

# STATE APPELLATE DEFENDER OFFICE

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August 6, 2015

Michigan Indigent Defense Commission  
200 N Washington Square  
Lansing, MI 48933

Dear Commissioners:

I write to express the strong support of the State Appellate Defender Office (SADO) and Michigan Appellate Assigned Counsel System (MAACS) for the MIDC's Proposed Standards 1 and 3, addressing education and training of defense counsel, and use of investigation and experts. As appellate counsel, we represent thousands of clients each year, reviewing cases from every Michigan county. A significant percentage of appeals from criminal convictions involve claims of ineffective assistance of trial-level counsel, some of which are based on claims that counsel made a mistake or was uninformed on the law. Given the complexity and ever-changing nature of criminal law and procedure, it is extremely difficult for counsel to maintain competency. The sheer difficulty of the subject matter is joined by the fact that many trial-level attorneys practice on their own, earning low fees: all are major contributors to the risk of error.

SADO has devoted itself to education and training of defense counsel since its creation in 1969, on the theory that an organized statewide defense office has an obligation not only to litigate for clients, but also improve the practice. SADO's enabling act, MCL 780.717 et seq, specifically authorizes maintenance of resources to be made available to the bar, a provision that led to creation of SADO's Criminal Defense Resource Center (CDRC). The CDRC is currently Michigan's largest provider of training to the criminal defense community, both trial and appellate levels, with four staff members devoted to the work. A summary of 2014 training activity accompanies this letter.

We know the benefits of training for our community, and greatly appreciate the MIDC's prioritization of training as a statewide standard for trial counsel. The proposed standard captures not just the obvious basics, but also the essential need for counsel to understand forensic and scientific issues. We often investigate such issues on appeal, in cases where trial counsel was unable (due to limited resources), or uneducated (due to lack of training). SADO obtained exonerations for clients whose cases involved problems with the Detroit Police Crime Lab, for example, when simple retesting of evidence revealed fatal flaws. With prominent groups like the National Academy of Sciences calling much forensic theory and testing into question, it is very important to train counsel at the trial level.

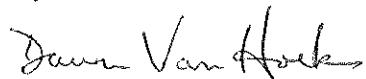
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With training on scientific evidence and applicable defenses, of course, adequate resources for investigation and experts must be provided. A defense attorney well-trained on arson theory can do little on his or her own without funding of an investigator to find reports and witnesses, or an expert to analyze evidence and testify. Our own appellate investigations have led to fact development and exonerations for a significant number of clients, where little or no investigation was done by trial counsel. We believe that in many cases, appointed trial counsel refrains from investigation simply because funding is unavailable.

Thanks for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Dawn Van Hoek". The signature is cursive and fluid, with "Dawn" on top and "Van Hoek" below it.

Dawn Van Hoek  
Appellate Defender

## **Training and Support Delivered by SADO's Criminal Defense Resource Center 2014**

### **Training**

#### The Defender Books

The principal training provided by the CDRC on a statewide basis is SADO's "Defender Series" of books: *The Defender Trial Book*, *The Defender Plea, Sentencing and Post-Conviction Book*, *The Defender Motions Book*, and *The Defender Habeas Book*. These books reside on SADO's website, [www.sado.org](http://www.sado.org), and are available at any time to SADO's approximately 600 online subscribers – composed of criminal defense attorneys around the State of Michigan including SADO staff and all full-time public defenders. The electronic version of the books is also available on a flashdrive for a nominal fee for those who prefer to take the books on the go. These four annually-updated books contain well-organized summaries of the law on all aspects of criminal law and procedure, from arrest through appeal. In addition, the Defender Motions and Habeas Books contain model pleadings that can be adapted for use in any case, as well as consulted as writing models. Summaries and analysis of case law, statutes, court rules and legal practice are also included. A small companion to the *Defender Plea, Sentencing, and Post-Conviction Book*, the *Defender Sentencing Guidelines Manual Annotated* remained the most requested new print product developed by the CDRC in the last year, with more than 500 units distributed statewide.

