

Attorneys get better pay, more oversight in state program

Justin A. Hinkley, Lansing State Journal 7:05 a.m. EST December 5, 2016

State doesn't track quality of court-appointed attorneys



(Photo: Dave Wasinger/The Lansing State Journal)

LANSING – Today, when a judge considers a bill from a court-appointed attorney who worked on an appeal, that judge has no data to gauge whether the attorney's request is appropriate.

The method of paying attorneys who represent defendants who cannot afford one at the Michigan Court of Appeals or Supreme Court is handled on a court-by-court basis. Because broad data is not collected, judges have little outside of their own observations to gauge whether an attorney is charging too much or performed too little. Making that judgement is especially difficult in counties that rarely deal with large felony appeals.

But that is something the Michigan Appellate Assigned Counsel System

(<http://www.sado.org/Page/55/Appellate-Defender-Commission-Commission-MAACS>) (MAACS) is hoping to

change with a pilot program that aims to standardize the way — and how much — attorneys are paid and centralize some of the administrative work.

Coupled with new data collection by MAACS, that standardization will allow judges to compare the performance of each attorney on each case against other attorneys in their courts and other courts participating in the program. Officials hope that oversight, along with a uniform pay schedule in participating courts that will give many attorneys their first hourly rate increase in decades, should improve the quality of representation indigent defendants receive.

"By both increasing the fees and making them more uniform and predictable, I would hope that the system will open up to an influx of good, smart, hardworking appellate lawyers who'll both have the opportunity to participate in an important idea — and that is, appellate justice for everybody — and, at the same time, be rewarded financially for a higher quality of work," said Larry Katz, a West Bloomfield attorney who works MAACS cases.

Lessons learned from the MAACS pilot focused on appellate work could apply to county courts, such as the collection of comparative data.



LANSING STATE JOURNAL

Court-appointed attorneys paid little, do little, records show

(<http://www.lansingstatejournal.com/story/news/local/watchdog/2016/11/03/court-appointed-attorneys-paid-little-do-little-records-show/91846874/>)

The State Journal analyzed thousands of court-appointed attorney bills from Ingham, Eaton and Clinton counties ([/story/news/local/watchdog/2016/11/03/court-appointed-attorneys-paid-little-do-little-records-show/91846874/](http://www.lansingstatejournal.com/story/news/local/watchdog/2016/11/03/court-appointed-attorneys-paid-little-do-little-records-show/91846874/)) and reported last month that court-appointed attorneys here rarely use outside experts, take cases to trial, file motions or run the preliminary examinations that are supposed to determine if prosecutors have enough evidence to proceed to trial.

While some attorneys, prosecutors and judges said that didn't match their personal observations, none could point to any data to refute the LSJ's findings.

There are currently 14 circuit courts participating in the pilot, but the Michigan Supreme Court recently extended the pilot (<https://www.scribd.com/document/333023590/MAACS-Pilot-Year-One-Report>) through 2017 and MAACS Administrator Brad Hall said he hopes to grow participation to 30 courts.

As the MAACS pilot program heads into its second year, Hall and Liisa Speaker (<http://www.speakerlaw.com/>), a prominent Lansing attorney who represents parents appealing the loss of their parental rights, are discussing ways to create a formal assigned counsel system for parents fighting Michigan's Children's Protective Services. No such system currently exists.

'Inefficient and costly'

The overwhelming majority of defendants are poor and receive a publicly funded attorney.

MAACS — a small shop made up of one administrator, one attorney and a handful of support staff — maintains a list of private attorneys who can be

appointed to represent those defendants. Those attorneys are paid by counties and managed by staffers at each of the state's 57 circuit courts.

Because each court had its own fee schedule, each court kept its own list of attorneys willing to be paid those fees, which required a lot of paperwork from each court's staffers. MAACS spent a lot of time training local staffers and couldn't do things like monitoring attorney performance.

"It was just inefficient and costly and it was just difficult to be confident people were getting the kind of representation they should be getting," said Supreme Court Justice Bridget McCormack.

Now, for those 14 courts in the pilot program — covering most of the Upper Peninsula and Thumb region — MAACS now maintains regional lists of attorneys and handles all of the administrative work, such as pulling transcripts from the trial court and mailing them to the required people.

In surveys after the pilot's first year, almost all of the participating courts said they were saving time and money on administrative functions. And the uniformity and centralization has made the process less confusing, slashing the rates of attorney substitution and follow-up orders for missed paperwork that can delay cases.

"It's the best pilot that I've seen in my years in the courts," said Jerry Celmer Jr., the administrator of St. Clair County's 31st Circuit Court who has worked there for 25 years. "Our experience has just been tremendously positive."

'It's worth it'

Those efficiencies have helped soften the blow to courts who are now paying the attorneys more.

