief and strongly prefer when attorneys are thoughtful about how many issues they raise. Although judges differed in the extent to which they believe SADO can improve the parsimony of their briefs, they stated across the board that MAACS attorneys need a significant amount of training in this area. "*I think that's what SADO does that distinguishes them from assigned counsel, is that they, for the most part, are making a conscientious effort to raise only the issues that have arguable merit.*" Judges also mentioned their concern with what they view as the "*cutting and pasting of canned issues*" and the "*copying of old arguments from the brief bank.*" Judges prefer to see fewer legal citations and more legal arguments that drive home the point. "*Public*

*defenders need to be more adept, by and large, at giving me a reason to rise to the bait. I don't mean to put it in car salesman terms, but you need to be more of a closer."*

Oral Arguments. Although judges admitted having a strong sense of their opinion before oral arguments, they insisted that the process is not perfunctory. *"At least two or three times during a case call, I will say 'when this lawyer said x, I want to go back and look at the transcript because if it is true, I'll have to go back and change my opinion.'" And, "Absolutely, it's worth appearing. Again, why would you forgo the opportunity to talk to the three people that make the decision four hours before they're gonna make it?"*

According to the judges, oral arguments are particularly important for three reasons: (1) in busy courts, judges may have overlooked something in the brief; (2) judges may seek clarification on the brief from the attorneys; and (3) changes in the law since submission may warrant a legal update from attorneys. One judge explained,

*"So if I read it at 4:00 and let's say one of my kids calls me and I'm interrupted three times...I've read it but I haven't really taken it in and my brain hasn't really engaged in it. Then I go to oral argument and for some reason, it just hits me in a different way. Or sometimes just hearing somebody argue a problem, it's different than reading the words on a paper."*

Another judge elaborated, *"I view oral arguments primarily as a vehicle to assist the judges if they have issues with your case that they are unsettled about and need your input and your perspective."* Because the court is overloaded and judges experience fatigue during the panels, they stressed the importance of keeping the argument simple and concise. *"I'd say, pick your best issue, maybe two, never more. Because you'll lose if you try to argue eight or ten issues. You'll just lose us. That's the point at which the judge's mind goes click and they're looking at 'em but they're not listening."*

Other judges emphasized the importance of more intangible, non-legal factors such as

appearance and courtroom behavior. *“First, damn right you should pay attention to your appearance. Judges are human beings. We make decisions without thinking about it. When you walk up to that podium, I am making decisions I may not even be conscious of based on the way you look, what you're bringing with you.”* For some judges, attorneys who are late, disorganized, inappropriately dressed, reading the newspaper, or sleeping in the back of the courtroom are showing disrespect to the court, which may indirectly affect judges’ willingness to listen. *“What's my thought process? Undisciplined, therefore unpersuasive.”* Judges also emphasized the importance of speaking loudly and slowly, making eye contact, and looking interested. Another judge mentioned the importance of the ceremony and formality of the process, feeling put off by attorneys who fail to properly introduce themselves. Finally, they all highlighted the importance of good listening – *“You're trying to persuade ME. You want to hear MY question”* – and being truthful. *“There are three possible answers. ‘Yes’ -- you can put a comma after that and say, ‘but,’ and then explain. ‘No,’ but explain. Or ‘I don't know.’ ‘I don't know’ is the only answer an advocate should give when he or she doesn't know the answer. Never, ever fake it.”*

### **Client-Centered Representation**

The previous two sections illustrated the multiple considerations that attorneys need to balance when pursuing an appeal. One final – and perhaps the most essential – component to preparing a case is developing a trusting relationship with the client. Good client-attorney relationships not only shape legal outcomes but also frequently inform a client’s sense of justice and satisfaction with the criminal justice system. The following section first presents the characteristics that clients identify as most important in client-

attorney relationships and then discusses how SADO attorneys conceptualize and strive to meet client needs.

