

Appellate Investigation Project & Litigation Support Services



S A D O

MAACS

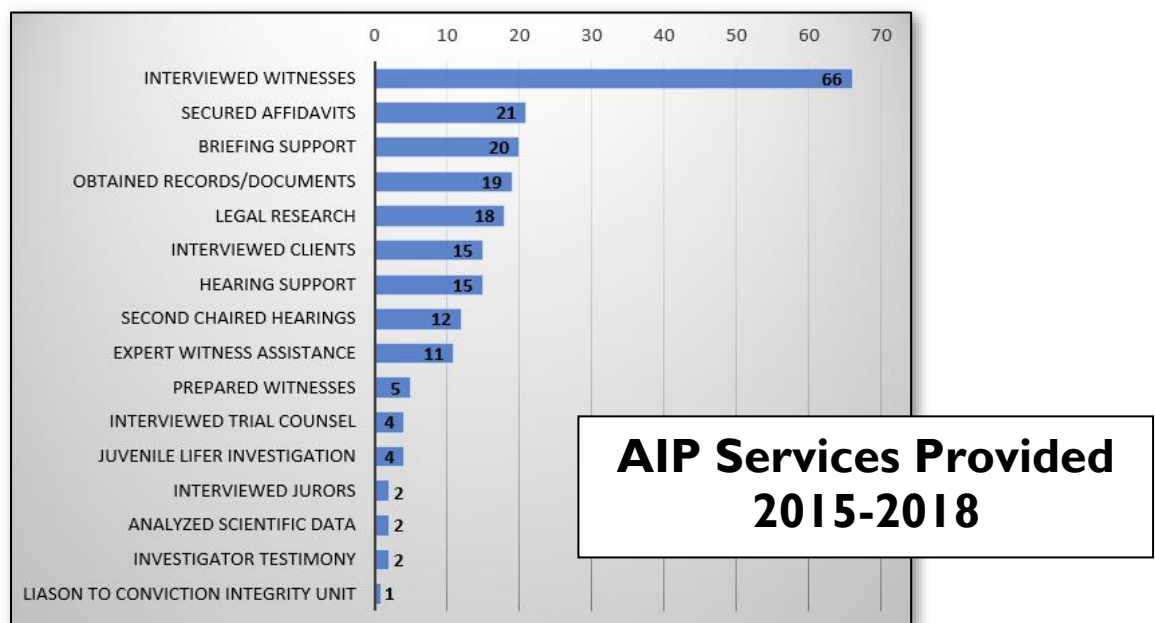
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Overview

Michigan's indigent felony appellate defense system is divided into two parts. The State Appellate Defender Office (SADO) represents approximately 25% of indigent appellants and provides its staff attorneys and clients with support, on-staff investigative services, and expert witness funds.

The remaining 75% of indigent appellants—over 2,000 individuals—are handled by approximately 150 private attorneys overseen by the Michigan Appellate Assigned Counsel System (MAACS), a division of SADO. Although regulated at the state level, MAACS roster attorneys are funded by counties. MAACS representation has historically suffered from inadequate and unpredictable attorney fees and resistance to funds for investigative and expert witness support. Not surprisingly, surveys reveal that relatively few MAACS roster attorneys conducted fact investigations for their indigent clients or were comfortable using newly developed facts on direct appeal.

From 2015-2018, MAACS received funding from a federal Byrne Justice Assistance Grant to form the Appellate Investigation Project (AIP), which extended investigative services and litigation support to the MAACS roster. This has led to new forensic testing of critical evidence, expert witness testimony, evidence of jury bias, challenges to the reliability of convictions, the presentation of new mitigating evidence for resentencing purposes (including juvenile life without parole resentencing proceedings), and new trials.



AIP Successes

New trial for Port Huron woman

Prosecution witness's DNA found on weapon

BETH LEBLANC
TIMES HERALD

A Port Huron woman is heading to trial again in the death of her former boyfriend.

Circuit Judge Michael West ordered a new trial for Judy Higley-Zuehlke after DNA from a prosecution witness was identified on a possible murder weapon.

In October, Michigan State Police matched DNA from a previously unknown donor to Robert Card, an initial suspect in the investigation of John Allen's death and a witness at trial.

The evidence, if presented at trial, could have produced a different outcome, West said.

"The question is not whether the new evidence proves beyond a reasonable doubt Card is the murderer. Card is not on trial," West said in his 14-page



Judy Higley-Zuehlke

See **NEW TRIAL**, Page 2A

The AIP has helped many MAACS roster attorneys improve the quality of representation and secure tangible results for their clients. This includes interviews of dozens of witnesses, assistance in obtaining or conducting evidentiary hearings in 11 cases, helping secure significant sentence reductions, and working collaboratively to win new trials after significant convictions. Highlights include:

People v Noralee Hope. New trial granted after the AIP located and interviewed a juror who signed an affidavit about her extensive knowledge of Ms. Hope's family history, which was "on her mind throughout deliberations."

