

MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM

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MAACS Regional Pilot Project First-Year Report and Call for Expansion October 2016

This Report summarizes findings from the first year of a regional pilot project implemented by the Michigan Appellate Assigned Counsel System (MAACS) with approval from the Supreme Court and in partnership with fourteen trial courts. In its first year, the pilot project has been widely popular with trial courts, appellate courts, and roster attorneys, though there remains a need for additional data and experimentation before the implementation of permanent reforms. Therefore, the Supreme Court has extended the pilot project until December 31, 2017, and MAACS seeks partnerships with additional trial courts for expansion into more trial courts and geographic regions.

A. Implementation of the Regional Pilot Project

In September 2014, the Supreme Court consolidated MAACS with the State Appellate Defender Office (SADO) for management purposes and directed the Appellate Defender Commission to review operations of the combined agency and propose any structural reforms that the Commission deemed appropriate. The review began in earnest, with MAACS management engaging all stakeholders to find commonsense reforms to ensure high-quality representation for every indigent criminal defendant, while also recognizing economic concerns among the trial courts and their funding units, which bear the financial burden of non-SADO cases.

One year later, in Administrative Order 2015-9, the Supreme Court approved a pilot project “to assess the feasibility, costs, and benefits associated with structural reforms currently under consideration for permanent statewide implementation,” including:

- Consolidation of 57 independent appellate assignment lists into regional lists
- Transfer of administrative responsibilities from the trial courts to MAACS
- Voluntary adoption of uniform attorney fee and expense policy by trial courts

The Supreme Court explained that “[t]he pilot will assess the extent to which this consolidation results in greater speed and efficiency in the assignment process,” as well as “the extent to which uniformity in attorney fee policies allows more meaningful data analysis related to attorney performance and efficiency, as well as the potential financial impact . . . on the circuit courts and their funding units.”

On October 1, 2015, MAACS launched the regional pilot project in partnership with fourteen trial courts in two geographic regions.

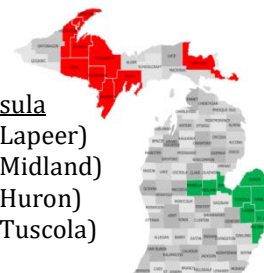
2015-16 Pilot Project Regions

Upper Peninsula

12 (Baraga/Houghton/Keweenaw)
25 (Marquette)
41 (Dickinson/Iron/Menominee)
47 (Delta)
50 (Chippewa)

Eastern Lower Peninsula

16 (Macomb) 40 (Lapeer)
18 (Bay) 42 (Midland)
21 (Isabella) 52 (Huron)
24 (Sanilac) 54 (Tuscola)
31 (St. Clair)



B. Changes to the Assignment Process

In the fourteen courts participating in the regional pilot project, MAACS has assumed much of the necessary administrative work in the assignment process. Immediately after receiving a defendant's request for appellate counsel, the trial court transmits the request to MAACS electronically, which allows MAACS to pre-screen a qualified roster attorney from the applicable regional list. After confirming the attorney's willingness to accept the assignment, MAACS prepares an appointment order including all lower court transcripts and provides it to the trial court for a judge's signature. Finally, MAACS serves the order and related documents on the defendant, the assigned attorney, and the Court of Appeals where necessary.

These changes to the assignment process have substantially reduced the unnecessary delays, efforts, and costs associated with subsequent orders, whether due to the substitution of counsel (after a lawyer rejects a case) or the need for additional transcripts. First-year data reveal a 47% reduction in substitutions of counsel and a 70% reduction in amended orders for additional transcripts.

	Statewide Average	Pilot Project Rate
Substitutions of Counsel	7.24%	3.84%
Amended Orders	28.43%	8.69%

Survey results confirm that trial court administrators and other court staff overwhelmingly approve of these reforms. 100 percent of participating trial courts report that the pilot project has "overall . . . improved the appellate assignment process," and almost all courts reported noticeable reductions in postage costs, time spent preparing and mailing orders, and the frequency of substitutions of counsel and amended orders. While court staff offered some important suggestions, the overall response has been enthusiastically supportive.

The value in these changes extends beyond trial courts. For instance, the elimination of unnecessary delays assists the Court of Appeals in adjudicating cases in a timely and efficient manner. Lastly, and perhaps most importantly, these reforms benefit indigent defendants by ensuring the prompt appointment of an appropriate pre-screened attorney (with a complete trial court record) immediately after sentencing, well before the expiration of any filing deadlines and while witness memories remain fresh.

Trial Court Feedback – Assignment Process

"Attorneys rejecting assignments was a major nuisance and this new process eliminates a lot of wasted time, effort, and cost."

"I was not excited about becoming a part of this pilot process but I have to say that I really do find it much more expedient."

"We have no complaints; this process has been wonderful for our office."

C. Changes to Fees and the Vouchering Process

The implementation of these reforms depends upon the trial courts' voluntary adoption of a uniform attorney fee policy, which was developed in consultation with attorneys and courts and approved by the Appellate Defender Commission. The fee policy establishes rates of \$50/hr. for Level I appeals and \$75/hr. for Level II/III appeals, with presumptive maximum fees of 15 hours for plea appeals and 45 hours for trial appeals (not including travel). Prior to implementation,

MAACS prepared cost forecasts estimating the budgetary implications for all participating trial courts. In spite of increased costs in most cases, 100 percent of participating trial courts report that they are “satisfied with the overall fairness and reasonableness” of the new fee policy through the first year, albeit with some suggestions for change, particularly including travel compensation.

On January 1, 2017, the rate of pay for travel time will decrease by half, from \$50/hr. to \$25/hr. plus mileage, resulting in an average cost savings to the trial courts of approximately \$100 per case (and substantially more in some cases). This adjustment is based on outreach to courts and roster attorneys alike, and reflects the goal of establishing a policy that is acceptable to all courts while remaining reasonable to roster attorneys and not discouraging vigorous representation.

