



NEW JERSEY STATE BAR ASSOCIATION

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April 10, 2023

Via Regular and Electronic Mail

Hon. Bonnie J. Mizdol, A.J.S.C., Chair
New Jersey Judiciary Working Group on Attorney Pro Bono Assignments
Administrative Office of the Courts
Post Office Box 037
Trenton, New Jersey 08625-0037

RE: Update on NJSBA's Review of the *Madden* System of Assignments and
Publicly Funding Counsel in Right-to-Counsel Matters

Dear Judge Mizdol:

Thank you for permitting me to appear before the Judiciary Working Group on Pro Bono Assignments. The efforts of the Working Group are important to members of the New Jersey State Bar Association (NJSBA) and to New Jersey lawyers, generally.

I write to provide you and the Working Group with an update on the Association's efforts to review and make recommendations on the *Madden* assignment system and right-to-counsel matters. The NJSBA has consistently voiced concerns about the *Madden* assignment system as it does not meet the constitutional mandate to provide effective assistance of counsel. We continue advocating for a voluntary pro bono system and for a publicly funded compensated counsel system consistent with the Supreme Court's decision in *Madden v. Delran Twp.*, 126 N.J. 591 (1992).

To further illustrate the concerns regarding ineffective assistance of counsel, we have heard from many members about their experiences with *Madden*-assigned cases, and many of those stories focus on how attorneys are required to engage in

matters in which an attorney has no experience – many times no litigation experience at all and at least not in the area of the law in which that attorney is called upon to represent a client. Litigation experience requires not just finding a court house, but knowing the Rules of Court and evidence rules, which many attorneys who do transactional work have never had to familiarize themselves with. While they do their best to serve the assigned client, attorneys question if the litigants, as well as the justice system, are well-served by their assignment. They seek out whatever assistance might be available to help them get educated to handle the assigned case, and often worry that their malpractice carrier will not cover the work. This underscores the concerns we have that defendants facing consequences of magnitude - where oftentimes they face the possibility of imprisonment - are not receiving effective assistance of counsel.

Because of these and other concerns, 13 county bar associations and the Hispanic Bar Association of New Jersey have joined with the NJSBA to call for the *Madden* assignment system to be abolished. I am enclosing resolutions from those groups that can be shared with the Working Group. It is my hope we can continue this conversation to encourage a fairer system of assigned counsel that provides effective assistance to indigent litigants.

Below are just a few examples of the stories we heard while reviewing the *Madden* assignment system:

Contempt

In re Michael Haya, Esq. emanates from an assignment Mr. Haya received to represent a defendant in a contempt of a domestic violence restraining order. Mr. Haya asked to be relieved as counsel because he was not competent to handle this matter. While Mr. Haya is a licensed attorney, he is currently employed as a non-attorney consultant who consults on retirement plan issues. Since 2000, he worked as a computer programmer. He has not actively practiced law in over two decades and has never handled a matter regarding a contempt of domestic violence matter, nor has he ever litigated a case. As such he lacked familiarity with court procedure and rules of evidence, precluding him from effectively representing the defendant. He also did not have the requisite malpractice insurance to cover his assignment in

this matter.

Mr. Haya's request for relief was denied and he was provided the Judiciary's Domestic Violence Contempt Primer. Mr. Haya advised his new client of his exchange with the court, duty bound by his ethical obligations to do so. He retained an attorney and filed a formal Motion to be Relieved as Counsel, which was denied. Due to an administrative issue, however, Mr. Haya did not learn of this until he was called upon to appear in court in the underlying matter. This is when he first learned that the decision had been made over a week prior. The defendant in the underlying matter expressed concern that Mr. Haya would not be able to effectively represent him and asked that he be assigned new counsel.

The Hon. Deborah Silverman Katz, A.J.S.C. ultimately relieved Mr. Haya because of the defendant's concerns, but reiterated that he otherwise would have been required to continue with the representation. Mr. Haya is currently appealing the decision because while he was relieved from the assignment, he is still not relieved of his obligation under Madden. This matter is currently being appealed.

