

MICHIGAN APPELLATE ASSIGNED COUNSEL SYSTEM

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Final Report on the Regional Pilot Project and New Case Assignment System September 2017

On October 1, 2015, the Michigan Appellate Assigned Counsel System (MAACS) partnered with 14 trial courts to launch a Regional Pilot Project to “assess the feasibility, costs, and benefits” of possible structural reforms to the appellate counsel assignment process. Administrative Order No. 2015-9. These include:

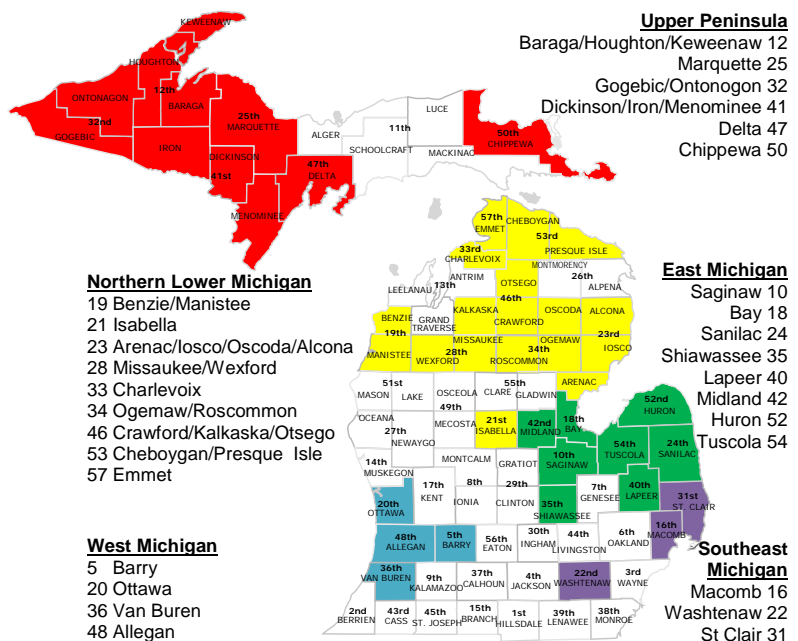
- Trial courts’ voluntary adoption of a uniform attorney fee and expense policy.
- Transfer of administrative burdens from participating trial courts to MAACS.
- Consolidation of independent trial court assignment lists into regional lists.
- Pre-screening of appellate counsel before entry of appointment orders.
- Electronic service of orders and related documents to MAACS and parties.

Two years later, the Pilot has grown to include 30 trial courts from all corners of the state, earning overwhelming support from trial and appellate courts, trial court administrators, MAACS roster attorneys, and other system stakeholders.

Based on this success, and to accommodate greater trial court participation, MAACS launched an innovative new case assignment system on June 5, 2017, which has improved the appellate counsel assignment process for *all* trial courts statewide.

This Report summarizes both aspects of the ongoing reform.

