

**APPELLATE DEFENDER COMMISSION MEETING  
MINUTES**

JUNE 15, 2022  
SADO DETROIT  
12:00 P.M.

**PRESENT:**

**COMMISSIONERS:** Chair Thomas Cranmer, Judith Gracey, JoAnn Lank, and Honorable Thomas Solka.

**OTHERS PRESENT:**

**SADO/MAACS:** Director Jonathan Sacks, SADO Deputy Director Marilena David, Direct Appeals Managing Attorneys Katherine Marcuz and Jessica Zimbelman, Juvenile Lifer Managing Attorney Tina Olson, MAACS Administrator Brad Hall, MAACS Deputy Administrator Patricia Maceroni, and Commission Secretary MariaRosa Palmer.

**Guests:** Staff: Wendy, Dealca, Stephanie Farkas, Bill Moy. Jessica Newton, Joshua Pease, and Amanda Smith

**Via Zoom:** Staff: Maya Menlo, Heather Waara, Mike Waldo, Jackie Ouvry, and Chelsea Richardson

**Special Guests:** Gary Strauss (via Zoom), Larry Katz, Families of Katherine Root, Amanda Smith, and Gary Strauss

**Welcome**

Chair Thomas Cranmer welcomed JoAnn Lank, who was recently appointed to the Commission by Governor Whitmer. Ms. Lank shared some of her background information with the Commission. Mr. Sacks also welcomed and introduced the meeting attendees.

**PUBLIC COMMENT**

Jessica Newton made a public comment on behalf of the UAW Local 4200 Bargaining Unit.

**AWARDS**

The Norris Thomas award was given posthumously to Katherine Root. Mr. Sacks, Ms. Olson, Jackie Ouvry, and Jessica Newton spoke about working with Katherine Root and

the positive impact she made on her clients and colleagues. Ms. Roots' parents accepted the award and thanked SADO.

The Barbara Levine award was presented to Gary Strauss. Mr. Hall highlighted Mr. Strauss's work over the years as a MAACS roster attorney. Larry Katz, David Strauss, and Miani Strauss accepted the award on behalf of Mr. Strauss who could not attend in person. However, Mr. Strauss acknowledged his award and thanked MAACS and the Commission via Zoom.

Mr. Sacks presented the SADO staff award to Amanda Smith. Ms. Smith has worked for SADO for 36 years and will be retiring next week. He highlighted her years of service. Ms. Smith accepted her award and thanked SADO and the Commission for the award. She expressed her gratitude that support core staff are now acknowledged with an award for all of their hard work and commitment.

#### **APPROVAL OF THE MINUTES FROM THE MEETING OF MARCH 16, 2022:**

***Commissioner Gracey moved to approve the minutes of March 16, 2022, seconded by Commissioner Solka. Carried.***

#### **UPDATES:**

Case Highlights: Ms. Marcuz shared that the Wrongful Conviction Unit had their first official success and exoneration. Ms. Zimbelman shared the highlights of SADO's success in the Michigan Supreme Court.

Ms. Maceroni discussed the positive impact of the availability of MIDC funds to MAACS roster attorneys for trial court work and trial court experts. She shared a recent positive outcome for a client in Shiawassee County that was made possible with those funds.

Juvenile Lifer Unit: Ms. Olson shared that the unit still has 12 clients waiting terms of years sentences and 28 clients facing contested hearings. Several of these contested hearings are also high-profile cases. Ms. Olson also noted that there was a prosecutor appeal filed after a Miller hearing.

Mr. Sacks thanked the leadership at MAACS and SADO for all their hard work and the positive outcomes.

MAACS: Ms. Maceroni shared an update of the MAACS roster. MAACS currently has 61 level 1 (non-capital plea cases) and 46 level 2 (capital plea cases and trials) roster attorneys. The numbers are down from the last meeting. Chairperson Cranmer questioned if exit interviews are held with roster attorneys who leave the roster. Ms. Maceroni responded that an interview is not held but roster attorneys do provide a reason for their departure which is mainly centered on fees. Ms. Maceroni indicated that MAACS is in a code red. She has started recruiting and has submitted an article to the Macomb Briefs and will be presenting at CDAM in July.

