

# NEW JERSEY LAWYER



February 2023

No. 340

## ACCESS TO JUSTICE

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Mental Health Courts

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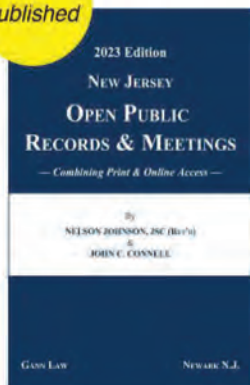
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By Nelson Johnson, JSC (Ret'd) & John C. Connell

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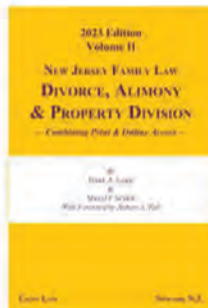
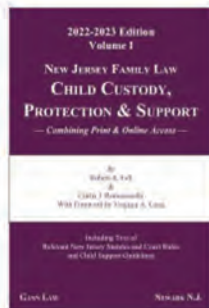
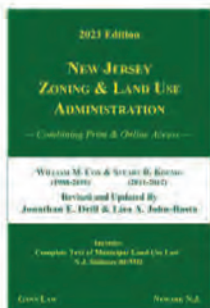
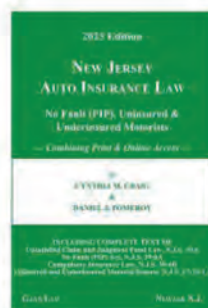
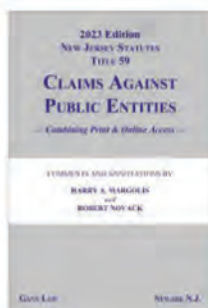
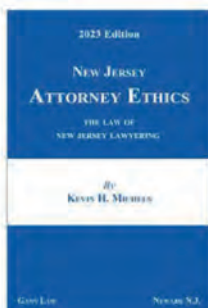
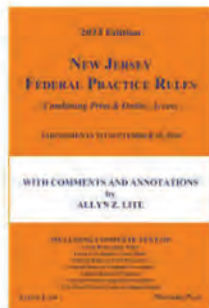
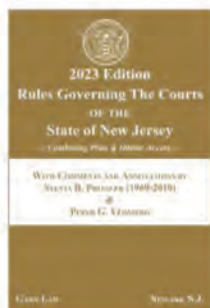


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# PRESIDENT'S PERSPECTIVE

JERALYN L. LAWRENCE

## Indigent Litigants Have the Right to Effective Counsel— The Time Has Come to End *Madden* System



**T**he New Jersey State Bar Association believes in the fundamental importance of the need for indigent litigants to have effective counsel in cases of magnitude. In *Madden v. Twp. of Delran*, 126 N.J. 591 (1992),

the Supreme Court noted the Court's limited power to ensure equal access to justice in lieu of a legislative fix, so it created the *Madden* system of mandatory *pro bono* assignments as a stop-gap measure until the Legislature acted. More than 30 years later, we are still waiting.

Over the course of nearly two years, our Right to Counsel Committee studied the issue extensively and concluded in its 2021 report that the mandatory *Madden* system of arbitrary *pro bono* assignments—often to attorneys with no experience in the matter of consequence—creates a two-tiered justice system, where indigent litigants do not have equal access to justice. “The *Madden* system of random assignments to uncompensated counsel should be abolished and replaced with publicly funded systems for the provision of effective representation,” the Committee concluded.

It is indeed time for the *Madden* system to be abolished and for adequate funding to be allocated to the entities that can provide effective counsel.

### Many Voices are Heard

Before concluding its work, the Right to Counsel Committee made numerous presentations around the state to gather information and hear from the legal community at large as to ways to improve access to justice for the indigent. The NJSBA Pro Bono Committee, Hispanic Bar Association of New Jersey and 18 county bar associations provided feedback and suggestions.

The final report, adopted in full by our Board of Trustees, made 13 significant recommendations, recognizing that the *Madden* system is for many an obstacle to equality and a barrier to justice. Increased funding should be allocated for the Office

of the Public Defender (OPD), the Committee concluded, to handle the cases that are most aligned with their current work, including contempt of domestic violence matters, parole revocations, some guardianship cases as well as all civil commitments. Funding should be available to nonprofit providers with expertise in particular types of cases, including representation of parents in private adoptions, representation of persons in need of guardianship and paternity cases. For all other matters, a publicly funded compensated counsel system should be created to engage qualified attorneys, at the pool attorney rate.

### Resolved for Change

The important work of the Right to Counsel Committee is continuing.

A Right to Counsel Summit was convened in 2022 to discuss implementation of the Committee's recommendations. In January, the Association's Board of Trustees adopted a resolution urging the Judiciary to end these assignments and encouraging the Legislature to publicly fund effective representation for all cases in which there is a right to counsel.

We have shared that resolution with the Judiciary, the heads of the Legislative branch, as well as Gov. Phil Murphy. Our goal is to work constructively to find solutions that will better serve the people of this state.

Even more, the NJSBA has reached out to county and affinity bar associations to ask them to lend their voices to our advocacy. I am pleased to report that several responded immediately with their support. The continued collaboration of all the groups in the New Jersey legal ecosystem are what makes us strong, and I firmly believe that together we can make real and important progress.

### Making a Case for Change

The Association has also joined a pending case as an *amicus* party that goes to the heart of *Madden* assignments. The case, *State v. Burgos*, involves an attorney who was assigned to

*Continued on page 7*

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# FROM THE SPECIAL EDITORS

## Helping Communities Access Justice

As lawyers and citizens, we are charged with working to create a more perfect union, both in New Jersey and nationally. That goal includes a person's ability to access justice and equality through our court system.

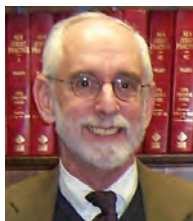
The Pro Bono Committee of the New Jersey State Bar Association approached the *New Jersey Lawyer* Editorial Board asking that an issue of the magazine be devoted to access to justice, focusing on right to counsel and pro bono work.

The Editorial Board readily agreed.

The interest from the NJSBA community in contributing articles on these issues was overwhelming. As a result, the Editorial Board determined to run two consecutive issues of the magazine to be devoted to this topic.

This first issue on access to justice includes the following articles:

- Incarcerating non-violent criminal defendants who have mental health illness fails to address their personal and society's needs. New Jersey is developing new ways to address treatment. Joanna R. Adu and Eric Marcy describe the coming of age of mental health courts in our state
- Amy Vasquez reviews the 30-year history of New Jersey's current mandatory attorney assignment to fulfill the constitutional right to counsel. At best, using random selection of counsel has had mixed results
- Litigants cannot be treated with dignity or obtain unfettered access to justice without the ability to fully communicate with the court and counsel. Victoria B. Nicholson investigates how to deliver access to justice to individuals with limited English proficiency.
- Adelina Herrarte and Melanie Zelikovsky acknowledge that access to justice comes with a price tag—filing fees. Their article provides a breakdown of New Jersey filing fees in comparison to elected state and international courts. They recommend change so that a person's access to the court system is not stymied



**BILL SINGER** has practiced law at *Singer & Fedun, LLC* in Somerset County for 50+ years. His practice concentrates on the creation and protection of families of all configurations and as counselor to nonprofit organizations.



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by an inability to pay the price of admission.

- Maling Miranda and Classie Colinet write about the impact of court-ordered psychological evaluations. They offer ideas to make the process fairer and to include a deeper consideration of the life of the parent and family.
- Akil Roper and Shivi Prasad dissect the findings of the Legal Services of New

Jersey's Poverty Research Institute, which give a picture of the concentrated poverty in our state and its effects on individuals, families, and communities. That report will fuel civil legal advocacy for low-income residents.

- In her article, Karen Robinson explains the disparate impacts of driver license suspensions on communities of color. These populations are more likely to suffer license suspen-

sion, which can have collateral consequences keeping families in perpetual poverty.

Thank you to the Pro Bono Section for suggesting this topic. If any other readers or sections of the Bar have ideas for possible topics for the magazine, please submit them to the Editorial Board.

More to come on access to justice with the April edition of the magazine. ■

## PRESIDENT'S MESSAGE

*Continued from page 5*

represent a defendant in a contempt of domestic violence matter, with the possibility of the defendant being incarcerated if convicted.

The attorney, Michael Haya, asked for relief from representation, truthfully stating that he did not feel he could ethically represent the client without any relevant experience to do so. He told the court he had not practiced law since 2000. The judge declined to grant the relief, leading him to file an Order to Show Cause to be relieved of the assignment.

The NJSBA has filed papers as a friend of the court arguing that that the defendant has the constitutional right to effective counsel.

"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."

## A Profession Committed to Voluntary Pro Bono Service

Lawyers do a great deal of *pro bono* work—arguably more than any other profession. They do it voluntarily every day in areas where they are experienced and feel they can provide effective counsel. The NJSBA supports and, in fact, encourages voluntary *pro bono* service. It is an obligation of our profession.

We must ensure, however, that indigent clients facing matters of magnitude get the representation they deserve. The "any lawyer is better than no lawyer" model creates a two-tiered system of justice, where indigent and marginalized litigants suffer the consequences. The time is long overdue to make a meaningful change for the people who are most vulnerable in our society. We owe them that. ■



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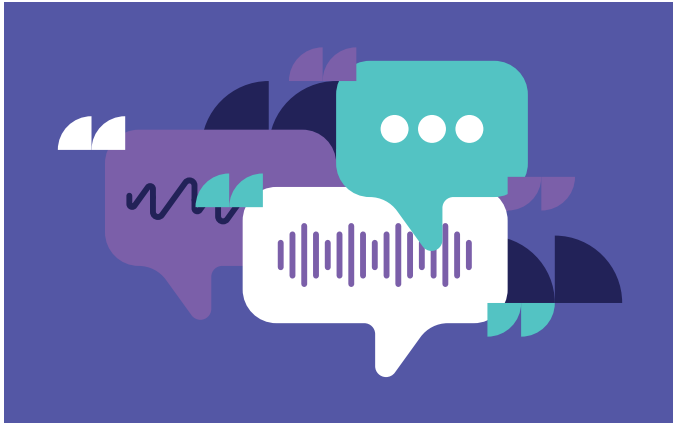


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# PRACTICE TIPS



## TECHNOLOGY

### Social Media for Professionals

By Jake Koch

*PracticeHQ*

Social media is an integral part of our modern world. There are many uses for social media both for professional and personal purposes, but ordinary social interaction continues to be the primary reason most people spend time on these platforms. For better or worse, social media is here to stay, and this means it is immensely important to educate yourself about how to properly use social media to ensure that your private and professional lives do not conflict.

#### Why are you on social media?

If you are already on social media, then you may want to examine your usage of the various platforms for reasons ranging from privacy to professional appearance. Taking a close look at your social media usage can help you evaluate its effects on your professional life. The first step in analyzing your social media presence is asking yourself, “Why do I use social media?” Do you use it to communicate with friends? To keep in contact with your children or other family members? Some other reason? Perhaps you use social media to promote yourself or your business (many people use LinkedIn for these purposes). You should be aware of your reasons for using social media, as this can help you monitor your activity and allow you to use the platforms appropriately. If

you know *why* you use social media, then it is much easier to determine *how* you should be using it.

#### What to be aware of when using social media

Once you know why you use social media, it is important to understand the individual social media platform(s) available. Facebook, Twitter, TikTok, Snapchat, Instagram, LinkedIn, and all other platforms have unique functions, customs, and expectations. For example, you may want to communicate with distant family members on Facebook or show your Instagram followers a photo of yourself at an interesting location, but both activities would be highly inappropriate on LinkedIn. Every platform is unique and it can take time to learn how to properly use each; however, that is time well spent.

Something that most social media platforms do have in common is that they make it possible for people to gather quite a bit of information about you from relatively basic searches. Many platforms allow users to publicly display personal information such as their name, location, job, interests, relationship status, family and friends, etc. If you use LinkedIn, then your employment information and history is on full display. You need to be fully aware of your social media presence and the impression other people may have of you if they search for your account. It is important that you present yourself according to the customs of the platform.

You want to present yourself in a positive manner, especially considering the possibility of clients and business contacts finding you through social media. You may have strict privacy settings on your social media accounts, but it is still possible for people to use basic information to learn something about you. An important thing to note is that companies change their privacy rules and settings frequently and surreptitiously. Because of this, you need to keep yourself up to date with the current privacy policies of each social media platform you use.

Also be aware of any social media policies your employer may have. There have been well-publicized instances of people facing ramifications for posting offensive, controversial, or prohibited content through social media. For instance, a Kansas attorney was fired after tweeting that the then-Kansas Attorney General, who was testifying in front of the Kansas Supreme Court, would be disbarred for his conduct. This is the sort of opinion that is best not shared on social media.



Ensure that you always present yourself in a manner that is publicly acceptable, especially to people like your boss and clients (all of whom will be able to view your online interactions). When you interact through social media, you represent not only yourself, but also your employer. You want to abide by any professional social media requirements (i.e. company policies), as well common-sense social media rules.

Besides being aware of *what* you post, you should also be aware of other outwardly visible activity on social media. Facebook groups, followed accounts on Instagram, and posts that you have liked on Twitter all tell a story about you as an individual, and by extension as a member of your organization. Make sure that, again, you are showing the best version of yourself on social media. Other people may not give you another chance to alter their impression of you if they disapprove of your social media presence. Likewise, an employer may not look kindly upon controversial social media activity.

As a rule, you should never put out anything hurtful or offensive on social media. Even if you believe your social media account could not possibly upset another person, it is always wise to take time and self-audit your usage to make sure you are representing yourself well. Some platforms, such as LinkedIn, have ways to view your account as strangers would. This can be a helpful tool when trying to analyze your accounts from the perspective of others. You may only use social media to interact with friends and family, but you still need to make sure that the communication is clean and appropriate. You may only be *directly* communicating with someone you are close with, but that communication could still be visible to others.

## Conclusion

Professionally, social media is a fantastic way to promote your business or service. Socially, it can be a lot of fun and a great way to stay connected to your friends, family, colleagues, and the world. You need to make sure that you are using social media appropriately and for the correct reasons, but otherwise you should take advantage of this modern form of communication. You can only meet so many people in person, but you can connect with countless people digitally.

Take care to separate your professional and personal lives in the digital sphere. One way to do this is to use some platforms for personal communication and social interaction (such as Facebook), and to use others as a form of professional communication (such as LinkedIn). Exactly which platforms you prefer to use for these purposes is up to you, but make sure you are using the platform appropriately. Other people cannot do that for you, and the image that you create of yourself digitally is visible to many more people (and active for much longer) than in-person engage-

ments. Make sure the version of you that others see online matches the version of you that they meet in person.



## WORKING WELL

### The Nutrition-Conscious Lawyer

By Lori A. Buza

*NJSBA Lawyer Well-Being Committee Co-Chair  
KS Branigan Law, P.C.*

Our brains and ability to think, and hence, to serve clients to our best abilities is largely dependent on our nutrition. Research shows that the food we consume has a direct effect on our mental functioning and cognitive capacity. It is essential we feed our brains with the appropriate glucose, vitamins, and minerals for good health. Not only does our food provide energy and build material to the body, but it contributes to our immunities to prevent and protect against disease. Obesity, diabetes, certain cancers, cardiovascular disease, neurodegenerative disease, depression, and anxiety are all linked to poor nutrition.

Further, studies show that with proper nutrition you can reduce fatigue and irritability while you increase cognitive effectiveness, competence, memory, and concentration. Research also indicates that foods high in trans-fat and refined sugar can negatively affect your ability to think clearly and provide your most skilled and adept self to others. In essence, proper nutrition promotes a sharp mind and more effective lawyering.

