



State Appellate Defender Office

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REQUEST FOR PROPOSALS

Michigan Appellate Public Defense Caseload Standards Study

Issued: April 19, 2021

Submission Deadline: May 31, 2021

1. Introduction

The State Appellate Defender Office (SADO) is requesting proposals from qualified vendors to assist SADO in determining appropriate workload standards for providers of indigent legal representation in criminal appeals in the state of Michigan.

SADO seeks to procure the services of a vendor to conduct a study which can be used as a basis for stipulating numerical caseload/workload standards for adult criminal appeals in Michigan courts. The selected vendor will work in consultation with SADO at all stages of the study, including the conduct of the study itself. The study must result in the production of recommended caseload standards for indigent defense providers that accounts for (a) guilty plea and trial appeals, (b) the different facets of appellate work including both trial court and appellate court representation, and (c) variation in delivery models between the SADO public defender office and the Michigan Appellate Assigned Counsel System (MAACS).

SADO requests proposals from qualified vendors which may include, but are not limited to, private sector firms, not-for-profit organizations, and public or private institutions such as universities or colleges with expertise in conducting research similar to research described in Sections 4 and 5 of this RFP.

This RFP also outlines the terms and conditions, and all applicable information required for submission of a proposal. Proposers should pay strict attention to the proposal submission deadline to prevent disqualification. To ensure compliance with these requirements and to prevent possible disqualification, Proposers should follow the format and instructions contained in this document.

Key Dates

It is anticipated that a contract will be awarded in response to this RFP based on the following schedule:

Table 1. Timeline for This Request for Proposals*

RFP Release Date	April 19, 2021
Questions Due By	May 3, 2021
Questions Answered By	May 10, 2021
Proposal Due Date	May 31, 2021
Award Announcement	June 18, 2021
Tentative Contract Start Date	TBA by the SADO and Bidder, but before October 1, 2021

*SADO reserves the right to change any of the dates stated in this RFP. If such change occurs, SADO will notify all bidders who received the RFP.

2. Background and Motivation For The Project

An independently governed agency within Michigan's Judicial Branch, SADO is tasked with meeting the statutory and constitutional requirements to represent poor people appealing their felony criminal convictions in Michigan. SADO consists of a public defender and the Michigan Appellate Assigned Counsel System (MAACS). The public defender division is charged by statute with handling at least 25% of Michigan's pending felony criminal appellate caseload. MCL 780.716(c). The remainder of the state's criminal appeals are assigned to county-funded private attorneys, administered and overseen by MAACS, which merged with SADO in 2014.

The Michigan Supreme Court has promulgated Minimum Standards for Indigent Criminal Appellate Defense Services which include review of the record, client communication, and litigation of the appeal, among other topics.¹ The standards do not include attorney caseload requirements. In addition to these minimum standards, the public defender division includes internal operating procedures and cultural expectations which create additional requirements for representation on appeal. For example, SADO public defenders are required to visit clients in person (pre-COVID) rather than via video, and are required to appeal on to the Michigan Supreme Court for certain categories of cases after an initial appeal is unsuccessful. MAACS roster attorneys are encouraged to visit clients in person, but do not otherwise have these requirements.

In 2018 and 2019, there were an average of 3293 felony appeals each year. These are divided into trial and guilty plea appeals and miscellaneous cases like collateral appeals. There are approximately 678 trial appeals and 2103 plea appeals in a typical year. In these two years, the SADO public defender division handled an average of 202 guilty plea appeals, 205 trial appeals, and 77 miscellaneous appeals, while the assigned counsel roster handled most of the remaining appeals. 2020 marked an atypical year with a significant decrease in appeals due to the pandemic. *Michigan Appellate Numbers, Appendix A.*

Public defender appellate workloads depend on obsolete case weights. Meanwhile, some private roster attorneys carry caseloads higher than public defender workloads. For both the public defender division and private roster attorneys, an updated and accurate workload study is necessary to best measure capacity and effectively represent clients. Both Assistant Defenders in the public defender division and roster attorneys are motivated to conduct an accurate workload study. SADO keeps careful assignment data and has the internal capacity to collect the necessary data.

