

Michigan Appellate Assigned Counsel System Regulations

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Section 1: Role of the Michigan Appellate Assigned Counsel System

- (1) The Michigan Appellate Assigned Counsel System (MAACS) operates in coordination with the State Appellate Defender Office (SADO) under the management of the State Appellate Defender and the oversight of the Appellate Defender Commission.
- (2) MAACS is established to compile and maintain a statewide roster of attorneys eligible and willing to accept criminal appellate defense assignments, and to engage in activities designed to enhance the capacity of the private bar to render effective assistance of appellate counsel to indigent defendants.
- (3) The MAACS Administrator, together with supporting staff, is responsible for:
 - (a) Compiling and maintaining a roster of attorneys eligible under these Regulations and willing to accept appointments to serve as appellate counsel for indigent criminal defendants.
 - (b) Maintaining for each circuit court a local list of attorneys eligible and willing to accept appellate assignments from that jurisdiction.
 - (c) Periodically reviewing the eligibility of each roster attorney, using the criteria set forth in these Regulations and with reference to the Minimum Standards for Indigent Criminal Appellate Defense Services.
 - (d) Timely notifying each jurisdiction of any change in the eligibility of any roster attorney on its local list.
 - (e) Investigating any allegation that a roster attorney has failed to comply with the Minimum Standards for Indigent Criminal Appellate Defense Services and taking appropriate action.
 - (f) In conformance with MCL 18.1284-1292, maintaining a file for each case in which private counsel is appointed, which must contain the judgment of sentence, request for counsel, order of appointment, and any other relevant matters as the Administrator may require for recordkeeping and statistical purposes.
 - (g) Selecting a roster attorney to be appointed upon a request by an appellate court or trial court under these Regulations.

- (h) Maintaining data regarding the fees paid to appellate assigned counsel and taking steps to promote the payment of reasonable fees which are commensurate with the provision of effective assistance of appellate counsel.
- (i) Providing continuing legal education programs for roster attorneys, and periodic orientation programs for new roster attorneys.
- (j) Taking steps to promote the development and delivery of support services to appellate assigned counsel.

Section 2: Membership and Classification on the MAACS Roster.

(1) Application procedure.

- (a) An application to join the roster must include the following, unless waived by the Administrator:
 - (i) A cover letter or email describing the applicant's interest in joining the roster.
 - (ii) A current resume.
 - (iii) Two writing samples, personally prepared by the applicant. A writing sample prepared in law school will suffice if no others are available.
 - (iv) Any other requested materials.
- (b) Admission to the roster is contingent upon an applicant's completion of an orientation and training program, unless waived by the Administrator.

(2) Classification of MAACS roster attorneys.

- (a) Roster attorneys are classified as follows:
 - (i) A Level I roster attorney may only represent on direct appeal defendants convicted by plea of offenses carrying a statutory maximum of less than life imprisonment, unless otherwise authorized by the Administrator and without objection from the attorney or the appointing court.
 - (ii) A Level II roster attorney may represent any defendant convicted by plea or at trial.
 - (iii) A Level III roster attorney may represent any defendant convicted by plea or at trial, but has requested and been approved to represent only defendants convicted at trial.
- (b) All roster attorneys are classified at Level I unless approved by the Administrator for Level II or Level III.

- (i) The Administrator must reserve Level II and Level III for roster attorneys who have established a significant record of consistently high-quality criminal appellate representation and an ability to handle any type of MAACS assignment. Relevant considerations include performance history, writing ability, familiarity with Michigan criminal law and procedure, client counseling skills, demonstrated interest in indigent defense, and reputation in the legal community.
 - (ii) An attorney is eligible to apply to Level II after conducting separate appeals of at least 10 felony convictions through submission on the merits in the 5 years immediately preceding the attorney's application.
 - a. In lieu of felony appeals, an attorney may rely on significant comparable experience, including criminal trials, state or federal post-conviction representation, amicus briefs, significant civil appeals, relevant scholarly articles, or substantial writing assignments as a judicial law clerk.
 - b. In exceptional circumstances and upon a request by the Administrator, the Commission may waive the experience requirement for Level II.
 - (iii) A Level II attorney is eligible for Level III upon approval by the Administrator, taking into consideration the needs of the roster.
- (c) During a roster attorney's first two appellate assignments at each level, the attorney must consult with the Administrator at least 21 days before filing any pleadings, unless waived by the Administrator. Based on these consultations, the Administrator may require the roster attorney to submit draft pleadings or other documents, extend the case consultation requirement, or initiate a performance review under these Regulations.