Additionally, and also on January 1, 2017, the roster will be reclassified into two newly-defined levels. Level I attorneys will handle only plea-based appeals with a statutory maximum sentence of less than life, while Level II attorneys will handle life plea-based appeals and all trial-based appeals. As a result, Level I assignments will increase from 39% to 59% of the statewide total, while Level II assignments will decrease significantly, but will include all trial-based appeals, which typically involve more hours. First-year data suggest a significant decrease in the average cost for plea-based appeals in the pilot project (from \$1144 to \$773) and a modest increase in the average cost for trial-based appeals (from \$2654 to \$2705). Given the relative frequency of plea- and trial-based appeals, the reclassification should result in an overall reduction in costs for participating trial courts, all while allowing more effective training, supervision, and caseload control over the roster.

2017 Projections*	<i>Rate (Legal)</i>	<i>Avg Hrs (Legal)</i>	<i>Cap (Legal)</i>	<i>Rate (Travel)</i>	<i>Avg Hrs (Travel)</i>	<i>Projected Avg Fee</i>	<i>Percent of Cases**</i>
Plea Appeals I (Max < Life)	\$50	13.61	15 Hrs (\$750)	\$25	3.73	\$773	58.5%
Plea Appeals II (Max = Life)	\$75	14.73	15 Hrs (\$1125)	\$25	4.38	\$1214	13.7%
Trial Appeals	\$75	34.75	45 Hrs (\$3375)	\$25	3.98	\$2705	25.5%

* Based on 127 pilot vouchers paid from October 2015-October 2016 (110 plea appeals; 17 trial appeals).

** Based on statewide totals, of which interlocutory appeals and other miscellaneous matters typically account for 1-3%.

MAACS has also assumed more responsibility in ensuring accuracy in the vouchering process. Upon completion of an assignment in one of the participating courts, appellate counsel completes a fillable pdf voucher, which is based on the approved attorney fee policy and contains substantially more detail than the traditional MAACS voucher. Counsel submits the voucher to MAACS to review for accuracy and compliance, including proof of visits, expenses, and other supporting documentation. After MAACS has resolved any concerns with counsel, the voucher is submitted to the trial court for payment. MAACS is then able to analyze meaningful data about the time, expenses, and outcomes in appellate assignments, both individually and in the aggregate. After one year of experience, 100 percent of participating trial courts report satisfaction with the new vouchering process.

Trial Court Feedback – Vouchers

“I truly believe this is a great asset to the courts. I also believe having you check vouchers first has definitely been a good thing—I believe there is a cost savings to the courts in this area, i.e. better accountability. We are truly on board with this.”

D. Effects on Quality of Representation

While there remains insufficient data to assess whether the pilot project reforms have influenced attorney practices or the quality of appellate representation, it is abundantly clear that the widespread adoption of a uniform attorney fee policy—which is reasonable, predictable, and reliable from a roster attorney perspective—has aided retention efforts and boosted the morale of the MAACS roster, which has been working under widely disparate and often-inadequate fee policies for far too long. The standardization of attorney fees has also aided in MAACS's efforts to grow the roster to include talented appellate lawyers who might not otherwise consider roster membership. The same is true of the new assignment process, which gives roster attorneys greater control over their assignments and ensures that they have the complete trial court record early in the appellate timeframe. The feedback has been overwhelmingly positive from veteran, new, and even aspiring roster attorneys. Along with expanded training opportunities and greater access to investigative and legal resources (made possible by the MAACS/SADO merger), the changes implemented by this pilot project represent an essential component to lasting and meaningful reform for the benefit of indigent criminal defendants.

E. Call for Expansion

On September 21, 2016, the Supreme Court approved an extension of the pilot project through December 31, 2017. MAACS seeks to build upon the success of the first year by expanding the pilot in more trial courts and geographic regions throughout the state.

MAACS is always interested in meeting with trial court judges and administrators to discuss these reforms in greater detail, including the potential cost implications, which MAACS can forecast based on existing trial court paid voucher data. For further information, please contact Brad Hall, MAACS Administrator, at hallb@mimaacs.org or 517-334-1200.

Attachments:

- A. Administrative Order 2015-9 and Extension
- B. Pilot Fee Policy (2017)
- C. Criminal Defense Newsletter, Oct. 2015
- D. LDA Pilot Project Survey