### *Clients' Self-Identified Needs*

Every client participant in the study felt that his or her trial attorney had been ignorant, dishonest, or too overwhelmed to provide adequate representation. As a result, clients reported feeling initially skeptical about the capabilities of their appellate attorneys. *“It was hard to trust her after my first attorney, I kind of felt like it’s not even worth trying anymore.”* Clients identified three different themes in their interactions with appellate attorneys as most central in shifting their skepticism to trust: open communication, belief in innocence, and strategic, client-led decision-making.

According to clients, communication is the most important aspect of building a trusting relationship. One client explained, *“People are gonna be scared, really scared. Try and keep in touch, follow up with messages, even if you gotta give it to the secretary to pass the message forward.”* Another client who worked with his attorney for many years before his exoneration understood that frequent communication takes a lot of time but is essential. *“[The clients] can get carried away...and can bug the shit out of the attorney where they can get nothing done, and I understand that. But they just gotta shuffle with the person, whoever the person is... My suggestion to make them feel a little comfortable is to communicate with them.”* A handful of clients reported feeling supported by their attorneys’ availability. *“I talked to [my SADO attorneys] very often. If they...was gonna be out of the office, I will call them and they’ll tell me, well I’m not gonna be in the office this particular day, or if they’re out and I happen to call and forget, I just leave a message with the secretary.”* However, most clients felt that their

attorneys were less accessible and willing to walk them through the details of the process than they would like.

Researcher: *“What did you feel was most important in developing a relationship with your attorney?”*

Client: *“Just knowledge, knowing what’s going on. Being aware of what’s happening, exactly, going through, okay, the reason why you got sent to circuit court from district without a police report, you know, why can’t that be argued? Explain it to me.”*

Researcher: *“And did you try to ask her those questions?”*

Client: *“I tried to but they are in a hurry.”*

Clients value communication that is consistent, thorough, and straightforward. They also want honesty and trust to be a two-way street. They perceived a direct correlation between the degree to which attorneys believed their innocence and their attorneys’ ability to obtain legal relief. Clients immediately vetted their attorneys based on whether attorneys seemed to believe their telling of the case. *“I asked [my SADO attorney], like, do you believe first, do you believe in me and my innocence?... If she didn’t have no belief in me, I didn’t want her.”* An attorney who believes in a client’s innocence is an ally rather than just a lawyer. *“And I guess that was part of why I felt good about the process, was she believed what I was saying. And then I didn’t have to fight it. I didn’t have to speak anymore. It’s like she was speaking for me.”* Clients explained that attorneys who believed in their innocence would fight harder to overturn their convictions. *“Imagine yourself in their shoes. And if you believe that they’re innocent and you want to switch places, how would you feel? Would you want somebody to do a half job or go the extra mile to clear you?”*

Finally, attorneys can earn clients’ trust by working diligently and strategically. Clients who were satisfied with their representation by SADO described this diligence. *“She put the time and effort, every move she made was calculated, the risks were, you*

*know, just everything. It was like how a lawyer should be, even from day one.”* Diligence also meant that their attorneys demonstrated sufficient knowledge of their cases. *“It’s like, they had gone over everything by the time I was talking to them. [My attorney] knew exactly what had happened and she, we talked about a lot of things, a lot of angles.”* Although most clients felt that their attorneys were thorough, several expressed frustration that their attorneys *“didn’t put much time into the details”* and therefore were unable to explain why convictions were upheld or why they could not move forward any further with the appeal.

In the end, hard work only matters when it centers around clients’ self-identified needs. Clients who were unhappy in this realm made statements such as, *“I mean, don’t close the case early, it’s not up to you.”* Another client stated that his appellate attorney had refused to withdraw his plea even though the client repeatedly made his preference clear. *“If it does turn out I lose my misdemeanor plea that I didn’t even want that I pled no contest to and I got a felony and served some time, well then, you know, I got the trial that I wanted that I wasn’t given and got what I deserved.”* In comparison, clients who were pleased with their representation felt that their needs were always at the center of decision-making. *“Every time she went to do something, she strategized with us and got our input before she did it.”* One client eloquently summarized the keys to developing a successful client-attorney relationship in the following passage.