We all understand the stresses of leading a life as a busy attorney and the lack of time we may have to devote to our nutritional needs. But there are manageable things we all can (and should)

do to be more nutrition-conscious and lead a healthier life. Make sure you have your refrigerator filled with smart options (see below) after consistent and thoughtful food-shopping.

Start every morning off with simple planning and effort, such that you commit to your health goals each day. For instance, eat a healthy but small breakfast (like berries or eggs) before starting your workday. Pack healthy lunches and snacks in advance, so you're not looking to grab unhealthy snacks or fast food during the day. Indeed, I suggest, having a "food prep" session once or twice a week, when you can set up in advance/pack several lunches and healthy snacks that you can grab from the refrigerator and go throughout the week. Also essential is to stay hydrated throughout the workday, so pack enough water in your briefcase/car to last the entire day. Add a consistent exercise plan and proper sleep for a well-rounded approach to your well-being.

Try this nutrition-conscious lawyer's 16 tips for healthier eating and clearer thought:

1. Eat "real foods" and avoid "fast foods"
2. Eat colorful natural foods, like green leafy vegetables such as kale, broccoli, spinach
3. Enjoy "whole grains" instead of white breads and pastas
4. Enjoy eggs, which are a good source of Vitamins B-6, B-12, and folic acid

5. Eat oily fish, containing Omega 3, which supports brain health, and other healthy proteins such as beans and/or lean meats
6. Enjoy colorful berries and dark chocolate (in moderation) for antioxidant benefits
7. Drink plenty of water—at least eight glasses per day!
8. Avoid carbonated drinks, and sugary drinks
9. Avoid highly processed foods, refined sugar, and alcohol
10. Avoid foods with trans-fat and ingredients listed as "partially hydrogenated oils"
11. Choose olive oil for your salads and cooking—it has natural anti-inflammatory benefits and promotes heart health
12. Avoid snacking at your desk or in the car—have one or two snacks per day prepared in advance instead of grazing on junk
13. Enjoy fruit or nuts/seeds for your snack (but limit your intake to one handful!)
14. Limit sodium, though enjoy flavorful spices such as turmeric, ginger, and peppers
15. Control your portions and do not go back for seconds
16. Avoid late night eating—if possible, pick a consistent time to stop eating each night for an evening fast (e.g., 7 p.m.), until you "break" that fast in the morning with your breakfast

*Remember to consult with a doctor for your specific nutritional needs and health concerns.*



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# The Coming of Age of New Jersey Mental Health Courts

## *Addressing a Dilemma in the Criminal Justice System*

By Joanna R. Adu and Eric Marcy

**T**he intersection of chronic mental illness and the criminal justice system has always posed a dilemma for courts, prosecutors, defense attorneys, defendants, and defendants' families. The system has historically involved individualized review of charging decisions, high bails resulting in possible detention pending trial, plea negotiations, and sentencing. Chronic mental illness<sup>1</sup> has been inconsistently treated as either an aggravating or mitigating factor in the determination of psychiatric intervention, criminal prosecution, diversion, plea offers and sentencing. That determination is unfortunately dependent on the life experience and training of law enforcement, prosecutors, defense attorneys, and the judges assigned to the matter.

Incarcerating non-violent criminal defendants who have mental illness serves a punitive function and does not address the underlying issues that led to incarceration. It also is inca-

pable of preparing the individual to return as a functional member of society after the sentence is served since it does not address the mental illness itself. New Jersey, however, has risen to the challenge and is actively working on various approaches to address treatment.

For instance, the Superior Court of New Jersey has experimented with and, in some cases, implemented, procedures that seek to monitor and manage psychiatric conditions where an individual with mental illness has been exposed to the criminal justice system. Further, homegrown and structured pilot programs are being implemented in several counties, which provide an opportunity to develop and implement more effective approaches to mental health recovery, diversion, and monitoring at the various stages of criminal prosecution. New Jersey counties have established various programs that may serve as models for building a statewide program. The experience gained by these pilot initiatives should provide guidance for



the implementation of a statewide mental health court system. Finally, New Jersey state legislators recently advanced a bill intended to create a “mental illness diversion program” to move eligible persons into case management and mental health services rather than the criminal justice system.<sup>2</sup>

### **The Concept of Mental Health Courts Reach New Jersey**

One of the earliest mental health courts in the country was established in Broward County, Florida in 1997 as the brainchild of a task force involving key stakeholders focused on addressing mental health and the criminal justice system.<sup>3</sup> Fast forward to today, there are now more than 300 mental health court programs nationwide.<sup>4</sup>

## **...Supreme Court Chief Justice Stuart Rabner has led the mental health court charge in New Jersey with the establishment of two committees focused on addressing mental illness and our criminal justice system, respectively, the Interbranch Advisory Committee on Mental Health Initiatives (IACMHI) assembled in 2010, and the multidisciplinary Mental Health Advisory Committee (MHAC) in 2019.**

Like the birthing of the first mental health court in Broward County, Supreme Court Chief Justice Stuart Rabner has led the mental health court charge in New Jersey with the establishment of two committees focused on addressing mental illness and our criminal justice system, respectively, the Interbranch Advisory Committee on Mental Health Initiatives (IACMHI) assembled in 2010,<sup>5</sup> and the multidisciplinary Mental Health Advisory Committee (MHAC) in 2019.<sup>6</sup>

The IACMHI included 21 key stakeholders from various disciplines and branches of government including representatives from various county prosecu-

tors’ offices, the Public Defender’s Office, the State Division of Mental Health and Addiction Services (DMHAS), and the New Jersey Judiciary, among others.<sup>7</sup> The stated mission of the IACMHI’s was to, “develop models of research-based, cost-effective intervention processes that can be implemented to improve responses of the criminal justice system to persons with serious mental illness.”<sup>8</sup> In that regard, the population of focus for the IACMHI were those individuals with diagnoses such as schizophrenia and bipolar spectrum disorders.<sup>9</sup>

Approximately two years after its creation, the IACMHI issued its Committee Report outlining 17 recommendations geared toward improving the Judiciary’s response to people with serious mental illnesses in the criminal justice system

and providing suggestions for related changes to the other branches of government.<sup>10</sup> Some of the Committee’s recommendations included: creation of an “Interbranch Mental Health Initiatives Implementation Committee” to spearhead and oversee many of the other related recommendations, and development of comprehensive intervention strategies for the different stages of the criminal justice system.<sup>11</sup> The issues IACMHI sought to tackle included pre-arrest; initial contact with the criminal justice system; pre-adjudication diversion; municipal court mental health liaisons; educational programs for Judges, non-



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judicial staff, first responders, public defenders’ offices, mental health service providers, and the public; and the funding for such programs.<sup>12</sup> As a result of its research and investigation, the IACMHI concluded that focus on early intervention initiatives was most likely to produce the best return for “effectiveness and financial investment.”<sup>13</sup>

Like its predecessor, the MHAC will also evaluate the issues that arise from the intersection of the criminal justice system and individuals with mental illness, with the goal of developing ways to improve mental health services access.<sup>14</sup> The MHAC roster again includes a powerhouse of key multidisciplinary stakeholders from all branches of government, mental health service providers, ACLU-NJ, and others.<sup>15</sup>

The number of inmates with diagnosable mental health issues is significant, and this presents difficult issues for the criminal justice system. State prisons and county jails are not equipped to provide effective psychiatric treatment to properly stabilize and treat inmates with mental illness. So, while the advent of second- and third-generation “psychotropic” or “antipsychotic” medications have enabled many people to manage symptoms that previously brought them into conflict with the criminal justice system, prisons simply do not have the available medications or sufficient professional staff to provide effective treatment. In the absence of properly trained and sufficient professional staff, the available medication in prisons may focus only on sedating inmates.

On Jan. 11, 2022, the New Jersey General Assembly introduced Assembly Bill No. 1700, which would expand on the current county-based diversion programs by establishing a “Statewide Mental Illness Diversion Program.”<sup>16</sup> Like its county-based counterparts, the proposed statewide diversion program would divert eligible people into case management and mental health services rather than the criminal justice system.<sup>17</sup> If enacted, this legislation would create a uniform framework for intake procedures, eligibility, disqualification standards, program requirements, conditions for admission, deferred prosecution with a potential dismissal of charges, and establish a statewide resource directory of entities to facilitate mental health screening, counseling, case management and treatment.<sup>18</sup> This Assembly Bill further proposes amendments to the Pre-Trial Intervention, conditional discharge, and expungement statutes.<sup>19</sup> Eligibility would be limited to “non-violent petty disorderly persons offense, disorderly persons offense, or crime of the third or fourth degree,” but the county prosecutor would retain sole authority to determine eligibility and admission.<sup>20</sup> Assembly Bill No. 1700 is still in the early stages of consideration, and as of Sept.

29, 2022, had been referred to the Assembly Human Services Committee.<sup>21</sup>

### **Why the Need Exists**

The number of inmates with diagnosable mental health issues is significant,<sup>22</sup> and this presents difficult issues for the criminal justice system. State prisons and county jails are not equipped to provide effective psychiatric treatment to properly stabilize and treat inmates with mental illness. So, while the advent of second- and third-generation<sup>23</sup> “psychotropic” or “antipsychotic” medications have enabled many people to manage symptoms that previously brought them into conflict with the criminal justice system, prisons simply do not have the available medications or sufficient professional staff to provide effective treatment. In the absence of properly trained and sufficient professional staff, the available medication in prisons may focus only on sedating inmates.<sup>24</sup>

Housing offenders who have mental illness creates unique problems for the prison system, including overcrowding, behavioral problems resulting in discipline, related physical medical problems resulting in stress on prison medical services, suicides, victimization of these inmates due to the vulnerability arising

from their mental illness, increased costs to the prison system, and increased likelihood of recidivism.<sup>25</sup>

Data on recidivism rates has yet to be developed in New Jersey; however, nationwide statistics show that people with mental illness are 10 times more likely to end up in a jail than in a hospital.<sup>26</sup> As New Jersey counties continue to develop mental health court programs, data will be collected and is expected to reveal the impact, if any, of mental health court programs on recidivism. In the interim, statistical data from other jurisdictions with established mental health court programs confirms a significant positive impact not only on recidivism rates,<sup>27</sup> but also in other areas such as rate of psychiatric hospitalizations,<sup>28</sup> medication compliance,<sup>29</sup> and improved employment status.<sup>30</sup>

By way of example, Michigan established its first mental health court in 2007 and codified its Mental Health Court program in 2013.<sup>31</sup> As of January 2021, the Michigan Judiciary reported 41 mental health courts across the state that are considered as part of the state’s “Problem-Solving Courts,” along with 135 Drug and Sobriety Court programs and 27 Veterans Treatment Court programs.<sup>32</sup> For the year 2021, new convictions with-



in three years of admission for mental health court graduates were reduced by 18%-21%, and new convictions within five years of admission for mental health court graduates were reduced by 18%-19%.<sup>33</sup>

In New Jersey, county prosecutor's offices have been at the forefront in addressing issues presented by defendants with mental illness. Notable examples are the programs initiated by the Union County Prosecutor's Office, which began a program in 2005, and the Ocean County Prosecutor's Office, which began a program in 2014. Most counties, without established diversion programs, continue to resolve matters that present serious mental health issues on a case-by-case basis. Such a response is highly individual and dependent on the subjective approaches of individual prosecutors, defense attorneys, and judges. Connecting services to address mental health issues has been left to families, defense counsel, and the availability, or lack thereof, of private and community mental health care providers.

### **How Early Intervention Can Facilitate Help**

There is a recognition that early psychiatric screening and diversion should be a priority when police are confronting a suspect involved in non-violent, disorderly, or minor criminal activity. Directing an individual suffering from an obvious mental health issue to a screening center is the most effective way to stabilize and avoid unnecessary incarceration.<sup>34</sup> Police training<sup>35</sup> and coordina-

tion with the Psychiatric Emergency Screening centers<sup>36</sup> are more effective than incarceration of individuals needing psychiatric intervention. Crisis Intervention Training (CIT) Programs for law enforcement are a good start but need expansion and integration with psychiatric emergency screening centers, county prosecutors' offices, and the New Jersey Judicial system.<sup>37</sup>

Early psychiatric intervention, investment in local community mental health providers, and case management follow up care is not only humane, but will reduce the jail population, the stress on the county and state prison systems, and the expense of incarceration.<sup>38</sup>

The current statewide pre-trial detention system and the Public Safety Assessment (PSA) tool does not account for and address the special needs presented when a defendant has a serious mental illness. People suffering from serious mental illness may have a history of minor criminal offenses, such as disorderly conduct, harassment, stalking, or other convictions that arise from or relate to their illness. Such individuals may have a history of failing to appear for minor motor vehicle or criminal charges resulting in a higher Public Safety Assessment (PSA) score resulting unnecessarily in pre-trial detention.<sup>39</sup>

### **Pilot Programs Have Been Newly Initiated**

Prosecutors' offices and courts have recognized the need for assessing individuals early in the criminal process with serious mental illness and establishing a

diversion system. It has been long recognized that there are defendants that have the potential for diversion out of the system if given needed social services, case management, supervision, and mental health treatment necessary to stabilize them and reduce the chance of recidivism. Incarceration of individuals with serious mental illness and subsequent release without treatment and support services only fosters recidivism.<sup>40</sup>

Beginning in 2022, New Jersey began funding pilot programs for early intervention Pre-Trial Release in Camden, Essex, and Middlesex counties. On May 18, 2022, the Division of Mental Health and Addictions Services issued a "Request for Proposals—Mental Health Screening, Referral, and Support Pilot Diversion Program for Criminal Justice Reform (CJR) Pretrial Released Defendants."<sup>41</sup> The purpose of this program is to provide services for persons who have a Serious Mental Illness (SMI)<sup>42</sup> and provide early intervention services, community-based mental health, medical, housing, case management, and other social support services for diversion from the criminal justice system if the participant successfully completes the diversion program. Funding for this pilot program was awarded to Legacy Treatment Services of Middlesex County, Mental Health Association of Essex County, and Oaks Integrated Care of Camden County on Aug. 10, 2022. These pilot programs are in the process of development and implementation by these respective agencies.<sup>43</sup>

The scope and goals of the pilot programs are to: 1) Identify defendants with

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serious mental health issues early in the criminal process; 2) Link defendants to community providers that can address the mental health needs of the defendant and identify and implement necessary support services; 3) Provide for expedited mental health evaluations; 4) Assist defendants in application and completion of a voluntary diversion program; 5) Coordinate with the County Prosecutor's Office, Public Defender's Office, and courts for a collaborative integrated approach to addressing eligible criminal defendants in securing services and diversion from criminal prosecution; and 6) Establish comprehensive individual service plans to address the mental health issues in an effort to reduce recidivism.<sup>44</sup>

The programs seek to identify defendants with serious mental health issues, connect them with providers of mental health and other social services. The programs require voluntary participation, for those in county jails or on pre-trial release and coordination with community services for employment, housing, substance abuse and mental health support.<sup>45</sup> The evaluation will be a component of the risk-based Public Safety Assessment (PSA) and a Social Determinants of Health (SDOH) mental health screen to identify those who qualify and will voluntarily participate in the program.<sup>46</sup>

The goal and benefit to the individual participant is the ability to address their mental health and social needs with the possibility of diversion away from the criminal justice system. This program involves collaboration with county prosecutor's offices, local mental health service providers, probation departments, the Public Defender's Office, private counsel, with an assigned Judiciary Diversion Officer, monitoring by a case management behavioral team, and supervision by the court.