#### Live Defender Book Training Events

Eight live CDRC training events complimented the training book updates during the reporting period. The events were part of the grant funding generously awarded to SADO by MCOLES. Locations and topics were largely driven by request and need from the criminal defense community, and every event was recorded and posted on SADO's website to ensure maximum access to content and updates at the convenience of trainees. The events included:

- October 11, 2013 – “Michigan Legislative and Criminal Law Update” by Michael Mittlestat at Cooley Law School (live in Lansing and simulcast in Grand Rapids, Ann Arbor and Auburn Hills).
- October 18, 2013 – OWI/OUIL Update by Patrick Barone and Michael Nichols in Saginaw.



*Valerie Newman in Muskegon*

- December 6, 2013 – “Felony Sentencing Update” by Anne Yantus at Cooley Law School (live in Lansing and simulcast in Grand Rapids, Ann Arbor and Auburn Hills).

- May 2, 2014 – “COMPAS at Sentencing” by Jacqueline McCann at Cooley Law School (live in Auburn Hills and simulcast in Lansing, Ann Arbor and Grand Rapids).

- July 31, 2014 – “Master Class: Preserving the Record and Looking Down the Road” by Valerie Newman in Muskegon at the Grand Valley State University Alternative and Renewable Energy Center.
- August 7, 2014 – “Michigan Felony Sentencing Law” by Jacqueline McCann at the Emmet County Courthouse in Petoskey.
- August 8, 2014 – “Smarter Sentencing for Criminal Justice Practitioners” by Jacqueline McCann in the Marquette County Circuit Courthouse.
- August 22, 2014 – “Bindovers, Appeals and Innovative Motion Practice” by Neil Leithauser and Kelly McDoniel in the Frank Murphy Hall of Justice in Detroit.

Beginning with the July 2014 events, the CDRC used Eventbrite to manage registrations, a free online service that enabled trainees to RSVP on their own, reducing significant time spent by the CDRC administrative staff in compiling attendance.

#### Legal Technology Training

The CDRC continued<sup>1</sup> to present live demonstrations to defense counsel on the use of a variety of online research tools, including the Defender Books, other web-based legal research, word processing skills, caseload management, electronic filing, and trial presentation skills. These trainings ranged from hour-long brown-bag lunch styled training events to full afternoon sessions for beginners and experienced criminal defense attorneys with varying levels of technological proficiency.

Three shorter sessions took place at public defender offices including Kent, Chippewa and Muskegon Counties during the reporting period. All public defender offices in Michigan were supplied, pursuant to their requests and/or preferences, with paper copies and flash drive versions of the Defender Series of Books. All full time public defenders in Michigan are provided with complimentary access to all SADO resources.

The CDRC team also presented an hour of training to new MAACS lawyers when the roster opened in December 2013, and provided a free year of online access to SADO’s resources for the newest attorneys taking appellate assignments in Michigan.

Afternoon sessions took place at the CDAM conferences in November 2013 and March 2014. At each conference, a two-hour hands-on presentation was provided by the CDRC team, largely using live demonstrations of all of the databases on [www.sado.org](http://www.sado.org). Separately, at each conference a break out session was offered by the CDRC team to provide a working lunch to learn about the latest technology for practicing lawyers.

Hour long sessions were also offered at three prisons in Michigan, based on request and need. Virtually all prison law libraries are now equipped with online access to SADO’s resources, and the CDRC team traveled to Macomb Correctional Facility (New Baltimore), Huron Valley Correctional

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<sup>1</sup> SADO continued to offer the training despite a reduction that removed it from the customary MCOLES award.

Facility (Ypsilanti), and Kinross Correctional Facility (Kincheloe) to demonstrate updates in the online version of the *Defender Habeas Book*, as well as how prisoners can stay current with legal developments as most continue to litigate their cases in *pro per* during post-conviction proceedings.

#### *CDAM Conferences, Trial College, and CAP Seminars*

Once again, the CDRC included in its MCOLES grant application funding for conferences planned with training partners, the Criminal Defense Attorneys of Michigan (CDAM) and the Criminal Advocacy Programs of Wayne County Circuit Court (CAP). Funding was obtained for twelve trainee scholarships to attend the summer CDAM Trial College, and also for the operational expenses of the ten CAP seminars conducted each fall.

Two CDAM conferences were conducted during the reporting period. The fall conference was held in Traverse City in November 2013 and the spring conference was held in Troy in March 2014. Hundreds of attorneys from all over Michigan attended the trainings.