*“Be honest with them and tell them what you are capable of and are you going to go that extra mile just to do things, just to get by doesn’t always work. You have to believe in your client’s innocence and it will push that drive a little, you’ll find that fire, you’ll have that drive to go a little bit more. But some cases, you have the clients that might play the role and know that they did it, but that’s not your, that’s not the attorney’s judgment to condemn or persecute that client. They supposed to do their job...as the law permits, to get them a second chance at it. I just say, just be honest with yourself.”*



The most pervasive sentiment expressed by clients was that they needed “*more*” – more contact with attorneys, more honesty, a more in-depth understanding of the process, and more attention paid by attorneys to clients’ suggestions about legal strategies.

### *SADO’s Approach to Client-Centered Representation*

In conversations with SADO defenders, it is clear that they share with clients many of the same beliefs about the importance of the client-attorney relationship. The narrative around client needs at SADO can be best understood through the office’s intensified focus on “*client-centered*” or “*holistic*” representation, a trend that follows a broad national shift within public defense agencies. This approach has been at the center of staff trainings and new protocol and these terms are frequently heard in conversation in the office among both attorneys and managers. The managerial team expressed a great deal of excitement about the office’s ongoing commitment to placing clients at the center of representation. One of the managers explained that in previous years, the office utilized more of a “*four corners of the record kind of approach to cases, you know, get the case done, look at the record, are the issues preserved.*” She contrasted this with SADO’s current approach.

SADO Manager: “*We have, in recent years, broadened that, kind of blew out the walls from that tunnel and are now looking at the clients in a different way. It’s a popular client-centered culture sort of movement that we’re all very familiar with now. But it pays off. Looking at the client differently, interacting with them differently.*”

Researcher: “*How were they looked at before?*”

SADO Manager: “*Sometimes as obstacles to getting work done. You know, people who would slow you down a little bit... We respected our clients but we didn’t listen to them as well, and I think the representation suffered a little bit as a result. And I feel that now we are really paying more attention to the client.*”

Managers explained that client-centered representation emphasizes representation that is holistic and individualized. To illustrate this point, another manager described a recent case in which a client was not able to raise any legal issues but desperately wanted to be able to see her children while in prison. Because the mother did not have their birth certificates, the Department of Corrections would not allow visitation. Her attorney helped secure the children's birth certificates and facilitate regular visits. Although the client did not obtain any legal relief, the attorney was able to assist in what the manager called a "*really meaningful way*" that brought a distinct – but equally significant – form of relief to the client.

Not all SADO attorneys, however, share this level of excitement about client-centered representation. Pushback comes primarily from senior attorneys who feel that the "*shift*" is really just a "*rebranding*" of the work in which they have engaged throughout their careers. "*It makes people who have been here more than a couple years think that we're being essentially criticized, I think, for what we have been doing. And the suggestion that we're supposed to be doing something different and more than what we have been doing, where we already, many of us, feel like, how many more hours do I have to give to this?*" Other attorneys expressed concern that there is a potential for "*mission drift*" as managers ask them to take on tasks outside of their primary aim to seek legal relief. They can understand the need for more services since "*there are such deficiencies in the system*" and "*we do want to provide things for them that other social programs can't provide,*" but there is widespread apprehension that "*they want us to be social workers.*"

How, then, do attorneys themselves define and describe their relationships with clients? With no exceptions, every attorney started by explaining that their job is to

provide the most effective legal representation for their clients, but when clients and attorneys disagree on the best course of action, clients are always in charge. *“It’s their case, not mine. If I’ve done everything I can do to advise them, and they make their own decision, that’s all I can do.”* The attorneys described a variety of tactics that they use when clients want to pursue a direction that seems ill-advised, most of which focus on explaining and re-explaining the risk. *“You do your best to make sure they know everything they can know about risks and benefits, etc, and then be able to let go of what you might think the best thing is.”* Another attorney uses analogies or asks clients what their mothers might think, since mothers tend to have *“better perspective.”*

Even when clients disagree with their attorneys’ recommendations, attorneys support them to the fullest. Learning to follow clients can be a developmental process for attorneys. One explained:

*“Being client centered takes more time and patience. I think sometimes that the attorneys that have been doing it longer get a little jaded. And I think that there are some young attorneys that get so, like, ‘But that’s not good for you! You’re making a bad decision!’ And then they get really frustrated because they know, like a parent, it’s like when your kid makes a bad decision. You want your kid to do well, you’re looking out for your client, your kid, but in this case, your kid is your client who is an adult. And sometimes they make bad choices but if they are making a choice that’s good for them and it’s informed, they know all the risks, they know all the benefits, and that’s the decision they make? They are the client.”*

Although it can be a challenge, SADO defenders described this as the best course of action because, *“If it’s [the client’s] decision and he got there on his own, he’s gonna feel much better about it down the road.”* Attorneys reported that *“there is more of a sense of acceptance and closure”* for clients who have chosen the direction of their own appeal. One attorney described this dynamic in a recent case where no legal relief was obtained.

*“We pursued appeal, we fought, but he was thrilled that I had fought for him. He felt that was a successful appeal. And I felt good at the end because he felt so good.”*

Yet despite unanimous agreement that clients’ needs should always come first, there is significant fluctuation in how attorneys’ identify, prioritize, and take steps to meet client needs. Some attorneys described setting boundaries around the types of tasks in which they will and will not participate, many of which differed across attorneys and often seemed arbitrary. For example, one attorney wanted to *“make the client feel heard”* and would *“talk to the family as necessary”* but would not *“help the client get moved to another [prison] facility.”* Other attorneys in the same focus group stated they help with transfers at times but try to limit the amount of time they spend speaking to family members. In another focus group, one attorney mentioned occasionally purchasing food for clients, at which another attorney scoffed, *“I’ve never given them a nickel.”* Others differentiated between what they called *“emotional versus physical needs.”* For instance, *“I think of that as a function, you know, of giving somebody hope even though realistically they're not gonna get a benefit from it. But it's still, like you say, part of the support system.”* In contrast, another attorney said she only intervenes if a client has safety issues or is not being adequately treated for an illness.

Another group of attorneys based their willingness to partake in *“extra-legal”* activities on whether such activities have the potential to improve outcomes. *“I draw the distinction around whether it has a substantive legal impact.”* For example, *“If there’s something I have to do in a case cause it’s going to make our relationship better... I’ll do that with a particular client if it helps me to represent them. Not so much because I feel bad... but because it makes my job as their lawyer easier and more effective.”* Another

attorney summarized it simply, *“I tell my clients, I say, look, I’m not here to be your friend, I’m not here to be your relative, I’m not here to be your protector, I’m here to be your lawyer. But sometimes being your lawyer means you have to do the other things.”*

Finally, other attorneys identified time as the most important factor. They will agree to do *“social-worky things”* for clients but only when it does not detract from their legal work. *“Yes, we can respond and pay attention to clients. But ultimately, our mission is to represent them in the legal forum...It’s hard not to want to [help with other needs] but there has to be a recognition that we are lawyers and want to advance their legal positions first.”* A newer attorney explained that she is willing to discuss client needs that are not directly pertinent to the appeal but *“there is a line you have to draw, which is where spending time on social-worky things for one person will jeopardize your representation of others. For example, if I have six hours to work on a client’s case and I have no issues, then I might help with something social-worky.”* Most SADO defenders, however, laughed at the notion of having extra time to help. *“I already work nights and weekends, holidays.”*

### **The Personal Journeys of SADO Defenders**

*“I think that one of the things about this job is, some of the things you have to face to do it are really big things. They’re not little. To understand how important each of the attorneys are in this office, for them to understand how important they are, might be too much for some of them. I mean, I’m speaking mostly from my own experience, when I realize how important my role is in this one person’s life, it’s daunting. And to take responsibility and to own up to it is not a small job. And it’s very humbling... This job is not for the weak, it is really not a normal pick. They are superheroes, the attorneys.”*

As reflected here by SADO’s social worker, the work performed by SADO defenders is intensive, emotionally grueling and – at times – seemingly thankless. Cases in which legal relief is obtained are few and far between. What strategies, then, do SADO

defenders draw upon to stay motivated and energized? In focus groups and interviews, they referenced three types of beliefs or actions that fuel and refuel their work: outrage at the criminal justice system, broad measures of success, and office-wide and personal practices of self-care.