Ms. Maceroni also provided an update from the MAACS mitigation specialist. Ms. Swanson has had 12 requests for mitigation in MAACS cases. 3 requests involve clients who were sentenced to life without the possibility of parole and 9 involved clients whose cases were remanded from the Court of Appeals for resentencing in the trial court.

Mr. Hall provided the Commission with an update of the Appellate Assignments. He indicated that the numbers are still not at 2019 levels but as Ms. Maceroni stated MAACS is in code red. MAACS sees cases that have gone through the entire roster and then MAACS staff needs to reach out and contact attorneys. Mr. Hall also shared that a large percentage of roster attorneys are taking less than 5 cases. MAACS will need to make some tough decisions to get a more active roster but expressed that it is a delicate matter. Mr. Sacks commented that SADO was able to assist MAACS and accept 10 cases.

Mr. Hall reintroduced Joshua Pease to the Commission as the Youth Defense Project Director. He shared a memo written by Mr. Pease regarding the word "Juvenile" and notified the Commission of the first meeting with the Advisory Board.

Mr. Hall also welcomed Stephanie Farkas as the MAACS Litigation Support Specialist. Stephanie is actively working with roster attorneys and recently had a success assisting a roster attorney.

Training and Reentry: Marilena David provided an update on all trainings. Ms. David shared that SADO has been partnering with different organizations to provide training to the defense bar. All trainings are recorded and available on the SADO website. Ms. David also informed the Commission that a training was held for the SADO leadership team.

For reentry, Ms. David announced that Anna Kohn as joined the reentry team. She also shared that reentry received a grant from the Michigan Justice Fund for a fellow. This fellow will be a formerly incarcerated person who will assist recently released individuals.

Court Rules and Legislation: Ms. Zimbelman reported that an attorney provided a comment on a proposed court rule for *Cobbs* agreements. The comment suggested that there is a need for more feedback from prosecutors and defense attorneys. Following a request from the Michigan Supreme Court, Ms. Zimbelman will team up with the attorney and coordinate this effort.

SORA cases are included in the direct appeal case highlights. Ms. Zimbelman reported that 4 individuals have been discharged from their prison sentences. She thanked the Commission for authorizing SADO to work on these cases.

Budget: Mr. Sacks is hopeful to hear about the budget this month. The legislators go on break in July.

Hiring: Mr. Sacks reported that the hiring for MAACS staff is complete and it's at its largest in several years. The reentry team lead position has been filled and SADO will have two attorneys who will start in July with a possible third depending on the outcome of the budget.

Case Statistics/Intake: SADO is currently at 31% pending appeals and 36% pending trials.

SADO Values: Ms. David shared with the Commission the values that were developed and adopted by SADO staff in May 2022. The values will help with office behavior, office decisions, and expectations of our staff.

Judge Solka commented that he continues to be impressed with the passion and level of advocacy of the SADO staff attorneys and MAACS roster attorneys. He also acknowledged Joshua Pease's writing in his memo regarding the word "juvenile" showing that words do matter.

### **Invitation to Amend the Appellate Defender Act**

Mr. Sacks indicated that SADO and MAACS had previously received authorization from the Commission to explore amendments to the MIDC Act to properly pay MAACS roster attorneys. However, after meetings with several stakeholders, it was decided that the MIDC Act was not the correct avenue to address appellate fees. SADO and MAACS instead intend to address this issue through state appropriations and an effort of the Michigan Juvenile Justice Task Force to expand the appellate mandate to include youth indigent appellate defense.

***Commissioner Solka moved to authorize SADO and MAACS to pursue legislative reforms to expand the Appellate Defender Act to include youth indigent defense and to provide state funding of MAACS roster attorneys at rates consistent with MIDC minimum standards, seconded by Commissioner Lank. Carried.***

Mr. Sacks also shared that Mr. Hall was contacted by the Michigan Supreme Court about the issue of representation in child welfare cases and possible MAACS involvement. SADO is requesting a second authorization for a possible broader mandate for MAACS to include child welfare appeals. Discussion took place regarding the Commission's concerns if MAACS was the proper place to handle civil appeals and if the legislature approved the broader mandate, would MAACS remain under the SADO umbrella.

