

**APPELLATE DEFENDER COMMISSION MEETING
MINUTES**

JUNE 17, 2020
ZOOM MEETING
12:00 P.M.

PRESENT:

COMMISSIONERS: Chair Tom Cranmer, Honorable William Caprathe, Judith Gracey, Tom McNeill, Douglas Messing, and Darryl Woods.

OTHERS PRESENT:

SADO/MAACS: Director Jonathan Sacks, SADO Deputy Director Michael Mittlestat, SADO Deputy Director Marilena David-Martin, MAACS Administrator Brad Hall, MAACS Deputy Administrator Kathy Swedlow, and Commission Secretary MariaRosa Palmer.

Guests: Wendy Dealca, Jason Eggert, Kristin LaVoy, Patricia Maceroni, Katherine Marcuz, Jackie McCann, Angeles Meneses, Sofia Nelson, Jessica Newton, Jackie Ouvry, Christine Pagac, Lindsay Ponce, Erin Van Campen, Jessica Zimbelman and John Zevalking.

Welcome

Mr. Sacks introduced SADO staff members who were present in support of Kristin LaVoy and to speak on the caseload item on the agenda.

Chairperson Cranmer also welcomed new commissioner, Darryl Woods. Mr. Woods was recently appointed by Governor Whitmer as the appointee representing the general public. Commissioner Woods briefly shared his background and stated that he looks forward to serving on the Commission.

Resolution of Appreciation for Commissioner Adams

Chairperson Cranmer indicated with the appointment of a new commissioner, the Commission must say goodbye to Commissioner Adams and asked Mr. Sacks to share the resolution prepared for Commissioner Adams.

Commissioner Messing moved to adopt the resolution of appreciation and present to Mr. Adams later, seconded by Commissioner Gracey. Carried unanimously.

PUBLIC COMMENT

Mr. Sacks indicated that several SADO attorneys were present to give comment on the workload agenda item. Chairperson Cranmer suggested that it might be best to save those comments when we reach that item unless schedules do not allow.

Jessica Zimbelman commented about workloads.

PRESENTATION TO THE RECIPIENTS OF THE NORRIS THOMAS AND BARABARA LEVINE AWARDS

Mr. Hall presented the Barbara Levine award to John Zevalking. He acknowledged his hard work and his willingness to take on the difficult cases. Mr. Hall also stated that Mr. Zevalking continues to assist SADO and MAACS when needed such as helping with training and working with CDRC. Ms. Swedlow added that Mr. Zevalking is a great writer.

Mr. Mittlestat presented the Norris Thomas award to Kristin LaVoy. He shared that Ms. LaVoy is no longer with SADO. Ms. LaVoy is now the Training Director at Neighborhood Defender Services. Ms. LaVoy represents the epitome of client-centered representation. She spent the time with clients and their families. Ms. LaVoy was valuable at SADO as a mentor/friend, trainer and instrumental in tracking case weights and working for reform.

APPROVAL OF THE MINUTES FROM THE MEETINGS OF DECEMBER 10, 2019 AND FEBRUARY 24, 2020:

Commissioner Gracey moved, seconded by Commissioner Messing to approve the minutes of December 10, 2019 and February 24, 2020. Carried unanimously.

UPDATES:

COVID-19 operations: Mr. Sacks reported that SADO has set up virtual operations with one staff member going into the office to process mail. Mr. Sacks also shared a snapshot of one month's work since working remotely. As the State gradually opens, SADO has accommodated staff who need to go into the office.

COVID-19 advocacy: Mr. Sacks shared that the SADO website has sample motions, pleadings, and information for attorneys and the public.

Mr. Sacks also reported that external advocacy has been very successful. Letters were sent out to all judges from SADO and the ACLU talking about COVID-19 and how it should impact their decisions on bonds and probation violations. He also acknowledged the work Patty Maceroni, Sofia Nelson, and Brad Hall did in the early release project for Oakland, Macomb and Wayne Counties. Each of them recruited and organized volunteers to file motions for early release on behalf of individuals serving time in jail.

HYTA Reviews: SADO was approached by Wayne to assist in HYTA Reviews for early prison release.

MDOC Update: Mr. Sacks stated that SADO lost two clients to COVID-19. Mr. Garrison a juvenile lifer who had a successful Miller hearing and was set to be released and Mr.

Columbo who a former SADO client and a former client of Mr. Hall while he was at the Federal Defender's Office.