YEAR	Case Number	Case Level	Case Type	Date Paid	Total Hours	Est. Travel	Fee Paid	New Level	MAACS Fee	MAACS Cap	Pilot Estimate
2013	11-3476	1	PL	08/14/13	13	0.00	\$ 520.00	1	\$ 650.00	\$ 650.00	\$ 773.75
	11-3513	2	JT	03/05/13	53	9.33	\$ -	2	\$ 3,508.33	\$ 3,508.33	\$ 2,705.75
	11-3521	2	PL	03/27/13	18	8.58	\$ 720.00	1	\$ 885.42	\$ 885.42	\$ 773.75
	11-3522	2	PL	03/27/13	18	0.00	\$ -	1	\$ -	\$ -	\$ -
	12-3579	1	PVP	10/16/13	12.9	7.67	\$ 516.00	1	\$ 453.33	\$ 453.33	\$ 773.75
	12-3598	2	PL	03/05/13	30.4	9.45	\$ 1,216.00	1	\$ 1,263.75	\$ 986.25	\$ 773.75
	12-3607	2	PL	09/05/13	98.1	20.33	\$ 2,324.00	1	\$ 2,396.67	\$ 1,256.33	\$ 773.75
	12-3616	1	PL	03/06/13	4.8	0.00	\$ 190.00	1	\$ 240.00	\$ 240.00	\$ 773.75
	12-3660	1	PL	03/05/13	25.3	1.08	\$ 1,010.00	1	\$ 1,237.92	\$ 777.08	\$ 773.75
	12-3664	1	PL	08/14/13	27.5	12.50	\$ 1,100.00	1	\$ 1,062.50	\$ 1,062.50	\$ 773.75
	12-3669	2	PL	04/15/13	27	0.28	\$ 1,080.00	1	\$ 1,342.92	\$ 757.08	\$ 773.75
	12-3692	1	PL	03/05/13	28	10.00	\$ 1,120.00	1	\$ 1,150.00	\$ 1,000.00	\$ 773.75
	12-3706	2	PL	08/14/13	20.3	0.13	\$ 812.00	1	\$ 1,011.67	\$ 753.33	\$ 773.75
	12-3751	1	PL	09/17/13	22.3	2.00	\$ 890.00	1	\$ 1,065.00	\$ 800.00	\$ 773.75
	12-3754	1	PL	09/11/13	20.8	9.00	\$ -	1	\$ 815.00	\$ 815.00	\$ 773.75
2013 Total							\$ 12,690.00		\$ 18,470.83	\$ 15,165.00	\$ 16,244.00
2014	12-3623	3	JT	01/20/14	76.5	10.00	\$ 3,080.00	2	\$ 5,237.50	\$ 3,625.00	\$ 2,705.75
	12-3727	3	JT	10/28/14	85	15.53	\$ 3,400.00	2	\$ 5,598.33	\$ 3,783.33	\$ 2,705.75
	13-3876	2	JT	09/25/14	41.5	1.28	\$ 1,690.00	2	\$ 3,048.33	\$ 3,048.33	\$ 2,705.75
	13-3897	1	PL	04/28/14	23	3.00	\$ 920.00	1	\$ 1,075.00	\$ 825.00	\$ 773.75
	13-3922	1	PL	08/26/14	40.5	0.00	\$ 1,620.00	1	\$ 2,025.00	\$ 750.00	\$ 773.75
	14-3968	2	PL	12/29/14	38	10.97	\$ 1,520.00	1	\$ 1,625.83	\$ 1,024.17	\$ 773.75
	14-3977	2	PL	12/26/14	22.2	0.73	\$ 888.00	2	\$ 1,628.33	\$ 1,143.33	\$ 1,214.25
	14-4011	2	PL	12/23/14	26.5	1.25	\$ 1,060.00	1	\$ 1,293.75	\$ 781.25	\$ 773.75
2014 Total							\$ 14,128.00		\$ 21,532.08	\$ 14,960.42	\$ 12,426.50
2015	10-3343	2	PVP	05/04/15	25	1.67	\$ 1,000.00	1	\$ 1,208.33	\$ 791.67	\$ 773.75
	12-3657	3	JT	02/12/15	88.5	15.00	\$ 3,480.00	2	\$ 5,887.50	\$ 3,750.00	\$ 2,705.75
	12-3749	1	JT	05/04/15	45.4	11.25	\$ 1,816.00	2	\$ 2,842.50	\$ 2,842.50	\$ 2,705.75
	12-3755	3	JT	05/04/15	34.5	11.25	\$ 1,380.00	2	\$ 2,025.00	\$ 2,025.00	\$ 2,705.75
	13-3785	2	PL	09/25/15	14.9	4.63	\$ 596.00	2	\$ 885.83	\$ 885.83	\$ 1,214.25
	13-3787	1	PL	02/11/15	9	0.00	\$ 280.00	1	\$ 450.00	\$ 450.00	\$ 773.75
	13-3852	3	JT	05/04/15	31	11.25	\$ 1,240.00	2	\$ 1,762.50	\$ 1,762.50	\$ 2,705.75
	13-3876	2	JT	02/12/15	43.8	6.17	\$ 1,752.00	2	\$ 2,976.67	\$ 2,976.67	\$ 2,705.75
	14-3978	1	PL	01/12/15	23	0.50	\$ 920.00	1	\$ 1,137.50	\$ 762.50	\$ 773.75
	14-4004	1	PL	05/13/15	23.5	1.00	\$ 940.00	1	\$ 1,150.00	\$ 775.00	\$ 773.75
	14-4049	2	PL	07/22/15	9.7	4.77	\$ 388.00	1	\$ 365.83	\$ 365.83	\$ 773.75
	14-4052	1	PL	07/24/15	22	0.50	\$ 880.00	1	\$ 1,087.50	\$ 762.50	\$ 773.75
	14-4086	1	JT	08/21/15	30.5	0.00	\$ 1,220.00	2	\$ 2,287.50	\$ 2,287.50	\$ 2,705.75
	15-4121	2	PL	08/18/15	17.7	0.47	\$ 708.00	1	\$ 873.33	\$ 761.67	\$ 773.75
	15-4158	2	PL	12/21/15	25.5	1.00	\$ 1,020.00	1	\$ 1,250.00	\$ 775.00	\$ 773.75
	15-4164	2	PL	12/21/15	18	0.00	\$ 720.00	1	\$ 900.00	\$ 750.00	\$ 773.75
2015 Total							\$ 18,340.00		\$ 27,090.00	\$ 22,724.17	\$ 24,412.50
Grand Total							\$ 89,601.20		\$ 131,574.17	\$ 103,253.75	\$ 102,686.50
Yearly Averages:							\$ 17,920.24		\$ 26,314.83	\$ 20,650.75	\$ 20,537.30

Order

**Michigan Supreme Court
Lansing, Michigan**

September 16, 2015

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2014-36

Stephen J. Markman
Mary Beth Kelly

Administrative Order No. 2015-9

Brian K. Zahra

Bridget M. McCormack

Authorization of a One-year Pilot Project
Related to the SADO/MAACS Merger

David F. Viviano

Richard H. Bernstein,
Justices

In Administrative Order No. 2014-18, the Court ordered the merger of the State Appellate Defender Office (SADO) and the Michigan Appellate Assigned Counsel System (MAACS), and further ordered the Appellate Defender Commission “to review operations of the MAACS and submit a proposed administrative order that reflects the consolidation of the two offices and incorporates proposed updates or revisions that the commission recommends.”

On order of the Court, and upon the request of the Appellate Defender Commission, MAACS is authorized to implement a one-year pilot project to assess the feasibility, costs, and benefits associated with structural reforms currently under consideration for permanent statewide implementation. These reforms would consolidate the individual “local lists” of roster attorneys, which currently exist in all 57 circuit courts, into a smaller number of regional lists to be maintained and administered by MAACS. The pilot will assess the extent to which this consolidation results in greater speed and efficiency in the assignment process, by reducing the number of lists to maintain and allowing MAACS to assume the responsibility of prescreening counsel, preparing appointment orders, and sending notification of appointments to defendants and their attorneys.

The reforms under consideration will depend upon the standardization of appellate assigned counsel policies among the circuit courts, most notably including the voluntary adoption of a standard attorney fee and expense policy. The pilot will assess the extent to which uniformity in attorney fee policies allows more meaningful data analysis related to attorney performance and efficiency, as well as the potential financial impact of these reforms on the circuit courts and their funding units. The pilot will also assess the extent to which standardization of attorney fees affects MAACS’s attorney recruitment and retention efforts.