Many SADO defenders articulated that they share a value system that prioritizes fairness, equality and perseverance. One attorney explained that everyone in the office would rather “*represent the underdog than the favorite.*” As a result, “*The few times we win, they’re much sweeter... We all think being in the prosecutor’s office and winning easily wouldn’t be as satisfying as losing most of the time but winning some of the time.*” They recognize that they are “*fighting against a system that is largely stacked against you,*” and they find this injustice to be motivating rather than discouraging. Although the work can be exhausting, they are eager to come to work each day. “*I love the legal part, you know, I love the research, the writing. I love when I feel like I have made a difference and had an impact. I love this office, I love being around the people that I work with.*” That said, they also recognize that they need to develop sustainability practices in order to engage in this work for the long-term. A young attorney described this realization:

*“It’s just hard being this early in my legal career because I feel the outrage or the injustice more. I’m more bothered by things that are commonplace than people who’ve been doing this a long time and I haven’t yet developed as thick of a skin as I probably need to to be able to do this work sustainably. I just, it’s hard, but there is a part of me that doesn’t want to stop being outraged at all because it’s ridiculous, this system that we have. But I’m gonna be exhausted all my life if I don’t find a way to manage that.”*

One essential sustainability practice that many SADO defenders describe is the art of expanding the definition of “success.” This does not mean that attorneys stop seeking legal victories but that such victories are not expected in every case. “*You gotta accept*

*the fact that we're not gonna win much. And take pleasure in the few that we do."* SADO defenders also explained that success must necessarily encompass outcomes other than legal relief. For instance, attorneys defined success as *"making the client feels that he has been given a voice"* and *"making good arguments, setting up good issues for further appeals, being imaginative in terms of pushing the envelope."* Attorneys and managers agreed that this perspective is an essential element of being an effective advocate.

That said, warding off disappointment and compassion fatigue requires more than just broadening the idea of success. SADO defenders need to develop replenishing self-care practices in and out of the office. One staff member explained that for her, self care is about how she chooses to spend her time outside of the office. *"I don't bring my personal life in the office... I feel vulnerable enough in this position so I try to keep my private and work life separated. I eat well and I exercise and I meditate... I spend time with family."* A senior attorney echoed this sentiment. *"There has to be a very broad commitment that what you are doing is right and that it feels valuable to you. But also being able to separate yourself from the job in the sense that you can go home at night and sleep even though you didn't win something for your client that you should have won."* This attorney has learned over time how to evaluate her state of well-being. *"If I find myself getting short with clients on the phone, where I really can tell I'm being short and not compassionate or sympathetic at all...those are signs to be that I need to step back and take care of myself because I am getting burned out."* Getting burned out might warrant a trip to the gym, a vacation, or a multitude of other practices that individual attorneys have developed for themselves. These practices are not only good for attorneys but ultimately serve clients, and the SADO social worker is adamant about this point. *"We do trainings*

*for young attorneys and students, and I tell them that they are worthless to clients if they don't practice self-care."*

For some SADO defenders, the majority of self-care takes place within the confines of the office. Many of the attorneys mentioned how much they “love” and “appreciate” their colleagues and that they find motivation in social events like happy hours, holiday parties, and baby showers. Even “*jokes over email*” can go a long way toward creating community. Managers are aware that “*this job can really wear on people*” and try to create outlets for the “*fatigue that wears down public defenders uniquely*” that has included remodeling the office to create more general social spaces and celebrating individual and office-wide victories. A new mentorship program also aims to foster relationships that help younger attorneys find solutions to questions such as, “*How do you go home and turn it off at night?*” These types of innovations have been well-received but the demand appears to exceed the current programming. Younger attorneys stated that they need more mentorship and training, and more seasoned attorneys expressed that they feel underutilized. “*SADO does not take advantage of the experience and knowledge of attorneys who have been there for many years.*” A small handful of veteran attorneys appear to take on much of the informal training load, and while newer attorneys are grateful for this assistance, they also express concern that are overloading the more available attorneys with requests for assistance.