MAACS Regional Pilot Project 2017 Assignment Lists



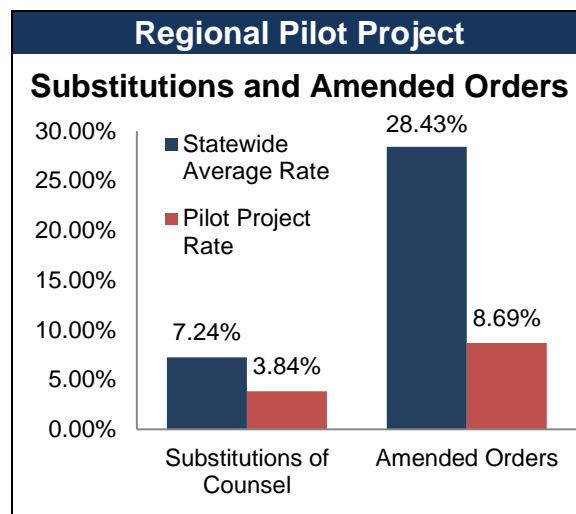
A. Regional Pilot Project

MAACS administers the roster of private attorneys handling approximately 75% of assigned felony appeals in Michigan, as well as the system for selecting and appointing appellate counsel in all 57 trial courts. Since its inception more than 30 years ago, MAACS has struggled to ensure quality representation in the face of longstanding structural obstacles, most notably with respect to county funding. Because MAACS has no authority to dictate fee policies, the trial courts have maintained unique rates and schedules, many of which remain alarmingly low and without any incentive for adjustment. And the existence of 57 unique fee policies has required MAACS to maintain 57 rotating assignment lists, the operation of which relies heavily on local court staff. Apart from its administrative inefficiency, this structure has negatively impacted the quality of representation. The existence of so many assignment lists has frustrated efforts to control caseloads, while the absence of reasonable fees—or any semblance of consistency or predictability between courts—has made it nearly impossible for MAACS to recruit and retain good lawyers or meaningfully analyze data about the quality of representation.

The Pilot arose from Supreme Court Administrative Order No. 2014-18, in which the Court consolidated MAACS with the State Appellate Defender Office (SADO) and directed a comprehensive review of operations and potential reforms. One year later, in Administrative Order No. 2015-9, the Court approved the Pilot. It was designed to improve efficiency and the quality of appellate assigned representation by relieving the trial courts of several administrative burdens in order to encourage the courts’ voluntary adoption of a uniform attorney fee policy and participation on regional assignment lists.

Under the Pilot, a participating trial court transmits the request for counsel to MAACS electronically, which allows MAACS to pre-screen a qualified roster attorney from the applicable regional list, create a proposed appointment order including all lower court transcripts, and provide the order to the trial court electronically. Once signed, MAACS serves the order on the defendant, the attorney, and the Court of Appeals, saving the court time and postage.

While these changes appear simple, they have resulted in a 47% reduction in substitutions of counsel and a 70% reduction in amended orders for additional transcripts, substantially alleviating unnecessary delays, efforts, and costs on the trial courts, Court of Appeals, roster attorneys, and MAACS.



The implementation of these reforms depends upon the trial courts' voluntary adoption of a uniform attorney fee policy, developed in consultation with attorneys and courts and approved by the Appellate Defender Commission. The policy features hourly rates of \$75 and \$50, depending on type of appeal and severity of sentence, as well as presumptive hourly maximums of 15 hours for plea appeals and 45 hours for trial appeals. Travel is compensated separately at \$25 per hour.

Given the wide disparities in trial court fee policies in the past, adoption of the Pilot policy carries budget implications for most trial courts, the extent of which depends upon a court's prior fee policy. While some courts can reduce overall costs or remain flat, most see some degree of increase. MAACS can reliably forecast the potential budget implications for any trial court by aggregating and analyzing Pilot voucher data from multiple jurisdictions to assess the average hours, fees, and costs associated with appellate assignments of differing types, and comparing these averages with historical voucher data from the individual court.

In spite the significant budget implications for many courts, all 14 original Pilot courts reported that they were "satisfied with the overall fairness and reasonableness" of the new fee policy through the first year, and 86% of participating courts report overall satisfaction after year two.

Surveys reveal that much of the courts' satisfaction with the fee policy is driven by a new sense of confidence in the reliability of vouchers. Unlike traditional MAACS vouchers, Pilot vouchers contain substantially more detail as to services and expenses, and are not submitted to the trial courts until MAACS has reviewed them for accuracy and compliance, including documentation of visits and expenses. Several court administrators have observed that roster attorneys now treat vouchers with greater care and attention due to this additional layer of scrutiny. This gives the courts greater confidence that they are getting what they pay for. After one year, all 14 original Pilot courts reported satisfaction with the Pilot vouchering process. After the second year, the satisfaction level remained at 87% of all participating courts.