(3) Performance review and reclassification procedure.

- (a) All MAACS roster attorneys will be subject to performance reviews after completing appeals of at least 10 separate felony convictions through submission on the merits, and at least once every three years thereafter. At the conclusion of a performance review, the Administrator may take any of the following actions:
 - (i) Retain the roster attorney at the current level.
 - (ii) Re-classify the roster attorney to another level.
 - (iii) Initiate suspension and removal proceedings under these Regulations.
 - (iv) Defer a decision on retention, re-classification, or removal. A deferral must be accompanied by a written explanation of deficiencies in the roster attorney's performance and expectations for corrective action.

- (b) Upon a request by the Administrator, roster attorneys must timely provide all pleadings or other information in the format requested.
 - (c) All performance and re-classification reviews must be in writing.
- (4) Requirements for continued membership on the roster.
 - (a) Roster attorneys must maintain membership in good standing with the State Bar of Michigan and immediately report to the Administrator any change in state bar membership status.
 - (b) Roster attorneys must annually complete twelve hours of training provided by MAACS or SADO/CDRC, or approved by the Administrator. A roster attorney must correct any deficiency within 60 days of notice, unless extended by the Administrator.
- (5) Resignation, suspension, and removal procedure.
 - (a) A roster attorney may resign from the roster at any time by submitting a written letter of resignation to the Administrator.
 - (b) The Administrator may suspend a roster attorney under any of the following circumstances:
 - (i) The roster attorney has failed to remedy a CLE deficiency, as described in these Regulations.
 - (ii) The roster attorney has violated the Minimum Standards in a manner that raises concerns about the quality or integrity of representation or the attorney's practice.
 - (iii) The roster attorney has submitted pleadings or other case-related documents that raise concerns about the quality or integrity of representation or the attorney's practice.
 - (iv) The roster attorney has failed to respond to the Administrator's request for documents or information relevant to a MAACS assignment.
 - (c) If a roster attorney is suspended from the MAACS roster for any reason other than a CLE deficiency, the Administrator must conduct a performance review of the attorney's work under these Regulations.
 - (d) The Administrator may permanently remove a roster attorney from the MAACS roster following written notice to the attorney of the grounds for anticipated removal and a reasonable opportunity to respond.
 - (e) Upon resignation, suspension, or removal from the roster, an attorney remains personally responsible for the completion of all previously-assigned appeals unless the

attorney has been suspended from the practice of law or formally relieved of responsibilities as counsel.

- (f) In appropriate circumstances, the Administrator may move the trial court for substitution of counsel in any pending case assigned to the suspended or former roster attorney. Notice must be provided to the defendant and the attorney. If substitution of counsel is granted, the trial court may determine the amount of compensation due to the attorney being replaced.

(6) Review by the Appellate Defender Commission.

- (a) An attorney may petition the Appellate Defender Commission for review of the Administrator's decision to remove the attorney from the roster or to decline admission to the roster. No other decision by the Administrator is reviewable except upon a showing that the Administrator acted arbitrarily or contrary to law or these Regulations.
- (b) Petitions for review must be filed with the Chair of the Commission within 30 days of the final decision under review, with a complete copy to the Administrator. No special form of petition is required but a petitioner must submit copies of all written communications relevant to the challenged decision. The Chair may extend this deadline for good cause.
- (c) Upon receipt of a petition for review, the Commission may take any of the following actions:
 - (i) Dismiss the petition for lack of merit.
 - (ii) Request any documentation from the Administrator that would aid in the resolution of the petition.
 - (iii) Request the Administrator to respond to the petition, after which the petitioner must have an opportunity to reply.
 - (iv) Hold a hearing where appropriate.
 - (v) Grant or deny the petition in a written decision explaining the basis for its decision.
- (d) Hearings under this section shall be open to the public, but deliberations may be closed to the public upon the attorney's request and a showing of permissibility under the Open Meetings Act.

(7) Confidential files and records.

- (a) Unless specified otherwise in these Regulations, non-record documents pertaining to any inquiry or review of a roster attorney's MAACS-related work are confidential and may not be publicly disclosed.