SADO's governing body, the Appellate Defender Commission believes that a weighted caseload study setting forth appellate indigent defense caseload standards is a critical

¹ Minimum Standards for Indigent Criminal Appellate Defense Services, accessed at http://www.sado.org/content/temporary/11193_MAACS-MS.pdf

step to best provide quality legal representation. The results of the weighted caseload study will be used to inform a caseload standard for appellate-level indigent defense attorneys in Michigan, to measure the proper workloads for public defender and roster attorneys, and to inform SADO budget and legislative strategy.

Public Defender Division and Workloads:

SADO is authorized by statute to only accept the number of assignments for the public defender division that will ensure quality criminal defense appellate services consistent with appropriations and the 25% mandate. MCL 780.716(c). Depending on overall intake amounts, the public defender under authorization from the Appellate Defender Commission may at times take fewer than 25% of appeals. In 2018, the Appellate Defender Commission voted for the public defender division to meet this mandate through primarily trial appeal appointments for best overall representation of indigent appellant clients on appeal.

The public defender division consists of two managing attorneys, seventeen attorneys, one investigator, and a social worker paid on a State of Michigan salary rate. Four of those attorneys and an additional two attorneys and four mitigation specialists compose a separate juvenile lifer resentencing unit. This proposed workload study is for the standard direct appeals unit, not the temporary Juvenile Lifer Unit.

SADO has established a standard weighted caseload at approximately 26.4 appeals per year based on now-obsolete internal time studies conducted in the 1980s. The current system supplies weights to different categories of appeals based on the type of appeal and the length of the transcript. For example, a 200-page jury trial appeal carries a case weight of 1, while a typical plea appeal carries a case weight of .375. Under these standards, an attorney could receive assignments ranging from 72 plea appeals to 26 or fewer trial appeals per year. *SADO Case Weight Categories, Appendix B.*

These case weights have supplied a useful benchmark and SADO's statute and governing Commission have allowed the public defender division to maintain these case weights divided among Assistant Appellate Defenders, with remaining assignments going to the MAACS roster attorneys. SADO is not required to handle more appeals per attorneys than these case weights. However, as appellate criminal practice has grown more complex and attorneys increasingly utilize Michigan's two-tiered appellate structure, which requires certain issues to be developed in trial court,² this case weight system has proved increasingly obsolete.

² See Hall, Bradley; *Thinking Outside the Four Corners: How Michigan's unique criminal appellate process promotes justice through factual development on direct appeal.* Accessed at <http://www.michbar.org/file/barjournal/article/documents/pdf4article3754.pdf>

In particular, the existing case weight system failed to take into account trial court evidentiary hearings, trial court resentencing hearings, case transfers from departing attorneys, and the growing complexity of appellate practice in Michigan. In response to these developments, the Appellate Defender Commission adopted interim case weight adjustments in September 2020 that included additional credit for three events: trial court evidentiary hearings, trial court resentencing hearings, and case transfers.

Assigned counsel roster reforms and workloads:

In 2015 following the merger with SADO, after decades of operating under an inefficient assignment model and inadequate resources, MAACS launched an innovative pilot project. The project used a regional assignment process to encourage the trial courts' voluntary adoption of a standardized attorney fee policy. After beginning with 14 trial courts, the pilot grew to include most of Michigan's trial courts statewide. In 2017, the Supreme Court approved these reforms permanently.

Counties that have adopted uniform fee schedules and regional lists compensate attorneys at a rate of \$50 or \$75 per hour, depending on the category and type of appeal – most plea appeals fit into the \$50 per hour category and all trial appeals the \$75 per hour category. This compensation carries a presumptive maximum fee of 45 hours for trial appeals and 15 hours for plea appeals. Attorneys may file motions for excess fees for work beyond these caps. The trial circuits that have not adopted uniform fee schedules generally pay less than these rates. SADO's appellate case management software allows for calculation of the hours per appeal recorded by MAACS roster attorneys on their payment vouchers.

Roster attorneys are categorized into three levels based on the type and complexity of the appeal. As of March 2021, 77 roster attorneys handled standard guilty plea appeals and 52 attorneys handled appeals for trials and the most complex guilty pleas.