***Commissioner Solka moved authorize SADO and MAACS to pursue legislative reforms to further expand the mandate of MAACS to include child welfare appeals and other appellate functions, seconded by Commissioner Lank. Commissioner Gracy abstained. Carried.***

***Commissioner Solka added that he would support this motion only if the act covered appellate matters, no trial level work. Chair Cranmer observed that due attendance levels, a majority of Commissioners had not yet approved this initiative and requested that MAACS and SADO take that into account while proceeding.***

### **Request to Evaluate the SADO/MAACS Merger**

At the March meeting Commissioner McNeill asked the Commission to evaluate the performance and quality of work of MAACS roster attorneys since the merger of SADO and MAACS. The request to amend the Appellate Defender Act so that MAACS roster attorneys can receive state funding and equitable compensation with indigent defense trial attorneys raises further questions as to the merger. Should this initiative succeed, the

combined agency would oversee significant additional appropriations and spending over legal services on both sides of the appellate indigent defense system.

***Commissioner Gracey moved to authorize the Director to pursue a proposal from the National Association for Public Defense to evaluate the SADO/MAACS merger and issue recommendations, seconded by Commissioner Lank. Carried.***

### **Director Biennial Review**

The Director's review is due in December. Mr. Sacks suggested a 360-degree review and will provide information to the Commission.

Chairperson Cranmer appointed commissioners to two committees. Commissioners Tom McNeill, Judith Gracey and Jo Ann Lank were appointed to oversee the request to evaluate the SADO/MAACS merger with the National Association for Public Defense Association with Commissioner Gracey serving as chair.

Commissioners Judge Solka, Darryl Woods and Doug Mains will serve on the committee to handle the Director's Biennial review with Commissioner Solka serving as Chair.

### **Non-Standard Contracts and Expenses**

#### **Mastering Dialogue Training**

SADO has had a lot of improvement, changes, and progress. This change requires and raises communication challenges. Ms. David is requesting funding to provide training to some staff to turn disagreements into dialogue by speaking up candidly, respectfully, and quickly. Ms. David has identified a training provider, Crucial Learning. Crucial Learning currently has ongoing contracts with the State of Michigan.

Commissioner Lank addressed the concern made in public comment about use of resources. Both Mr. Sacks and Ms. David responded indicating these funds are coming from a one-time surplus due to delayed hiring.

Chair Cranmer asked why the request did not include funding for the full staff. Ms. David responded that the cost would be double because it is an in-person training which would require another facilitator and a larger venue.

***Commissioner Gracey moved to authorize SADO to spend \$21,390 for training, seconded by Commissioner Solka Carried.***

#### **Mitigation Specialist Contract**

SADO is requesting to enter into a contract with mitigation specialist, Jessica Carrier to provide mitigation services as needed for SADO's Juvenile Lifer Unit.

***Commissioner Lank moved to authorize SADO to spend \$55,000 for a mitigation specialist contract, seconded by Commissioner Gracey. Carried.***

## Modular Offices

Wendy Dealca informed the Commission that SADO is at its office capacity in Detroit. To free up offices, SADO offered some employees with 15 years or more of service the opportunity to give up their offices and work remotely. SADO is requesting funds to provide additional offices for the new hires and a drop-in space for employees who gave up their office.

Mr. Sacks noted that there are two proposals, one for funding with the current SADO need but if the budget is successful, funding will be needed for additional modular offices.

***Commissioner Solka moved to authorize SADO to purchase modular offices -either \$30,987 for one area based on status quo needs, or \$61,589 for both areas if SADO's FY 23 appropriations request is successful, seconded by Commissioner Gracey. Carried.***

## Annual Report

Mr. Sacks shared the Annual Report and requested authorization to post to the SADO website and distribute to stakeholders.

***Commissioner Lank moved to authorize the publication of the annual report, seconded by Commissioner Gracey. Carried.***

Respectfully submitted,

MariaRosa J. Palmer  
SADO

APPELLATE DEFENDER COMMISSION

BY:   
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Thomas W. Cranmer, Chair