Custody Matter/Contempt

One of our members shared a story in which they received a call from a "high-profile, well studied, civil-only litigator" who was assigned to represent someone in a custody matter involving contempt. This litigator had no experience in the matter and reached out to his colleague (our member) who guided him through the process. However, our member remained concerned about the lack of familiarity with the area of the law and ability to make decisions on their feet because assigned counsel lacked any material experience in this area of the law.

More recently, the member was asked to provide guidance on a potential immigration issue on another contempt matter. Upon review of the domestic violence manual, there is a fleeting mention of immigration issues. The manual includes information that a client who is not a citizen or who is unsure whether the client is a citizen has the right to seek advice from an attorney about the effect of the alleged conduct and participation in the proceeding may have on immigration status. (See *Defending a Domestic Violence Contempt Case*, njcourts.gov, p. 29). This

attorney could have inadvertently committed malpractice because of a lack of guidance regarding immigration issues, especially because the *Madden* assignment was limited only to defending the contempt matter.

Adoption

Another member was retained by an attorney who received a *Madden* assignment on an adoption matter. This attorney, in-house counsel in a company outside of New Jersey, had no experience with the subject matter and expressed concerns with being able to represent this person because of the attorney's work outside the state. Out of concern that the litigant receive appropriate guidance and counsel, the attorney retained at their own expense an experienced attorney to advise on adoption matters generally in order to properly represent the litigant.

Contempt/Parole Revocation

A member who works in-house at a New Jersey corporation reported receiving three different *Madden* assignments in the last nine years. The assignments were: a contempt of a domestic violence order and two parole revocation matters. In all these matters, because of resources this particular attorney had available as in-house counsel at a major corporation operating in the state, the attorney engaged outside counsel to assist in the representation expressly because the attorney had no experience in this area of the law. This attorney voiced several important concerns that warrant noting in discussions relative to *Madden* assignments:

- This attorney does not have malpractice insurance that covers these types of assignments;
- There is a feeling that attorneys are being "invited to commit malpractice;"
- The ability to call upon outside law firms to handle these assignments is a unique benefit this attorney had that others do not.

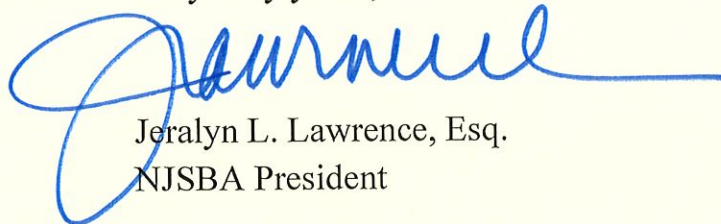
Last October, the NJSBA held a *Madden* Summit to discuss the *Madden* assignment system and its impact on defendants who do not have the means to hire an attorney and the legal community at large. Members were asked if they had experience in the *Madden* assignment they received. Of those who said they received a *Madden* assignment, 69% said they had no experience in the area of the law relative

to the matter assigned. Out of those who had no experience, 29% used the online court resources. The others either reported having the prosecutors walk them through the matter, other attorneys in a firm assist them, or they utilized resources outside of the Judiciary's offerings to help them.

The NJSBA issued recommendations to address effective representation in right-to-counsel matters, which include moving matters that are more aligned with those areas already under the auspices of the state Office of the Public Defender; providing additional funding to legal services providers where training is offered to attorneys who undertake representation of their clients, and additional recommendations for consideration by the Supreme Court, including encouraging attorneys to maintain pro bono service in the areas of the law they feel most comfortable undertaking.

It is our desire to maintain the integrity of the legal process by offering resolutions to provide constitutionally mandated effective representation to litigants who are facing consequences of magnitude but who are unable to pay for counsel. We hope you will share this information with the working group as it considers how to address the *Madden* assignment system. As always, I remain available to further discuss this issue with you. Please contact me at jlawrence@lawlawfirm.com or at 732-616-5052. I look forward to continuing this important work with you.

