

**APPELLATE DEFENDER COMMISSION MEETING
MINUTES**

SEPTEMBER 16, 2020
ZOOM MEETING
12:00 P.M.

PRESENT:

COMMISSIONERS: Chair Thomas Cranmer, Judith Gracey, Vice-Chair Thomas McNeill, Douglas Mains, 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: SADO Staff: Jackie McCann, Jackie Ouvry, Erin Van Campen, Jessica Zimbelman; UAW Representatives: Christine Peel and Susie Reed.

Welcome

Mr. Sacks introduced SADO staff members who were present and two representatives from the UAW, Christine Peele and Susie Reed.

Tribute to Commissioner Judge William Caprathe

Chairperson Cranmer stated that the Commission lost an excellent colleague, a member of State Bar, a former Bay County defender, judge and someone who cared about the work done by SADO and MAACS. The tribute will be printed and framed and presented to the family.

Commissioner Woods moved to adopt the tribute and present to Judge Caprathe's family, seconded by Commissioner Gracey. Carried unanimously.

PUBLIC COMMENT

Jackie McCann commented on behalf of the union, local 2200 in support of the interim workload adjustment and reserved the right further negotiate.

APPROVAL OF THE MINUTES FROM THE MEETINGS OF JUNE 17, 2020 AND AUGUST 18, 2020:

Commissioner Messing moved, seconded by Commissioner McNeill to approve the minutes of June 17, 2019 and August 18, 2020. Carried unanimously.

UPDATES:

COVID-19 operations: Mr. Sacks reported that SADO still remains remote with two staff members going into the office to process mail. Protocols are in place if staff wish or need to go into either the Lansing or Detroit offices.

COVID-19 advocacy: Mr. Sacks reported that through the early release advocacy, 77 Macomb individuals and 19 in Oakland were granted early release. He acknowledged the work done by Patty Maceroni, Sofia Nelson, and Brad Hall. Mr. Sacks also informed the Commission that the grant funding to continue this work has been informally approved and forwarded for final review.

Union: On August 27, 2020 a third party conducted a verification of the union cards signed by staff. A majority of SADO employees signed cards. SADO now has a Union and the next step will be collective bargaining.

Detroit Lease/Move: The build out for SADO's new space at New Center One has started and plans have been made to pack up the space at Penobscot Building. SADO's attorney has advised SADO to terminate the lease November 1, after the expected start of the New Center lease, 11 months early. The State Budget Office has been notified of these plans.

Budget: For this fiscal year SADO was able to avoid furloughs and layoffs by not filling vacant positions and limiting discretionary spending. For fiscal year 2021, the State is expecting a \$1 billion deficit and SADO is still waiting to hear the impact on the budget.

Formula: Mr. Sacks reported based on pending appeals the public defender division is at 42.4% trials and 2% pleas, for a total of 30.4% of pending appeals. In August, September, and October, SADO's raw intake numbers have been reduced by half as a result of the COVID-19 crisis. Since overall appeals are down, there is negligible impact to the MAACS Roster from this change.

Juvenile Lifer Unit: Mr. Mittlestat provided the Commission with an update – 70 clients await resentencing. He also shared that two cases were recently given term of years.

MAACS

Mr. Hall shared that MAACS is still remote with Frank Rodriguez processing mail for MAACS. He indicated that Patty Maceroni and Terry Huhn are doing a wonderful job given that they both joined MAACS during a pandemic.

Mr. Hall also added that MAACS has launched their on-line voucher system. Programmer Eric Buchanan has done an outstanding job. The launch has also provided an opportunity to open dialogue with the remaining courts that have not adopted the Standard Fee Policy.

Mr. Hall is also encouraging Wayne County attorneys to use the system and submit a motion for fees on what may not normally be paid by the Wayne County Circuit Court.

Ms. Swedlow reported that the MAACS roster size remains the same. Applications to join the roster were down, the lowest since 2015. 19 attorneys have been invited to join as Level 1 and 3 were conditionally invited since they are recent law school graduates.

Ms. Swedlow also indicated that due to a possible SADO workload adjustment, two roster attorneys were promoted from Level 1 to Level 2. Commissioner McNeill asked if it was a good time to survey the COA judges again. Mr. Hall noted that he has received positive comments but agreed it is something to consider.

Training and Reentry: Ms. David-Martin shared with the Commission virtual trainings that were held and a calendar of upcoming virtual trainings. SADO staff are required to attend one training on racial justice issues.