- (b) Any final complaint determination must be made known to the complainant and the attorney.
- (c) The Administrator may disclose relevant information pertaining to a roster attorney's performance or status on the MAACS roster if that disclosure is made:
 - (i) To court personnel, related to the roster attorney's performance.
 - (ii) To the Attorney Grievance Commission or any other court-authorized attorney disciplinary or admissions agency.
 - (iii) To the Commission.
- (d) Written material submitted to the Commission in relation to a petition for review of a decision by the Administrator, and any written findings by the Commission, are not confidential.
- (e) The Chair of the Commission may authorize disclosure of information outside the scope of this Section.
- (f) A roster attorney may waive these confidentiality provisions at any time.

Section 3: Selection of Assigned Counsel.

- (1) The judges of each circuit court shall appoint a local designating authority who may be responsible for the selection of assigned appellate counsel from the local list provided by the appellate assigned counsel administrator pursuant to these regulations and who shall perform such other tasks in connection with the operation of the list as may be necessary at the trial court level.
 - (a) The designating authority may not be a judge, prosecutor or member of the prosecutor's staff, public defender or member of the public defender's staff, or any attorney in private practice who currently accepts trial or appellate criminal assignments within the jurisdiction.
 - (b) Circuits which have contracted with an attorney or group of attorneys to provide representation on appeal for indigent defendants shall comply with these regulations within one year after the statewide roster becomes operational.
- (2) Appellate assignments shall be made by each trial court only from its local list or to the State Appellate Defender Office except pursuant to Sec. 3(7) or an order of an appellate court.
 - (a) Each trial bench shall review its local list and, within 56 days of an attorney's appearance on that list, shall notify the appellate assigned counsel administrator if it has actual knowledge that the attorney has, within the last three years, substantially violated the Minimum Standards for Indigent Criminal Appellate Defense Services or the Rules of Professional Conduct. Each bench shall thereafter notify the administrator of

such violations by attorneys on its list within 56 days of learning that a violation has occurred.

- (b) Upon receiving notice from a trial court that an attorney has substantially violated the Minimum Standards or the Rules of Professional Conduct, the Administrator shall promptly review the allegations and take appropriate action. Any determination that an attorney should be removed from the roster shall be made in compliance with these regulations.
- (3) Appellate counsel shall be assigned within 14 days after a defendant submits a timely request.
- (4) In each circuit court, the chief judge shall determine whether appellate assigned counsel are to be selected by the chief judge or by the local designating authority.
- (a) If the chief judge chooses to retain the discretion to select counsel, he or she shall personally exercise that discretion in all cases as described in Sec. 3(5).
 - (b) If the chief judge chooses to delegate the selection of counsel, the local designating authority shall, in all cases, rotate the local list as described in Sec. 3(6).
- (5) The chief judge may exercise discretion in selecting counsel, subject to the following conditions:
- (a) Pursuant to these Regulations, every third, fourth, or fifth assignment, or such other number of assignments as the Appellate Defender Commission may determine, shall be made to the State Appellate Defender Office. That office may also be assigned out of sequence pursuant to Sec. 3(13) or 3(15).
 - (b) All other assignments must be made to attorneys whose names appear on the trial court's local list.
 - (i) The attorney must be eligible for assignment to the particular case, pursuant to these Regulations.
 - (ii) Where a Level I attorney has received an even-numbered amount of assignments and any other Level I attorney has less than half that number, an assignment shall be offered to each of the latter attorneys before any additional assignments are offered to the former.
 - (iii) Where a Level II or Level III attorney has received an even-numbered amount of assignments and any other Level II or Level III attorney has less than half that number, an assignment shall be offered to each of the eligible latter attorneys before any additional assignments are offered to the former.
 - (iv) If an order of appointment is issued and the attorney selected refuses the appointment for any reason not constituting a pass for cause as defined in Sec. 3(6)(c), the assignment shall be counted in the attorney's total.

(6) When directed to select counsel by the chief judge, the local designating authority shall select the attorney to be assigned in the following manner:

(a) The local designating authority shall first determine whether assignment is to be made to the State Appellate Defender Office, to a particular attorney on the local list pursuant to Sec. 3(6)(f), 3(12), or 3(13), or by rotation of the local list.

(i) Pursuant to these Regulations, every third, fourth, or fifth assignment, or such other number of assignments as the Appellate Defender Commission may determine, shall be made to the State Appellate Defender Office. That office may also be assigned out of sequence pursuant to Sec. 3(13) or 3(15).

(ii) An attorney whose name appears on the local list may be selected out of sequence pursuant to Sec. 3(6)(f), 3(12), or 3(13). That attorney's name shall then be rotated to the bottom of the list.

(iii) All other assignments shall be made by rotating the local list.