## **What New Jersey Has Now**

### ***Union County Recovery and Veteran Court—Jail Diversion Program (JDP), Initiated 2005***

The Union County Prosecutor's Office created one of the earliest, progressive, structured programs for the diversion of defendants presenting serious mental health issues. In 2005 the Union County Prosecutor's Office created an alternative to incarceration, a program of "treatment and oversight."<sup>47</sup> The Jail Diversion Program (JDP) permits a diversion that may result in a dismissal or downgrade of charges following the completion of a course of mental health treatment and completion of rehabilitative services. Eligibility is limited to non-violent offenses, in-county residents, and those who are not subject to Megan's Law, parole disqualifiers, or mandatory sentences. Conditions of participation include supervision by a caseworker, release of medical, psychiatric, and substance abuse treatment history to the program, monthly appearances before the designated JDP Judge, and active participation for a minimum of eight months. Information is available from the Union County Prosecutor's Office Special Offenders Unit and referral forms are available on its website.<sup>48</sup>

### ***Ocean County Mental Health Diversion Program (MHDP), initiated 2014***

The Ocean County Prosecutor's Office implemented an early Mental Health Diversion Program (MHDP) in September of 2014, which continues through today. It provides a diversion option for those with "serious and persistent mental illness," and is structured to provide a teamwork approach involving mental health professionals and case management. Mental health services are provided through community mental health providers, Ocean Mental Health Services and Preferred Behavioral Health. Successful completion of the course of recommended treatment may result in a downgrade or dismissal of charges. After

completion of the program, defendants continue to be monitored by the program for one year to track recidivism.<sup>49</sup>

### ***Essex County Mental Health Diversion Initiative***

Essex County has implemented a mental health diversion program based on the Union County Program. The goal is diversion through long-term treatment and reducing the recidivism rate with those who have serious mental health issues. The program seeks to establish "individualized treatment plans" with linkage to mental health providers and monitoring by case managers and courts. The model follows the drug court programs, and the Essex County Hospital Center providing case management for those who qualify and are admitted into the diversion program. The program seeks to address the many social and supportive needs of the participants including mental health treatment and "social entitlements, housing, education, vocation" with the goal of comprehensive services for community reintegration and the reduction of recidivism.<sup>50</sup>

### ***Morris County Mental Health and Veterans Diversion Program and Collaborative Justice Services (CJS) Pilot Program<sup>51</sup>***

The Morris County Prosecutor's Office has implemented a Mental Health and Veteran's Diversion Program "for individuals with serious mental illness where there is a causal link between the defendant's criminal conduct and their diagnosis. The goal is to work with appropriate individuals who agree to comply with supervised treatment to limit certain convictions or incarceration based upon continued cooperation." The aim of the program is to reduce recidivism and the rate of incarceration for those with mental illness, and to create wrap-around supportive services and case management so that individuals may



not only recover from mental illness but be successful in reintegrating into the community. The program includes collaboration with the Mental Health Association's Collaborative Justice Services Pilot Program, Morris County Judiciary, and Morris County Sheriff's Office Community Connections and Hope Hub Programs.<sup>52</sup>

Referrals to the CJS come from a wide range of stakeholders including attorneys, assistant prosecutors, probation department, pre-trial services, law enforcement, and family members. It is a structured program, and the application outlines the: 1) Admission Criteria; 2) Exclusionary Criteria; 3) Referral Process; 4) Acceptance Procedures; and 5) Conditions of Acceptance. Depending on the type of offense, charges may be downgraded or dismissed if the defendant successfully completes a plan of treatment.<sup>53</sup>

The application is available through the Morris County Prosecutor's Office. The Morris County Prosecutor's Office reviews applications with the Mental Health Association and Morris County Judiciary Probation Officers to assess whether the individual is legally, clinically, and case management appropriate. If accepted into the program, a comprehensive case management and treatment plan is implemented and closely monitored. The individual's criminal charges are addressed, and services are linked to counseling, housing, and other supportive services. If there is a co-occurring substance abuse disorder, the program will coordinate with or refer the individual to the Recovery Court Program. The Morris County Judiciary provides supervision through Probation Services on certain cases and has developed a "Wellness Court" to review the individuals in the program. The assigned Judge, Prosecutor's Office, Office of the Public Defender, and Probation Officers conduct regular meetings with participants to ensure and support compliance and assist with treatment and other needs.<sup>54</sup>

The Morris County Prosecutor's Office has also implemented Crisis Intervention Team (CIT) Training, which is a 40-hour course for Law Enforcement, Emergency Medical Technicians, Department of Children Protection & Permanency, and other professionals who regularly deal with the special needs populations to work together to identify individuals having a mental health crisis and address them in a manner to de-escalate high risk situations and link these persons to county services and treatment.<sup>55</sup>

### **Other Mental Health Initiatives**

New Jersey courts confront mental health issues in a variety of contexts, which has generated programs that may serve as models, and if not models, provide experience that may contribute to the development of a statewide mental health court system. Some examples include:

#### ***Recovery Court—"Drug Court" Programs***

New Jersey is in the process of standardizing a Statewide Drug Court Program. The goal is to create a uniform approach for eligibility criteria and a statewide system.<sup>56</sup> The implementation of drug courts is a success story that may serve as a template for how mental health courts can be rolled out throughout the various vicinages and implemented on a statewide basis. The structure for supervision and monitoring sets a good example as to how a statewide mental health court may be implemented.<sup>57</sup>

One of the challenges arising out of current drug court programs are defendants with co-occurring disorders, i.e., serious mental health issues co-existing with substance abuse issues. It is not uncommon for those with serious mental health issues to rely on alcohol and drugs to self-medicate. Co-occurring disorders present a unique challenge to the

drug court system because it is not equipped and does not have the funding to provide the mental health and social services necessary to address underlying serious mental health issues.<sup>58</sup>

The challenge for the implementation of mental health courts will be obtaining funding and clinical services to manage serious and persistent mental health issues and any related substance abuse issues. The experience in the development and implementation of the drug court program will be instructive to the development of a standardized statewide approach to a diversion program for those with serious mental health issues.

#### ***Veteran Diversion Courts (VDP)***

The Veterans Diversion Program (VDP) is another court system involving assessments and diversions related to mental health issues which can serve as a guide for mental health courts. In recognition of those who have served our country and in recognition that service sometimes results in psychological issues, New Jersey has implemented a diversion program for veterans with mental health issues that result in contact with the criminal justice system. VDP is limited to qualifying service members, charged with an eligible offense, and present with mental illness.<sup>59</sup> The eligible offenses have limitations, they include non-violent municipal criminal matters and third- and fourth-degree offenses. Admission into the VDP is the sole discretion of the prosecutor. VDP also has a mentorship component that makes this program unique. Successful completion of VDP may potentially lead to the dismissal of criminal charges.<sup>60</sup>

#### ***Involuntary Out-Patient Commitment<sup>61</sup>***

New Jersey courts have experience with the supervision and case management of individuals with chronic mental illness. The creation of state-wide mental health courts in the criminal justice sys-

tem can look to the experience gained in the civil commitment system<sup>62</sup> and most notably the Involuntary Outpatient Commitment (IOC) programs. One component of the involuntary commitment system provides for judicial supervision of those are not “immediately or imminently dangerous to self, others, or property.”<sup>63</sup> The involuntary out-patient commitment system is of fairly recent origin implemented due to the need to provide mental health services to those who may be dangerous in the ‘reasonably foreseeable’ future.”<sup>64</sup>

The Involuntary Out-Patient Commitment system involves court-ordered treatment, provides links to community provider mental health services, the implementation, and judicial monitoring of court ordered plan of treatment.<sup>65</sup> The system assesses clinical progress, provides for legal representation of patients, and coordinates the patient’s participation in court hearings. Individual enrollment requires a structured screening by mental health professionals consistent with the court rules and state law.<sup>66</sup> Before an out-patient commitment order may be entered, a certified psychiatric screener, qualified mental health providers, and a court must make a determination that the individual qualifies under the legal standard which is: “an adult with mental illness, whose mental illness causes the person to be dangerous to self or dangerous to others or property and who is unwilling to accept appropriate treatment voluntarily after it has been offered.”<sup>67</sup>

The involuntary in-patient and out-patient commitment system is different than the system that mental health courts in the criminal justice system would implement. Mental health courts will seek to provide an alternate avenue for resolving criminal charges, for those who will voluntarily participate, like recovery court diversion programs for substance abuse and veterans. The due process protections and issues presented

by a mental health court system will be substantially different, but the ordering of out-patient treatment, linkage to mental health services, monitoring of such plans, and assessment progress are issues that the courts currently address in commitment proceedings.<sup>68</sup>

### **Challenges to Implementing a Statewide Mental Health Court System**

For a statewide mental health court system to be effective, certain issues will have to be addressed, including who qualifies, what crimes qualify, whether there will be voluntary participation, and the implication for the ultimate resolution of the criminal charge. Another major challenge will be funding the psychiatric, medical, and integrated case management services capable of addressing the wide variety of mental health illnesses presented by this population and the availability of appropriate community health care providers throughout the state.<sup>69</sup>

There is no “magic pill,” and the system will require medical professionals capable of prescribing and monitoring psychiatric medication issues. Since the prescription of psychotropic/antipsychotic drugs is an art and as individuals may respond differently to a medication, an integrated case management system will require qualified medical staff to prescribe, and case manage medication issues. Medical professionals will need to work directly with the participant, the County Prosecutor’s Office, counsel, and court system to establish a medicine protocol that is both effective and accepted by the participant.<sup>70</sup>

Frequently, no single medication may provide the relief of psychiatric symptoms. Effective treatment may require a combination of medications which complicate treatment, create polypharmacy,<sup>71</sup> and side effect issues. Creating a system that can balance an individual’s rights<sup>72</sup> to control their medication decisions with the management of symptoms and

side effects is a challenge. Medication issues will require the cooperation of the individual as well as staffing, with qualified case management, and medical personnel to address medication issues.

### **Conclusion**

Managing serious mental health issues arising out of the criminal justice system is complicated and will require adequate funding to provide the services necessary to make the system work. Implementing mental health courts on a statewide basis presents challenges at every stage of criminal proceedings. In addition to public policy concerns about the humane treatment of persons who have mental illness, there are issues involving the cost of incarceration, the failure to accurately diagnose and treat, the resulting deterioration of the inmate’s level of functioning, complicating medical issues, and recidivism. These concerns compel the need for action to be taken to reform the system.

The Drug Court/Recovery Court system took years to implement and through the efforts of pilot programs is being effectively implemented on a statewide basis that will reduce the loss of life and reduce the prison population. New Jersey is now rolling out pilot programs and experimenting with programs to address mental illness, treatment, and diverting those suffering from mental illness to take them out of a punitive correctional approach.

The ultimate challenge for New Jersey’s 21 counties is having the availability of community mental health providers with sufficient training, staffing, and funding, to work in an integrated case management program with county prosecutors’ offices, pre-trial services, probation, defense counsel, and the court system to provide the necessary services to stabilize, monitor, and maintain the mental health of the population of defendants who struggle with serious mental illness. Understanding these



obstacles, the implementation of a statewide mental health court system is likely several years in the future. The patchwork of programs currently in place are setting the groundwork for determining how, as a society, we deal with mental illness in the criminal justice system. Establishing a more humane and just approach to addressing the complex issues presented by serious mental illness in the criminal justice system is necessary and in society's interest. ■

## Endnotes

1. Given the complexity of the human mind and the variations in diagnosed mental health illnesses and developmental disabilities, there is no easy or simple definition for "chronic mental illness" or what conditions would qualify one for acceptance into a mental health court/recovery court program. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is a system of classification, a manual for the characterization and setting the criteria for diagnosis, a common language, for Mental Health Providers. It is constantly evolving and provides a system of diagnosing, defining, and characterizing a constellation of symptoms and behaviors presented by a subject. Due to the complexity of symptoms and behaviors it is not a "Bible" and has limitations that should be accounted for in its use. Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* (5th ed. 2022); Jeffrey Guterman, *Limitations of the Diagnostic and Statistical Manual of Mental Disorders – also known as the DSM5*, Medium (Feb. 4, 2017), <https://jeffreyguterman.medium.com/limitations-of-the-diagnostic-and-statistical-manual-of-mental-disorders-also-known-as-the-dsm-f864149da182>; Anna Bredstrom, *Culture and Context in Mental Health Diagnosing: Scrutinizing the DSM-5 Revision*, J. Medical Humanities 40, 347 (2019); *Diagnostic & Statistical Manual of Mental Disorders (DSM): Strengths & Weaknesses*, Study.com, <https://study.com/academy/lesson/diagnostic-statistical-manual-of-mental-disorders-dsm-strengths-weaknesses.html> (last visited Oct. 25, 2022).
2. See Gen. Assemb. 1700, 220th Leg., 2022 Sess. (N.J. 2022).
3. Amy Watson, M.A. et al., *Mental Health Courts and the Complex Issue of Mentally Ill Offenders*, 73 Psychiatric Servs. 477, 479 (2001).
4. *Mental Health Courts*, Council of State Gov'ts Just. Ctr., <https://csgjusticecenter.org/projects/mental-health-courts/> (last visited Oct. 20, 2022).
5. Interbranch Advisory Comm. on Mental Health Initiatives, *Improving Responses to Individuals with Mental Illness in New Jersey* 1, 4 (Dec. 2012).
6. See News Release, Supreme Court Forms Mental Health Advisory Committee, N.J. Cts. (Nov. 12, 2019), <https://www.njcourts.gov/pressrel/2019/pr111219c.pdf>.
7. Interbranch Advisory Comm. on Mental Health Initiatives, *supra* note 5, at 4.
8. *Id.* at 6.
9. *Id.* at 4.
10. *Id.*
11. *Id.*
12. *Id.* at 2-3.
13. *Id.* at 6.
14. See News Release, *supra* note 6.
15. Mental Health Advisory Comm. Roster, N.J. Cts., <https://www.njcourts.gov/host/pr/mhacommroster.pdf>.
16. N.J. Assemb. Judiciary Comm., *Statement to Assembly Bill No. 1700*, 220th Leg., 2022 Sess. (Sept. 29, 2022), *available at* [https://pub.njleg.state.nj.us/Bills/2022/A2000/1700\\_S1.HTM](https://pub.njleg.state.nj.us/Bills/2022/A2000/1700_S1.HTM).
17. See Gen. Assemb. 1700, *supra* note 2; see also N.J. Assemb. Judiciary Comm., *supra* note 16; Fast Democracy, <https://fastdemocracy.com/bill-search/nj/2022-2023/bills/NJB00043244/> (last visited Nov. 22, 2022).
18. See Gen. Assemb. 1700, *supra* note 2; see also N.J. Assemb. Judiciary Comm., *supra* note 16; see also Fast Democracy, *supra* note 17.
19. The Assembly Judiciary Committee reported favorably Assembly Bill No. 1700. Gen. Assemb. 1700, *supra* note 2.
20. Gen. Assemb. 1700, *supra* note 2; see also Fast Democracy, *supra* note 17.
21. *Id.*
22. While studies show a wide variation in the percentage of inmates with serious mental illness, the common thread is that the percentage of inmates with serious mental illness is significant. U.S. Dep't. of Just., *Mental Health Problems of Prison and Jail Inmates* (2006), <https://bjs.ojp.gov/content/pub/pdf/mhppji.pdf>; see also *Mental Health: Policies and Practices Surrounding Mental Health*, Prison Pol'y Initiative (Oct. 19, 2022, 12:28 PM), [https://www.prisonpolicy.org/research/mental\\_health/](https://www.prisonpolicy.org/research/mental_health/); see also Lorna Collier, *Incarceration Nation*, 45 Monitor on Psych. 56 (2014); see also Treatment Advoc. Ctr., *How Many Individuals with Serious Mental Illness are in Jails and Prisons?* (Nov. 2014), <https://www.treatmentadvocacycenter.org/storage/documents/backgrounders/how%20many%20individuals%20with%20serious%20mental%20illness%20are%20in%20jails%20and%20prisons%20final.pdf>; Edward Lyon, *Imprisoning America's Mentally Ill*, Prison Legal News, Feb. 2019, at 22; *Access to Mental Health Care and Incarceration*, Mental Health Am.,

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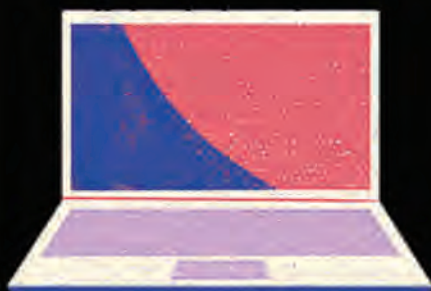
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# CRISIS OF MAGNITUDE

## *Madden v. Delran* on its 30th Anniversary

By Amy Vasquez

“The victim in the present system is not the bar, but the poor.”