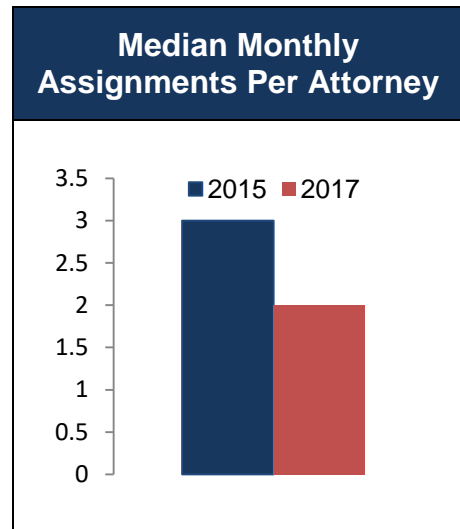
Average Time, Expenses, Fee, and Total Cost by Case Type and Level*

<i>Appeal Type</i>	<i>Roster Level</i>	<i>Percent of Total**</i>	<i>Rate (Legal)</i>	<i>Avg Hrs (Legal)</i>	<i>Rate (Travel)</i>	<i>Avg Hrs (Travel)</i>	<i>Avg Expense</i>	<i>Avg Fee</i>	<i>Avg Cost</i>
Guilty Plea Appeals	Level 1 Max<Life	58.5%	\$50	12.70	\$25	3.99	\$116	\$735	\$851
	Level 2 Max=Life	13.7%	\$75	13.63	\$25	4.33	\$116	\$1131	\$1247
Trial Appeals	Level 2	25.5%	\$75	33.57	\$25	4.69	\$186	\$2635	\$2820

* Averages are based on 294 vouchers paid under the Pilot from October 2015 - September 2017.

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

Finally, and perhaps most importantly, these reforms are helping to improve the quality of appellate representation for indigent defendants. The prompt appointment of pre-screened counsel, with a complete record, allows representation to begin immediately after sentencing, before the expiration of filing deadlines and while witness memories are fresh. The standardization of reasonable and predictable attorney fees boosts attorney morale and aids efforts to recruit and retain quality appellate lawyers, while allowing MAACS to monitor attorney performance and efficiency. And the regional consolidation of assignment lists reduces and regulates attorney caseloads.



Along with improved training, greater access to investigative and legal resources, and a rigorous new quality and retention review process, the changes implemented by this Pilot represent an essential component to lasting and meaningful reform.

Regional Pilot Project Surveys and Comments

Trial Court Survey	Yes	No	N/A	Trial Court Comments
Improved experience from MAACS creation of orders	94.4%	5.6%		<p><i>"Attorneys rejecting assignments was a major nuisance and this new process eliminates a lot of wasted time, effort, and cost."</i></p> <p><i>"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></p> <p><i>"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."</i></p>
Improved experience from MAACS service of orders	100%	0.0%		
Improved experience from new voucher process	86.7%	13.3%		
Greater confidence in accuracy of vouchers	86.7%	13.3%		
Overall satisfaction with reasonableness of fee policy	85.7%	14.3%		
Roster Attorney Survey	Yes	No	N/A	Roster Attorney Comments
Overall satisfaction with Pilot vouchering process	69.8%	11.1%	19%	<p><i>"Much better than a few years ago!"</i></p> <p><i>"Superb improvement over prior system."</i></p> <p><i>"In many ways, an improvement over the old system."</i></p>
Overall satisfaction with Pilot fee policy	68.3%	11.1%	20.6%	
Overall satisfaction with Pilot	81.3%	4.7%	14.1%	

B. New Case Assignment System

Based on the success of the Pilot and robust demand for expansion after the Supreme Court's continuing authorization in 2016, MAACS launched a new web-based case assignment system on June 5, 2017. The new system is designed to accommodate the assignment process as it has evolved under the Pilot in an even more efficient and user-friendly manner. Significantly, this system delivers some of the most important features of the Pilot to all trial courts statewide—including those not participating in the pilot project.

The new system automates many of the processes that MAACS and trial court staff had undertaken manually in the Pilot, including pre-screening of counsel by automated email notifications, the electronic transmission of appointment orders and related documents, and the ability for judges and court staff to e-sign appointment orders.

To pre-screen counsel in all cases and accommodate both Pilot and non-Pilot courts, it divides the assignment process into multiple steps, with MAACS assuming responsibility for the creation and service of appointment orders—albeit only for Pilot courts.

MDOC No. 11111111: Close [X]

Is this the defendant?