Very truly yours,

A handwritten signature in blue ink, appearing to read "J. Lawrence", with a long horizontal flourish extending to the right.

Jeralyn L. Lawrence, Esq.
NJSBA President

Encl.

cc: Chief Justice Stuart Rabner, Supreme Court of New Jersey
Hon. Glenn A. Grant, J.A.D., Administrative Director of the Courts
Heather Joy Baker, Supreme Court Clerk
Steven Bonville, Deputy Clerk of the Superior Court
Timothy F. McGoughran, Esq., NJSBA President-Elect
Angela Scheck, NJSBA Executive Director

BERGEN COUNTY BAR ASSOCIATION

**RESOLUTION
JOINING THE NEW JERSEY STATE BAR ASSOCIATION
IN OPPOSITION TO
THE *MADDEN* MANDATORY PRO BONO SYSTEM**

WHEREAS, on January 12, 2023, the New Jersey State Bar Association Board of Trustees adopted a Resolution in opposition to the *Madden* mandatory pro bono system; and

WHEREAS, the reasons for NJSBA's opposition are set forth in a report entitled "Achieving Effective Representation in Right to Counsel Matters" dated April 6, 2021, which was prepared by the NJSBA's Right to Counsel Committee, and adopted by the NJSBA Trustees on April 16, 2021; and

WHEREAS, the NJSBA Report makes the following statements:

1. "The state has the primary obligation to provide effective counsel in matters affecting fundamental rights. That obligation is established by the federal and state constitutions, case law and, in some cases, statutory law." (NJSBA Report, p. 2)
2. "Principles of fundamental fairness dictate that if representation is constitutionally mandated, that representation must be effective." (NJSBA Report, p. 4)
3. "History and research have shown that the only method of providing effective counsel is through adequate funding of counsel by the Legislature. One only needs to look at New Jersey's Office of the Public Defender to see that adequate funding of a professional system of counsel is the underpinning for justice for litigants who cannot afford to retain counsel. All other methods, such as *Madden* assignments, are inadequate in comparison." (NJSBA Report, p. 18)

4. “While the current [*Madden*] system provides representation, it does not provide people who are indigent with equal access to justice.” (NJSBA Report, p. 3)
5. “Appointment of unqualified, inexperienced attorneys in matters involving fundamental rights does little to promote the public’s confidence in the independence, integrity and impartiality of the Judiciary.” (NJSBA Report, p. 2)

AND WHEREAS, on pages 23 and 24, the NJSBA Report cites recent studies showing that the failure to provide compensated counsel in matters of fundamental rights falls disproportionately on people of color, and recommends that the Supreme Court should officially recognize the *Madden* system is an “obstacle to equality” and take all necessary steps to address this barrier to access and justice;¹ and

WHEREAS, on pages 29, 30 and 34, the NJSBA Report recommends that the right to counsel should be fully accessible, transparent, and consistent, and that the Administrative Office of the Courts (AOC) should publish comprehensive data on right to counsel matters and assignments, and address the problem of ever-increasing exemption categories that exclude thousands of attorneys from the *Madden* list and thus “unfairly casts the full burden of providing representation on a smaller pool of attorneys”; and

WHEREAS, for the above reasons, and many others, the NJSBA Report concludes, on pages 22 and 23, that the state and the courts should not continue to shift the sole responsibility for providing representation in matters not handled by the Office of the Public Defender to the private bar, and that by doing so the state and the courts “abdicate their primary responsibility and fail to full their obligations to the citizens of New Jersey”; instead, the NJSBA Report recommends that the *Madden* system of random assignments of uncompensated counsel should be abolished

¹ This section of the NJSBA Report concludes by stating, simply and firmly, “The *Madden* system of mandatory assignments must end.” (NJSBA Report, p. 24)

and replaced with publicly funded systems for the provision of effective representation in all cases in which there is right to counsel; and