The pilot shall begin as soon as possible as authorized by this order and when there is participation by a sufficient number of circuit courts to constitute two geographic regions, as identified and approved by MAACS. The pilot shall remain in effect for 12 months, unless extended with the approval of this Court and participating circuit courts. MAACS shall track the effectiveness of the reforms by quantitative and qualitative analysis, and shall make its findings available to the Michigan Supreme Court.

For the duration of the pilot project, all participating circuit courts shall comply with the following regulations, which supplement Section 3 of the MAACS regulations as adopted by this Court in Administrative Order No. 1989-3:


- (1) Upon the consent of all affected circuit courts and MAACS, local lists of MAACS roster attorneys may be consolidated by geographic region in whatever manner MAACS deems appropriate, with MAACS assuming certain administrative responsibilities that have traditionally been handled by individual circuit courts.
- (2) In order to facilitate the consolidation of local lists, any affected circuit court shall adopt the following administrative procedures:
 - (a) Within one business day after receiving a request for appellate counsel, the trial court shall provide a copy to MAACS, along with the judgment of sentence, the register of actions, and the identities of all court reporters not named on the register of actions.
 - (b) Within seven days after the filing of a timely request for counsel, MAACS shall provide to the trial court a proposed order of appointment naming a qualified attorney who has been selected by list rotation or approved specific selection, and directing the court reporter(s) to prepare and file all transcripts as required by MCR 6.425(G) within the time limits specified in MCR 7.210.
 - (c) Within seven days after receiving a proposed appointment order naming appellate counsel, and within the deadline provided by MCR 6.425(G)(1)(a), the trial court shall issue an order appointing counsel or denying the request for counsel. If the court denies the request for counsel, it shall accompany its ruling with a statement of reasons. The court shall provide copies of its order to MAACS, the prosecutor, and the court reporter(s). MAACS shall provide copies of the trial court's order to the defendant and appointed counsel, thereby satisfying the trial court's responsibilities under MCR 6.425(G)(2).
 - (d) Within 28 days after receiving a timely request for payment detailing the time and expenses related to the representation in a manner approved by

MAACS, the trial court shall order reimbursement pursuant to a standard attorney fee and expense policy that has been approved by the appellate defender commission and the trial court.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 16, 2015


Clerk

Order

**Michigan Supreme Court
Lansing, Michigan**

September 21, 2016

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2014-36

Stephen J. Markman

Brian K. Zahra

Bridget M. McCormack

David F. Viviano

Richard H. Bernstein

Joan L. Larsen,
Justices

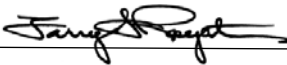
Extension of
Administrative Order No.
2015-9 (MAACS pilot project)

On order of the Court, the MAACS Regional Pilot Project authorized under Administrative Order No. 2015-9 is extended until December 31, 2017.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 21, 2016


Clerk

MAACS Regional Pilot Project
Standard Attorney Fee and Expense Policy – Effective January 1, 2017

** As Authorized by MSC Admin. Order 2015-9 and approved by Appellate Defender Commission*

Hourly Rate (Legal, Administrative, Investigative)

Level I cases: \$50 per hour

Level II and III cases: \$75 per hour

Presumptive Maximum Fees*

Plea-based appeals: 15 hours (\$750 Level I; \$1125 Levels II, III)

Trial-based appeals: 45 hours (\$2250 Level I; \$3375 Levels II, III)

*The presumptive maximum fee represents the maximum number of hours that will be presumed reasonably necessary. Requests for fees beyond the presumptive maximum must be accompanied by a motion explaining why the case reasonably required additional effort. Potential grounds for excess fees include, but are not limited to, lengthy trials, complex legal issues, fact investigation, and trial court litigation.

Travel

Travel will be reimbursed at a rate of ~~\$50~~\$25 per hour plus mileage with documentation, and will not count toward the presumptive maximum fee.

Expenses

Necessary expenses will be reimbursed with documentation. Printing and copying will be reimbursed at \$0.10 per page, and shall include providing the trial court record to a client if counsel deems it necessary to the representation or to maintaining the health of the attorney-client relationship.

Time for Billing

Requests for reimbursement may be submitted after the filing of the appellate brief or other substantial pleading, at the conclusion of the representation, or both.

Method of Billing

Requests for reimbursement shall include a detailed accounting of all time and expenses, with time reported in 1/10-hour increments and specifying the dates and types of services.

Denials and Reductions

A denial or reduction of an attorney fee request shall be explained in a statement of reasons.



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Upgrades in Store for Michigan's Indigent Appellate Defense System:

The Vision to Increase Pay for Appointed Appellate Counsel, Advance Court Efficiencies, and Improve the Quality of Client Representation

Editor's Note: *The Author, Bradley R. Hall, became the Administrator of MAACS in January 2015. Since that time, he has implemented many changes aimed at improving the Indigent Appellate Defense System, with the goal of benefitting attorneys, courts, and most of all, clients. One example is the MAACS regional pilot project, adopted by the Supreme Court in Administrative Order 2015-9, 498 Mich. ____ (2015), which is the subject of this article.*

On October 1, 2015, the Michigan Appellate Assigned Counsel System (MAACS) partnered with fourteen circuit courts to implement an innovative pilot project that will standardize the courts' attorney fee policies, consolidate their assignment lists by region, and transfer several administrative responsibilities from the courts to MAACS. These changes are designed to improve the administrative efficiency of the appointment process, the speed and accuracy with which appointment and transcript orders are issued, and the overall quality of appellate assigned representation. This important initiative represents a significant step in the ongoing review of MAACS operations. If successful, it could pave the way for a structural overhaul of the entire system—and may contain important lessons for indigent defense reform elsewhere.