3. Available Caseload Data

Through case management systems, the following data is currently available for SADO public defenders and MAACS roster attorneys:

SADO

- Number of appeals per attorney per year
- Number of trial and guilty pleas per attorney
- Attorney trial and guilty plea weighted caseload
- Events per appeal: client visits, trial court hearings, Court of Appeals and Michigan Supreme Court briefs, etc.
- Number of transcript pages per case
- Charges and sentences per case

MAACS

- Number of appeals per attorney per year
- Number of trial and guilty pleas per attorney
- Since August 2020, hourly billing categories and totals per attorney per appeal
- Charges and sentences per case

4. Previous Caseload Studies

Studies in states including the Michigan trial level system, Texas, Missouri, Massachusetts, Louisiana, Indiana, North Carolina, and New York have recently addressed the best ways to develop caseload standards. These studies were based on empirical research, took account of their unique state-level legal frameworks, and drew upon the expertise of local defenders and other stakeholders. While the details of any particular study may differ from what is required in this RFP, they may provide bidders with guidance when completing the study defined in this RFP.

These studies often involve two phases. The first phase includes data review, timekeeping, and surveys, where defenders track in detail their work, which allows the researchers to quantify how much time defenders put into specified activities in different classes of case. In other words, this first phase answers the question, “*What is?*” The second phase convenes a meeting of experts and key stakeholders, commonly called a Delphi Panel, which is tasked with developing recommendations for the final caseload standards, and, pursuant to Delphi principles, participate in a series of iterative discussions whereby meeting members are repeatedly polled until they reach consensus on ideal caseload limits. The second phase answers the question, “*What should be?*”

5. Expectations of Current Study

Bidders on this RFP may plan a study drawing on some version of the two phases mentioned above, although SADO is also interested in new and innovative approaches. Bidders should be aware that while the studies performed by other states or prior to the issuance of this RFP may provide insight into the area being studied or the methodologies used, they should not unduly direct or influence the conduct of the study to be completed as a result of this procurement. The selected bidder is to conduct a new, empirically-based, methodologically-sound, and objective study of appellate caseload/workload standards in the state of Michigan.

SADO and MAACS both operate as remote workplaces during the pandemic. Bidders should present a study that relies on remote meetings and participation.

Bidders will be expected to identify a strategy in their proposal for selecting a representative sample of public defenders and roster attorneys for which to conduct the caseload study.

Through the study, bidders will be expected to produce the following:

- (a) The appropriate numerical caseload/workload standards for each provider of mandated representation, whether public defender or assigned MAACS attorney. One challenge for the successful applicant will be the establishment of standards that apply to both SADO public defenders and MAACS roster attorneys.
- (b) Recommendations for the means by which those standards will be implemented, monitored, and enforced on an ongoing basis.
- (c) An accessible template by which SADO and MAACS can determine the number of additional attorneys as well as the amount of other necessary in-kind resources such as support staff and investigators necessary to comply with the caseload/workload standards.

In doing so, bidders will be expected to develop, in collaboration with SADO, a complete list of all relevant categories of cases that may be handled by the attorneys in question.

Bidders should be prepared to assess attorney time required in activities including the following:

- (a) Client communication and meetings;
- (b) Initial record review and legal research;
- (c) Factual investigation;
- (d) Expert research and consultation;
- (c) Composition of appellate or trial court pleadings;
- (d) Trial court hearings;
- (e) Court of Appeals arguments;
- (f) Supreme Court practice;
- (g) Resentencing hearings;
- (h) Administrative tasks, especially for MAACS roster attorneys, who generally lack support staff;
- (i) Non case-specific tasks such as traveling, waiting in court, training, supervision, or general research.

As part of the award process, the proposer and SADO will establish a mutually agreed upon final budget and work plan, which become the contract deliverables.

6. Application Procedures

Questions

All questions regarding this request for proposal must be made in writing by May 3, 2021 and sent electronically to the attention of SADO Office Manager Wendy Dealca, at the following address: wdealca@sado.org. All correspondences should use the

subject line: Michigan Appellate Case-Weighting RFP. Answers to all questions will be publicly posted on the SADO website (www.sado.org) by the close of business on May 10, 2021.