—*Madden v. Delran*, 126 N.J. 591 (1992)



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**N**ew Jersey’s current mandatory attorney assignment system in constitutional right to counsel cases was upheld 30 years ago by a unanimous Court in *Madden v. Delran*. Since that time, courts have expanded types of cases where indigent litigants face “consequences of magnitude.” *Madden*’s provision of continuing the system of randomly appointing uncompensated counsel has amplified fatal flaws in our state’s justice system, where the poor are disadvantaged on the scales of justice. Among the most concerning of *Madden*’s unintended consequences is the constitutionalizing of ineffective assistance of counsel. On its 30th anniversary, *Madden* presents as a crisis situation.

## New Jersey's Pre-Madden Right to Counsel Cases

Since New Jersey adopted its constitution declaring independence from England in 1776, this state has recognized the right to counsel as a guaranteed right.<sup>1</sup>

The question of compensation for counsel when providing constitutionally required representation of indigent defendants was not raised in the New Jersey Supreme Court until 1966, three years after the U.S. Supreme Court required states to provide attorneys to criminal defendants who cannot afford to hire one in *Gideon v. Wainwright*.<sup>2</sup> In the wake of *Gideon*, the New Jersey Supreme Court determined attorneys should be compensated for representing criminal defendants.<sup>3</sup> The court, however, delayed its holding's effective date indefinitely to allow the Legislature time to resolve the "practical problems" associated with compensating counsel.

A decade later the Supreme Court determined that municipal court judges could assign "free counsel" to defendants facing "consequences of magnitude" in municipal courts.<sup>4</sup> In the subsequent years leading up to *Madden*, the Court expanded uncompensated counsel assignments in the Family Division in termination of parental rights cases. The Court opined, "The weighing of those policy considerations is not for this Court but for the legislature. It is to that body that a burdened bar, which devotes countless hours to a broad range of frequently-unheralded pro bono endeavors, must address any petition to relieve an apparent inequity."<sup>5</sup>

### **Madden v. Delran**

In this context, a Burlington County law firm contested the random appointment process.

In a 1992 unanimous decision, the Court created the current appointment process. The Court confirmed that attorneys should continue to be appointed to

represent defendants in municipal courts until the legislature acts.

Chief Justice Robert N. Wilentz wrote that though the uncompensated system would continue, the Court would encourage state, county, and municipal governments to eliminate the burden on the bar, "...because this form of pro bono service representing indigent defendants in municipal court matters is inevitably not only inefficient but unfair to indigent defendants who suffer with unequal justice."

In its opinion, the Court acknowledged that this system would perpetuate ineffective representation. It stated, "Real estate attorneys, corporate counsel, experts in commercial leases, all have been assigned to represent indigent defendants charged with simple assault, driving while intoxicated; all were required not only to learn how to defend those cases but to find out where the courthouse is. We have no doubt that on occasion their inexperience has affected their representation, but the fact is that over these many years no substantial complaints of a failure of justice have been brought to our attention."

In a recent *Madden* assignment case, the appellate panel initiated the issue of ineffective assistance of counsel and not the litigant.<sup>6</sup> The assigned counsel filed the initial brief more than a year after its due date, never cited case law, did not file a reply brief to correct an issue of controlling law, and did not advise the court that a crucial trial transcript was omitted from the appellate record. During a New Jersey State Bar Association panel discussion on *Madden* assignments, the case *In the Matter of the Adoption of a Child by C.J.* was described as a Dumpster fire.<sup>7</sup> The *C.J.* court found ineffective assistance of counsel. "The level of representation was tantamount to a total lack of appellate counsel."<sup>8</sup>

*C.J.* demonstrates a disastrous consequence of the *Madden* system. The combination of decades of a system of ran-

domly assigned uncompensated counsel, the acknowledgment by courts that the *Madden* system fosters unfairness and the courts' perceived silence by litigants in seeking redress for grievances has created the perfect storm for constitutionalizing ineffective assistance of counsel. This unintended consequence of *Madden* is the sleeping giant, while the issues of unfairness to the litigant and counsel remain constant.

In the days following the *Madden* decision, *The New York Times* reported on the importance of the case in critical terms.<sup>9</sup> It compared New Jersey to New York and Connecticut where attorneys are paid in their respective systems. In an interview quoted in *The New York Times* article, James Youngelson, who wrote a brief for the New Jersey State Bar Association supporting the Delran challenge was reported as stating, "How can there be even-handed justice when there is a paid, knowledgeable prosecutor and not necessarily a knowledgeable defender?"

## Right to Counsel Cases Grow While the Madden System Remains Unchanged

In 1994, the Court declined to consider an appellate division ruling requiring assigned counsel for parole revocation hearings.<sup>10</sup> With growing concerns from its membership, in the late 1990s, the New Jersey State Bar Association turned its efforts to seek a solution through legislative action. Those efforts in collaboration with other stakeholder efforts resulted in legislation to fund municipal public defenders and requiring the Office of the Public Defender provide representation to indigent parents facing termination of parental rights.<sup>11</sup>

In 2006, the tide began to change as courts began to seek new solutions where it found a right to counsel was warranted. A brief wave of cases refrained from the mandatory appointment of counsel holdings of the previous right to counsel cases. In *Pasqua v.*



*Council*, the Supreme Court held that although child support obligors facing potential incarceration are entitled to counsel, “We will not use our authority to impress lawyers into service without promise of payment to remedy the constitutional defect in our system.”<sup>12</sup> Instead, the Court determined that unless there is a funding source for the provision of counsel, coercive incarceration will not be an available sanction.

Similarly, in a 2018 case, it was held that due process and fundamental fairness require that counsel be appointed for indigent child support obligors when faced with automatic suspension of their driver’s license.<sup>13</sup> The court concluded that courts remain free to deny counsel to indigent obligors at child support hearings, but, as in *Pasqua*, they may not impose driver’s license suspensions unless the right to appointed counsel has been offered. The court noted further that, “Without the services of the Office of the Public Defender, if counsel for indigent parties is required by court precedent, the Assignment Judge of each vicinage must assign pro bono counsel using a list of licensed attorneys known as the Madden List. Although this practice is not an ideal solution because it often assigns attorneys to cases not in their area of expertise, it does satisfy due process requirements.”

These solutions that offered an acceptable alternative to uncompensated counsel appointments were not, however, crafted for every type of case. In *re Adoption of J.E.V.*, the court found that indigent parents facing termination of parental rights as a result of adoption proceedings are constitutionally entitled to representation.<sup>14</sup> Although the court agreed that the Office of Parental Representation has developed expertise in this area, it concluded that it could not direct that office to handle additional cases under the Adoption Act. It noted that the Legislature had acted “responsibly” in the past and provided counsel when the

constitution so required and trusted that the legislature would act to address this issue.

In *DCPP v. L.O.* the Appellate Division held that in a child abuse and neglect proceedings, as a matter of fundamental fairness, counsel should be appointed for indigents in administrative child abuse proceedings at the administrative and appellate levels.<sup>15</sup> The Office of the Public Defender is currently representing indigent litigants in those matters under a pilot program.

### NJSBA Right to Counsel Report

The current *Madden* system of assignments that has been in existence since the decision in 1992, followed by an Administrative Office of the Courts Directive on Feb. 16, 1993. Currently, there is a right to counsel in the following types of cases that are not handled by the OPD or other counsel compensated by the responsible governmental entity (i.e., municipal public defenders and attorneys paid by counties to represent individuals in certain civil commitment hearings):

1. municipal court appeals;
2. representation of parents in termination of parental rights in private adoption;
3. representation of persons facing parole revocation;
4. representation of defendants in domestic violence contempt;
5. violation of probation related to domestic violence;
6. representation of persons in need of guardianship (except for clients of DDD for whom guardianship only of the person is sought.); and
7. paternity proceedings.

In 2019, the New Jersey State Bar Association formed a Right to Counsel Committee to examine, in part, the effectiveness of assigned counsel under the *Madden* system. In 2021, NJSBA issued a

report entitled “Achieving Effective Representation in Right to Counsel Matters.”

The first recommendation is to abolish “the *Madden* system of random assignments to uncompensated counsel” and to replace “with publicly funded compensated counsel.” The report issues other recommendations in an attempt to lessen the burden of the bar and support measures to ensure effective representation during the transition to eliminating the system as it is known today. ■

### Endnotes

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2. *Gideon v. Wainwright*, 372 U.S. 335 (1963)
3. *State v. Rush*, 46 N.J. 399 (1966)
4. *Rodriguez v. Rosenblatt*, 58 N.J. 281 (1971)
5. *N.J. Div. of Youth and Family Serv. v. D.C.*, 118 N.J. 388 (1990)
6. *IMO the Adoption of a Child by C.J.*, 463 N.J. Super. 254 (2020)
7. “30 Years of *Madden v. Delran Twp.*: Where do we go from here? An interactive forum on the impact of *Madden* on attorneys and the public,” October 26, 2022
8. *IMO the Adoption of a Child by C.J.*, 463 N.J. Super. 254 at 262 (2020)
9. Strum, Charles, “New Jersey Public Defenders Please Few,” *The New York Times* (March 28, 1992)
10. *Bolyard v. Berman*, 274 N.J. Super. 565 (App. Div.), certif. denied, 138 N.J. 272 (1994)
11. N.J.S.A. 2B:24-7; N.J.S.A. 30:4C-15.4(a)
12. *Pasqua v. Council*, 186 N.J. 127 (2006)
13. *Kavadas v. Martinez* (Docket No. MER-L-1004-15, Law Div.),
14. *In re Adoption of J.E.V.*, 226 N.J. 90 (2016)
15. *DCPP v. L.O.*



# REACH

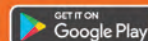
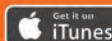
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# Justice Speaks All Languages

Ensuring the Due Process Rights of Limited English Proficient Litigants through Volunteerism and Judicial Collaboration

By Victoria B. Nicholson

*"...I appreciate the work of my volunteer attorney and the [bi-lingual] paralegal. For me, it was a big deal because I did not have money to pay for an attorney...I could not have done this alone. It was important to have an attorney during a time like this. Many people like me are alone in this country without family or without anyone to confide in."*

—A domestic violence survivor served by Partners Pro Bono Programs

Language access is integral to providing inclusive access to justice for individuals with limited English proficiency (LEP). Pro bono counsel, in tandem with the courts can open greater pathways to justice for LEP individuals. New Jersey's diversity makes our state strong, with over 1 million of our residents speaking a language that is not English at home.<sup>1</sup> Attaining universal linguistic and cultural equity requires the collaboration of practitioners and courts to meet the language access needs of the over 2,693,000 LEP individuals that reside in our state.<sup>2</sup>



## Pro Bono Representation: The Role of Attorneys in Improving Language Access

Attorneys share with courts the duty to serve the public with fairness and equity.<sup>3</sup> This duty magnifies in cases involving members of our society in the greatest need.<sup>4</sup> Under federal and state law, courts are required to provide language access to LEP individuals.<sup>5</sup> Attorneys, along with judges, bear responsibility for ensuring every person with a legal interest in a court event can fully exercise their right to be heard and fully participate.<sup>6</sup> Melissa Kiefer, a staff attorney with Legal Services of Northwest New Jersey recommends that attorneys fulfill their duty to provide *pro bono* service by volunteering to represent a LEP individual. Kiefer advises:

The best way for members of the bar to help improve language access is to take *pro bono* cases for representation. The expectations, understanding, and anxiety related to the Court process for Limited English Proficiency litigants can be successfully addressed by an attorney using interpretation services or who is multilingual.<sup>7</sup>

Attorneys can make the greatest impact in assuring justice for all by actively volunteering in accredited *pro bono* programs throughout the state. Meaningful due process cannot be achieved solely by the provision of in-court interpretation services alone. Many litigants on traditionally *pro se* dockets enter courts facing intersectional issues of both limited English proficiency, cultural marginalization, and economic disadvantage. For litigants in these circumstances, true access to justice includes representation by competent and culturally sensitive counsel. Together with the judiciary, *pro bono* counsel plays an important role in procuring full procedural justice for LEP individuals in court proceedings. Liti-

gants experience procedural justice when a court interaction generates a perception of being heard, understood, and treated fairly and respectfully. Attorneys achieve procedural justice by advocating for the provision of language access services inside and outside the courtroom. In so doing, counsel helps bridge the gap between the court, adversary, and the LEP litigant.<sup>8</sup>

### Assistance of Counsel Rebalances the Scales of Justice

Litigants cannot be treated with dignity or obtain unfettered access to justice without the ability to fully communicate with the court and counsel. Historically, those with Limited English Proficiency frequently experience discrimination based on racial and anti-immigrant bias, and disadvantage, leading to unequal treatment in society.<sup>9</sup> “Language is perhaps the most conspicuous characteristic of cultural difference and it is at the core of one’s identity.”<sup>10</sup> A person’s English proficiency in the United States can have significant effects on their life including ability to participate in civic and political life and seek assistance from government agencies and courts.<sup>11</sup> Justice must speak in all languages in order for all who seek it to be treated with fairness and equity. By restructuring legal procedures and institutions to reflect the multilingual nature of American society, courts and the bar have taken significant steps toward holistic equity in the justice system.<sup>12</sup> However, in order to remove obstacles to justice, “the systematic fair treatment of people of all language communities and respect for everyone’s fundamental language rights [is] a critical part of effective and inclusive legal services.”<sup>13</sup>

Counsel can ensure that interpreters are present during proceedings and empower LEP litigants to notify the court if the quality of interpretation and translation does not comply with statutory and judicial standards. Legal terminolo-

gy and procedural terms cause confusion to many; court events can overwhelm LEP litigants, even with interpretation assistance. Marcela Jorge-Ventura, former domestic violence case manager and advocate at Women Rising, Inc., noted that without counsel, many litigants, “are so scared to speak up. They do not know what to say or do. When they [are helped by an attorney] volunteer, they have hope.”<sup>14</sup>

Engagement of multilingual counsel amplifies the benefits of legal representation for LEP individuals. Staff attorney Jasmine Elatab and paralegal Dana Shikhelbasatna of Wafa House regularly assist economically disadvantaged domestic violence survivors of Arabic speaking communities. Frequently, their clientele rely on interpreters and translators to help convey their testimony and evidence to the court. Elatab noted that, “one lost word can affect the disposition of the case.”<sup>15</sup> This linguistic pressure can cause stress and undue burden to *pro se* litigants who may never have interacted with an interpreter prior to their legal



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Multilingual lawyers should be incentivized to volunteer and be matched with LEP clientele in need of legal assistance. Courts, legal service providers, firms, and bar associations can support and encourage the engagement of multilingual attorneys in *pro bono* work by offering professional development opportunities and recognition for exceptional *pro bono* service to LEP individuals.

proceedings. With the assistance of Arabic speaking counsel, Wafa House clients immediately “feel relieved,” reported Shikhelbasatna. Representation by multilingual counsel allows LEP litigants to focus on presenting their legal position unhindered by the weight of having to self-advocate for language access.