WHEREAS, the Supreme Court implemented the *Madden* system of random assignments in 1992 as a “stop-gap measure” to represent defendants in municipal courts pending proper legislative action, in the belief that “other branches of government, state, county, and local, are equally able to address the problem, equally committed to meeting the constitutional obligation, and equally concerned with the unfairness that inevitably affects the present system,” *Madden v. Township of Delran*, 126 N.J. 591, 596 (1992); and

WHEREAS, the Supreme Court itself acknowledged that “we cannot forever accept a system so clearly inefficient, historically unfair, and potentially unconstitutional,” *Id.* at 595-96 (underlined emphasis added); and

WHEREAS, rather than ending the *Madden* system the Supreme Court, over the past thirty years, has institutionalized it; expanded it; removed it from the vicinage-based control of assignment judges; hidden its operational details; and made it permanent; and

WHEREAS, by withholding the *Madden* system’s operational data from attorneys and the general public, the AOC effectively conceals the true nature and extent of the funding problem from the Legislature and the Office of the Public Defender, thereby perpetuating the funding failure and, as a consequence, the ongoing need for the *Madden* system;² and

WHEREAS, although not addressed in the NJSBA Report, the *Madden* system imposes unconstitutional involuntary servitude upon non-exempt attorneys, an issue that was neither raised by the *Madden* plaintiffs nor subjected to legal analysis by the *Madden* Court; and

² According to the Report, the NJSBA requested data from the AOC on *Madden* assignments by type of case and county of assignment but the AOC did not provide the information. (NJSBA Report, pp. 29 and 30)

WHEREAS, the Supreme Court should compel the Legislature to fulfill the Legislature's obligations under Article I, Section 1 of the New Jersey Constitution³; instead, by "staying its hand" against the Legislature and raising its hand against non-exempt New Jersey attorneys, the Court itself is effectively perpetrating two additional constitutional violations, those being of Article VI, Section 2, paragraph 3 of the New Jersey Constitution⁴, and the Thirteenth Amendment of the United States Constitution⁵; and

WHEREAS, the current institutionalized *Madden* system of forced attorney labor ignores the specific needs of indigent clients, as well as the professional qualifications, work schedules, and personal inclinations of attorneys who are appointed to represent them; it is based on the incorrect presumption that "non-exempt" attorneys are fungible as to their qualifications and abilities, and that indigent defendants are fungible as to their needs, and as such it demeans and disserves all parties; and

WHEREAS, the mandatory pro bono system eliminates remunerative work opportunities for those lawyers who are qualified and willing to perform legal services through the Public Defender's office and other publicly funded agencies; and

WHEREAS, in summary, indigent persons facing consequences of magnitude should receive *effective* representation from *qualified* attorneys who work *voluntarily* and are *paid*; and

³ "All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness." (The right to due process of law has been determined to be implicit in this paragraph – see *Pasqua v. Council*, 186 N.J. 127, 147 n.5 (2006), cited on page 2 of the NJSBA Report.)

⁴ "The Supreme Court shall make rules governing the administration of all courts in the State and, subject to the law, the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted." (Underlined emphasis added.) The Legislature has enacted no law authorizing court-ordered conscription of attorneys to perform free legal services.

⁵ "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

WHEREAS, any decision to provide pro bono legal services should be left to the sole discretion of the attorney who is willing to provide such services without payment; put more simply, pro bono legal services should be rendered only on a *voluntary* basis; and

WHEREAS, the Resolution adopted by the New Jersey State Bar Association Board of Trustees on January 12, 2023, calls upon the Supreme Court of New Jersey to abolish the *Madden* system of assignments, and calls upon the New Jersey Legislature to publicly fund the provision of effective legal representation in all cases in which there is a right to counsel;

NOW, THEREFORE, BE IT RESOLVED, by the Bergen County Bar Association, as follows:

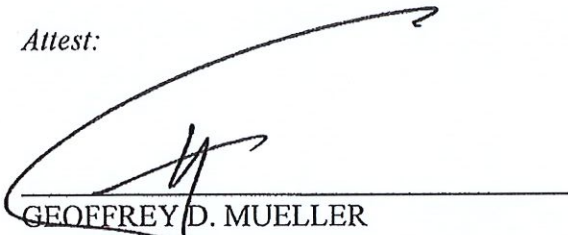
1. The Bergen County Bar Association hereby joins the New Jersey State Bar Association in the NJSBA's opposition to the *Madden* mandatory pro bono system, and hereby joins the NJSBA's calls for abolition of the mandatory pro bono system, and for proper public funding for effective legal representation of indigent persons.
2. The Bergen County Bar Association hereby adopts, as its official policy in opposition to the mandatory pro bono system, all of the foregoing statements of this Resolution, and all of the findings, conclusions, and recommendations presented in the NJSBA Right to Counsel Committee's Report entitled "Achieving Effective Representation in Right to Counsel Matters" dated April 6, 2021.

BE IT FURTHER RESOLVED, that copies of this Resolution, the NJSBA's January 12, 2023 Resolution, and the NJSBA Right to Counsel Committee's Report entitled "Achieving Effective Representation in Right to Counsel Matters" dated April 6, 2021, shall be distributed by the Executive Committee of the Bergen County Bar Association to the Trustees and Officers of the New Jersey State Bar Association; all other New Jersey bar associations; and any members of

the New Jersey Legislature and Judiciary and such other persons or organizations as may be deemed appropriate by the Bergen County Bar Association Executive Committee for the purpose of publicizing the Bergen County Bar Association's position on this issue and furthering the objectives expressed herein.

The undersigned Geoffrey D. Mueller, Esq., Secretary of the Bergen County Bar Association, hereby certifies that this resolution was duly adopted by the members of the Bergen County Bar Association on February 14, 2023.

Attest:



GEOFFREY D. MUELLER
SECRETARY
BERGEN COUNTY BAR ASSOCIATION

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

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

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

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

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

WHEREAS, the NJSBA convened the Right to Counsel Committee to examine the history of the right to counsel in New Jersey, how that right was established, how the right to counsel was fulfilled in each area of the law, and the effectiveness of assigned counsel under the system developed following the Supreme Court's decision in *Madden*; and

WHEREAS, the Right to Counsel Committee issued a report, *Achieving Effective Representation In Right to Counsel Matters*, outlining thirteen separate recommendations to consider in addressing the issue of effective counsel in matters where there is a right to counsel in New Jersey; and

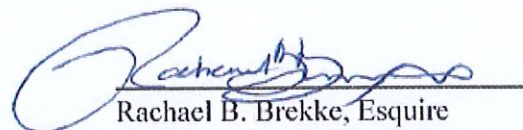
WHEREAS, chief among the recommendations was to abolish the *Madden* system of assignments to uncompensated counsel in favor of a publicly funded system for the provision of effective representation; and

WHEREAS, the NJSBA Board of Trustees adopted this report on April 16, 2021; and

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

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

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


Rachael B. Brekke, Esquire

President, Camden County Bar Association

Dated: March 8, 2023



RESOLUTION OF THE CAPE MAY COUNTY BAR ASSOCIATION CALLING UPON THE NEW JERSEY SUPREME COURT TO ABOLISH THE CURRENT MADDEN ASSIGNMENT SYSTEM WHICH IS AN OBSTACLE TO EQUALITY AND A DISSERVICE TO ALL AND CALLING UPON THE LEGISLATURE TO FUND THE PROVISION OF EFFECTIVE REPRESENTATION IN ALL CASES IN WHICH THERE IS A RIGHT TO COUNSEL TO FOSTER ACCESS TO JUSTICE.