A Brief History of the System

To appreciate why these changes carry so much promise, it helps to understand the history and structure of MAACS. The Appellate Defender Act, signed into law in 1978, created the Appellate Defender Commission to “develop[] a system of indigent appellate defense services which shall include . . . the state appellate defender [SADO] . . . and locally appointed private counsel.”¹ The Act requires SADO to accept at least 25% of assigned appeals statewide, with the remainder assigned to private counsel.² As to the latter, the Act directs the Commission to “compile and keep current a statewide roster of attorneys eligible for and willing to accept appointment by an appropriate court to serve as criminal appellate defense counsel for indigents.”³

Through administrative orders in 1981 and 1989, the Michigan Supreme Court adopted a bifurcated structure to administer the local appointment of private counsel. The court created MAACS to “compile and maintain” the “statewide roster” of appellate lawyers,⁴ but directed the “judges of each circuit” to “appoint a local designating authority,” or LDA, with the responsibility of “select[ing] assigned counsel from the local list” and “perform[ing] such other tasks in connection with the operation of the list as may be necessary at the trial court level.”⁵ These tasks include accurate list rotation, specific selection or exclusion of counsel, recordkeeping and reporting requirements, and the preparation and distribution of orders appointing counsel and requiring the production of transcripts.⁶

When first adopted, this was a sensible model, as it ensured consistency and independence in the assignment processes that took place in the 57 circuit courts—where rudimentary local lists consisted largely of truly local attorneys, rather than criminal appellate specialists handling cases around the state.

Over time, however, the model has outlived some of its usefulness and revealed a number of disadvantages, most significantly with respect to funding. Prior to the existence of MAACS, the circuit courts were accountable for their appellate attorney fee policies because they were obliged to ensure adequate representation in all appeals, either through contracts or by maintaining lists of familiar local attorneys. But the current MAACS model removes that accountability entirely. For example, although the circuit courts remain responsible for reimbursing counsel in MAACS cases, it is now

MAACS’s responsibility to ensure that counsel is available in every case, and the circuit courts are directed to “refer” cases to MAACS for assignment when the local list contains no attorneys who are “willing to accept” a case.⁷ Circuit courts are also permitted to refer a case to SADO based upon “the economic hardship the appeal would cause the county”⁸ While these policies ensure that counsel is provided in every case, the unintended consequences have been significant. With the state constitutionally prohibited from imposing unfunded mandates on local units of government,⁹ the counties have no financial incentive to pay reasonable attorney fees, or even pay attention to the issue at all.

The Resulting Shortfalls

As a result, some courts have not increased their attorney fees for over 40 years, and some chief judges were *not even aware* of their own fee policies until approached by new MAACS management earlier this year. There remain 57 unique and often idiosyncratic attorney fee policies throughout the state, most of which fail to provide reasonable compensation for this difficult but constitutionally required work. Some courts pay hourly rates as low as \$25 per hour, others pay flat fees as low as \$350 per case, others pay based on event schedules, and still others have adopted complex formulas based on transcript length. Policies differ as to payment caps, travel, and expenses.

The impact on quality is twofold. First, and most predictably, the attorney fees have had devastating consequences on roster attorney morale, retention, recruitment, and overall quality. The system is stretched to the breaking point, with too few lawyers handling far too many serious appeals. Second, and less obvious, is that the endless list of peculiarities and idiosyncrasies impacts the manner in which counsel complete payment vouchers, making it virtually impossible for MAACS to conduct apples-to-apples comparisons of time, performance, and cost data from cases assigned by different courts. In spite of thousands of cases per year, MAACS cannot say with any degree of confidence how many hours it should take to complete the average plea or trial appeal, or how much time it should take to read a page of transcripts. The value of this information should be apparent, not just to MAACS but to the circuit courts who are responsible for ordering payment in individual appeals.

But the existing attorney fee structure does not merely affect the quality of representation. It also

compels the persistence of an astonishingly inefficient administrative model. Fifty-seven different fee policies require 57 local lists, and 57 circuit court employees to manage them. In most circuit courts, the LDA is a court administrator or clerk who is pulled from his or her other responsibilities whenever a request for appellate counsel is filed. Instead of simply preparing accurate appointment orders on its own, MAACS must devote considerable energy training LDAs, correcting mistakes, and trying to ensure as much timeliness and consistency as possible. Meanwhile, technological advances have made a more centralized administration feasible—MAACS now hosts all of the rotating lists on its own computer servers, which circuit court personnel access remotely to create appointment orders and carry out their responsibilities. MAACS is often capable of accomplishing these tasks more quickly and accurately than the circuit courts—and frequently does so as a courtesy when the LDAs are occupied with the other responsibilities of their jobs.

Redundancy is not the only inefficiency. Compounding matters is the existence of so many rotating lists. The 57 circuit courts are divided into three levels based upon case severity, for a total of 171 lists for which MAACS must ensure adequate participation, a task that is complicated by the constant stream of attorney additions and removals, the only mechanism for caseload control. And because roster attorneys can accept assignments from as few as one or as many as 57 circuit courts, caseloads vary widely, with some attorneys accepting too few assignments, others accepting too many, and all attorneys facing an unpredictable stream of fits and starts. Simply put, the unwieldy model is incapable of self-regulation, creating ongoing administrative headaches and compounding quality control problems.

Reform is Here

While MAACS has struggled under these structural and financial obstacles, its state-funded counterpart, SADO, has thrived as a model provider of indigent defense services. SADO attorneys have secured 19 exonerations, argued multiple cases at the United States Supreme Court, and saved the state of Michigan over \$50 million in the past decade through successful sentencing error litigation. SADO has obtained millions of dollars in grant funding for successful projects dealing with wrongful convictions, the Detroit Crime Lab closure, post-conviction DNA testing, and technology for indigent defense. For these and other efforts, SADO has received numerous awards, including the NLADA's 2010 Clara Shortridge Foltz Award for outstanding

achievement by a public defender program. The contrast could hardly be clearer.

In September 2014, the Michigan Supreme Court took action, merging MAACS with SADO for management purposes under the leadership of the Appellate Defender, and directing the Appellate Defender Commission “to review operations of [] MAACS and submit a proposed administrative order that reflects the consolidation of the two offices and incorporates proposed updates or revisions that the commission recommends.”¹⁰ The review began in earnest, with a close examination of how MAACS could be restructured to remove the impediments to reform and encourage better practices, greater efficiency, and standardized attorney fees. Over several months in 2015, MAACS leadership held countless meetings with roster attorneys, circuit judges, court administrators, county executives and commissioners, appellate judges, and other stakeholders. The result of these meetings was a proposal to implement a series of interdependent reforms that would dramatically reshape MAACS, as well as a voluntary uniform attorney fee policy that would tie the pieces together.