Legal counsel alone drastically improves a litigant’s likelihood of success, regardless of the attorney’s linguistic capacity. Assistance of *pro bono* counsel serves to improve litigant outcomes for underrepresented populations on traditionally *pro se* dockets. In a recent study of New York Housing Courts, tenants paired with volunteer counsel, “were less likely to be subject to possessory judgments,...to have eviction warrants issued...and face monetary judgments.”<sup>16</sup> Positive outcomes markedly increased for tenants in poverty and those hailing from immigrant and/or historically disadvantaged communities.<sup>17</sup>

Amayra Lugo, supervising paralegal advocate at the Community Health Law Project, similarly emphasized how language access support is critical in a landlord/tenant context. Lugo recounted a case in which assistance of counsel changed outcomes for a LEP individual. An LEP tenant was attempting to organize the deposit of a money order for rental payment. However, building management could not understand the tenant because it lacked multilingual staff or access to interpretation services. Had the Community Health Law project not interceded, the tenant could have incurred missed rental payments, and in turn, faced the commencement of evic-

tion proceedings. For this individual, lack of interpretation services brought them to the brink of homelessness. Language access via legal services kept the tenant housed and safe.

In domestic violence matters, lawyers also play a crucial role. In a study of survivor outcomes, 83% of victims represented by counsel successfully obtained a protective order.<sup>18</sup> In contrast, the court granted protection to only 32% of unrepresented survivors. Professor Jessica Miles of Seton Hall School, Family Law Clinic supervises student attorneys representing domestic violence survivors in cases involving restraining orders, divorce, international custody disputes, and private adoptions. Reviewing a recent experience of her clinical students, Miles recounted:

The challenges of obtaining a Temporary Restraining Order with appropriate relief are heightened for LEP litigants and survivors have so many questions on the Temporary Restraining Order process which go unanswered if they do not have bi-lingual counsel.... For one Spanish speaking survivor, we arranged for an interpreter by phone and then [a student attorney] spent at least twenty minutes answering her many questions....It was distressing to even think about what the process would have been like for the survivor in the absence of our student attorney supported by an interpreter.<sup>19</sup>

Assistance of *pro bono* counsel became increasingly important during the COVID-19 health crisis, as many LEP individuals found themselves cut off

from traditional providers of legal and social services. The pandemic disproportionately impacted some of the most vulnerable speakers of the non-dominant language, such as asylum seekers, immigrant survivors of domestic and sexual violence, victims of human trafficking, and those facing homelessness.<sup>20</sup>

### **Engaging Multilingual Attorneys in Language Access Through Volunteerism**

Positive outcomes can only further increase when LEP litigants gain access to volunteer counsel who speak their language. In terms of the attorney-client relationship, multilingual lawyers act as a direct conduit to legal services, without the litigant experiencing the additional hurdle of reliance on interpreter or translator.<sup>21</sup> *Pro bono* volunteers, especially those who speak more than one language, perform a central role in facilitating language justice for all litigants.<sup>22</sup> In providing services in their client’s preferred language, attorneys model a culture of bilingualism and in turn, “begin to dismantle the structural impediments that language minorities encounter in their interactions with courts and decision makers.”<sup>23</sup> Multilingual lawyering enhances human dignity and accomplishes greater ethical goals of inclusivity of participation for all members of society in judicial and government processes.<sup>24</sup>

Multilingual lawyers should be incentivized to volunteer and be matched with LEP clientele in need of legal assistance. Courts, legal service providers, firms, and bar associations can support and encourage the engagement of multi-

lingual attorneys in *pro bono* work by offering professional development opportunities and recognition for exceptional *pro bono* service to LEP individuals. Creation of bar specializations and certification programs for multilingual promotes the professionalization of attorneys who can provide services in more than one language, and provide assurances to LEP clients that their multilingual attorney has a defined skills set in the second language.<sup>25</sup>

Through *pro bono* casework, multilingual attorneys gain the opportunity to solidify their professional lexicon and language skills in non-English languages while dually engaging in meaningful work in furtherance of racial and social justice.<sup>26</sup> Shirley Moreno, an associate at Parker, Ibrahim, and Berg, LLP and a bilingual *pro bono* volunteer at Partners illustrated the benefits of nonprofit work, stating:

“Volunteering is a way for us as attorneys to lift our surrounding communities as we climb. It allows us to contribute our knowledge and skill set with those around us. As a first-generation Afro-Latina attorney, it gives me great joy to help others who share a similar background as myself during their time of need.”

In addition to uplifting a shared linguistic and cultural community, multilingual attorneys stand to reap cognitive benefits from engaging in bilingual practice. Scientific studies have concluded that multilingual practitioners develop the ability to think divergently, gain enhanced problem-solving abilities and critical thinking skills in regards to lan-

guage and semiotics, and obtain greater sensitivity in communication.<sup>27</sup> With such profound and life-changing benefits to the attorney volunteer, their LEP client, and the greater community, practitioners stand to gain by incorporating multilingual *pro bono* practice into their work. Those attorneys who are monolingual or have some capability in a second language can also benefit from engaging in work with LEP individuals in need of counsel, provided that they partner with staff, co-counsel, or nonprofit agencies who offer the requisite linguistic support to facilitate client communication.

### **Nonprofits Provide Vital Framework for Volunteer Representation**

Nonprofit organizations serving linguistically marginalized communities can further support volunteers by providing trainings focused on language access and diversity, equity, and inclusion to the bar. Creating meaningful language equity is an obligation of all public interest legal organizations. Pursuant to the American Bar Association Standard on Promoting Language Justice:

A legal aid organization must ensure language justice for all legal services clients including language assistance that incorporates different tools and strategies (e.g., a bilingual staff, interpretation, translation, signage, and outreach). The organization's management should evaluate whether all language groups have meaningful and equitable access to critical services, programs, and civic participation, including service on the organization's governing body.<sup>28</sup>

Training is an essential component of volunteer engagement. To maximize volunteer participation, many *pro bono* programs offer training and support to volunteers who may have limited practical experience representing a low-income individual with limited English proficiency.

Non-profit organizations should consider adapting existing trainings or creating novel seminars focused on client-centered advocacy.<sup>29</sup> Offered as part an organization's greater language access plan, such trainings provide both mono and multilingual volunteers with guidance on how to interact with and advocate for LEP individuals within a culturally and linguistically sensitive model.<sup>30</sup> Ultimately, *pro bono* counsel who receive trainings that bring to focus the intersectionality of poverty, cultural identity, and linguistic and racial discrimination will provide more holistic advocacy from volunteers.

Cross-cultural trainings that include “components of trauma informed lawyering, implicit bias and debiasing strategies, as well [as] cultural humility and competence will more likely challenge the underlying racism” that may exist as part of a client's fact pattern and interaction with governmental systems.<sup>31</sup> In providing trainings dedicated to linguistic justice, public service legal providers set up their volunteers for success, and so bolster legal outcomes for their clients.<sup>32</sup> Ideally, both substantive laws and ethics rules governing representation of linguistically diverse clientele should be included in course curricula. Integration of practical guidance on how to interview and zealously represent LEP

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individuals into trainings will prepare volunteers to support of the nuanced decision making of *pro bono* clients.<sup>33</sup>

For LEP litigants and those who face socio-economic barriers, representation by competent counsel is the key to opening the doors of justice. In providing *pro bono* representation, volunteer attorneys do not simply fulfill their professional responsibility to render public interest legal service.<sup>34</sup> In fact, the work of *pro bono* counsel reshapes the fabric of our society for the better. With the assistance of *pro bono* counsel, LEP litigants and the disadvantaged gain the ability to fully participate in the legal system, and ultimately transcend discriminatory societal biases that prevent full societal inclusion.

### **Linguistic Diversity in Law School Composition and Curricula Strengthens the Future Bar and Improves Language Access**

Full inclusivity requires bar composition to reflect the diversity of the community whom membership serves. Law schools can play an important role in recruiting and engaging multilingual students and, “incorporating language access into their curricula and extracurricular programming.”<sup>35</sup> Although many attorneys admitted to the bar in New Jersey and nationally possess multilingual capacities, few have had the opportunity to cultivate the skills and breadth of linguistic knowledge to provide comprehensive legal assistance in bilingual formats.<sup>36</sup>

Infusing law school curricula with opportunities to hone legal linguistic skills can both educate and cultivate a generation of lawyers prepared to assist LEP individuals.<sup>37</sup> Many law schools nationwide offer bilingual courses. Greater availability of this genre of study enriches students and serves to improve access to justice to future LEP clients.<sup>38</sup> Integration of Spanish language instruction in traditional law school curricula for all or a portion of the course offering

achieved positive results in some juris doctorate programs.<sup>39</sup> Law schools can partner with not-for-profit legal services agencies to match interested multilingual law students with organizations in need of language access to support through internship, externship, and volunteer programs.

### **The Future: Courts and Practitioners Working Together for Greater Language Access**

There is a marked growth in light of increased case numbers in docket types with primarily *pro se* litigants, such as landlord/tenant, special civil, and domestic and sexual violence. This increase requires the judiciary and attorneys to collaborate in taking additional steps to protect the rights of LEP litigants.

The New Jersey Judiciary Language Access Plan (LAP) currently includes translation of case related documents and limited translation of case related evidence.<sup>40</sup> Further augmentation of the LAP could include comprehensive court subsidized evidence translation. While volunteer attorneys may absorb translation costs in *pro bono* matters, most indigent *pro se* litigants do not have the ability to pay for interpretation services. In some proceedings, such as domestic violence, asylum, and immigration matters, a litigant’s personal safety may rest on proper evidentiary translation. Lack of access to quality translation services can result in unjust decisions on all docket types. Subsidized translation services will elevate this burden from *pro se* litigants and further streamline evidentiary analysis for both volunteer attorneys and courts.

Deepened court collaboration with practitioners, advocates, and community leaders to improve language access will also aid in connecting volunteers with litigants in need. Pursuant to the current LAP, the judiciary aims to expand further outreach and engagement.<sup>41</sup> To implement the plan, volunteer attorneys can work with the judiciary and nonprofit

service providers who serve LEP community members in furtherance of this goal. Possibilities for volunteer involvement include the facilitation of legal clinics and seminars through court partnerships with nonprofit organizations, as successfully piloted in other jurisdictions.<sup>42</sup>

Justice balances on a litigant’s ability to fully understand and meaningfully participate in judicial proceedings. Lack of comprehensive language access for all renders justice both deaf and blind. *Pro bono* volunteers can help to overcome linguistic obstacles by championing low-income LEP litigants. Nonprofit readiness to provide wrap-around support to all *pro bono* volunteers offers confidence to multilingual attorneys and law students interested in utilizing their skills to improve legal outcomes for LEP individuals. By building upon our existing judicial language plan, greater inclusivity for LEP individuals can be achieved. Together, practitioners and courts can ensure that LEP litigants have equal access to justice. ■

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### **Endnotes**

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5. “Each county shall provide interpreting services necessary for cases...in the Law Division and the Family Part of the Chancery Division., N.J.S.A.2B:8-1; *See also*, *Daoud v. Mohammad*, 402 N.J. Super. 57, 60-61 (App. Div. 2008).
6. Attorneys are subject to a complex code of behavior that reflects the burdens inherent in an attorney’s dual obligations to clients and to the system of justice. Licensure requires members of the bar to conduct themselves in a manner compatible with the role of courts in the administration of justice in both federal and state practice. *In re Synder*, 472 U.S. 634, 634-5 (1985). The majority of jurisdictions have adopted a version of the American Bar Association’s Model Rules of Professional Conduct, including New Jersey. All judges and attorneys are bound by professional codes and laws in the states and jurisdictions in which they are barred and in which they appear and practice. *Id.* at 634. *See also* CODE OF CONDUCT FOR UNITED STATES JUDGES, CANON 3 (Eff. March 12, 2019); NEW JERSEY REVISED CODE OF JUDICIAL CONDUCT, CANON 3.6 AND 3.7; NEW JERSEY RULES OF PROFESSIONAL CONDUCT, RPC 3.3; 3.4; 3.5; 4.1; 4.2; 4.4; and 6.1.
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# The Effect of Filing Fees on the Access to Justice

By Adelina Herrarte and Melanie Zelikovsky

Access to justice has a price tag. Being a *pro se* litigant is a recognized barrier to justice. When litigants file their claims without the benefit of legal counsel, they fail at virtually every stage of civil litigation and overwhelmingly fail to obtain meaningful access to justice.<sup>1</sup> But for individuals and families who are unable to retain an attorney for a civil case or choose to represent themselves, court costs and filing fees can be an added barrier. In New Jersey, litigants must pay the court a fee when filing legal papers. That can mean that those who struggle to afford basic needs are less inclined to avail themselves of their legal rights because the fees to be heard are cost-prohibitive. In a divorce case, for exam-

ple, a plaintiff must pay a \$300 fee to file a complaint and a defendant must pay \$175 to respond via an answer.<sup>2</sup> The money collected from fees is used to operate and maintain the court system. Because a litigant is using the court system to resolve a legal problem, they are expected to pay for part of these costs. On the surface, that seems reasonable. But when they serve as a barrier to justice, the disparity between those who have access and those who do not is stark. In fact, fees are among the top obstacles to accessing the civil justice system, which also includes technology and language barriers.<sup>3</sup> Courts that have taken steps to increase access to justice are missing a vital point when they charge defendants hundreds of dollars to respond to a complaint. For litigants experiencing poverty, this erodes

their ability to participate in the court system and impedes their access to justice and may lead to defaults when viable defenses exist. Along with New Jersey, 14 states charge fees to answer a complaint in addition to fees for filing other documents, like motions.<sup>4</sup>

New Jersey is scored at 46 out of 100 by the National Center for Access to Justice.<sup>5</sup> This is partly because even though New Jersey makes fee waivers available, the required documentation process can be time consuming, invasive, and overly burdensome. It can be difficult to access the required records for the New Jersey fee waiver application. Even if a litigant can compile the documents for their fee waiver application, there is no guarantee it will be granted. This poses considerable difficulty for litigants experiencing poverty and increases their costs to access justice.

This article provides a breakdown of New Jersey filing fees and compares selected state and international courts. No domestic or international model for fee waivers provides a streamlined, unintrusive process for *pro se* litigants. In fact, comparable jurisdictions also put a price tag on justice. This presents an opportunity for New Jersey to lead by example and consider, by way of example, suggestions by the American Bar Association that could enhance equity and access.