Mr. Sacks also reported that SADO conducted a survey about COVID-19 concerns occurring in Michigan's jails and prison. They received 100 responses and a summary was submitted to the Department of Corrections with recommendations.

Budget: Mr. Sacks reported that the revenue estimating conference took place a month ago and the State is expecting a \$2 billion deficit for this fiscal year and next fiscal year. For 2020, all discretionary spending has been limited or halted and SADO has not filled vacant positions. The next revenue estimating conference will take place in August. Mr. Sacks is working closely with the judicial branch and will form a plan as how best to address any budget shortfalls.

Detroit Lease/Move: Mr. Sacks signed the long-term Detroit lease and SADO will be able to move into the New Center in September or October 2020 which will be in line with the phased reopening plan.

Cybersecurity: Mr. Sacks updated the Commission about computer security incidents that took place in December. The Michigan State Police Cyber Command was called to investigate, and the Michigan Cyber Civilian Core provided consultation regarding software and changes. SADO implemented new software and procedures has had no new incidents. He also reported that there was no evidence that the client files were accessed. There is some evidence that personnel clients may have been accessed and all employees now have an identity protection plan through Lifelock.

Formula: Mr. Sacks reported based on pending appeals the public defender division is at 38% trials and 2% pleas. Overall the SADO intake is down with the shift to more trial appeals.

Juvenile Lifer Unit: Mr. Mittlestat provided the Commission with an update – 87 clients await resentencing and 6 await upcoming Miller Hearings. Mr. Mittlestat stated that some courts may have virtual Miller hearings which brings some tough decisions for SADO attorneys and clients. Virtual hearings raise lots of questions and possible issues such as the Confrontation Clause.

MAACS

Mr. Hall reported that assignments have decreased since the pandemic. He believes this will be temporary and MAACS will see the backlog come in over the next several months until the end of year.

MAACS has also been working remotely and the staff has been doing an outstanding job keeping things moving. Mr. Hall shared with the Commission the loss of Jane Doyle and that Terry Huhn was added to the staff.

Ms. Swedlow reported that the MAACS roster size remains the same. She provided a chart in the materials that gives a snapshot. She also indicated that MAACS has already begun recruiting efforts and is currently working on training for the new class of roster attorneys.

Ms. Swedlow shared with the Commission that she and Mr. Hall identified anomalies with the appointment of counsel while working on a project of tracking right to counsel in Court of Appeals cases. These cases, *People v Haywood* and *People v Nino* were in Wayne County, both had retained counsel in trial court, the charges were dropped but the prosecution appealed. Because these were retained cases, no automatic remand was ordered and clients were not aware of the appeal. Mr. Hall and Ms. Swedlow filed leave applications in the Supreme Court and *Haywood* was remanded to the Court of Appeals for consideration on the issues raised.

Mr. Hall shared the new Regional Map and noted that Alpena and Montmorency (26th) and Newaygo (27th) adopted the Standard Fee Policy. Oceana (27th) still has not but Mr. Hall is hopeful. Mr. Hall plans to keep working and pushing for reasonable fees in all circuits but with the pandemic, those may slow down. Commissioner McNeill thanked Mr. Hall and Ms. Swedlow for all the work on continued regional cooperation.

Commissioner McNeill asked about the roster size and average workload for a roster attorney and how many attorneys were over the 26.4 weighted caseload. Mr. Hall responded the workload varied significantly and that currently, MAACS has 12 attorneys with a caseload higher than the 26.4.

Lastly, Mr. Hall shared with the Commission that both SADO and MAACS are successfully doing client video visits via Zoom. He thanked Marilena David-Martin for her work with the MDOC to put together and to Terry Huhn and MariaRosa Palmer for their work.

Training and Reentry: COVID-19 related trainings were held in April (Motions MI Defense Attorneys Can File in Light of COVID-19) and in May (COVID-19 Issue Spotting and Record Preservation Training with Katherine Marcuz and Michael Mittlestat and the MIDC and How to Zoom Court with Jessica Zimbelman and Elizabeth Young). All trainings were well attended and well received.

The Appellate Writing Workshop was cancelled but Ms. David-Martin indicated that she just completed a training program which will help her utilize other avenues for training and come up with creative and interactive ideas.

For reentry, SADO has recently launched a new application that is available on the SADO website. This app will provide resources for those recently released from jail or prison. Ms. David-Martin also shared that SADO hosted several wellness workshops and provided the Commission with the most recent issues of their newsletter, the DRUM.

