

Michigan Appellate Assigned Counsel System Regulations

Approved September 20, 2017

Section I: Role of the Michigan Appellate Assigned Counsel System

- (A) The Michigan Appellate Assigned Counsel System (MAACS) is established to maintain a quality statewide roster of attorneys eligible and willing to accept criminal appellate defense assignments from the trial courts under these Regulations.
- (B) MAACS operates within the State Appellate Defender Office (SADO) under the management of the Appellate Defender and the oversight of the Appellate Defender Commission.
- (C) The Appellate Defender shall appoint an Assigned Counsel Administrator and supporting staff who shall be responsible for ensuring the fair and accurate administration of these Regulations and taking other appropriate measures to improve the quality of private assigned appellate representation in Michigan.

Section II: Membership and Classification on the MAACS Roster

- (A) Application procedure.
 - (1) An application to join the roster must include the following, unless waived by the Administrator:
 - (a) A cover letter describing the applicant's interest in joining the roster.
 - (b) A current résumé.
 - (c) 2 writing samples, personally prepared by the applicant. A writing sample prepared in law school will suffice if no others are available.
 - (d) Any other requested materials.
 - (2) The Administrator shall have discretion to grant or deny any application to join the roster.

- (3) Admission to the roster is contingent upon an applicant's completion of an orientation program and an annual MAACS training seminar, unless waived by the Administrator.
 - (4) Admission to the roster represents an agreement by the roster attorney to accept personal responsibility for all aspects of assigned appellate representation.
- (B) Classification of MAACS roster attorneys.
- (1) Roster attorneys are classified as follows:
 - (a) A Level 1 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.
 - (b) A Level 2 roster attorney may represent any defendant convicted by plea or at trial.
 - (c) A Level 3 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.
 - (2) All roster attorneys are classified at Level 1 unless approved by the Administrator for Level 2 or Level 3.
 - (a) The Administrator must reserve Level 2 and Level 3 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.
 - (b) A level 1 roster attorney may apply for reclassification to Level 2 after completing separate appeals of at least 10 felony convictions through submission on the merits, unless waived by the Administrator. Before reclassification from Level 1 to Level 2, the Administrator must conduct a performance review.

(c) A Level 2 roster attorney is eligible for Level 3 upon approval by the Administrator, taking into consideration the needs of the roster.

(3) During a roster attorney's first 2 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 attorney to submit draft pleadings or other documents, extend the case consultation requirement, or initiate a performance review under these Regulations.

(C) Performance review and reclassification procedure.

(1) All roster attorneys will be subject to performance reviews after completing appeals of at least 10 separate felony convictions, and at least once every 3 years thereafter. At the conclusion of a performance review, the Administrator may take any of the following actions:

(a) Retain the roster attorney at the current level.

(b) Reclassify the roster attorney to another level.

(c) Initiate suspension and removal proceedings under these Regulations.

(d) Defer a decision on retention, reclassification, or removal, with an explanation of the reasons for the deferral, including any deficiencies in the roster attorney's performance and expectations for corrective action.

(2) Upon a request by the Administrator, roster attorneys must timely provide all pleadings or other information in the format requested.

(3) All performance and reclassification reviews must be in writing.

(D) Requirements for continued membership on the roster.

(1) Roster attorneys must maintain membership in good standing with the State Bar of Michigan and immediately report to the Administrator any discipline or change in bar membership status.

- (2) Roster attorneys must annually complete 12 hours of Continuing Legal Education (CLE) provided by SADO or otherwise approved by the Administrator. A roster attorney must correct any deficiency within 60 days of notice, unless extended by the Administrator.
- (3) Roster attorneys are encouraged to demonstrate continued participation in the field of indigent criminal appellate practice by completing at least 2 separate appellate assignments from felony trial convictions or 6 separate appellate assignments from felony plea convictions in each calendar year.

(E) Suspension and removal.

- (1) The Administrator may suspend a roster attorney under any of the following circumstances:
 - (a) The roster attorney has failed to remedy a CLE deficiency, as described in these Regulations.
 - (b) The roster attorney has violated the Minimum Standards in a manner that raises concerns about the quality or integrity of the attorney's work.
 - (c) The roster attorney's work raises concerns about the quality or integrity of representation or the attorney's practice.
 - (d) The roster attorney has failed to respond to the Administrator's requests for documents or information relevant to MAACS assignments.
- (2) If a roster attorney is suspended from the roster for any reason other than a CLE deficiency, the Administrator must conduct a performance review of the attorney's work under these Regulations.
- (3) The Administrator may permanently remove a roster attorney from the roster following written notice to the attorney of the grounds for anticipated removal and a reasonable opportunity to respond.
- (4) 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.

- (5) 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.
- (F) Resignation and voluntary standby.
- (1) A roster attorney may resign from the roster at any time by submitting a letter of resignation to the Administrator.
 - (2) A roster attorney may request to be placed on voluntary standby status for any reason.
 - (a) The Administrator shall have discretion to place the roster attorney on standby status with any appropriate conditions, deny the request for standby status, or take any other action under these Regulations.
 - (b) A roster attorney's failure to adhere to any conditions of standby status may be treated as a resignation from the roster.
 - (c) A roster attorney may only be removed from standby status with the Administrator's approval.
- (G) Review by the Appellate Defender Commission.
- (1) 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.
 - (2) 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. The Chair may extend this deadline for good cause. No special form of petition is required but a petitioner must submit copies of all written communications relevant to the challenged decision.
 - (3) Upon receipt of a petition for review, the Commission may take any of the following actions:

- (a) Dismiss the petition for lack of merit.
 - (b) Request any documentation from the Administrator that would aid in the resolution of the petition.
 - (c) Request the Administrator to respond to the petition, after which the petitioner must have an opportunity to reply.
 - (d) Hold a hearing where appropriate.
 - (e) Grant or deny the petition in a written decision explaining the basis for its decision.
- (4) 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, MCL 15.261 *et seq.*

(H) Confidential files and records.