All MAACS attorneys in the pilot are paid \$50 an hour for simpler cases and \$75 an hour for more complex cases. The impact varies from court to court, since each court was paying different fees. It also may vary from case to case, since some courts were paying a flat rate and are now paying more for some cases and less for others.

In Ingham County, Hall estimates the total cost of appointed appellate work would climb from about \$47,000 a year to as much as \$82,000. Eaton County's costs would climb from about \$18,000 a year to as much as \$30,000 a year. Both counties are considering joining the MAACS pilot but are concerned about costs.



Brad Hall, administrator of the Michigan Appellate Assigned Counsel System (Photo: Photo provided)

But one thing the uniform fee schedule allows, Hall said, is for courts to compare attorneys against one another.

Next month, MAACS will launch a new invoice system for attorneys that will require those attorneys to upload the briefs and motions they write, along with the bills they submit for the time they spent writing those documents. Judges can then open those documents on a computer in their office — instead of asking the Court of Appeals in Lansing to send them or tracking down the attorney — to gauge whether that brief is really worth the time the attorney says it took.

The new system will also allow MAACS to track every case from beginning to end, and track case outcomes, such as sentence reduction. Judges can use that information to hold attorneys accountable.

If an attorney is billing for unusually high hours but rarely gets relief for their clients, maybe that attorney is padding his or her vouchers, Hall said. If another attorney is billing for high hours but is unusually successful in court, maybe other attorneys should be more like that counselor.

MAACS can use that information to keep the best-performing attorneys on its lists.

"Everything we're doing is for indigent criminal defendants," Hall said in an email to the State Journal. "They deserve much better. To get there, we need fee policies that allow us to remove bad lawyers, attract and hold onto good ones, and compensate rather than discourage vigorous representation. And we need to make a business case for all of this to the courts. But at the end of the day, it's really not about the money."



LANSING STATE JOURNAL

Parents outgunned in child welfare cases

(<http://www.lansingstatejournal.com/story/news/local/watchdog/2016/02/25/parents-outgunned-child-welfare-cases/76572142/>)

"I have explained to our county boards that these are important and lofty goals to get improved appellate counsel," said Judge Mary Barglind, chief judge

of the 41st Circuit Court that covers Dickinson, Iron and Menominee counties. "And if we have to pay a little bit more, it's worth it."

Researchers told the State Journal that better-performing attorneys could help the state save money in its prison budget. Ineffective assistance of counsel played a role in nearly half of Michigan's 60 overturned convictions listed in the National Registry of Exonerations.

'A lot at stake'

For all the weaknesses in criminal court, in many ways shortcomings are even more prevalent in CPS cases, which are handled in civil court.

Parents battling CPS must battle prosecutors and stand before judges in a courtroom, the same as criminal defendants. Evidence can be submitted. And many parents face the possibility of losing their kids forever, which to many is the same as a life sentence.



Liisa Speaker, a Lansing attorney who represents parents battling the Michigan Children's Protective Services. (Photo: Photo provided)

But, as a [State Journal investigation showed earlier this year \(/story/news/local/watchdog/2016/02/25/parents-outgunned-child-welfare-cases/76572142/\)](https://www.scribd.com/document/333023590/MAACS-Pilot-Year-One-Report#from_embed), a zealous defense attorney can be even more important in CPS cases, because the law can be more complex, prosecutors have a lower burden of proof in civil cases, and parents must navigate heaps of state bureaucracy to win their kids back.

"There's a lot at stake," Speaker, the parents' attorney, said.

There is no MAACS for CPS cases, so local courts appoint and oversee appellate attorneys, raising concerns about independence for the appellate lawyers who are challenging the lower courts who appointed them.

That also means there's no agency setting minimum standards for appointed parents' attorneys, and no agency tracking how much attorneys are paid or how they're performing.

With the MAACS pilot humming along, Hall and Speaker have launched early conversations about how to build a similar system for child welfare cases.

The idea is still in its earliest stages, and there are many questions. Should MAACS, which has always been limited to criminal cases, expand to take on appointment and oversight of family attorneys? That would require more staff, including an attorney who knows family law.

But several said the success of the MAACS pilot thus far is encouraging.

"Since we have this working model, why not apply it in this other area where we know we have a similar problem?" McCormack, the Supreme Court justice, said. "I'm optimistic."

[MAACS Pilot Year-One Report \(https://www.scribd.com/document/333023590/MAACS-Pilot-Year-One-Report#from_embed\)](https://www.scribd.com/document/333023590/MAACS-Pilot-Year-One-Report#from_embed) by [Justin Hinkley \(https://www.scribd.com/user/124440629/Justin-Hinkley#from_embed\)](https://www.scribd.com/user/124440629/Justin-Hinkley#from_embed) on Scribd

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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)



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