For reentry, Ms. David-Martin talked about a recent experience with a SADO client that was released from prison after serving 40 years. Michael Moore, a client of Jackie Ouvry, with medical issues was dropped off by the MDOC at a homeless shelter because prearranged housing had fallen through. Ms. Ouvry was contacted and the next day he was picked up and taken to a hotel. SADO staff member Jose Burgos stayed with Mr. Moore to help care for him. Through a Go Fund Me campaign, SADO was able to raise funds and secure new housing at a nursing home. The remaining funds will be used for Mr. Moore's medical needs.

Commissioner Gracey congratulated SADO on their steadfastness and coordinating efforts. Mr. Woods also commented that it was heartbreaking, and he hopes the MDOC and Governor were informed so this never happens again.

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

Interim Workload Adjustments

Mr. Sacks shared his recommendation for an interim workload adjustment. Mr. Sacks requested the following interim adjustments implemented:

1. Add weight to cases based on these events that arise throughout the course of an appeal:
 - Evidentiary Hearing Trial Appeal: Add .5
 - Evidentiary Hearing Plea Appeal: Add .3
 - Resentencing Hearing Trial or Plea: Add .3

2. Assign percentage weight to transferred cases according to the status of the case at the time of the transfer:
 - Before opening pleading: 100% of original case weight
 - Awaiting Court of Appeals argument: 25% of original case weight
 - Supplemental briefing: 50% of original case weight

Mr. Sacks invited Mr. Mittlestat and Mr. Hall for their input. Mr. Mittlestat stated that the SADO weighting system is outdated and that a comprehensive workload study would be costly and time consuming. Relief is needed now. Mr. Hall expressed that any reductions would be at the cost of the full client population – SADO and MAACS clients. He agrees that the weighting system is outdated but believes that the Commission should wait to decide since collective bargaining with the union is forthcoming. Discussion continued by the Commission.

Commissioner Woods moved to approve the interim workload adjustment recommended by Mr. Sacks, seconded by Commissioner Messing. The motion carried 4-2, with Commissioners Gracey and McNeill opposed.

Policy Updates

In-Person Court Appearance Policy

Mr. Sacks shared the in-person court appearance policy and indicated that it is based on the state, national, and Michigan Supreme Court Guidelines. He also thanked Marilena David-Martin, Michael Mittlestat, Tina Olson and Claire Ward for their work.

Safe Return to Field Work Checklist

The policy allows for essential field work to resume and are based on state and national guidelines. Mr. Sacks thanked Tina Olson, Julianne Cuneo, and Wendy Dealca for their work on the checklist.

Commissioner Messing moved, seconded by Commissioner Woods to approve the In-Person Court Appearance policy and the Safe Return to Field Work Checklist. Carried unanimously.

MIDC Standard 5

Mr. Sacks reported that the MIDC Standard 5 (independence from the judiciary) is moving forward pending approval by LARA in October. SADO and MAACS comply with much of this standard except for payment to roster attorneys and other related expenses which are administered by the court and can lead to a possible conflict. SADO would like to explore obtaining independence in these areas through conversations with stakeholders.

Commissioner McNeill moved, seconded by Commissioner Woods to support the director's recommendation regarding MDIC Standard 5. Carried unanimously.

Budget Authorizations

Labor Relations Attorney

Mr. Sacks requested authorization for SADO to enter a contract with labor relations attorney, James Perry for \$150 hours at \$215/hr.

Commissioner McNeill noted that he is abstaining from the discussion and vote since he and Mr. Perry are members of the same firm.

Commissioner Woods moved, seconded by Commissioner Messing to authorize SADO to authorize SADO to enter a contract with Mr. Perry. Carried unanimously with Commissioner McNeill abstaining.

Criminal Defense Resource Center Contract

Mr. Sacks requested authorization to continue a contract with Mr. Zelvaking.

Commissioner Messing moved, second by Commissioner Woods to authorize SADO to enter a contract with John Zelvaking for \$45 per hour up to 500 hours. Carried unanimously.

Annual Report

Mr. Sacks shared the SADO/MAACS 2019 Annual Report and thanked staff for their work in completing. The report captures what SADO and MAACS was able to accomplish for their clients and training and reentry.

Commissioner McNeill moved, seconded by Commissioner Messing to adopt the 2019 Annual Report as submitted in the materials. Carried unanimously.

Director Evaluation

Chairperson Cranmer apologized for the delay and that a survey will be distributed to Commission members by Friday.

The meeting was adjourned at 2:22 p.m.

Respectfully submitted,

MariaRosa J. Palmer
SADO

APPELLATE DEFENDER COMMISSION

BY: Thomas W. Cranmer, Chair