## **OBSERVATIONS AND RECOMMENDATIONS**

The analysis completed in this project suggests a number of observations and recommendations for moving forward that are organized below in five themes. Opportunities for future research projects are also identified.



## **1. Trial Court/Request For Appellate Counsel**

SADO defenders identified pervasive concerns with trial court representation, all of which were confirmed by SADO clients. Although this is out of SADO's direct jurisdiction, the launch of the Michigan Indigent Defense Commission (MIDC) should provide tangible opportunities to further investigate and improve trial court representation.

*POTENTIAL RESEARCH OPPORTUNITY: SADO managers alluded to the differential rate of appeals across counties and across regions. Using data collected by SADO on both cases coming into SADO as well as cases coming into MAACS, investigate the types of cases coming in from each county/court broken down by (a) trial/plea, (b) type of offense(s), (c) sentence range, and (d) type of sentence. SCAO, MIDC, or potentially individual courts may be able to provide information on the overall number of cases of each type in order to calculate relative rates by court.*

## **2. Attorney-Client Disconnect**

The disconnect between clients' self-identified needs and the extent to which attorneys are realistically able to meet these needs emerged as one of the most salient and important elements of the project. Some of this disconnect may ultimately be unavoidable given the incredibly complex nature of the law and the limited time that SADO attorneys have to spend on client communication. That said, the interviews were extremely illuminating in the extent to which clients remain confused about the appellate process long after their cases are closed. SADO attorneys were very surprised to learn of this confusion and expressed interest in helping to alleviate it. One common response by attorneys was that their clients may have a difficult time understanding the written materials that they send, despite their efforts to simplify them as much as possible. Going forward, additional time should be put into examining these materials and potentially convening a focus group of clients to give feedback on what will help them best grasp the

process. Other possibilities include making a video that can be shown in prisons or creating a more accessible graphic novel-type document that describes the journey from trial court conviction to appeal. For an example, see the graphic novel retelling of Marc Mauer's *Race to Incarcerate* (Jones & Mauer, 2012).

### **3. Case Management and Information Sharing**

In interviews and focus groups, the project PI brainstormed with attorneys and other staff members to identify the following tools that could improve case outcomes.

#### *Case Management*

Attorneys lamented that it is difficult to keep track geographically of court locations and clients' prison locations and, as a result, they often use their travel time inefficiently. A mapping program that would allow attorneys to visualize the locations of courts and client locations could enable better planning and ultimately less travel time away from the office. Mapping software could range from an extremely simple program like Google Maps to something far more complex. These maps might be useful as one part of the new attorney dashboard.

#### *Information Sharing*

Two opportunities for increased information sharing surfaced during a number of different discussions, both related to the generation of "local knowledge" of court systems across counties. First, both attorneys and support staff spoke at length about the difficulty they experience in obtaining trial court materials. Although they share basic resources such as phone numbers and email addresses for the relevant contact people in each county, these processes are largely independent and decentralized across staff and attorneys, as each attorney-support staff pair has developed their own individualized

systems. Some of the defenders described the benefits of this type of decentralized system as it allows them to capitalize on their own unique strengths and also maintain their own work flow. However, there may be advantages to centralizing at least some of this process in order to cut down on the frequency with which SADO defenders reach out by phone and email to external administrators and agencies.

