



Madden assignment system should be abolished, says NJSBA

Emphasizing the fundamental importance of the need for indigent litigants to have effective counsel in cases of magnitude, the New Jersey State Bar Association (NJSBA) recently took a pair of actions aiming to end the *Madden* system of pro bono assignments.

The Association adopted a resolution urging the Judiciary to end the assignments and asked the Legislature to provide necessary funding to provide effective representation in all cases in which there is a right to counsel. Referring to the *Madden* system of assignments as an obstacle to equality, the NJSBA, in its resolution, calls upon the Judiciary to end *Madden* assignments as a necessary step to address this barrier to access and justice. It also joined a pending case as an *amicus* party where an attorney was assigned a case in Camden County and has asked to be relieved based on inexperience.

Madden assignments are a result of the Supreme Court's decision in *Madden v. Twp. of Delran*, 126 N.J. 591 (1992), which held that indigent defendants have a constitutional right to effective counsel when there is a consequence of magnitude. The NJSBA has consistently voiced concerns about the *Madden* system, has been a steadfast advocate in favor of publicly funded representation, and has actively encouraged voluntary pro bono service among its members as an alternative.

The Association in 2021 adopted the report and recommendations of its Right to Counsel Committee, *Achieving Effective Representation In Right to Counsel Matters*. The report outlined 13 recommendations to consider in addressing the issue of effective counsel in matters where there is a right to counsel. Chief among them was to end the *Madden* system.

At its January meeting, the NJSBA Board voted in support of a resolution calling upon the Supreme Court to abolish the *Madden* system of random assignments. The resolution also calls upon the Legislature to publicly fund a compensated counsel system to provide effective counsel to indigent litigants in right to counsel matters.

"The Supreme Court in *Madden* noted its limited power in ensuring equal access to justice and the judicial system in lieu of a legislative fix... although the *Madden* system of pro bono assignments was meant to be a

stop-gap measure until the Legislature acted, *Madden* assignments continue to be made more than 30 years after the original decision," the resolution states.

In addition, the Right to Counsel Committee report noted: "Despite its serious limitations, the *Madden* system has been the default mechanism for random assignments regardless of



CAPITOL REPORT

counsel's expertise in many types of right to counsel matters that has created a separate and critical issue in the consideration of due process."

In a related effort, the NJSBA has filed a motion seeking to appear as *amicus curiae* in the matter of *State v. Burgos*, in which counsel requested to be relieved from a *Madden* assignment based on his inexperience in the area of the law for which he was assigned.

In this Camden County matter, attorney Michael Haya was denied relief from representation after advising the court that he had not practiced law since 2000 and had not practiced in the area of the law at all for which he was assigned. He has since filed an order to show cause seeking relief from the *Madden* assignment.

The NJSBA is also arguing that Haya should be relieved as counsel, that the defendant has the constitutional right to effective counsel, and that *Madden* assignments created a two-tiered justice system.

"As a result of *Madden*, an attorney, who while having passed the bar, has worked as a computer programmer and a non-attorney consultant for almost 23 years has been assigned to defend a contempt of domestic violence charge. He is not simply 'rusty' in the practice of law, he has not seen a courtroom as an attorney for over 20 years. This attorney should be excused from service," the Association argued in its brief.

"More importantly, the indigent defendant in this case and all indigent defendants subject to a *Madden*-assigned attorney, deserve more than a 'physical presence' in their court proceedings. This is not what the constitution envisioned—nor could it be what the Court envisioned. The effective

right to counsel enshrined in the federal and state constitutions is purposeless without an effective way to ensure competent, knowledgeable counsel."

The matter has been scheduled for Feb. 8 before the Assignment Judge Deborah Silverman Katz.

Below is the full text of the NJSBA resolution:

Right to Counsel Committee to examine the history of the right to counsel in New Jersey, how that right was established, how the right to counsel was fulfilled in each area of the law, and the effectiveness of assigned counsel under the system developed following the Supreme Court's decision in Madden; and WHEREAS, the Right to Counsel Committee issued a report, Achieving Effective Representation In Right to Counsel Matters, outlining thirteen separate recommendations to consider in addressing the issue of effective counsel in matters where there is a right to counsel in New Jersey; and

WHEREAS, chief among the recommendations was to abolish the Madden system of assignments to uncompensated counsel in favor of a publicly funded system for the provision of effective representation; and WHEREAS, the NJSBA Board of Trustees adopted this report on April 16, 2021; and

WHEREAS, the recommendations advocate using a multi-pronged approach to funding the right to counsel including additional funding to the Office of the Public Defender to handle cases most aligned with their current work (parole revocation, contempt of domestic violence hearings, civil commitments, and other such cases); authorizing municipal public defenders to handle municipal appeals; funding non-profit providers with expertise in particular types of cases (private adoptions, guardianship, paternity); and increasing pool attorney rates, among other recommendations;

NOW, THEREFORE IT IS RESOLVED, that New Jersey State Bar Association Board of Trustees hereby calls upon the Supreme Court of New Jersey to abolish the Madden system of assignments; and

LET IT BE FURTHER RESOLVED, the New Jersey State Bar Association Board of Trustees hereby calls upon the Legislature to publicly fund the provision of effective legal representation, including the costs associated with implementation and administration of the compensated counsel system, in all cases in which there is a right to counsel consistent with the decision in Madden. ■

A RESOLUTION of the New Jersey State Bar Association calling upon the New Jersey Supreme Court to abolish the Madden assignment system, which has proven to be an obstacle to equality and a disservice to all, and calling upon the Legislature to publicly fund the provision of effective representation in all cases in which there is a right to counsel, as a necessary step to be taken to address this barrier and foster access to justice.