Grants: SADO has applied for funding to continue the Wrongful Prosecution Project and applied for funds for Appeals & Post Disposition work in Juvenile defense cases. SADO was also invited by a new organization of funders called Michigan Justice Fund to join a group to plan funding strategies for reduction of incarceration.

Case Highlights: Mr. Mittlestat and Ms. Swedlow provided a summary of case highlights to the Commission.

Policy Updates

Phased Reopening Plan

Mr. Sacks shared SADO's reopening plan. The plan follows Federal and State of Michigan Guidelines. He also noted that the plan was reviewed and approved by Community Health Emergency Coordination Center of DHHS. The plan is a 4-phase process:

- Phase 1 - Essential operations only (after stay-at-home order is lifted)
- Phase 2 – Limited Operations
- Phase 3 – All staff with Social Distancing
- Phase 4 – COVID-19 Suppressed, All Staff without Social Distancing

Commissioner Woods moved, seconded by Commissioner Messing to approve the phased reopening plan. Carried unanimously.

In-Person Client Visits

Mr. Sacks shared the in-person client visit policy for visiting clients in person at prisons or jails. The policy includes a flowchart / checklist requiring several factors to ensure the health and safety of clients and staff members. This policy has also been reviewed and approved by the Department of Community Health Emergency Coordination Center of DHHS. Mr. Sacks also stated that future checklists on fieldwork and court work are under development.

Commissioner Messing moved, seconded by Commissioner McNeill to approve the changes in the In-Person Client Visit Policy. Carried unanimously.

Budget Authorization

Moving/Furniture Expenses

The costs to move SADO from the Penobscot Building is high because movers would only be able to work on weekends due to elevator issues. Since some new furniture is needed, Mr. Sacks is requesting authorization to spend \$10,000 on a small move and \$70,000 on new furniture. This is necessary spending and will take place over the next 2 fiscal years. Commissioner McNeill asked about the old furniture and who will absorb the cost of removing. Wendy Dealca responded that it will be SADO, but she feels the furniture will be deemed worthless and they can slowly remove it from the building at no cost.

Commissioner Gracey moved, seconded by Commissioner Woods to approve the moving/furniture expenses as set in the materials. Carried unanimously.

Counsel to Explore Penobscot Rent Withholding

Mr. Sacks believes SADO is in a good position to withhold rent for the remainder of the Penobscot Building lease but would like authorization, not to exceed \$5,000, to consult with an attorney.

Commissioner Messing moved, seconded by Commissioner Woods to approve engagement of counsel not to exceed \$5,000 to further explore the possibility of rent withholding at the Penobscot Building. Carried unanimously.

COVID-19 Funding

Mr. Sacks would like authorization to receive funds from the Department of Justice. It was recommended that SADO receive \$200,000 to assist with ongoing jail release efforts.

Commissioner McNeill moved, second by Commissioner Messing to allow SADO to receive the COVID-19 funding and to continue with the jail relief project. Carried unanimously.

Interim Workload Adjustments

Mr. Sacks indicated that this is a difficult and important issue. SADO has been working with a 30-year old case weighting mechanism that does not account for work done by SADO attorneys – Supreme Court work, Evidentiary Hearings and Mitigation hearings. The current weighted caseload is also above the national standard of 25. And now SADO is faced with extremely dedicated and fantastic attorneys that are drowning. He also stated that while the merger of MAACS and SADO accomplished what it intended to accomplish; some successes have been accomplished because of resource allocation decisions. For instance, SADO's obsolete database has not been updated because priority needed to be given to the voucher system and SADO vacancies were not filled because the MAACS Litigation Support Specialist was needed for the roster.

Mr. Sacks highlighted several points for the Commission to discuss:

- Ethical implications about excessive public defender workloads;
- Resource trade off;
- Sustaining the flagship defender office; and
- Specific recommendations including a Comprehensive Workload Study; a Workload Minimum Standard; MAACS Roster Appointment Slow-Downs; and Interim Objective Internal Case Weight Adjustments at SADO.

Public comments were heard by several SADO attorneys – Katherine Marcuz, Jackie McCann, Sofia Nelson, Jackie Ouvry and Erin Van Campen. Chairperson Cranmer stated that the Commission would review the materials received and act, if deemed appropriate, at the September meeting.

Director Evaluation

Chairperson Cranmer will appoint a subcommittee to conduct the director evaluation and report back at the September meeting.

The meeting was adjourned at 3:06 p.m.

Respectfully submitted,

MariaRosa J. Palmer
SADO

APPELLATE DEFENDER COMMISSION

BY: Thomas W. Cranmer, Chair