In September 2015, the Supreme Court authorized “a one-year pilot project to assess the feasibility, costs, and benefits associated with structural reforms currently under consideration for permanent statewide implementation.” The reforms include a consolidation of local lists into “a smaller number of regional lists to be maintained and administered by MAACS,” as well as the circuit courts’ “voluntary adoption of a standard attorney fee and expense policy” to be approved by the Appellate Defender Commission.¹¹ The Commission in turn approved an attorney fee policy that would reimburse appellate counsel at hourly rates of \$50 or \$75 depending on the severity of the case. The policy includes presumptive maximum fees of 15 hours for plea appeals and 45 hours for trial appeals, though counsel may file a motion for excess fees if a case reasonably requires greater effort, and a judge must provide a statement of reasons if he or she declines such a request or otherwise reduces a fee. The policy provides for the payment of all necessary expenses, as well as reimbursement for travel time (which is excluded from the presumptive maximum). This fee policy was crafted with the advice of stakeholders from all sides of the issue, and is designed to be fair and predictable to attorneys and courts alike. While it would represent a significant increase for some courts, it falls well within the range of attorney fees already paid in many counties throughout the state.

The pilot was immediately implemented by fourteen circuit courts in two geographic regions. The Eastern Lower Peninsula Region consists of the following circuits: 16 (Macomb), 18 (Bay), 21 (Isabella), 24 (Sanilac), 31 (St. Clair), 40 (Lapeer), 42 (Midland), 52 (Huron), and 54 (Tuscola). The Upper Peninsula Region consists of the following circuits: 12 (Baraga/Houghton/Keweenaw), 25 (Marquette), 41 (Dickinson/Iron/Menominee), 47 (Delta), and 50 (Chippewa).

Under the pilot project, the local appellate assignment lists for these fourteen circuit courts have been abolished, and in their place are two regional lists administered by MAACS. Within days of the filing of a defendant's request for counsel, MAACS identifies appellate counsel, confirms counsel's willingness to accept the assignment, prepares an appointment order including *all* lower court transcripts, and provides the order to the circuit court judge for signature. Upon entry of the appointment order, MAACS provides copies to the defendant, appointed counsel, and the Court of Appeals. By streamlining the assignment process in this manner, MAACS substantially reduces the unnecessary delays, efforts, and costs associated with substitution of counsel orders and amended orders requesting additional transcripts.

In these two pilot regions, the assignment process is moving more quickly and efficiently than ever before, all because of the tremendous leadership and commitment by the participating circuit court judges and court administrators. In spite of likely cost increases in most of the courts (which MAACS was able to forecast based on financial data from prior cases) the courts recognized the value in these reforms, not only with respect to their own ability to reallocate local court resources, but also for the lasting improvements in the quality of Michigan's indigent defense system.

This is Just the Beginning

The response to this initiative has also been surprisingly positive even outside the participating circuit courts, with many chief judges and court administrators inquiring about when they might be able to adopt these policies in their own courts, and how much it would cost to do so. What this shows is that courts statewide appreciate the need for reform, and there may be more tolerance than expected for cost increases, so long as they accompany greater efficiency, uniformity, predictability, and quality. If the pilot project is successful, MAACS envisions expanding the project statewide, along with a

coordinated effort to convince all circuit courts of the value in a uniform fee policy. Although some courts may resist these efforts or prefer to maintain their own local lists, MAACS will work tirelessly to prove the usefulness of this new model, as well as the immense value in sharing the financial burden of reform among all circuit courts as well as the state.

The regional pilot project is just one example of the exciting developments at MAACS, which are made possible through its new partnerships with SADO and the Criminal Defense Resource Center (CDRC). These include Westlaw access for roster attorneys at a substantially reduced rate, federal grant funding to provide investigative services to the roster under the SADO model, and improved access to high quality training from the CDRC. MAACS has also undertaken an intensive review of roster attorney work product, and is actively litigating multiple attorney fee appeals in the courts, one of which recently resulted in the Michigan Supreme Court holding that trial courts must *explain* the denial of proper requests for reasonable fees—even requests above a county's payment cap.¹² It has been a busy year, but this is just the beginning.

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Maria Rosa Juarez Palmer, Jane Doyle, and Mary Lou Emelander, for never missing a beat.

Endnotes

1. M.C.L. 780.712(4).
2. M.C.L. 780.716(c).
3. M.C.L. 780.712(6).
4. Administrative Order No. 1981-7, § 1(1), 412 Mich. lxx (1982).
5. While AO 1981-7 specifically allowed groups of "voluntarily combined circuits" to appoint a single LDA to administer a combined "rotating list" of lawyers, AO 1981-7, § 3(1), that option was omitted from a 1989 revision, thereby requiring each circuit

court to maintain its own list of roster attorneys willing to take assignments. Administrative Order 1989-3, § 3(1), 432 Mich. cxxvi (1989).

6. *See* AO 1981-7, § 3; AO 1989-3, § 3.

7. AO 1989-3, § 3(7).

8. AO 1989-3, § 3(15).

9. Const. 1963, art. 9, § 29.

10. Administrative Order 2014-18, 497 Mich. ____ (2014).

11. Administrative Order 2015-9, 498 Mich. ____ (2015).

12. *In re Attorney Fees of John W. Ujlaky*, ____ Mich. ____; ____ NW2d ____; 2015 WL 5779654 (Sep 30, 2015) (Docket No. 150887).

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MAACS Regional Pilot Project (LDAs)



QUESTIONS

RESPONSES 14

14 responses



SUMMARY

INDIVIDUAL

Accepting responses

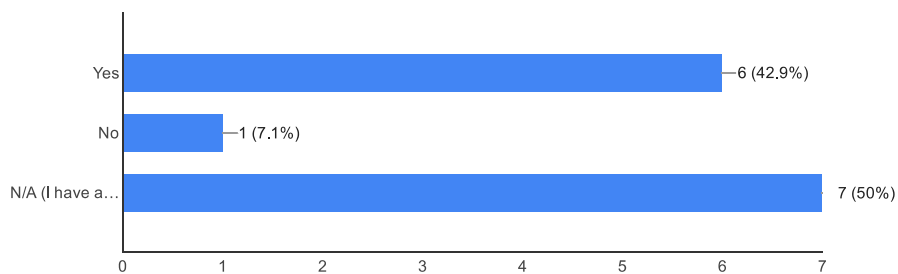
For which circuit do you work? (14 responses)

31st Circuit, St. Clair County
41st Circuit
21
50th
18th
25TH
12th
40TH CIRCUIT - LAPEER COUNTY
47th Circuit - Delta County
16th Circuit Court
42ND CIRCUIT COURT, MIDLAND
54th Circuit
24th Circuit Court
52nd

The Assignment Process

1A. For LDAs who have always created their court's appointment orders, is the new process noticeably simpler and faster?