A second opportunity for information sharing concerns the “local knowledge” related to trial court judges and courthouses. Like information on obtaining trial court materials, the current SADO process of gathering information on trial court judges and courthouses is both informal and individual. Attorneys looking for information generally send out emails to the office, while more senior attorneys who have established connections in other counties often reach out to their contacts for firsthand information. Such connections take time – years, even – to develop, and attorneys reflect that it would be difficult to share this information internally using any kind of formal structure. However, there is a great demand for it, as many (especially newer) attorneys feel strongly that they could improve the quality of their representation with more of this information. Any sort of internal system that tracks usable information on judges or courthouses would need to be confidential and would require the buy-in of attorneys, since they would be called upon to enter in this information. Tracked information of this sort could be related to courthouse and prison facility norms, such as “The courthouse in County *A* does not allow cell phones” or “Judge *B* in County *C* is on the bench by 8am sharp and is easily angered by latecomers” or “Judge *D* in County *F* has ruled the same way in every single one of my *G* cases and therefore the best approach is to *H*. One attorney referred to this type of tracking system as an “internal SADO Yelp.” Attorneys also asked for aggregated

case information on how judges have ruled historically on different types of cases, and this may be a potential long-term project on which to partner with the Michigan Indigent Defense Commission.

*POTENTIAL RESEARCH OPPORTUNITY: How do judges tend to rule on different types of cases? SADO attorneys explained that as they prepare a case for trial court, it would be helpful to have access to information such as, “How many of X cases has Judge Smith seen in the last five years and how has he ruled on these cases?” This information could inform the decision to go to trial court or directly to the Court of Appeals, what types of legal arguments attorneys make, how they manage client expectations, and the organization of their workload. Collecting this information would be a significant undertaking that would require partnerships either with SCAO, MIDC, or individual courts but may be fruitful in the long-term. Additional focus groups with attorneys may be helpful in illuminating the extent to which this information would be beneficial.*

#### **4. Database Improvements**

SADO is in the midst of developing a new administrative database for the agency, an extremely exciting step that will open up many new possibilities for future research and evaluation. The results of this particular project suggest the following priorities in designing the new database:

- Attorneys are reluctant to enter information into a database and so brevity, accessibility, and user-friendliness are critical.
- Drop-down menu options constrict the range of options for values but lead to fewer errors and also easier analysis. From a data perspective, categories should be considered extremely carefully and not selected randomly.
- Database development allows for managers to brainstorm the important questions first and then choose the variables rather than basing analysis off of variables already collected. Be sure to comprehensively identify research questions to the best of your ability at the outset.

#### **5. Training**

##### *Briefs and Oral Arguments*

The report discusses a number of recommendations from appellate judges as to best practices in brief writing and oral arguments that will be briefly summarized here. The judges participating in this study stressed the particular importance of this training for

MAACS roster attorneys. Suggestions that were primarily relevant to MAACS attorneys are identified below with an asterisk.

- Reiterate the format of briefs according to court rules: introduction, statement of issues, statement of facts, argument, prayer for relief. Highlight the correct composition of each section.\*
- Beware of briefs that tell the story of a trial rather than the story of a case.
- Identify main issues at outset in simple and clear language.
- Raise only issues that have arguable merit.
- Judges understand and appreciate the use of “canned issues” from the brief bank, but attorneys should be extremely conscientious about revising these to be directly relevant to the case at hand.
- Always attend oral argument.\*
- Conceptualize oral arguments primarily as an opportunity to summarize the main argument and answer judges’ questions.
- Be extremely cognizant of more intangible factors such as dress and courtroom behavior. Older, more conservative judges seemed particularly concerned with this type of attention to detail.

#### *Attorney Training and Mentorship*

Not surprisingly, attorneys differed widely on their perspectives of office-wide training. However, several consistent themes did surface in focus groups and interviews. The following reflections and suggestions come directly from attorneys’ self-identified needs.

- Utilize role-playing more frequently in training sessions for newer attorneys.
- Emphasize targeted training rather than one-size-fits-all-training (for example, some attorneys might struggle more with using online filing systems while other attorneys struggle more with brief writing).
- In recalling their early training at SADO, attorneys who were given a “mini caseload” of their own by their training attorney (where they were responsible for doing everything - ordering transcripts, writing letters, visiting client, etc.) felt more confident after finishing formal training than those who had less autonomy during training.
- A small number of attorneys seem to carry the informal training/mentorship load for the office. Implement structures that redistribute this weight more evenly.
- Create spaces in the office where attorneys can engage in meaningful dialogue that allows for venting and processing rather than just solution-building.

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