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Innovative Appellate Investigation Project launched

With the benefit of funding from a federal Byrne Justice Assistance Grant, the Michigan Appellate Assigned Counsel System (MAACS) and State Appellate Defender Office (SADO) are making appellate investigation more accessible in criminal cases.

The just-launched Appellate Investigation Project (AIP) is a MAACS/SADO collaboration which will extend investigative assistance to the 140 attorneys taking appellate assigned cases from MAACS, which maintains a statewide roster of private assigned appellate counsel. An AIP attorney and attorney/investigator will train roster attorneys, develop materials, and help one-on-one with issue spotting and development. The AIP team will assist with investigations that may lead to testing of evidence, use of experts, challenges to the reliability of convictions obtained at the trial court level, and mitigation of sentences. Training will be provided through SADO's Criminal Defense Resource Center.

MAACS roster attorneys and their clients now face serious obstacles to investigating cases on appeal. Michigan's 83 counties each fund appellate expenses, in contrast to the state funding that supports SADO. MAACS attorneys must ask local judges to pay for investigators and experts when facts should be explored. That funding, coming from local budgets, is often unavailable. Approximately 2,500 cases, or 75% of the total indigent felony appeals, are handled each year by MAACS attorneys.

Appellate-level investigation has unquestioned benefit in some cases, as demonstrated by SADO advocacy for assigned clients. Nearly twenty exonerations have been obtained by SADO attorneys in recent years, most due to post-conviction investigations.

The National Registry of Exonerations reports that of Michigan's 55 exonerations of actually innocent people, 29 were achieved through more complete appellate investigations. Appellate attorneys and investigators typically look for erroneous eyewitness identification, faulty forensic science or testing results, lack of investigation by trial counsel, false confessions, and involuntary or unknowing pleas. With the help of investigators and experts, mistakes can be identified and corrected through evidentiary hearings in the trial court, and appellate advocacy.

The AIP seeks to provide necessary investigative services in more assigned appeals,

while also assisting appellate counsel in establishing the need for locally-funded experts and investigators in appropriate cases.

Katherine Marcuz will serve as the principal attorney and Andrew Lee will serve as the investigative attorney of the AIP. Both attorneys have experience in conducting investigations in their own cases—Marcuz as an assistant defender at SADO, and Lee as a trial attorney at the Orleans Public Defenders in New Orleans, Louisiana.

The AIP team has developed a screening protocol, eligibility criteria, and policies that will ensure MAACS attorneys the greatest opportunity for access to the project. Although grant funding is not available for direct payment of expert witness fees, the team will provide help with identifying and working with experts, and obtaining local funding for expert services.

The AIP may be contacted at 313-256-9833, or on the web at www.sado.org.

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