## The Waiver Process

For states that offer fee waivers, the process lacks uniformity and drastically varies by county and judicial district.<sup>6</sup> In some cases, the court requires documents not previously listed or required on the court's webpage, meaning that litigants who go to the courthouse with all the listed forms and paperwork are sometimes denied due to administrative oversights.<sup>7</sup>

It is also difficult for *pro se* defendants to obtain filing information. Filing fees are not easy to find on court websites and can be tucked away in attached files called "fee schedules."<sup>8</sup> For those filing by mail, finding the court's mailing address

presents another hurdle: a small number of states include the court's mailing address on summonses. Like the fee amounts, the mailing address is also often not readily listed online.<sup>9</sup> If all else fails, a litigant can call the court, but may not always receive accurate information—or information that corroborates what is online, if it is there at all.<sup>10</sup>

Cost, lack of uniformity or easy access, and overall difficulty, are prohibitive and create a devastating cycle where *pro se* litigants experiencing poverty are understandably frustrated with the complexity of the courts' processes, or simply choose not to participate. Statutes and court rules are difficult to access and decipher, forms can be difficult to interpret from legalese into plain language, and this combined with the litany of other obstacles that litigants experiencing poverty face, is more of a deterrent to justice than an incentive to pursue it.<sup>11</sup> This "distrust and fear of the system," as journalist Jessica Folker puts it, manifests as a belief that justice is available only for those who can foot the bill.<sup>12</sup>

## New Jersey's Court Fees

Court fees and waiver requirements are outlined in the New Jersey Court Rules. A 2017 New Jersey Supreme Court Directive established a standard process and criteria for fee waivers based on indigence.<sup>13</sup> Court fees may be waived "by reason of poverty," defined as a household income not exceeding 150% of the federal poverty level based on the number of members of the household, and not more than \$2,500 in liquid assets. To permit fee waivers, the Directive relaxes and supplements rules pertaining to "Proceedings by Indigents"<sup>14</sup> and "Appeals by Indigent Persons."<sup>15</sup> Rule 1:13-2(a) deals specifically with fee waivers for indigent litigants and lays out that it is within the court's discretion to approve or deny a fee waiver application.<sup>16</sup> Rule 2:7-1, which deals with relief from filing fees, states that the court "shall briefly state its reasons" for deny-

ing a fee waiver application, though in practice that reason is not always given.<sup>17</sup> Litigants then have 20 days to appeal.<sup>18</sup>

The directive also requires litigants seeking waiver to complete a fee waiver packet,<sup>19</sup> which asks for detailed financial information. The packet, available online, is relatively easy to fill out, provided the litigant has (i) access to a computer or smartphone that allows them to digitally fill out the form, (ii) a printer, (iii) funds, or (iv) time to mail or submit in person their packet. A further barrier for New Jersey litigants is completion of the required attachments: two months of documentation of any benefits (including unemployment, disability, Social Security, child support, alimony, or any other income) and six months of bank



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The fee waiver process is critical to a litigant's ability to continue or start an action, as the court clerk is prohibited from filing the case unless the required fee is included or waived. New Jersey courts do not have enough judges to adjudicate the considerable backlog of cases much less to approve or deny fee waivers.

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statements for all bank accounts.<sup>20</sup> In addition, the packet asks litigants for their total monthly income and assets, and employer information.<sup>21</sup> The required information is intrusive and the requirement to share this information with the courts opens up the possibility for misuse. It is unclear how long such information is stored, how it is stored or protected, and what happens to that data afterward.

The fee waiver process is critical to a litigant's ability to continue or start an action, as the court clerk is prohibited from filing the case unless the required fee is included or waived.<sup>22</sup> New Jersey courts do not have enough judges to adjudicate the considerable backlog of cases much less to approve or deny fee waivers. By the end of 2021, New Jersey had a 93,624-case backlog, an increase of 17% percent from 2020.<sup>23</sup> From May 2021 to May 2022, the statewide civil case backlog included an additional 30,000

cases.<sup>24</sup> Over 46,000 of the backlogged cases are held up in Landlord-Tenant court, where the most common action is for nonpayment of rent, deeply affecting litigants already struggling with poverty.<sup>25</sup> In 2021, the New Jersey Senate confirmed 25 Superior Court judges from 2022 and seven who were nominated in 2021. Even with 32 new judges, courts are still slogging through a backlog.<sup>26</sup> This is not helped by the fact that an unknown number of fee waiver requests are denied without the reasoning required by Rule 2:7-1.<sup>27</sup>

The filing fee schedule is listed online in the "Attorneys—Rules of Court" section of the court's website, which is not where a layperson would necessarily go to look.<sup>28</sup> Complaints and answers are key to understanding the implication of fees because they are not only the first contact a litigant might have with the court on their specific matter, but can also be their first major roadblock. To file a complaint in Superior Court, Law Division, Civil Part the fee is \$250.<sup>29</sup> An answer in the same division costs \$175.<sup>30</sup>

Based on the 2019 U.S. Census, 9.2% of New Jerseyans, 800,000 people, live in poverty according to the federal standard (though some argue that with appropriate updates to the formula, that number is closer to 3 million).<sup>31</sup> New Jersey has the third highest cost of living in the country, yet in 2019 the annual rent for a two-bedroom apartment wiped out nearly 85% of a poverty-level family's annual wage.<sup>32</sup> Based on this outdated standard, that same family would have about \$273 per month to meet all other expenses: food, health care, taxes, and transportation, to name the major ones. To make matters worse, wages are not rising commensurate with inflation.<sup>33</sup> Therefore, it is not surprising that reliance on credit may be prevalent to meet daily living expenses. New Jersey has the sixth highest average household credit card debt with the average household owing \$8,956.<sup>34</sup> So, for 800,000 (or 3 million,

depending on who is counting) New Jerseyans, they could be faced with choosing between eating, going to work, caring for their family, going into more debt and filing or answering a complaint. Even if those litigants need the court to adjudicate their matter, it may make more financial sense either to not sue or not to answer.<sup>35</sup> The resulting default judgment for litigants who choose not to answer may also pose further problems and barriers for them later.

### Comparing New Jersey

According to the National Center for Access to Justice, the situation for court fees and fee waivers generally is—in a word—"bleak."<sup>36</sup> New Jersey is not alone.

Other states with fee waiver applications for civil court also require extensive financial information; it is not enough for litigants to certify that they are below or at the federal poverty line. For example, Alaska, California, Florida, Idaho, New York, and Texas require the following for their fee waiver applications: detailed accounts of monthly income and/or benefits, expenses and deductions, assets, debts, employer information, and household information.<sup>37</sup> This is a titanic and invasive process for any litigant, let alone someone struggling with poverty. For a litigant experiencing poverty, the time required to fill out, compile, and turn in a fee waiver application can take valuable time away from work or caretaking. It is also of note that for disabled litigants experiencing poverty, these same challenges increase exponentially. Furthermore, depending on the state, either a judge, judicial officer, or clerk will approve or deny a fee waiver application.<sup>38</sup> The states compared here also do not clearly require the court official reviewing fee waiver applications to provide a reason, so in this respect New Jersey is ahead of the curve though that reason is not always provided.

Even internationally, fee waiver applications for a litigant experiencing pover-

ty are at the discretion of the court: fee waiver information webpages from Ontario, British Columbia, and England and Wales all hinge on the word “may.”<sup>39</sup> *The court may approve a request* depending on several factors listed. These factors are similar across the board; income, assets, debts, financial assistance, household size still reign supreme across the pond and to the north as determining factors for fee waivers.

## Conclusion

Change is needed because a person’s access to the court system can be dictated by whether they have the funds to pay. A municipality or county’s need for revenue may be a critical factor, yet a 2019 report on New Jersey Municipal Courts outlined the need to decouple sentencing practices from the municipality’s need for revenue. The report proposed aiming for judicial independence of the Municipal Court while making administration more efficient. It suggested amending N.J.S.A. 22A:2-7(a) to provide waivers for docketing fees where defendants default on financial obligations after failing to appear at “ability to pay” hearings.<sup>40</sup>

The American Bar Association’s *Ten Guidelines on Court Fines and Fees* provides some insights, particularly for civil court fees. The *Guidelines* partially depend on courts being more transparent about the actual costs of services provided. For example, the first suggestion is that amounts imposed should never exceed the actual cost of the service provided or the individual’s ability to pay, and that no rule should limit a judge’s ability to waive or reduce a fee.<sup>41</sup> Next, the ABA suggests mandatory ability-to-pay hearings before imposing sanctions on litigants for nonpayment of fines or fees.<sup>42</sup> The *Guidelines* call for a consistent ability-to-pay standard that is clear and should require consideration of financial and extenuating factors that bear on a litigant’s ability to pay—specifically

whether payment would manifest a hardship to the person.<sup>43</sup> The ninth guideline calls on courts to make information about fees and fines publicly available and more transparent, including financial and demographic data, which is often difficult to find without in-depth research.<sup>44</sup>

The lack of a national or state model for the fee waiver application process and court fee schedules means there is room for New Jersey not only to make its system more equitable, but also to be a national leader. The need for such reform is clear as is research on the issue, which the ABA acknowledges in their *Guidelines*.<sup>45</sup> For meaningful, impactful filing fee and fee waiver reform, data is needed, for instance, how many fee waivers are denied without the required reasoning and how many litigants default because of denied fee waiver applications. More collaboration between practitioners and court officials may be the place to start. One possible change New Jersey Courts can make, for example, would be to permanently remove the fee required to answer a complaint or broaden the current fee waiver structure by adding a sliding fee waiver based on income. Additionally, the New Jersey Courts can offer litigants the option to pay a filing fee in installments by submitting payment for at least 25% of the full filing fee at the time of filing and subsequent installments on a monthly schedule. For instance, the United States Bankruptcy Court for the District of New Jersey requires litigants to make the final payment within 120 days after their bankruptcy petition is filed.<sup>46</sup> These options would extend financial protections already offered to qualifying indigent defendants to others who are still experiencing poverty but may have more income. Fee waivers and payment plans will not eliminate all the barriers to justice. Many will still struggle to take time off from work, travel to a hearing and pay for public transportation or parking if

they have a car, access technology for a virtual hearing, or secure child care. However, waiving or reducing the fees or breaking them up into smaller payments could alleviate some barriers and promote fairness. Because there is no nationwide model, New Jersey has an opportunity to become a national leader in an effort to make justice accessible to its residents experiencing poverty. ■

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# The Impact of Court-Ordered Psychological Evaluations in Child Welfare Cases

By Maling Miranda and Classie Colinet

**F**ear. Worry. Shame. These are some feelings parents express when they learn that they are subject to child welfare requirements. These include compliance with court orders, involvement with the Division of Child Protection and Permanency (DCPP) also known as the “Division,” and the possibility that their children may be placed in foster care if the court deems it necessary.

Consider the following real-world situation: It has been six months since a mother’s 3-year-old son was removed from her custody. This mother, “Tonya” completed her inpatient drug detox program, enrolled in an outpatient substance abuse program while living at a mother and child drug rehab home, a residential program that allows young children to live with their mothers while their mother rehabilitates, avoiding unnecessary separation during the process.<sup>1</sup> Tonya’s hope was that if she complied with the Division’s demands and reached several months of sobriety, with a recommendation from her counselor, the court would return custody to her. However, the Division’s attorney argued against reunification. Tonya pointed out that her son cried at the end of visits and was harmed by continued separation. In response, the Division requested that Tonya submit to an expert who would evaluate her and be empowered with recommending whether she should reunify. Tonya complied with the evaluation. To the surprise of the Division’s attorney, the expert recommended immediate reunification and opined that the Tonya’s child would be at little to no risk in her care. Notwithstanding this recommendation, the Division attorney continued to argue that the Division was not “convinced” that Tonya was ready to have her child in her care. The court did not order reunification. Tonya believed that her history, lack of resources, and traumatic life circumstances were indelible strikes on her record, and she would





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always be presumed as unfit. Her belief may not stray far from the truth.

### Psychological Evaluations in Child Welfare Matters

Tonya's story is not uncommon. Most parents who are Division-involved are subjected to forensic psychological testing based upon the Division's position that forensic psychological testing is required to assess risk of harm to child and recommend services.<sup>2</sup> However, the Division is not bound to follow the recommendation of its own expert and can ignore them or request that a parent submit to numerous forensic evaluations

throughout the life of a case, even where, like Tonya, a court has never made a finding that she abused or neglected her child, did not suffer from a mental illness, but instead was involved with the Division due to poverty-related issues and drug addiction.<sup>3</sup> In fact, in 2020 approximately 70% of all DCPD complaints are based on neglect concerns.<sup>4</sup>

New Jersey family courts rely on forensic psychological evaluations or parenting assessments in private family matters, but there, the focus is different. The evaluator in private matters is generally a neutral court-appointed expert and the evaluation serves as a guide for the court in determining the legal outcomes that can lead to settlement of an outstanding custody dispute. Comprehensive forensic custody evaluations are not required in every case and cost-effective alternatives such as mediation or custody neutral assessments are explored in most instances. Further, parents take a more active role in the process and collateral information from school officials, relatives, and community supports is consulted.<sup>5</sup>

In child welfare matters, forensic psychological/parenting assessments are not neutral, and can present situations that reflect a variety of legal and ethical considerations. In child welfare matters, forensic experts are positioned to contribute significantly to provide courts and the child welfare agency information regarding a parent's functioning and opinions as to therapeutic interventions.<sup>6</sup>

Unlike a private parenting evaluation, the scope of a forensic parenting evaluation is defined by the presenting issues outlined by the Division in the Division documents and Verified Complaint, leaving the parent with limited input aside from a short interview with the evaluator. For instance, Division experts do not observe the parent with the child, conduct home observations, or consult with third-party sources as in private family litigation.

Parenting assessments in private family matters are used as guideposts in

resolving a custody dispute, but Division-directed evaluations have a more imposing role in a case. This approach in child welfare matters has created controversy within the psychological field resulting in queries about whether evaluators should make an "ultimate opinion" regarding custody and termination of parental rights.<sup>7</sup>

The American Psychological Association's new guidelines for assessment and preparation of evaluations in child welfare matters emphasize the importance of proficiency, culturally informed assessments, and the consideration of ethical concerns present in child welfare evaluations.<sup>8</sup> This is because the focus in child welfare evaluations is a parent's capacity to parent and foreseeable risk to that child. The expert's clinical interpretations and findings will result in a permanent record and can even be relied upon in a proceeding to terminate parental rights.<sup>9</sup>

### How DCPD Assesses Parents in Child Welfare Matters

Parents are not required to submit to forensic evaluations absent a court order, but in practice the Division can and does request that parents submit to forensic testing even before a case has been filed in court. The APA guidelines caution evaluators from conducting assessments where there is not yet a court case and the parent is not represented by counsel due to concerns relating to informed consent and the negative consequences an evaluation can have on a child and parent.<sup>10</sup>

By submitting to an evaluation, parents may believe that the Division's involvement will cease. Parents are not aware of the deleterious outcomes that an evaluation can have including removal of their child, mental health diagnoses, and testing results that anchor a court's perception of the parent without the benefit of in-court testimony.<sup>11</sup>

Even when a matter is in litigation and before a finding of abuse, the Divi-

sion and courts customarily encourage the parent to submit to an evaluation. The general premise is that evaluations are required to properly service the parent and any delays could result in lengthy government involvement or familial separation. In practice most parents consent to services even before the Division has completed its internal investigation months before trial.

Because of this, it is questionable whether psychological evaluations should be ordered in every case and whether approaches that are less time consuming, invasive, and costly should be explored especially where the majority of cases involve neglect or poverty concerns.<sup>12</sup> The Division has discretion in following its own expert opinion or recommendations, like in Tonya's case.

It is important to take a look at the families who typically are involved in child welfare litigation. Black children make up approximately 13% of New Jersey's population but account for 44% of children in foster care. In 2020, Black children represented 44% of the children awaiting adoption in New Jersey's foster care system, which means they are legal orphans due to termination of parental rights.<sup>13</sup> Approximately 50% of Black children are removed due to neglect concerns involving inadequate food, shelter, and clothing whereas only 35% of white children are removed for the same concerns.<sup>14</sup>

The average cost of a parental assessment is \$1,278.<sup>15</sup> In 2021, there were approximately 3,200 children in placement, which correlates to the Division having paid approximately \$3.8 million to experts to evaluate the parents and guardians of those children as part of DCP's assessment and service planning. This figure does not account for the fact that parents can undergo multiple evaluations, or the psychological evaluations ordered in "care and supervision" cases where children remain in the home.