CDAM's trial college had approximately 35 trainees, with 12 scholarships offered to attendees based on demonstrated need. The trial college was held in Lansing in August of 2014, at the Radisson Hotel and State Bar of Michigan building.

The CAP sessions provide mandatory training for the Wayne County Criminal Defense Bar Association, approximately 500 attorneys taking assignments in criminal cases in Detroit. CDRC maintains a position on the CAP Board to plan the events, all of which receive overwhelmingly positive feedback in evaluations. A list of all prior sessions, with video recordings of the content and handouts provided, are on the CAP's website hosted by SADO, at [www.capwayne.org](http://www.capwayne.org).



*The CAP sessions are held in the auditorium of the Coleman A. Young Municipal Center.*

During the reporting period, one of the CAP sessions was also re-presented live in Saginaw to the bar association members, with grant funding provided for travel and training time to the presenters.

#### *In-House Training Events*

Adjacent to the CDRC central office area is a training room where several events are conducted throughout the year in an effort to encourage continuing education for all staff on a variety of topics. SADO's Internal Operating Procedures require training for staff and training needs are surveyed routinely. For example, CDRC conducted a thorough review of the "New Hire Training" at the conclusion of the 2012 new-hire's first year (October 2013), which provided invaluable feedback used to inform continuing education and mentorship for our newest assistant defenders.

Multiple events took place during the reporting period, including:

- New Hire training, designed specifically for the staff attorneys after a self-assessment of needs;
- Appellate Timeline Training, designed for new attorneys and serving as an update on rule changes for senior staff;
- Training for SADO's summer interns, an orientation event covering everything from ethics to substantive criminal procedure;
- DNA training by our grant-funded attorney participating in our Wrongful Conviction Unit;
- Sexual Harassment in the Workplace training administered by our Human Resources Manager;
- COMPAS training by Anne Yantus, explaining new policies by the MDOC;
- Hot topics in guilty plea appeals by Jacqueline McCann;
- Multiple roundtable discussions on Juvenile Life Without Parole, hosted by SADO's Deputy and featuring speakers knowledgeable about the issue to interact with line attorneys working on such cases;
- Periodic discussions of SADO's plea unit, designed to address trends and developments in that area of law;
- Group viewings of webinars hosted by the National Association for Public Defense on substantive legal issues relevant to our practice and special topics including speaking with the media.

#### *Non-CDRC-Sponsored Training*

SADO staff members are routinely called upon to present at training events, serving as experts in all areas of criminal defense and sharing their knowledge with members of the criminal defense community. Some examples include:

- SADO staff attorneys served as four of the six presenters at the annual MAACS Fall Training that occurred in October of 2013;
- Michael Mittlestat trained the Macomb and Genesee County Bar Associations on legislative updates;
- Anne Yantus trained the Genesee County Bar and with the Michigan Judicial Institute on Sentencing Law;

- Jacqueline McCann trained the Macomb County Bar on COMPAS at sentencing;
- Valerie Newman presented in New Orleans at a conference of the National Association of Criminal Defense Lawyers;
- Marla McCowan was part of a panel that trained on criminal law updates with the Institute for Continuing Legal Education;
- Katherine Marcuz trained at the Young Lawyers Summit on sentencing issues;
- Jacqueline Ouvry and Nicole George served as presenters for the SBM Prisons and Corrections Section;
- Marilena David-Martin served as a trainer at a CAPPS session;
- The CDRC also co-sponsored the Criminal Law Section's training on scientific issues in Frankenmuth, Michigan, where our Wrongful Conviction Unit attorney was a presenter.

Attorneys and support staff alike are regularly encouraged to attend non-SADO/CDRC sponsored training events *outside of the office* with the understanding that knowledge gained will be provided to staff, after such training. Staff also participated in events out of state, including but not limited to training for Public Defender Managers in Kentucky, Georgia, Illinois and North Carolina; training unique to public defenders with *Gideon's Promise* in Atlanta, Georgia; Innocence Network conferences in Oregon and Louisiana.

Additionally, all SADO staff received individual log-in credentials to access the online training resources of the National Association for Public Defense (NAPD). Dozens of web-based training events are archived for access at the convenience of the trainee.

All SADO staff (100%) attended at least one live training event during the reporting year.