

MICHIGAN LAWYERS WEEKLY

A sidebar with ... Kathryn R. Swedlow

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Starting May 16, Kathryn R. Swedlow will be moving up the road, in a manner of speaking.

After 15 years of teaching at Western Michigan University Cooley Law School's Lansing campus and being co-director of its Innocence Project, she will become deputy administrator for the Lansing-based Michigan Appellate Assigned Counsel System.

MAACS, which was merged in 2014 with the State Appellate Defender Office, administers the assignment of appellate counsel in approximately 2,500 criminal cases annually. It maintains a roster of 150 private assigned counsel who are trained and supervised in the work.

Swedlow spoke with Michigan Lawyers Weekly about her out-of-state experience in appellate indigent defense and what she believes Michigan needs to make its system better.



Swedlow

What got you interested in criminal appellate defense work?

From pretty much the first day of law school I thought criminal law was fascinating. It grabbed me early on. Also, I think something that sustains me is when the government is taking away people's liberties — or in some cases taking away people's lives — it's a pretty important thing. I feel strongly that those defendants should have the best lawyers we can possibly provide for them, because the stakes are so high.

I worked for a number of years at the federal public defender's office in Philadelphia, in a special unit called the capital habeas unit. What we did there was represent defendants on death row in the state of Pennsylvania, and at the time I started there, Pennsylvania had the fourth largest death row in the country, around 250 people give or take. So we had a busy practice, running around the state to defend as many as we could. Obviously we don't have the death sentence in Michigan, but criminal appeals are criminal appeals, to a certain degree.

What would Michigan defense attorneys want to know about the death penalty?

Death penalty cases go on and on and on, forever. One of my former clients 16 or 17 years ago had his case pending before the U.S. Supreme Court, and had been represented by different lawyers from my old office. That case is still continuing. The lesson I learned from my time there is when you bring death to the table it complicates everything. It changes the nature of the case.

What were your initial impressions when you moved to Michigan from Pennsylvania?

I had come from a city where there was a fantastic public defender's office that represented defendants at the trial level in state court; a fantastic federal defender office representing defendants at the trial level in federal court; and my office, which worked on capital defense. I was used to that level of defense service, so when I moved to Michigan in 2000, I thought I'd just become a public defender. Then I realized there were none here. The shock was the system I was used to wasn't in existence everywhere. So I became a teacher, though I brought some of my cases with me to work on the side.

What's the most common question students have about your career?

It gets asked in a variety of different ways, but it's, "How can you represent those people?" And the best answer is, "You're representing people. You're not representing crimes." That's sometimes hard for students to recognize because they've never had a client. My former clients are complex, multifaceted people, just like my students are, and they are as deserving of a solid defense as everybody else.

Where do you think Michigan is compared to the rest of the country in terms of how indigent defense is handled?

I think any indigent defense system can always be improved. Maybe where Michigan has lagged behind is how its systems have not been as streamlined as they possibly can be, with what private counsel does both at the trial and appellate levels.

But we do see efforts with the Michigan Indigent Defense Commission to bring Michigan more up to speed. For an appellate system we have a terrific representation with SADO, and the effort behind MAACS is to make sure the non-SADO appeals are handled equally well.

As deputy administrator, I'll be training lawyers, reviewing attorney work, and overall supporting the efforts of MAACS and the vision to make it an even better delivery system for indigent defense.

There is a one-year pilot project underway to create regional [case] lists instead of county-by-county lists. It'll be interesting to see what the assessment of that program comes up with about what worked and didn't, and what can be tweaked to make it better. A lot of work went into that and it's a lot to do in over a year to pull it together.

How can indigent defense be improved considering it's not a lucrative practice sector?

One thing you can do is have quality training. If we're not going to have, for instance, a statewide public defender's office — and some states do have that kind of system — then you need to be sure the private lawyers who are handling those cases are properly trained and have continuing education as they go. You need to also make sure they're properly monitored and are doing everything right — the kind of thing that might happen at a public defender's office but is harder to manage when there's a group of private attorneys working out of their own offices.

There's been a lot of effort from SADO on training and making sure people do things properly, and that's one example of something that can happen. But a hard thing to do is replicate some kind of mentoring model when you've got lawyers working as solos or out of small practices. I think those efforts are underway and it's my hope to support those efforts and keep them going.

The biggest challenge for indigent defense — and this is not restricted to Michigan, it's everywhere — is pay for counsel. It's been established over and over again in many jurisdictions that if the pay is low, the quality of representation will suffer. They need to be adequately compensated to do the work.

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