In 2021, the Division served 32,138 children.<sup>16</sup> Due to the Division's expan-

sive resources and dedicated contracted consultants, the ability for a parent to oppose an evaluation can be onerous where approximately 95% of the parents are indigent.<sup>17</sup> Many parent defense practitioners argue that the cost of keeping children in care and overly assessing parents is overwhelming and much less resources would be expended if the triggering concerns such as poverty and lack of parental resources were given priority.<sup>18</sup>

### **A Closer Look at the Forensic Evaluation Process**

Psychological evaluations can be ordered by the court or requested by counsel for the following parties: the child welfare agency, the child(ren) or the parents.<sup>19</sup> Psychologists are often asked to address questions focused on child protection concerns and a parent's ability to care for and protect their child.<sup>20</sup>

The evaluation process can be intimidating because a psychologist is assessing these parents, and the results of the assessment could be used to keep their kids in foster care, if their children have been removed. Parents may find the process intimidating if their children are living with them because they fear that the evaluator may write something in a report that could be used to remove their kids or limit their success.

There can be test interpretation or language barriers too. For instance, parents and caregivers who do not speak English or are more comfortable speaking another language are often at a disadvantage because it can take longer to find an evaluator who speaks their native language.

Parents who speak a language other than English also face barriers in the testing measures that are used for evaluations, because some measures require an individual to complete a questionnaire. The questions are generally in English, and translations can change the nuances in intended meanings.

Further, the results can alter the course of the parent's life. In other words,

the results from a psychological evaluation often determine how quickly a child can return home if at all. In cases where a child or children are still in the custody of their parents, the evaluation may determine how quickly litigation can be terminated.

In October 2021, the American Psychological Association issued a written apology, acknowledging that it failed in its role leading the discipline of psychology. The APA acknowledged its role in "promoting, perpetuating, and failing to challenge racism, racial discrimination, and human hierarchy in the U.S."<sup>21</sup>

The apology letter admits that psychologists "established, participated in, and disseminated scientific models and approaches rooted in scientific racism when the discipline was first founded." The inherent racial bias embedded in the field of psychology has led to the misdiagnosis, overdiagnosis and lack of culturally sensitive diagnostic criteria to describe the mental health concerns and lived experience of people of color.<sup>22</sup>

Currently, 84% of psychologists are white, 4% are Asian, 4% are Black, 6% are Hispanic, and 2% are American Indian/Alaska Native, Native Hawaiian/Pacific Islander, and people of two or more races.<sup>23</sup> These statistics highlight the need for counsel to be aware that psychologists may not share the same ethnic or racial background of some of the parents who are ordered to undergo psychological evaluations. This means that counsel should find out what steps a psychologist has taken to be culturally competent.<sup>24</sup>

Moreover, culture matters. The high-power distance between the average Division-involved parent and the evaluator can create unintended barriers and biases. Sometimes people just cannot connect. Different cultures have varying values of hierarchy and how they view authority.<sup>25</sup> In 2020, Black and Hispanic children made up 42% and 25% of the children<sup>26</sup> in foster care respectively. It is important for evaluators to consider a

parent's culture and value system to prevent personal biases or unsupported beliefs in such high-stakes assessments.<sup>27</sup>

## An Equitable Future

Stakeholders involved in child welfare cases can at least initially help families without the use of a psychological evaluation. The focus can be on providing families in the child welfare system with access to resources, as opposed to psychological testing that can perpetuate racism.

If a psychological evaluation is deemed necessary, a family-centered approach, which would include more than just the parents, can be effective. Consider holding discussions with an individual's proverbial village such as friends, relatives, coaches, and mentors. Recommendations for services can include how a parent's community can help the parent successfully engage and complete services. It is also possible that members of the parent's community can be incorporated into some of the recommended services, which may help the parent successfully complete a recommended service.<sup>28</sup>

Psychologists who are retained to complete psychological evaluations can be most effective if they describe an individual's circumstances within the context of where they live and the type of resources to which they have access. For example, redlining, the practice in which a mortgage lender denies loans, or an insurance provider restricts services to specific areas of the community (historically this process has been used against Black people), is still prevalent today and has forced people to remain in certain neighborhoods.<sup>29</sup>

The goal can be to help the process become more fair and include a deeper consideration of the life of the parent facing this difficult process. ■

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# The Disparate Impact of Driver's License Suspensions on Communities of Color

By Karen Robinson

It is estimated that 11 million people across the United States have their driving privileges suspended for failure to pay fines and fees or for failure to appear in court.<sup>1</sup> With 86% of Americans driving to work, debt-related restrictions on driving privileges force people to either jeopardize their employment or risk more fines, criminal charges, and even jail time by continuing to drive in order to keep their job.<sup>2</sup>

According to Free to Drive, “34 states and D.C. still suspend, revoke, or refuse to renew driver’s licenses for unpaid traffic, toll, misdemeanor and felony fines and fees.”<sup>3</sup> New Jersey is one of those states.

In New Jersey, there are more than 500 reasons a driver’s license can be suspended. In 2018, 91% of people with suspended licenses in New Jersey were for a “non-driving-related event” such as failure to pay fines or appear in court.<sup>4</sup> These license suspensions cost people their livelihoods. Many jobs require a license, even when the job responsibilities do not require driving. Without a valid license, it is difficult to work, perform daily tasks, and maintain economic stability, let alone prosper.<sup>5</sup> In a startling statistic, 42% of people in New Jersey lose their job after their license is suspended.<sup>6</sup> Of those, nearly half could not secure another job.<sup>7</sup>

### Racial Disparities Stemming from Traffic Stops

Research shows drivers who are racial minorities are stopped, arrested, and convicted more than white drivers.<sup>8</sup> Black Americans are three times more likely to face police force than white Americans.<sup>9</sup> “Routine” traffic stops can also lead to driver’s license suspension, disproportionately affecting communities of color. Suspension rates were seven times higher for those who live in New Jersey’s lowest income neighborhoods and five times higher in areas with predominantly Black and Hispanic residents.<sup>10</sup>

Driving with a suspended license can then lead to fines, arrests and incarceration, further reinforcing systemic racism and the cycle of poverty. Nine out of ten employers, four out of five landlords, and three out of five colleges use criminal backgrounds in decision-making.<sup>11</sup> These are some of the very real consequences of the racial disparities stemming from traffic stops.

The most tragic consequence of traffic stops is death. As seen with Daunte Wright, something as innocuous as a dangling air freshener can spiral into violence and death for minority drivers, a fate that can be avoided by facilitating access to a valid driver’s license.<sup>12</sup>

### Consequences Can Keep Families in Perpetual Poverty

Driver’s license suspensions place an undue financial burden, particularly on communities of color, and force families to depend upon unreliable at times public transportation to complete everyday essential tasks like grocery shopping, health care appointments, and going to school. Driver’s licenses are also an essential form of identification. One client of Volunteer Lawyers for Justice (VLJ), A.G. shared, “I had difficulty obtaining my COVID-19 vaccine without a driver’s license as proof of identification.” Access to legal justice, including access to a valid driver’s license, increases stressors leading to decreased quality of health, mental well-being, and economic output within these impacted communities.<sup>13</sup>

New Jersey also has one of the highest racial wealth gaps in the nation with the median net wealth for Black families of \$17,000, compared to \$26,100 for Latinx families, and \$322,500 for white families.<sup>14</sup> With numbers like these, it is no surprise that a greater percentage of Black, Indigenous and People of Color (BIPOC) families



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are unable to pay the fees, fines, and surcharges in order to get a suspended license restored.

### **The Power of Advocacy**

A recent legislative victory in New Jersey expanded access to standard driver's licenses, including to immigrants without status, survivors of violence, individuals experiencing housing instability, and formerly incarcerated people. A4743 expands driver's rights and offers greater access to opportunity for traditionally marginalized communities.<sup>15</sup> The New Jersey Legislature also proposed, but did not pass, A1376 which will eliminate driver's license suspension for failure to pay parking tickets and instead will require registration suspension for drivers who fail to make more than five required court appearances related to outstanding parking tickets or fail to pay more than five of those tickets.<sup>16</sup> The New Jersey Motor Vehicle Commission (MVC) would be responsible for providing notice to the municipal court that the registration is to be suspended.<sup>17</sup>

What many people do not realize is that a person's driving privileges can be suspended pursuant to N.J.S.A. 39:3-10 and N.J.S.A. 39:3-40 without ever having possessed a valid driver's license.<sup>18</sup> Drivers can also have their license suspended without their knowledge or understanding. Advocates for immigrants regularly report that immigrant New Jerseyans continue to face barriers because of these issues.<sup>19</sup> Advocacy in municipal court can remove these hurdles that many drivers do not even know are there. Although attorneys are not guaranteed for civil legal issues, like municipal traffic matters, attorneys can be tremendously helpful in addressing these suspensions and advocating on a driver's behalf.<sup>20</sup> An attorney at the Judicial Council of California explained, "A fair shot at justice is a bedrock value of the American legal system, yet litigants who represent themselves against attorneys are unlikely to

win their cases or settle on beneficial terms...[t]his reinforces the reality that America is split into two camps—the haves and the have-no-lawyers."<sup>21</sup> Unfortunately, individuals most likely to be impacted by driver's license suspensions are least likely to be able to afford an attorney to help. The true need is an army of *pro bono* volunteers, particularly given the high volume of municipal cases resolved per year—almost 6 million.<sup>22</sup>

### **So, What Can be Done?**

Volunteer Lawyers for Justice, New Jersey Reentry Corporation, and Legal Services of New Jersey are organizations that have similar missions to help New Jersey residents access justice. VLJ is a nonprofit legal services organization whose mission is to ensure access to justice for people experiencing poverty. VLJ's mission cannot be fulfilled without volunteers (attorney and non-attorney), and VLJ mobilizes its volunteers to work alongside staff to address critical civil legal needs across New Jersey, advancing racial, social, and economic justice for the most vulnerable members of our community. VLJ helps drivers with suspended licenses restore their privileges and get back on the road safely and legally.

Lawyers can help VLJ clients with suspended licenses determine what steps can be taken to restore their driving privileges. Lawyers hone advocacy skills by assisting clients in obtaining dismissals of unadjudicated tickets and vacating fines, and develop negotiation skills by establishing reasonable payment plans with the NJ Motor Vehicle Commission. Those interested in volunteering can learn more by visiting [vljnj.org/become-a-pro-bono-volunteer](http://vljnj.org/become-a-pro-bono-volunteer).

Lawyers can also partner with VLJ for mentorship, training, and support. VLJ holds trainings to recruit volunteers and provide them with the level of knowledge needed to be successful advocates in this area of law. Of the 7.6 million

licensed drivers in New Jersey, 424,869 drivers—or 5.5%—had a suspended license in 2018.<sup>23</sup> Let's change that statistic together. Help make an impact on important civil legal issues that are at the intersection of race, poverty, and policing, and remove barriers to justice, stability, and security. ■

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# The Impact and Consequences of True Poverty on Access to Justice

By Akil Roper and Shivi Prasad

Legal representation by a licensed attorney, and ultimately justice, are denied to the poor in far too many critical civil legal cases.<sup>1</sup> Social science studies reveal that those in poverty will have lawyers for just 8% (or less) of the civil legal problems they face.<sup>2</sup> And, the problems they face go to the very heart of their existence, often with grave consequences.<sup>3</sup> Examples include: preventing illegal loss of a home due to eviction or foreclosure; protection against injury and even death from abusers; shedding escalating usurious interest from predatory student and other loans that otherwise may haunt them for their entire lives; collecting essential child support; securing entitlements to critical aid from government safety net programs such as unemployment insurance and vet-

erans benefits; and enforcing employees' statutory guarantees to wages and fair treatment.<sup>4</sup>

We know that a lawyer is guaranteed to most criminal defendants who cannot afford one (thanks to the U.S. Supreme Court decision in *Gideon v. Wainwright*<sup>5</sup>) but in civil proceedings where often what is at stake is nearly as critical as liberty—there is no blanket guarantee to an attorney. Failure to have assistance of counsel in these matters is likely to be catastrophic for the individuals and families involved, but it is also frequently a terrible outcome for society as a whole. Homelessness, unsafe housing, broken families, malnutrition, failure of children to thrive, permanent harm to health, death—these are some of the real consequences of poverty.<sup>6</sup>

Given the serious nature of these legal matters to the poor



True Poverty Level (TPL) is the minimum income families need to afford necessities to make ends meet, without any public or private support, and without making trade-offs. In other words, it is the lowest amount families require to avoid deprivation in any one critical life area.

who experience them, in these critical cases, effective counsel—a lawyer—must be available to the full extent necessary. Indeed, studies have shown that having an attorney can make a huge difference in these matters—yet many New Jersey residents cannot afford an attorney.<sup>7</sup> And, as will be more fully described below, the racial and ethnic disparities of poverty in our state are stark. For these reasons, ensuring adequate counsel where needed is not just the responsibility of lawyers, the courts, or the state, but is a social justice issue, requiring all in society to do their part.

Legal Services of New Jersey, the statewide system for free civil legal assistance, provides free legal aid to indigent persons who cannot afford to pay for an attorney, but the need far exceeds available resources. As detailed below, nearly 3 million people in New Jersey have incomes which render them eligible for free legal services.<sup>8</sup> The difference between those who need an attorney and those who actually get representation is commonly called the “justice gap.”<sup>9</sup> To support a system that strives to provide civil legal representation regardless of ability to pay, it is critical to have an understanding of poverty, and importantly, *True Poverty*—and its devastating and myriad impacts and consequences.<sup>10</sup>

True Poverty Level (TPL) is the minimum income families need to afford necessities to make ends meet, without any public or private support, and without making trade-offs.<sup>11</sup> In other words, it is the lowest amount families require to avoid deprivation in any one critical life area. Importantly, an examination and greater understanding of TPL can lead to

identifying demographic groups that are more susceptible to deprivation, their unique circumstances, and how it affects their access to essential resources such as education, housing, health care, food, transportation, and technology.<sup>12</sup> Such an understanding can help guide the delivery of civil legal services. Further, understanding the myriad impacts of *True Poverty* will better equip advocates to confront and correct such conditions. Individuals living in poverty are likely to have greater and more impactful civil legal problems requiring the efforts of skilled and trained legal services providers of direct services, anti-poverty and racial justice advocates, and more resources to support the work.<sup>13</sup>

LSNJ’s *True Poverty Tracker* report, published by its Poverty Research Institute (PRI) revealed that nearly 3 million people in New Jersey, representing one-third of the population in 2019, lived in deprivation.<sup>14</sup> This includes individuals and families who do not have enough income to pay for an attorney—not without sacrificing other essentials, such as paying rent, buying food, or paying for transportation to go to work.

The *True Poverty* report, a part of its Benchmarks series<sup>15</sup> provides an in-depth look at poverty and the effects, specifically on individuals, families, and communities in New Jersey. In drawing what amounts to a statistical portrait of life on the economic edge in 2019, the report underscored numerous findings including what it’s like for nearly 3 million people to live and barely survive in New Jersey as they disproportionately face degrees of deprivation—largely in an uneven playing field. According to its

authors, far too many New Jerseyans were teetering on the edge of True Poverty even before the pandemic. The associated consequences of income deprivation—food insecurity, inadequate health coverage, fragile employment conditions, precarious housing stability, among others—converged to create desperate times for far too many.<sup>16</sup>

### The Harsh Realities of True Poverty

Developing an awareness and understanding of *True Poverty* in the context of community is vitally important to achieve an understanding of the needs, particularly legal needs, of the communi-



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ty. PRI's *True Poverty* report showed that below the bare-bones TPL threshold, individuals do not have enough income to meet some portion of basic needs including legal representation. Individuals and families without adequate income are forced to go without, or to trade off one critical need for another—perhaps less food to make the rent payment or putting off a health exam or a prescription to secure a child's winter clothing.