- (1) Unless specified otherwise in these Regulations, non-public documents pertaining to any inquiry or review of a roster attorney's MAACS-related work are confidential and must not be publicly disclosed.
- (2) Any final complaint determination must be made known to the complainant and the attorney.
- (3) The Administrator may disclose relevant information pertaining to a roster attorney's performance or status on the roster if that disclosure is made:
 - (a) To court personnel, related to the roster attorney's performance.
 - (b) To the Attorney Grievance Commission or any other court-authorized attorney disciplinary or admissions agency.
 - (c) To the Commission.
- (4) 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 Appellate Defender Commission, are not confidential.

- (5) The Chair of the Commission may authorize disclosure of information outside the scope of this Section.
- (6) A roster attorney may waive these confidentiality provisions.

Section III: Selection and Assignment of Appellate Counsel.

- (A) The statewide roster must be subdivided into local and regional assignment lists consisting of roster attorneys who are willing to accept appellate assignments from the respective trial court or courts.
 - (1) The Administrator must maintain a local assignment list for any trial court that elects to maintain a unique appellate assigned counsel fee policy.
 - (2) The Administrator may organize and maintain regional assignment lists as follows:
 - (a) Participation on regional assignment lists must be limited to trial courts that have agreed to adhere to a standard appellate assigned counsel fee policy approved by the Appellate Defender Commission.
 - (b) To encourage the regionalization of assignment lists and standardization of policies, the Administrator may assume responsibility for any administrative assignment responsibilities that would otherwise fall to trial courts participating in regional assignment lists.
- (B) Upon receiving a defendant's request for the appointment of appellate counsel and additional necessary information from the trial court, the Administrator must promptly select counsel as follows:
 - (1) At the direction of the Appellate Defender, and to ensure the effective statewide distribution of appellate defense services consistent with MCL 780.716(c), the Administrator must regularly select SADO as appellate counsel in a specified percentage of assigned appeals from each trial court and at each classification level.

- (2) In the interests of justice or judicial economy, the Administrator may specifically select SADO or any roster attorney for a particular appellate assignment, subject to the following:
 - (a) Upon a request from a trial court, the Administrator may specifically select SADO as appellate counsel to alleviate the potential economic hardship that the appointment of private counsel may cause to the court's funding unit in consideration of the court's attorney fee policy. The Administrator may treat such an assignment to SADO as a substitute for the next in-sequence assignment that SADO would have otherwise received.
 - (b) The specific selection of a roster attorney should be limited to exceptional circumstances, including but not limited to the existence of a prior attorney-client relationship, the avoidance of potential breakdowns or conflicts in the attorney-client relationship, geographic factors, the unique complexity of an appeal, and the subject matter expertise of counsel.
 - (c) The Administrator shall have discretion to admit an otherwise-qualified attorney to the roster for purposes of a particular appellate assignment.
- (3) If a case is not assigned to SADO or by specific selection, the Administrator must select counsel by regular rotation of the assignment list as follows:
 - (a) The Administrator must offer the assignment to the first eligible roster attorney on the applicable assignment list, and if necessary to subsequent attorneys by regular rotation of the list until an attorney accepts the assignment.
 - (b) A roster attorney must not accept any appellate assignment that presents an actual or potential conflict of interest without express approval from the Administrator. The name of any attorney who declines an assignment due to an actual or potential conflict of interest must remain in place on the assignment list.
 - (c) Unless the Administrator directs otherwise, the name of the appointed attorney, as well as the names of any attorneys who declined the assignment for non-conflict reasons or did not

timely respond to a notice of the assignment, must rotate to the bottom of the assignment list.

- (d) If a roster attorney declines 5 consecutive appellate assignments without good cause, or neglects to respond to 5 consecutive appellate assignments in a timely manner, the Administrator may remove the attorney from any assignment list(s) or take other appropriate remedial action.
 - (e) If rotation of the applicable assignment list fails to produce the name of any attorney who is eligible and willing to accept an assignment in a particular case, the Administrator must identify an eligible attorney from the roster at large who is willing to accept the assignment. Before accepting an assignment under this provision, the attorney may request to be compensated under the standard appellate assigned counsel fee policy approved by the Appellate Defender Commission, or some other fee policy that is agreeable to the attorney and the appointing trial court.
- (4) The Administrator shall have discretion to approve or deny a defendant's request to be represented on appeal by his or her trial counsel, provided that such a request must follow an explanation by the trial court, on the record, about the potential consequences of such representation.
 - (5) No attorney shall be required to serve as appointed appellate counsel without his or her consent.
- (C) Immediately after selecting appellate counsel and obtaining counsel's agreement to accept the assignment, the Administrator must present the trial court with a proposed appointment order identifying the attorney to be appointed and the transcripts to be prepared.
 - (D) All assignments other than those made to SADO shall be considered personal to the individual attorney named in the order of appointment and shall not be attributed to a partnership or firm.
 - (E) In conformance with MCL 18.1284-1292, the Administrator shall maintain 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 may be necessary for recordkeeping and statistical purposes.