

**APPELLATE DEFENDER COMMISSION MEETING
MINUTES**

SEPTEMBER 20, 2023
SADO DETROIT
12:00 P.M.

PRESENT:

Commissioners: Thomas Cranmer Judith Gracey Thomas McNeill, JoAnn Lank, Honorable Thomas Solka, Darryl Woods

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

Guests: SADO Staff: Josh Pease, Anna Kohn, Wendy Dealca, Janet Boswell, Adrienne Young, Jackie McCann, Jackie Ouvry, and Jessica Newton

SADO labor relations counsel Aaron Burrell and UAW Representative Susan Reed.

WELCOME

Acting Chair Judith Gracey called the meeting to order and welcomed everyone to the meeting. Jonathan Sacks introduced the attendees.

PUBLIC COMMENT

No Comment.

Recognition and Dedication for Departing Chair Thomas Cranmer, Vice-Chair Thomas McNeil, and Commissioner Doug Mains

Mr. Sacks read the resolutions recognizing Commissioner Mains' service on the Commission. He also presented and shared an art piece that was given to SADO to dedicate to Chair Thomas Cranmer and Vice Chair Tom McNeil for the years of service

to the Commission. Their work with the merger of SADO and MAACS has been invaluable.

Both Commissioners Cranmer and McNeil acknowledged and thanked everyone. Both commented that it was the hard work of SADO and MAACS staff that led to the success of the merger.

Commissioner Woods moved to adopt the resolutions recognizing the service of the departing Commissioners, seconded by Commissioner Solka. Carried.

APPROVAL OF MINUTES FROM THE MEETING ON JUNE 21, 2023

Commissioner Solka moved to approve the minutes of June 21, 2023, seconded by Commissioner Woods. Carried.

TENTATIVE COLLECTIVE BARGAINING AGREEMENT

On behalf of the UAW bargaining unit, Jackie Ouvry requested the Commission adopt the tentative agreement which was unanimously ratified by its members. Ms. Ouvry stated that she believes the contract will maintain SADO's excellence.

Acting Chair Gracey requested a motion to meet in closed session per MCL 15.268(h), to discuss attorney Aaron Burell's memo to the Commission, which is exempt from disclosure per MCL 15.243(1)(g) of the Freedom of Information Act, information subject to attorney client privilege.

A motion was made that the Commission meet in closed session. A roll call vote was held. Carried.

The Commission returned to open session at 2:22 p.m.

Commissioner Cranmer moved to adopt the Collective Bargaining Agreement along with memo of understanding between SADO and the UAW, seconded by Commissioner McNeil. Carried.

MAACS ACTION ITEMS – PROPOSED REVISION OF MINIMUM STANDARD COMMENTARY, PROPOSED REGULATIONS REVISION, AND PROPOSED MAACS ATTORNEY FEE POLICY

Proposed Revision to Minimum Standards Commentary, including Special Considerations for Youth Appeals

Brad Hall summarized the changes to the Minimum Standards Commentary – updated case law, updated expectations and Josh Pease wrote special considerations for youth appeals.

Proposed Regulation Revisions

Mr. Hall summarized the changes in the regulations with the biggest change that MAACS will no longer use separate assignment levels. Attorneys will be placed on lists according to case types. There were concerns about trial assignments, but Mr. Hall shared that there are mechanisms in place that will help with selecting qualified attorneys to work on these appeals.

Proposed MAACS Fee Policy

Mr. Hall reported that with new state funding, fees for MAACS attorneys in assigned cases can now be increased. MAACS is requesting the Commission approve the fee policy. The increase rates will be effective October 1, 2023. The new rates are as follows: \$142/hour for capital cases, \$130/hour for non-capital, and \$118/hour for misdemeanor. He would like the Commission to approve \$118/hour for youth assignments. The MIDC does not have fees in place that are specific to youth delinquency appeals, and it is unknown when they will address youth defense. Mr. Hall expressed that \$118 was a reasonable fee but does not want the Commission to settle on this rate as a policy decision. Without a MIDC standard for youth defense, MAACS used the lowest rate for representing adults in misdemeanor cases which is \$118, and it places MAACS in the best position with counties and courts. There are national studies that indicate that representing youth should not be paid less than representing adults. The rates should be revisited yearly in September, so they are consistent with MIDC fees. He also noted that if MIDC does act on youth defense rates, then MAACS will make the necessary changes.