Format

All proposals must be single-spaced, with one-inch margins, and use a standard 12-point font. The proposal shall include an abstract that summarizes the project in 500 words or less. The “Proposal Narrative” shall not be more than 20 pages, and must include capabilities of the responding organization, and the case-weighting plan. All proposals must also include a full budget and a budget narrative that describes every category of expenses listed in the budget. *Please see Appendix C for a detailed suggested proposal format.*

Deadline: May 31, 2021

Emailed proposals should be sent to Wendy Dealca at wdealca@sado.org with the subject line: “Michigan Appellate Case-Weighting RFP.”

Selection Criteria and Information

Priority will be given to applicants that provide a sound and convincing argument for their choice of methodology. SADO will give particular weight to bidders with a demonstrated capacity to successfully implement time-tracking among attorneys and conduct similar studies.

All rights reserved to not select any of the proposals. SADO is not liable for any cost incurred by the prospective contractors prior to selection of the RFP and implementation of a contract.

SADO will evaluate each proposal based on the following factors (*please see Appendix C for recommended structure*):

Evaluation Criteria	Weight
Plan of Action	50
Proposer Capability and Personnel	25
Budget and Cost	25
Total	100

SADO may utilize all proposals, including pricing information, without regard to a proposal’s technical score to determine fair market value, when comparing and negotiating prices. SADO is not obligated to accept the lowest price proposal. Access to available matching funds is not required but will be considered in the final decision.

The contents of the proposal of the successful bidder may become contractual obligations if a contract ensues. Failure of the successful bidder to accept these

obligations may result in cancellation of the award. The selected contractor will be required to assume responsibility for all services offered in the proposal whether or not they possess them within their organization. SADO will consider the selected contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract. The selected contractor will act as an independent contractor in the performance of duties under the contract reached between the contractor and the SADO.

Successful applicant will be notified by June 18, 2021.

Appendix A: Michigan Appellate Numbers

<u>Year</u>	<u>Case Type</u>	<u>Assigned To</u>	<u>Total Appeals</u>
2018	Trial	MAACS	484
2018	Trial	SADO	201
			Total: 685
2018	Plea	MAACS	1874
2018	Plea	SADO	263
			Total: 2137
2018	Other*	MAACS	430
2018	Other	SADO	91
			Total: 521
2019	Trial	MAACS	462
2019	Trial	SADO	208
			Total: 670
2019	Plea	MAACS	1929
2019	Plea	SADO	140
			Total: 2069
2019	Other	MAACS	441
2019	Other	SADO	63
			Total: 504
2020	Trial	MAACS	147
2020	Trial	SADO	143
			Total: 290
2020	Plea	MAACS	1392
2020	Plea	SADO	36
			Total: 1428
2020	Other	MAACS	310
2020	Other	SADO	48
			Total: 358

*An "other" case type are these kinds of cases: Resentencings, Probation Violations, 6.500 (collateral appeals), interlocutory, PPOs, Evidentiary Hearings, Juvenile Life without Parole.

Appendix B: SADO Case Weight Categories

Case Type	Case Weight
Plea Appeals	.375
Resentencing Appeals	.375
Probation Violation Trials	.5
Interlocutory Appeals	1
Prosecutor Appeals (of Dismissals)	.5
Prosecutor Parole Appeals	1

Jury/Bench Trials and Trial 6500s

Pages 0-150	.5
Pages 151-800	1
Pages 801-1700	1.5
Pages 1701-3000	2
Pages 3001-4000	2.5
Pages 4001+	3

Standard Adjustments*

Supreme Court Leave or Orals Grant	1
Resentencing	.3
Evidentiary Hearing Trial Appeal	.5
Evidentiary Hearing Plea Appeal	.3

* Individual case weight adjustments can be made as necessary with manager approval.

Transfer Weights

Before Opening Pleading	100% of original weight
Awaiting COA Orals	25% of original weight
Supplemental Brief Required	50% of original weight

Appendix C: Suggested Proposal Format

I. PROJECT SUMMARY

Please include:

1. Identification of the entity requesting funds.
2. Contact person, telephone, and email for this Request for Proposals.
3. Fiscal intermediary name and address (identify the department and/or individual responsible for fiscal reporting for this project).
4. Amount of funding requested.
5. A 500-word abstract of the proposed project.