WHEREAS, the Supreme Court of New Jersey held in Madden v. Twp of Delran, 126 N.J. 591 (1992) that indigent defendants are constitutionally entitled to counsel when facing a consequence of magnitude; and

WHEREAS, the Supreme Court in Madden noted its limited power in ensuring equal access to justice and the judicial system in lieu of a legislative fix and developed a random assignment system to ensure indigent defendants had attorney representation when facing a consequence of magnitude; and

WHEREAS, the NJSBA has consistently voiced concerns about the Madden system of mandatory pro bono assignments, has repeatedly advocated in favor of publicly funded representation, and has actively encouraged voluntary pro bono service among its members as an alternative; and

WHEREAS, although the Madden system of pro bono assignments was meant to be a stop-gap measure until the Legislature acted, Madden assignments continue to be made more than 30 years after the original decision; and

WHEREAS, the NJSBA convened the



Mark Benevenia



Vance Camisa



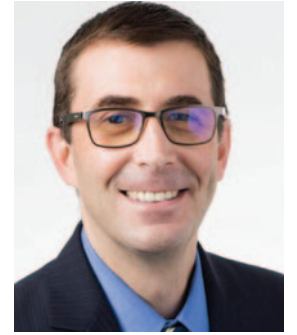
Melissa Geist



Jeff Gruen



Julia Lopez



John McDonald

Dedicated to service: Get to know the NJSBA Pro Bono Award winners for 2022

On Feb. 15, the New Jersey State Bar Association will recognize 20 members of the state's legal profession for their outstanding commitment to providing legal services to underserved residents. Hear from two of the winners—Reed Smith LLP and Merck & Co., Inc—on why it's important for international law firms and corporate legal departments to maintain a vibrant pro bono practice.

Editor's note: This is the second in a series of articles featuring this year's award recipients. The responses have been lightly edited.

Reed Smith LLP Pillar of Justice Award

The Pillar of Justice Award recognizes significant and innovative pro bono contributions of law firms toward advancing access to justice. The award will be presented to attorneys Melissa Geist, Julia Lopez and John McDonald of Reed Smith for their pro bono work including providing legal representation to immigrant children, performing closings for families in affordable housing, among other projects. The three attorneys offered their perspective on pro bono work.

Why is it important for law firms—especially international firms like Reed Smith—to perform pro bono services?

Our pro bono work represents our firm's values in action and is part of our mission as a progressive global law firm. We are proud that the firm's pro bono practice continues to grow and make up a critical part of the firm's response to major business and legal events. It is important for us as a law firm to be an active member of our society. In Princeton, two of our attorneys—who are immigrants themselves—recognized from their personal experience how they could make an impact on their client's lives and families through their work with Kids In Need of Defense. Indeed, there is nothing more rewarding than helping a client have a real opportunity at achieving the American Dream. In 2022, Reed Smith devoted over 92,000 pro bono hours firmwide supporting communities and people in need—our highest total number of hours in the firm's history.

How do Reed Smith attorneys balance pro bono work with their professional responsibilities?

The importance we place on pro bono work is reflected in the firm's policy, where up to 140 hours of pro bono time per year counts towards lawyers' chargeable targets. Pro bono is also one way in which we develop our relationships with our in-house counsel clients. We partner with our fee-earning clients on pro bono work to

increase capacity and offer more support to our pro bono clients.

Merck & Co., Inc. Mark Daniel Excellence in Pro Bono Award

The Mark Daniel Award recognizes exemplary pro bono efforts of corporate legal departments. In the last year, Merck's legal department worked with 30 different organizations on pro bono projects. Five attorneys with Merck will be honored. They are: Mark Benevenia and Vance Camisa, who assisted with the annual lease negotiations for a Polish supplementary school; Michelle M. D'Agostino and Scott Kauffman, who worked with the Hope House to offer a wide array of programs to the elderly, disabled and people with AIDS or substance abuse issues; and Jeff Gruen, who has educated nonprofits on New Jersey's sick leave law. The award follows the tradition set by the late Mark Daniel, who helped found Merck's corporate pro bono program in 1994. He was also influential in championing pro bono causes as a longtime member of the NJSBA's Pro Bono Committee.

How has Merck's pro bono practice grown over the years?

The Merck Pro Bono program started in 1994 with a core group of seven patent attorneys and four administrative associates in the patent depart-

ment. Merck's pro bono program has grown globally to include more than 120 attorneys, paralegals and other staff across all levels of the organization, who in the last two years provided approximately 4,600 hours of pro bono legal services.

Why is it important for corporate legal departments to perform pro bono services?

Merck believes that providing pro bono services is our responsibility as a good corporate citizen. Committing our legal skills to help the communities in which we live and operate is consistent with our company's mission: to ensure that every life is treated with dignity and respect by doing what we can to improve human lives and reduce human suffering. The nonprofit organizations we collaborate with through the Merck Pro Bono Program provide vital services to our communities, which would not be available without the partnership of corporate law departments like ours. We work to support our attorneys and staff to ensure they can successfully focus on both pro bono activities and professional responsibilities. We know that people do their best work when they are part of a committed and supportive team. One way our volunteers balance pro bono work with their Merck responsibilities is by partnering with another Merck attorney or staff member to share the workload. ■

Board of Trustees Awards recognize excellence in advocacy, leadership

For the first time since 2019, the New Jersey State Bar Association hosted the Board of Trustees Awards, honoring the many members who advance the Association's interests through the courts, state Legislature or their leadership in the legal community. The awards, presented by NJSBA President Jeralyn L. Lawrence, paid tribute to volunteers in the NJSBA's *amicus* cases, legislative work and those who made significant contributions to the Association's mission. Lawrence also presented a special resolution to former NJSBA President U.S. District Court Judge Evelyn Padin, for her steady leadership during the onset of the pandemic. ■