Poverty negatively impacts every single aspect of a person's life. Individuals face the immediate harms associated with the deprivation of basic needs, such as not having enough to eat, struggling to pay bills, and facing eviction or foreclosure or any other legal issue. Poverty also isolates individuals from essential resources as they are more likely to live in unsafe, cramped and poor-quality housing, attend low-performing schools, lack access to gainful employment, and live in communities without healthy food or market options. Together, the circumstances of poverty have a devastating, lasting impact. Each consequence of poverty overlaps into another, leading to a vicious cycle for families, by making it harder for the next generation to climb out of poverty. Ultimately and unfortunately and all too often poverty perpetuates poverty.<sup>17</sup>

### Racial Justice Implications

Another stark fact is that poverty has a disproportionate impact on racial and ethnic minorities. Black and Hispanic New Jerseyans experience True Poverty at double the rate of their non-Hispanic white and Asian neighbors. In 2019, about half of Hispanic and Black New Jerseyans lived in True Poverty, compared to just under a quarter of white New Jerseyans and a fifth of Asian New Jerseyans.<sup>18</sup> Racial and ethnic disparities were more disturbing when considering children. Sixty-three percent of Hispanic children and 65% of Black children expe-

rienced True Poverty compared to 28% of white children and 20% of Asian children in 2019.<sup>19</sup>

LSNJ's *True Poverty* report cites such drivers as the high cost of living in New Jersey that averages 300% or triple the official federal income calculations for what constitutes poverty. The 3-1 ratio clearly puts into sharp and revealing focus the real depth and breadth of deprivation for so many people living in our state, even when they are working, sometimes multiple jobs, but remain unable to afford the most basic needs.

As noted, people of color experience higher rates of poverty. They face systemic and structural barriers in almost every aspect of life that impede financial stability.<sup>20</sup> This includes significant employment barriers, such as discriminatory hiring practices, isolation from lucrative jobs with decent benefits, and limited access to promising career networks.<sup>21</sup> Simultaneously, people of color confront disadvantages in homeownership resulting from past discriminatory policies and practices such as redlining and exclusionary zoning.<sup>22</sup> Although less perceptible, discrimination persists, such as higher denials for conventional mortgages, even when Black and Hispanic applicants have the same qualifications as white applicants.<sup>23</sup> Children of color are also impacted by inequities affecting their parents.<sup>24</sup> They are likelier to attend lower-performing and higher-poverty schools, placing them at a further disadvantage for future opportunities.<sup>25</sup> Further, institutions such as the criminal justice and child welfare systems too often fail to equally serve and protect people of color.<sup>26</sup> Harms caused by racism and discrimination create and sustain poverty—compounding the consequences of poverty.<sup>27</sup>

### Steps Toward Justice for All

Greater awareness of *True Poverty* including its consequences and disproportionate impact on people of color,

obviously can lead to a more informed bar. This is a significant step toward change. PRI's reports are published to bring awareness of the disparities in poverty and concentrated poverty in an effort to ensuring effective policy solutions. PRI's work, more broadly, helps fuel civil legal advocacy for low-income people across the state. The data, and the analysis, provide guideposts for not only the geographic areas most in need but also the legal issues that are experienced by the state's most vulnerable populations. For those living in poverty, this frequently includes addressing life-sustaining issues such as housing, food insecurity, access to health care and protection from domestic violence.

While awareness of poverty and its effect on the individuals and society as a whole is a good first step, to achieve justice for all, it will take the support of many, not just lawyers. Effective stable assistance of necessary counsel in critical civil matters must go beyond being an ideal, or a promise. To avoid and end the terrible hardships and consequences occurring every day, we must make necessary counsel in civil cases a reality for all in New Jersey.

Organizations like LSNJ have a mission to provide access to justice for all and look for support from the private bar to achieve that goal. Specifically for the legal community, attorneys could work with the Regional Legal Services program in their county;<sup>28</sup> take advantage of opportunities to help strengthen the statewide system of legal services, including sponsorship and donations, and collaboration on access initiatives. Doing so may exempt an attorney from mandatory *pro bono* requirements (the *Madden* rule) and will help serve the greater good. Attorneys may understand they have a professional responsibility, per R.P.C. 6.1—to “render public interest service.” This affords the opportunity to do so. ■

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# Dedication and Service

## Get to Know the 2022 NJSBA Pro Bono Award Winners

**J**ustice for juvenile defendants with lengthy prison sentences, expunging criminal records to help former offenders find employment, a video series designed to help litigants without counsel. This is just some of the remarkable work performed by the New Jersey State Bar Association's Pro Bono Award recipients for 2022. On Feb. 15, the NJSBA will recognize 20 members of the New Jersey legal profession who have an outstanding commitment to providing legal services to the state's underserved residents. Hear from two of the award winners about their volunteer work and why pro bono service is important.

### Rebecca Spar—Lifetime Achievement Award

The Lifetime Achievement Award recognizes an attorney in practice for 25 years or more. A special education expert with a career spanning over three decades, Spar has provided pro bono services to scores of families, shaped legal doctrine and mentored numerous attorneys through Volunteer Lawyers for Justice (VLJ), a nonprofit that promotes access to justice for people experiencing poverty. Now retired, she dedicates her time to working with pro bono organizations and counseling less-experienced attorneys in special education law. Since retiring in 2018, she still dedicates 30 hours a week to undertaking pro bono activities.

#### *What inspired you to practice special education law?*

After beginning law school in 1984, my focus on education gradually changed. During my third year, I handled a special education case in the Rutgers School of Law clinic. A parent, with the assistance of a lay advocate, had won an administrative hearing which required the school district to place her child in a private school. The school district filed an appeal in federal court and the advocate, who could not represent the

student in federal court, asked and the clinic agreed to handle the appeal. I represented the parent in the appeal and dug into special education law. I succeeded in upholding the administrative decision and became hooked. I decided that after a few years of litigation experience, I would try to integrate special education cases as a part of my practice. I never dreamed that I would be able to turn it into a full-time practice.

#### *As the parent of a child with a disability, how has that experience shaped your pro bono advocacy?*

I understand what parents are going through because I've been there myself. I've seen firsthand the impact that ADHD or a learning disability has on a student when trying to do homework after a long day of school. I have seen the difference an effective teacher or resource room instructor who is involved and works with the parent can make versus an ineffective teacher. I've also seen the educational limits of private schools. They are not always the panacea for students with special needs students. Every disability and every child is different, but parents know that I am not only speaking as a lawyer, but also as someone who has had experiences similar to theirs.

#### *Most attorneys would slow down after retiring, yet you still perform many hours of pro bono service a week. Why do you continue this work?*

I like doing things that are meaningful and helpful to others, and I loved my special education involvement with the Education Law Center and VLJ. I considered doing some paid consultation when I retired from Cole Schotz but decided that I wanted to focus on pro bono tasks without concern about compensation. I gain great satisfaction by knowing that I can help others to achieve, and at the same time know that their success continues to enrich my life.



Mark Benevenia



Vance Camisa



Mallory Garvin



Melissa Geist

### **Geoffrey N. Rosamond—Champion of Justice Award**

The Champion of Justice Award is presented to an individual attorney affiliated with a firm. Rosamond, a partner at McCarter & English, logged 168 hours of pro bono service in 2021 while serving 27 clients. He serves as chairman of McCarter & English's Pro Bono Committee and is a member of VLJ's Board of Trustees.

*You've worked with Volunteer Lawyers for Justice for many years now. How did you become involved with the organization?*

Shortly after I began working at McCarter & English in January 2000, I developed a criminal reentry/expungement program at the firm. I was able to recruit and train volunteer lawyers at McCarter to represent pro bono clients referred by Essex County College and The First Occupational Center of New Jersey, among others. The McCarter criminal reentry/expungement program was successful in helping a significant number of pro bono clients expunge their criminal records in the early 2000s.

*What inspired you to dedicate much of your pro bono service to criminal expungements, and why do you believe that work is important?*

Ensuring access to justice for individuals experiencing poverty is the most personally rewarding and fulfilling work I have been involved with in my 26 years as an attorney. My background and experience as a former prosecutor provided me with the tools needed to make a meaningful difference in the lives of my expungement clients and survivors of human trafficking during this time.

Expungements provide a second chance to individuals who have made mistakes in the past, and the ability to dramatically change their lives for the better. As noted by VLJ, one in three U.S. adults (approximately 70 million individuals) have a criminal record. As a result of having their criminal backgrounds expunged, these individuals experience an

increase in employment and educational opportunities, economic independence, housing stability and productive citizenship, while reducing recidivism and building safer communities. The same is also true when we are able to obtain a vacatur of human trafficking convictions for a survivor. That not only eliminates these barriers, but also allows a survivor to escape the stigma resulting from their victimization.

*How are you able to balance pro bono service with your professional responsibilities?*

Balancing my pro bono service with my professional responsibilities has been relatively easy for me for the past 20 years, as I view them as one and the same. To make a meaningful difference in the lives of others is the most fulfilling reward of being an attorney and member of New Jersey's prestigious legal community.

### **Dillon J. McGuire—Distinguished New Lawyer Pro Bono Award**

The Distinguished Attorney Award recognizes an attorney in practice for 10 years or fewer. McGuire specializes in criminal defense and government and internal investigations with Pashman Stein Walder Hayden. In 2021, he argued before the state Supreme Court on behalf of the Association of Criminal Defense Attorneys—New Jersey on a pro bono basis in multiple cases involving the constitutionality of life sentences for juvenile defendants.

*What do you find most rewarding about pro bono advocacy, especially in the criminal defense space?*

After my judicial clerkships, it was very important to me to land at a law firm with a dedication to public interest work. When I heard about Pashman Stein Walder Hayden, and the Justice Gary S. Stein Public Interest Center, it immediately caught my attention. I think what I enjoy most about pro bono advocacy in the criminal arena is that our involvement in high impact litigation before the Appellate Division and



Jeff Gruen



Jaden Jackson



Julia Lopez



John McDonald

Supreme Court can make an immediate difference in the lives of New Jersey residents. Far too often, defendants' constitutional rights are cast aside by investigating officers, yet these officers routinely receive the benefit of the doubt from trial judges. In appropriate cases, our role as *amici* provides critical support for defense counsel and assists the Court in determining some of the broader policy implications of a particular case.

***Why do you believe it's important for young attorneys like yourself to take on pro bono work?***

It's extremely important for young attorneys to be involved in pro bono work. For me, pro bono assignments through the Justice Gary S. Stein Public Interest Center provided me with two invaluable opportunities. First, fighting for those who cannot fight for themselves is what attracted me to the practice of law in the first place. This is especially true in the criminal context, as an individual charged with a crime must defend him/herself against the seemingly unlimited resources of the state. The opportunity to represent defendants as designated counsel for the Office of the Public Defender in direct appeals has been particularly rewarding for me, as it allows more personal interaction with the defendants themselves. Second, pro bono work allowed me to get into court almost immediately and sharpen my oral and written advocacy skills while arguing as *amicus*.

***How are you able to balance pro bono service with your professional responsibilities?***

Finding a balance between pro bono work and billable work has been a challenge, but having the unwavering support of our managing partner Mike Stein, and the guidance of CJ Griffin, has made it a pleasure to take on these pro bono matters. I am also fortunate that our firm credits us for up to 150 pro bono hours a year toward our billable hours. While there have certainly been times where I had to come in early

or stay late to finish pro bono briefs, or prepare for argument, I have never felt that I was shirking responsibilities to firm clients by taking on pro bono matters. In my opinion, there is always time to help people, it's just a matter of wanting to do so.

**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 varied pro bono service in 2022. The attorneys provided legal representation to immigrant children, performed closings free of charge for families in affordable housing and assisted the VLJ in expungement cases, among other projects.

***How has Reed Smith's pro bono practice grown over the years?***

The firm has consistently increased its commitment to pro bono over the years in our offices across the U.S., Europe, the Middle East and Asia (EMEA). Our lawyers invest significant time and effort in pro bono work, providing free legal advice to individuals in need, charities, and not-for-profit organizations. This is demonstrated by the consistent increase in our global pro bono hours every year. Over the past year, attorneys in the Princeton office have tenaciously advocated for various underserved communities, including work with our nation's veterans and active-duty personnel to obtain disability benefits, providing legal representation to unaccompanied children in immigration cases, assistance to low-income renters facing tenancy challenges, representation of prisoners with Section 1983 claims in federal court, providing employment advice to the Arts Council of Princeton and American Repertory Ballet, collaborating in expungement clinics and helping our homeless population with their various legal needs at Homefront.





Dillon J. McGuire



Alexis Mitchell



Kiah Murphy



Erin N. Romano

***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 makes 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 clients' 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. By helping one client adjust their legal status, that client can freely pursue life, liberty and happiness. 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. We are excited to continue with our pro bono efforts in 2023.

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

We encourage all our lawyers to get involved in pro bono work and support them to proactively seek out and develop new pro bono opportunities. Across our global platform, we have a dedicated Pro Bono Committee, working with our global offices and teams to further our pro bono mission and goals. 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 toward 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.

***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 department. 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 non-profit 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.



Geoffrey Rosamund



Sarah Souaid



Rebecca Spar



Emre Tutuncu

***How do Merck's attorneys balance pro bono work with their professional responsibilities?***

Merck encourages participation in pro bono activities and 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. So, 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. Our partner organizations and our Merck legal network firms have also been very helpful in providing attorney support. And, every year, our Merck General Counsel personally reaches out to pro bono volunteers to express her appreciation of their contributions to the public interest. This makes it crystal clear that pro bono has tone at the top support and that Merck values this work.

**Seton Hall Law Student Teams—Outstanding Law Student Pro Bono Awards**

This award recognizes an individual law student or students who excelled in supporting pro bono or legal aid programs for underserved communities. A group of nine current and former Seton Hall Law students will receive the award for developing a series of informational videos for survivors of domestic and sexual violence, who represented themselves in restraining order hearings. The recipients are Erin N. Romano, Sarah Souaid, Mallory E. Garvin, Emre Tutuncu, Kaitlin R. Principato, Jaden W. Jackson, Brian M. Smith, Kiah B. Murphy and Alexis Mitchell.

***What interested you in performing pro bono service while still a law student?***

I had the lifetime honor of being a student in the Leadership Fellows Program for the Class of 2022. This pro bono program was established and has since been led every year by

Professor Paula Franzese, a person nationally recognized for her legal eminence in housing justice and her passion for inspiring servant leadership in her students. Professor Franzese always told us, “There’s a force that meets good with good,” and advised us not to wait for someone else to do good, but to ourselves be the person that meets every problem with a viable solution. This encompasses the way she meets the Fellows’ desire to help with the direct tools, guidance and contacts to make it happen.

The Leadership Fellows Program encouraged us to seek out needs in our community and use our unique position as law students to provide relief. Our final projects included pro bono services ranging from a coat drive to the video advocacy project for survivors of domestic abuse in obtaining necessary protection. We all leaned into the program and inspired change that will continue to inspire change.—*Alexis Mitchell*

***How has the experience helped prepare you for a career in the law?***

As anticipated, a project of this magnitude presented a multitude of challenges that cultivated a greater understanding of collaboration and leadership. Learning how to effectively work with classmates, professors, legal professionals and budding William Paterson filmmakers was a lesson in patience, communication and grace. Additionally, I have seen improvement in my organizational and management skills. I am more confident in my decision-making ability. Moreover, I have developed a deeper sense of empathy and compassion for others. Perhaps the greatest reward, however, was the bonds that I formed with my colleagues throughout this process.—*Jaden W. Jackson* ■



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