(14 responses)



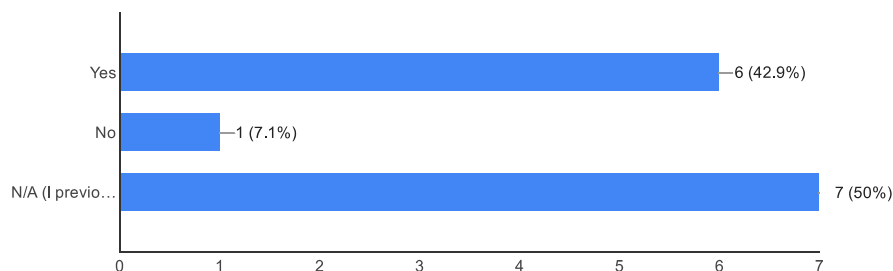
1A. Comments (2 responses)

Awesome service from Jane. She is great to work with.

It was probably easier for me to put the info in your system myself. Now we have to verify info, if any mistakes are made we have to contact to make changes. It's not a huge effort, but I do feel it was very easy for us to do the orders previously.

1B. For LDAs who have always relied on MAACS to create their appointment orders, is the new process noticeably simpler and faster?

(14 responses)



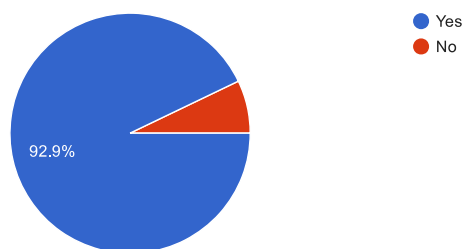
1B. Comments (3 responses)

See comments of 2 A - has not changed my process MAACS always prepared the Order and I mailed copies - actually I am providing MAACS with more documents now than in the past (copies of docket sheet, request for appointment and judgment of sentence)

The process is more efficient and the petition is processed faster.

It is a bit faster because I don't have to mail copies to Appellate Counsel, Defendant and Court of Appeals; MAACS takes care of that.

2A. Has the new process reduced postage costs for your court? (14 responses)



2A. Comments (3 responses)

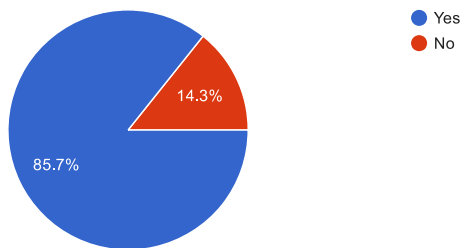
Absolutely

This was never a huge amount, but it has saved money on postage.

the certificate of mailing indicates that I certify that I mailed copies of the order with attachments to all parties and so I mail copies to all parties. So to reduce postage and time work etc the Certificate of Mailing should be changed to indicate what and whom MAACS provides and what and to whom the Court provides in the way of mailing the Order with attachments

2B. Has the new process resulted in a noticeable reduction in the amount of time that you must spend packaging and mailing materials upon completion of an appointment order?

(14 responses)



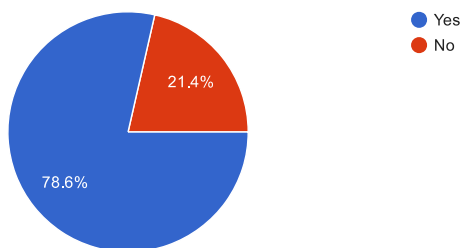
2B. Comments (2 responses)

See comments from 2 A

New process saves a lot of time preparing packages.

3. Another goal of the Pilot Project was to reduce the need for substitute counsel. To accomplish this goal, MAACS contacts the selected attorney before an appointment order is signed to ensure that he or she will accept a case if appointed. Has the new process resulted in a noticeable reduction in the need for substitution of counsel orders?

(14 responses)



3. Comments (6 responses)

I can't really tell if there has been a difference made here. I don't think we have had a substitution of counsel but I don't know if that is due to the new process or not.

Once again, this was not a huge issue, but I do feel that is a good policy to contact the attorney first.

I'm assuming the answer is yes. I haven't had any requests for substitute counsel.

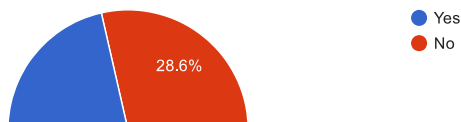
Attorneys rejecting assignments was a major nuisance and this new process eliminates a lot of wasted time, effort, and cost.

We didn't have many substitutions in the past—this may be saving me some time but I can't say that it has been noticeable.

I don't know that we ever had this happen in my time with the Court.

4. Another goal of the Pilot Project was to reduce the need for amended appointment orders (to include additional transcripts). To accomplish this goal, MAACS staff reviews the register of actions, with the assistance of court staff, to ensure that the transcripts from all relevant proceedings are ordered at the outset of the appellate assignment. Has the new process resulted in a noticeable reduction in the need for amended appointment orders?

(14 responses)



4. Comments (4 responses)

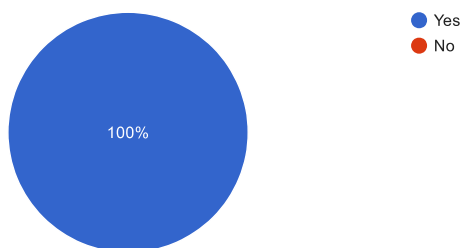
Again, we haven't had any amended orders but I don't know if that is due to the new process or not as we did not have a large number of amended orders previously.