II. PROPOSAL NARRATIVE

A. Plan of action

Please answer the following questions about how you would conduct the proposed study. Bidders will be evaluated on the information they provide.

Description of the study

Describe the process, from start to finish, that you intend to follow in the development of weighted caseload standards, including:

1. An overview of the whole process of the study, including a detailed timeline.
2. Description of strategic approach to selecting attorneys for the study.
3. How will 'quality' representation be conceptualized and operationalized in the study?
4. How would you assess the present caseloads/workloads of providers, including the amounts of time and types of work dedicated to cases? Include a description of any information technology products that will be used, how they will be used, and how you will seek to assure their successful use in this study. Please include a detailed description of how you will seek buy-in from participants.
5. How would you assess the additional time and resources necessary for the providers to provide quality representation? Include a description of any information technology products that will be used, how they will be used, and how you will seek to assure their successful use in this study.
6. How would the study incorporate participation from, and be applicable to both SADO public defenders and MAACS roster attorneys?

Accounting for non-case and non-attorney time

7. How would the study account for tasks or activities not directly related to specific cases, such as time spent reviewing legal developments, and how would such differences be reflected in the numerical caseload standards and weights?

8. How would the study consider and quantify the time required for supervision of attorney and non-attorney staff, and how would such differences be reflected in the numerical caseload standards and weights?
9. How would the study consider vacations and public holidays?
10. How would the study consider and quantify the time required not only of attorneys, but also of non-attorney support staff such as investigators, paralegals, administrators, and others, in order to meet standards, and how would such differences be reflected in the numerical caseload standards and weights?

Accounting for differences in caseload and service providers

11. How would the study account for both SADO public defenders and MAACS roster attorneys?
12. How would the standards be applied to MAACS roster attorneys who split their time between indigent appellate legal representation and other work?
13. How would the study address not only new cases, but also any backlog of cases attorneys are carrying, and how would such differences be reflected in the numerical caseload standards and weights?
14. How would the study account for representation in cases which end prior to disposition – for example because a conflict of interest is discovered, or the person elects to retain private counsel?

Development and application of standards

15. How would the study use the data gathered to produce both numerical caseload/workload standards for providers of indigent legal services, and a weighting scheme for different types of cases?
16. How would those standards and weights be used to calculate the amounts of funding, additional staff (both attorney and non-attorney), in-kind resources, and additional roster attorneys SADO and MAACS require to meet standards?

B. Proposer Capability and Personnel

Please provide qualifications and experience for the lead person(s) responsible for project implementation. Identify other members of the staff who will work on this project, as well as the role and level of involvement of outside participants in the completion of the project. If you are using sub-contractors for any other portion of the project plan, please specify their roles and responsibilities.

C. Budget and Cost

Proposals will be evaluated and rated on efficient use of funds and overall cost-effectiveness, which includes budget plans that are consistent with the proposed action plan, administrative costs, justification for each requested budget line, and cost benefit. The decision will not be based on pay rate alone; it will be an evaluation of all of the factors included in the proposal. Please be sure to address the following:

1. *Budget*: Provide a detailed budget containing reasonable and necessary costs. The budget for the proposed project must be consistent with the terms of the RFP and provide a justification for all expenses.
2. *Subcontracting*: Describe whether the proposed budget will include subcontracting with another service provider in order to complete the terms described in this RFP and, if so, provide a brief description of the purpose of the subcontract.
3. *Matching Funds*. As described above, matching funds are not an essential component of the proposed application but will be considered if available. If matching funds are available, please provide the source, amount, and any stipulations tied to funds.
4. *Budget Justification*: Include a brief narrative for each budget line justifying the budget request and relating the requested line budget amount to the plan of action and expected results. The narrative should be mathematically sound and correspond with the information and figures provided in the Budget Form.
5. The *Budget Justification* must also describe how the proposer will monitor expenditures during the life of the project to ensure that the project stays within the budget.