Mr. Hall shared that the expenses were doubled, and the presumptive maximums will remain the same. However, the presumptive max for 6.500 assignments will change from a 15-hour to 45-hour maximum. He would like to revisit the presumptive maximum after 3 years when MAACS expects to have more data.

Mr. Hall also shared that MAACS roster attorneys are expected to submit monthly bills. This will allow for more accurate vouchers and allow MAACS to track the state funding.

Commission Solka moved to approve the revisions to the MAACS Minimum Standard Commentary, Regulations, and the MAACS Fee Policy, seconded by Commissioner Woods. Carried.

ADDITIONAL SPENDING REQUESTS

Skills Training

Ms. David requested the Commission authorize SADO to spend \$46,000 for a 5-day trial court skills training for 15 SADO attorneys. SADO received a quote from Gideon's Promise, a leading trial attorney training provider. The training will be held in Detroit.

Commissioner Woods moved to authorize SADO to spend \$46,000 for skills training, seconded by Commissioner Solka. Carried.

Parallel One-Time Payment for Non-Bargaining Unit Members

Mr. Sacks requested the Commission authorize SADO to give non-bargaining unit members a one-time payment that was received by member of the collective bargaining unit as a ratification payment. The funds for these payments are due to a SADO surplus this year. The total amount would be under \$10,000.

Commissioner Cranmer moved to authorize SADO to give a parallel one-time payment to non-bargaining unit members, seconded by Commissioner Woods. Carried.

Renewal of contracts for John Zevalking and Gayle Amalfitano

Mr. Sacks requested the Commission authorize SADO to renew the contracts for John Zevalking and Gayle Amalfitano. Mr. Zevalking will continue his work with the CDRC and Ms. Amalfitano will continue her work with JLU record collection.

Commissioner McNeil moved to authorize SADO to renew the contracts for John Zevalking and Gayle Amalfitano, seconded by Commissioner Woods. Carried.

UPDATES:

Case Highlights: Ms. Zimbelman shared SADO highlights. SADO had multiple successes in the Michigan Supreme Court. Mr. Sacks congratulated Jessica Zimbelman for being elected on the executive board for the Appellate Practice Section and Katherine Marcuz for her award as one of the Michigan Lawyer's Weekly 2023 Influential Woman of Law.

Ms. Maceroni shared MAACS roster attorney successes with resentencing and litigating OVs. She added that mitigation specialist Emily Swanson's great work on sentencing memorandums have contributed to these successes. Ms. Maceroni highlighted a success by roster attorney, Diane Kay-Hougaboom. Ms. Kay-Hougaboom was able to get a client released with the filing of a motion for compassionate release.

Juvenile Lifer Unit: Ms. Olson highlighted the work and successes of the unit's mitigation specialists. She highlighted a case in Oakland County where the judge departed downward in a Parks case because the judge indicated she considered the mitigation

memo. She also shared that the Unit recently added two new specialists and expects to hire two more to start October 16, 2023.

Lastly, Ms. Olson shared that Jose Burgos was leaving SADO. She expressed what an honor it was to collaborate with him. His work has been amazing and inspiring.

Reentry: Ms. David shared a few highlights for reentry. She reported that summer fellow, Greg Wines is completing his project. This position was funded by the Michigan Justice Fund. Five more clients returned home since the last Commission meeting and a barbeque was recently held at Belle Isle, which was well attended. Ms. David thanked Anna Kohn for all her work with reentry.