We also use the Court reporter notes to ensure we have all court proceedings

Although the requests for additional transcripts has been eliminated, the new process is essentially ordering all transcripts and it does not appear relevance is always considered. This has created increases in cost and preparation time and challenges with the assigned court reporter.

I believe it was routinely the case that everything was argued regardless.

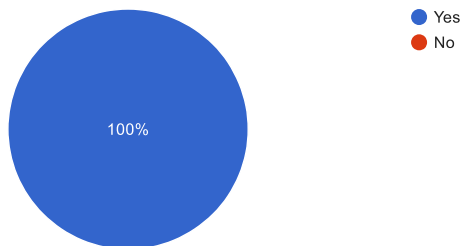
5. Under the Pilot Project, has your court received appointment orders from MAACS in a timely fashion? (14 responses)



5. Comments (1 response)

Overwhelmingly a yes on this questions. The staff is always prompt in their reply.

6. Overall, has the Pilot Project improved the appellate assignment process in your court? (14 responses)



6. Comments (0 responses)

No responses yet for this question.

7. Please provide any comments, criticisms, or suggestions that you would like MAACS to consider with respect to the new assignment process?

(5 responses)

Everyone at MAACS involved in the Pilot Project is very helpful and easy to work with. Questions are answered quickly. At first I was a little skeptical because I thought it would be a lot of back and forth with paperwork but I think the process is working smoothly.

I was not excited about becoming a part of this pilot process but I have to say that I really do find it much more expedient. I believe the staff is a huge part of why I changed my opinion of the process. I am not a technology person and was apprehensive about submitting online but the staff has always been so kind and helpful that they make the process seamless. All of them are to be commended!

Please look at the Certificate of mailing change to indicate what and to whom MAACS is providing documents and to whom and what documents the court will be providing

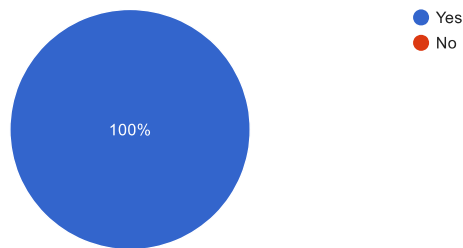
We have no complaints; this process has been wonderful for our office.

Specifically, we would like closer consideration of relevance for the transcript requests for probation violations. Otherwise, this has been an efficient and convenient new process.

Fees and Vouchering Process

8. The consolidation of assignment lists and administrative changes in the Pilot Project are made possible by your court's adoption of a uniform attorney fee and expense policy. Is your court satisfied with the overall fairness and reasonableness of that policy?

(14 responses)



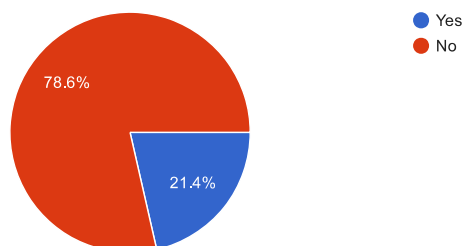
8. Comments (2 responses)

I believe so but this is really a question that the Chief Judge would have a better answer on.

It seems to me we spent more money due to the higher rates, but it is not an issue at this time.

9. Are there any specific aspects of the uniform attorney fee and expense policy that your court believes should be reconsidered or revised?

(14 responses)



9. If yes, please identify and explain. (5 responses)

It seems as though attorneys are getting paid double when getting mileage plus travel time. St. Clair County historically has not paid for travel time but has paid mileage. The fact that the attorneys do get paid at a lesser rate for the travel time does seem to help and not all attorneys do bill for it.

None that I can think of at this time. I personally, sometimes have an issue trying to upload and attach things but the staff have allowed me to fax things when I have a problem which works well for my equipment.

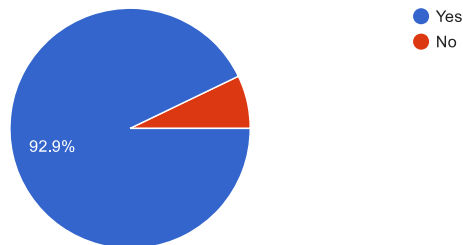
Attorney travel time

After reviewing more vouchers, consistent policies are needed for mileage/parking fees and bill preparation fees. We believe these are being considered inconsistently.

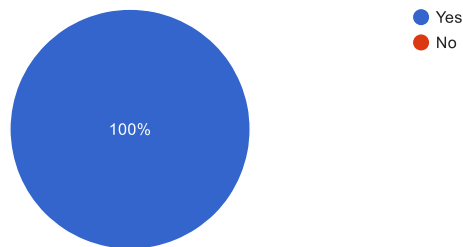
Not at this time.

10. Under the Pilot Project, roster attorneys must submit payment vouchers to MAACS for review before submission to the courts for payment decisions. MAACS reviews vouchers for completeness and accuracy, and frequently rejects vouchers due to technical deficiencies or discrepancies. Has this new process resulted in your court having greater confidence in the accuracy of payment vouchers submitted to your court?

(14 responses)

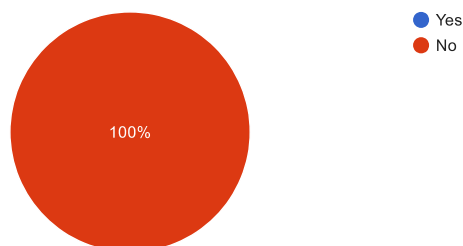


11. Overall, is your court satisfied with the vouchering process under the Pilot Project? (14 responses)



12. Are any specific aspects of the vouchering process that your court believes should be reconsidered or revised?

(14 responses)



12. If yes, please identify and explain. (0 responses)

No responses yet for this question.

13. Are there any other comments, criticisms, or suggestions that you would like MAACS to consider with respect to the new vouchersing process?

(4 responses)

I truly believe this is a great asset to the Courts. I also believe having you check vouchers first has definitely been a good thing—I believe there is a cost savings tot he Court's in this area, i.e. better accountability. We are truly on board with this.

Not at this time. Thank you for all your hard work!

As the pilot continues, requests for fees beyond the presumptive maximum have increased. The judges have questioned how to consider these requests and a recommendation may be useful from MAACS.

When I say that we don't have "greater confidence," it is simply because we didn't really lack confidence in the past. There were occasional mistakes, but not so many that the new process feels like it's purging us of the scourge of error.