MAACS DATA:
 Name: Test Defendant
 DOB: 5/26/1958

OTIS DATA:
 SID Number:
 Name: Test Defendant
 DOB: 05/26/1958 (58)
 Status: Discharged
 Location:

Registration Form:
 * First Name: First Name
 * Middle Name: Middle Name
 * Last Name: Last Name
 Suffix: Suffix (Dr., Sr., II, III, Etc.)
 * Date of Birth: DOB
 * Residence Type: (Select Type)
 * Facility: (Select Facility)
 * Address 1: Address 1
 * Address 2: Address 2
 * City: City
 * State: ST
 * Postal Code: Zip
 * Phone No.: Phone

MAACS Assignment - Order No. 11085 Close [X]

Sent: 9/15/2017 10:33:AM (emailed)
 From: SYSTEM
 To: [Cecilia Q. Baunsoe](#)

Your name has come up in rotation for the following MAACS assignment:

Order No: 11085
Court: 3rd Circuit Court
County: Wayne
Case: 17-3247 01 FC
Case Type: Jury Trial
Defendant: Martin Sydney Jones

You must accept or decline this assignment before 9/18/2017 5:00 PM.

Visit <http://www.mimaacs.org/view/orderdetail/11cf9749-9a7e-493f-b44e-36756a4d84b5> to review case-related documents and accept or decline this assignment.

Features of New MAACS Assignment System

- ✓ **Electronic Documents:** Trial courts upload case-related documents electronically, making them easily accessible to the court, MAACS, and the assigned attorney, and reducing the time and cost of mailing paper documents
- ✓ **Defendant Lookup:** Defendants' MDOC information is pulled from OTIS database to populate data entry fields and appointment orders
- ✓ **Court Reporter and Judge Lookup:** Court reporters and judges are selected from pre-populated dropdown lists, saving time in the process
- ✓ **Assignment Pre-Check:** Automatic search for prior-assigned counsel and co-defendants to avoid conflicts and maintain existing attorney-client relationships where appropriate
- ✓ **Automated Pre-Screening of Counsel:** Automated system will send an email notice to the next-in-rotation roster attorney, who will have approximately one business day to accept or decline the assignment, repeating until an attorney accepts and is named on an appointment order
- ✓ **E-Signing of Documents:** Allows orders and certificates to be e-signed by judges and court staff
- ✓ **Messages and Email Notifications:** Automated messages to inform court staff, MAACS, and assigned attorneys of developments in the assignment process

One of the greatest features of the new assignment system is its adaptability. With the assignment component now operational, work has begun on other features that will allow the collection and analysis of real-time data from the moment of assignment until the payment of fees, including client correspondence, the nature and length of trial and appellate court pleadings, court appearances, fact investigation, the hours and expenses reported, and case outcomes, including sentencing and cost relief. This data will allow MAACS to ensure that all assignments are properly resolved within the appropriate deadlines, measure the effectiveness and efficiency of roster attorneys, and inform attorney fee decisions and policies.

The screenshot displays a web-based form for an "ORDER REGARDING APPOINTMENT OF APPELLATE COUNSEL AND TRANSCRIPT" in Wayne County, Michigan. The form is divided into several sections:

- Header:** Includes the state and county names, and the case number and suffix (16-098).
- Court Information:** Lists the court address (Coleman A. Young Municipal Center) and telephone number.
- Defendant Information:** Fields for the defendant's name (The People of the State of Michigan), address, date of birth, and inmate number.
- Offense Information:** A table with columns for Description, PACC Code, and Minimum/Maximum sentences. A row shows "SAFE ENTRY AND BREAKING INTRUSION" with a PACC code of 76D111 and a 2-year sentence.
- Signature Section:** A prominent section titled "This Order Requires Signatures" with checkboxes for:
 - "I want to provide additional text."
 - "Include additional Certificate of Mailing Text to Document (View Text)."
 - "Upload a Pre-Signed PDF Document" (checked).
 Below these are fields for the Judge's Name, Signature, Bar No., Date, and Sign Order, as well as fields for the Mailer's Name, Signature, Bar No., Date, and Sign Order.
- Footer:** Includes a date field, a signature line, and page information (Page 1 of 1).