MAACS: Mr. Hall provided an update of the MAACS roster. MAACS currently has 109 active attorneys. 47 attorneys are currently on voluntary standby. He also reported that MAACS received 25 applications to join the MAACS roster.

Josh Pease shared an update on the Youth Defense Project. He presented upcoming training events for September, January, and February. He also reported that in late June, the Court adopted a notice of right to appellate review for youth cases. This will be used starting September 1, 2023. He also indicated that he is actively recruiting attorneys to handle youth appeals.

Child Protective Legal Representation Task Force: Mr. Hall shared that he and Josh are members of the Child Protective Legal Representation Task Force. The Task Force will release a final report in December. Mr. Hall indicated that it was too early to indicate whether MAACS will play a role in these reforms.

Intake Update: Mr. Hall shared an update on appellate assignments. He reported that August had 59 new trials. He also projected that assignments for the year will be close to 3000.

Training: Kathy Swedlow reported on the various upcoming and past training sessions. She shared that the CDRC will conduct monthly training sessions for trial lawyers, investigators, and mitigation specialists. She noted that the investigator training has had participants from all over the country.

Ms. David shared information about the upcoming Orientation Training and the Annual Fall Training in October. Ms. David also noted several new training courses at SADO. SADO will conduct new employee training for the 17 new staff members, supervision training for staff attorneys who will work with new attorneys and Ms. Maceroni conducted training for MAACS attorneys on trial appeals.

Ms. David acknowledged SADO staff for their hard work and assistance with all the training sessions.

Court Rules: Jessica Zimbelman reported that SADO is working with CDAM in opposing a series of bills that would reduce defense attorney's access to police reports.

Advancements: Marilena David reported on several items that are geared to making SADO a better workplace which included a Staff Survey which provided a space for staff to express their concerns. A summary of the findings was shared with the leadership team and staff. An Objective Evaluation Form was created to ensure that supervision is based on objective criteria. A new Team Intake Form was also created to assist in communication between staff and their team leaders. Lastly, Ms. David has formed a Black Attorney Mentor Group for new attorneys and six mentors have already been secured.

SADO/MAACS Organizational Chart: Mr. Sacks shared an updated chart which shifts more to an Appellate Defender Model. This new organizational chart will allow Mr. Sacks to focus on the overall system instead of different units in SADO and MAACS. Commissioner Lank asked if the new chart was sent to the NAPD and asked about the status of their review of the SADO/MAACS merger. Mr. Sacks indicated that the NAPD has collected and reviewed documents and the interviews of various stakeholders are almost complete. The review has been extended into Fiscal Year 23/24.

Budget/Hiring: Mr. Sacks reported on the budget for FY 2024 which includes funding to pay higher rates to roster attorneys, hire an accountant for MAACS, Juvenile Lifer Unit expansion, and the hiring of backfill SADO positions. He also shared the goal for FY 2025 is to expand SADO's direct appeals unit with the hopes of easing the pressure on the roster and reducing attorney workloads.

Appellate Defender Act: The Act is expected to be finalized in October. The act will include youth defense and codify that the 1:1 reimbursement of MAACS roster attorney fees to the counties will be permanent.

NCSC Workload Study: The study has been extended to fiscal year 23/24 due to changes in staff at the NCSC. A final report is expected by December.

Court order regarding SADO: Acting Chair Gracey requested a motion for closed session per MCL 15.268(h), to discuss attorney Ken Mogill's memo to the Commission, which is exempt from disclosure per MCL 15.243(1)(g) of the Freedom of Information Act, information subject to attorney client privilege.


Commissioner Cranmer moved, seconded by Commissioner Woods to move into closed session. A roll call vote was held. Carried.

The Commission returned to open session and Acting Chair Gracey adjourned the meeting.

Respectfully submitted,

MariaRosa J. Palmer
SADO

APPELLATE DEFENDER COMMISSION

BY:  _____
Judith Gracey, Acting Chair