(b) Local lists shall be rotated in the following manner:

(i) The local designating authority shall identify the first attorney on the list who does not have to be passed for cause and shall obtain an order appointing that attorney from the appropriate trial judge.

(ii) The name of the attorney appointed shall be rotated to the bottom of the local list.

(iii) The names of any attorneys passed by the local designating authority for cause shall remain in place at the top of the list and shall be considered for the next available appointment.

(c) An attorney's name must be passed for cause in any of the following circumstances:

(i) The attorney is not qualified at the eligibility level appropriate to the offense as described in these Regulations. A Level II or III attorney may be assigned a Level I case only if no Level I attorney is available or when the attorney represents the defendant on a currently pending appeal of another conviction.

(ii) The attorney represented the defendant at trial or plea and no exception for continued representation as specified in Sec. 3(12) is to be made.

(iii) Representation of the defendant would create a conflict of interest for the attorney. Conflicts of interest shall be deemed to exist between codefendants whether they were jointly or separately tried. Codefendants may, however, be represented by the same attorney if they express a preference for such representation under Sec. 3(6)(f), provided that there is no apparent conflict of interest.

- (d) An attorney's name may be passed for cause if the defendant has been sentenced only to probation or incarceration in the county jail, and the attorney's office is located more than 100 miles from the trial court.
 - (e) If the attorney selected thereafter declines appointment for reasons which constitute a pass for cause, the attorney's name shall be reinstated at the top of the list. If the attorney selected declines the appointment for any other reason, his or her name shall remain at the point in the rotation order where it was placed when the order of appointment was issued.
 - (f) When the defendant expresses a preference for counsel whose name appears on the local list, and who is eligible and willing to accept the appointment, the local designating authority shall honor it.
- (7) Where a complete review of the local list fails to produce the name of an attorney eligible and willing to accept appointment in a particular case, the local designating authority shall refer the case to the appellate assigned counsel administrator for selection of counsel to be assigned from the statewide roster.
- (8) When an attorney has declined to accept three consecutive assignments for which the attorney was eligible under these Regulations, the local designating authority may request the appellate assigned counsel administrator to remove the attorney's name from the jurisdiction's local list.
- (9) The trial court shall maintain, on forms provided by the Appellate Assigned Counsel System, records which accurately reflect the basis on which all assignments have been made, whether by the chief judge or the local designating authority, and shall provide duplicates of those records to the Appellate Assigned Counsel System at regular intervals specified by the administrator.
- (10) The local designating authority shall provide copies of:
- (a) each order appointing appellate counsel,
 - (b) written evidence of each defendant's request for counsel, including any waiver executed pursuant to Sec. 3(12), and
 - (c) each case summary submitted by appellate assigned counsel, after the order for payment has been signed.
- (11) All assignments other than those made to the State Appellate Defender Office shall be considered personal to the individual attorney named in the order of appointment and shall not be attributed to a partnership or firm.
- (12) When the defendant specifically requests the appointment of his or her trial attorney for purposes of appeal and the trial attorney is otherwise eligible and willing to accept the assignment, the defendant shall be advised by the trial judge of the potential consequences of continuous representation. If the defendant thereafter maintains a preference for appellate representation by trial counsel, the advice given and the defendant's waiver of the opportunity to receive new counsel on appeal shall appear on a form signed by the defendant. Appropriate forms shall be supplied to the trial courts by the Appellate Assigned Counsel System.

- (13) Where counsel represents the defendant on a currently pending appeal of another conviction, or represented the defendant on appeal of a prior conviction for the same offense, the designating authority may select that attorney out of sequence to conduct a subsequent appeal on the defendant's behalf if that attorney is otherwise eligible and willing to accept the additional appointment.
- (14) Where the trial judge determines that a Level I or II case is sufficiently more complex than the average case of its type to warrant appointment of an attorney classified at a higher level than required by these Regulations, the judge shall provide to the chief judge or the local designating authority a written statement of the level believed to be appropriate and the reasons for that determination. The local designating authority shall, and the chief judge in his or her discretion may, select counsel accordingly.
- (15) When, in exceptional circumstances, the complexity of the case or the economic hardship the appeal would cause the county makes the selection of private assigned counsel impractical, the State Appellate Defender Office may, after confirmation of that office's ability to accept the assignment, be selected for appointment out of sequence. When such an out-of-sequence assignment is made, it shall be treated as a substitute for the next in-sequence assignment the State Appellate Defender Office would have otherwise received.