Like the Pilot, the new case assignment system has been enormously popular with trial courts and roster attorneys alike. In spite of initial resistance that typically accompanies any significant system transition, 95% of trial courts and 91% of roster attorneys report overall satisfaction three months after implementation.

Steps in the New MAACS Assignment Process

1. Submission of request and identification of transcripts

Upon a defendant's request for appellate counsel, trial court staff will access the secure MAACS website and electronically submit the request, the judgment of sentence, and the register of actions. Court staff will also identify the transcripts to be ordered for the appeal.

2. Data entry for order

Court staff will next enter relevant case information into the database, such as the relevant dates, offense information (including PACC codes), sentences, and costs. *For courts that assign from regional lists, MAACS staff completes this step.*

3. Selection of counsel and creation of proposed appointment order

If the case is to be assigned to SADO under its statutory target, a proposed appointment order will immediately be generated and provided electronically to the trial court. If a MAACS roster attorney is to be assigned, an email notification will automatically be sent to the next-in-rotation attorney, including the relevant lower court documents and allowing until 5:00 pm the following business day to accept or decline the assignment. When an attorney accepts the assignment, a proposed appointment order will immediately be generated and provided electronically to the trial court.

4. Entry and service of order

Upon receipt of a proposed appointment order, the trial court will sign the order, either electronically or on paper, for filing with the clerk and service to MAACS and appropriate parties. Trial court staff will upload the signed order in the MAACS system, which will also provide electronic service to the assigned attorney. The court must also serve the order on the Court of Appeals (in claim cases), the defendant, the court reporter(s), and the prosecutor. *For courts that assign from regional lists, MAACS staff serves the defendant and the Court of Appeals on the trial court's behalf.*

New Case Assignment System Surveys and Comments

<i>Trial Court Survey</i>	Yes	No	N/A	<i>Trial Court Comments</i>
Overall satisfaction with new computer interface	95.0%	5.0%		<p><i>“The new system is very user friendly. The charges and the ability to take your time on the cases are great. Very pleased.”</i></p> <p><i>“It used to take upward of 45 minutes per order to tab through the forms, print and deliver the order for signature and make my copies that would be needed and prepare all the different envelopes for mailing. It is now a process that takes less than 10 minutes from start to finish.”</i></p> <p><i>“We have . . . found that the orders move through the system much more quickly.”</i></p> <p><i>“We LOVE this. It has saved us so much time and effort.”</i></p> <p><i>“I wish this system were available for our regular court appointments.”</i></p>
Overall satisfaction with pre-screening of counsel	94.7%	5.3%		
Overall satisfaction with paperless service process	97.5%	2.5%		
Noticeable reduction in postage costs	67.5%	32.5%		
Noticeable reduction in time printing and serving	75.0%	25.0%		
Overall satisfaction with new assignment system	95.0%	5.0%		

<i>Roster Attorney Survey</i>	Yes	No	N/A	<i>Roster Attorney Comments</i>
Helpful to pre-screen assignments	88.1%	3.0%	9.0%	<p><i>“Love the new case assignment process. Excellent!”</i></p> <p><i>“This new system is particularly helpful in assessing the case and our potential roles in the appeal process.”</i></p> <p><i>“I very much prefer receiving the Order of Appointment digitally and immediately because it allows me to actually get going right away.... Overall, the process is more fluid and just better in every way.”</i></p>
Reasonable 24-hr deadline to accept assignments	77.6%	22.4%		
Improved experience from paperless service	70.1%	11.9%	17.9%	
Overall satisfaction with new assignment system	90.8%	9.2%		

C. Conclusion

As the Supreme Court explained, the Pilot was designed to assess the extent to which list consolidation and pre-screening of counsel “results in greater speed and efficiency in the assignment process” and “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.” Administrative Order No. 2015-9. By this measure, it has been a tremendous success.

Both the Pilot and new case assignment system have been enormously popular with trial courts and roster attorneys alike. They have significantly enhanced the speed and efficiency of the assignment process while incentivizing critical new county funding in the form of reasonable and predictable attorney fees, resulting in better overall appellate representation for indigent criminal defendants.