People v Lawanda Jenkins. New trial granted after the AIP located new eyewitnesses who corroborated Ms. Jenkins's version of events, and who would have testified at trial. The AIP interviewed witnesses, secured affidavits, assisted with briefing and strategy, and second-chaired the evidentiary hearing.

People v Judy Higley-Zuehlke. New trial granted for second degree murder after the AIP investigation developed new evidence contradicting the testimony of two jailhouse informants and supported appellate counsel's presentation of new DNA evidence suggesting a different perpetrator.

STATE OF MICHIGAN COURT OF APPEALS	
PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee.	UNPUBLISHED October 18, 2016
v	No. 324703 Washtenaw Circuit Court LC No. 14-000280-FH
NORALEE MARIE HOPE, Defendant-Appellant.	
Before: RIORDAN, P.J., and METER and OWENS, JJ.	
PER CURIAM.	
Defendant, Noralee Marie Hope, appeals as of right her conviction of domestic assault, third offense, MCL 750.81(4). ¹ She was sentenced to 18 months' probation. We reverse and remand for a new trial.	

STATE OF MICHIGAN COURT OF APPEALS	
PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee.	UNPUBLISHED March 15, 2018
v	No. 329846 Wayne Circuit Court LC No. 15-004374-01-FH
LAWANDA KAY JENKINS, Defendant-Appellant.	
Before: CAMERON, P.J., and SERVITTO and GLEICHER, JJ.	
PER CURIAM.	
Defendant appeals as of right her bench trial conviction of assault with a dangerous weapon (felonious assault), MCL 750.82. The trial court sentenced defendant to three years' probation and 50 hours' community service in lieu of nonmandatory costs and fees. We reverse and remand for a new trial.	

Training & Resources

Michigan law uniquely allows expansion of the record on direct appeal. To be effective, appellate counsel must have the knowledge and tools to conduct extra-record investigations. In partnership with SADO's Criminal Defense Resource Center (CDRC), the AIP has provided MAACS roster attorneys with a wide array of trainings on many core subject areas, including:

- Investigation plans
- Motions to remand
- Freedom of Information Act
- Case flow and deadlines
- Forfeiture and waiver issues
- Funding expert witnesses
- Sentencing issues, including jail credit and offense variable scoring

"I learned so much from the investigation project, and I am applying what I gained to all my trial and appellate cases. The investigation project and all the other trainings have made me a better attorney. Thank you so much!"

– MAACS roster attorney

Other specialized trainings have included:

- **The Forensic Training Series:** a multi-part program addressing abusive head trauma, junk science on appeal, *Daubert* motions, DNA analysis, and firearms issues
- **The Appellate Writing Workshop:** an annual 3-day program where attorneys bring their own cases and work with trainers and peers to improve their writing, legal analysis, and oral advocacy skills
- **Monthly Virtual Mini-Trainings:** covering a variety of topics, each followed by an hour of case rounds and Q&A
- **Litigating Ineffective Assistance of Counsel Claims:** a two-part program combining plenary sessions and small group discussions

"I had never encountered a training at such a high level. I have applied these skills in several other cases since."

– MAACS roster attorney

Many trainings are recorded and available for later viewing on www.sado.org.



Litigation Support

The popularity of the AIP and its many successes demonstrate that appellate defenders need training and tools to improve their practices and secure positive outcomes for their clients. Upon the conclusion of grant funding for the AIP, MAACS created the permanent, full-time position of Litigation Support Counsel to help ensure reliable access to investigators and expert witnesses in MAACS cases, as well as other critical litigation support services.

Former SADO Assistant Defender Jessica Zimbelman serves as the first MAACS Litigation Support Counsel. To build on the AIP's work, Ms. Zimbelman consults with roster attorneys about appellate factual development, collaborates on pending cases, and oversees an expanding clearing-house of private investigators and expert witnesses.

Litigation Support Counsel helps with:

- Spotting issues in individual cases
- Planning case strategies
- Reviewing and editing pleadings
- Supporting and mentoring attorneys
- Identifying investigators and experts
- Second-chairing hearings
- Facilitating monthly virtual case rounds

Ms. Zimbelman also provides intense support and mentorship to newer MAACS roster attorneys to ensure they begin MAACS practice on solid footing. She is also implementing and supporting a new volunteer counsel project for select appellate cases.



For more information, contact MAACS Litigation Support Counsel Jessica Zimbelman at jzimbelman@sado.org or 517.334.1200.

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