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

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

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

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

WHEREAS, the NJSBA convened the Right to Counsel Committee to examine the history of the right to counsel in New Jersey, how that right was established, how the right to counsel was fulfilled in each area of the law, and the effectiveness of assigned counsel under the system developed following the Supreme Court's decision in *Madden*; and

WHEREAS, the Right to Counsel Committee issued a report, *Achieving Effective Representation In Right to Counsel Matters*, outlining thirteen separate recommendations to consider in addressing the issue of effective counsel in matters where there is a right to counsel in New Jersey; and

WHEREAS, chief among the recommendations was to abolish the *Madden* system of assignments to uncompensated counsel in favor of a publicly funded system for the provision of effective representation; and

WHEREAS, the NJSBA Board of Trustees adopted this report on April 16, 2021; and

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

NOW, THEREFORE IT IS RESOLVED, by Cape May County Bar Association Board of Trustees as follows:

1. The Cape May County Bar Association joins in the recommendations made in the report by the New Jersey State Bar Association's Right to Counsel Committee entitled *Achieving Effective Representation In Right to Counsel Matters* and hereby calls upon the Supreme Court of New Jersey to abolish the *Madden* system of assignments; and
2. The Cape May County Bar Association joins in the call upon the Legislature to publicly fund the provision of effective legal representation, including the costs associated with implementation and administration of the compensated counsel system, in all cases in which there is a right to counsel consistent with the decision in *Madden*.

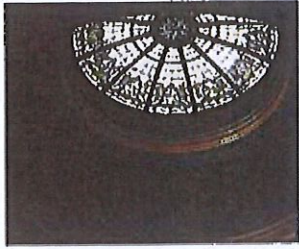
I, Christopher Gillin-Schwartz, Esq., President of the Cape May County Bar Association, do hereby certify that the above is a full, true and accurate copy of a resolution passed by the Board of Trustees on March 2, 2023.

In witness thereof, I have hereto set my hands as President on this 3rd day of March, 2023.

CAPE MAY COUNTY BAR ASSOCIATION

By: 
Christopher Gillin-Schwartz, Esq.
President

Cc: Jeralyn L. Lawrence, Esq. *President*, NJSBA
Timothy F. McGoughran, Esq., *President-Elect*, NJSBA
Angela Sheck, NJSBA *Executive Director*
Amy Conrad, NJSBA *Government Affairs Manager*



Essex County Bar Association

"With Honor and Dignity"

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President Elect

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NJSBA Trustees

February 23, 2023

Jeralyn L. Lawrence, President
New Jersey State Bar Association
New Jersey Law Center
One Constitution Square
New Brunswick, New Jersey 08901
Email: President@njsba.com

Dear Ms. Lawrence:

On February 21, 2023, the Officers and Trustees of the Essex County Bar Association discussed the New Jersey State Bar Association's request for the ECBA to support the resolution to end the *Madden* system of mandatory *pro bono* assignments. The substance of the ECBA's discussions were spirited and echoed the concerns raised by the NJSBA.

I am pleased to inform you that the ECBA unanimously voted to support the NJSBA's position. The ECBA applauds the efforts and advocacy being advanced by the NJSBA to end the *Madden* system which has proven to be unworkable in many respects.

If there is anything else the ECBA can do to help advance the efforts to end the *Madden* system, please let us know. The ECBA remains steadfast in its support for the expansion of legal access to underserved communities and firmly believes that all litigants deserve adequate and effective counsel in matters of significant impact.

Thank you again for your leadership and work on behalf of our statewide legal community.

Very truly yours,

Shoshana Schiff, President
Essex County Bar Association

cc. G. Glennon Troublefield, ECBA President-Elect,
NJSBA Secretary
Heather Jenquine, ECBA Executive Director
Angela Scheck, NJSBA Executive Director

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GLOUCESTER COUNTY BAR ASSOCIATION
RESOLUTION
JOINING THE NEW JERSEY STATE BAR ASSOCIATION
IN OPPOSITION TO
THE *MADDEN* MANDATORY PRO BONO SYSTEM

WHEREAS, on January 12, 2023, the New Jersey State Bar Association Board of Trustees adopted a Resolution in opposition to the *Madden* mandatory pro bono system; and

WHEREAS, the reasons for NJSBA's opposition are set forth in a report entitled "Achieving Effective Representation in Right to Counsel Matters" dated April 6, 2021, which was prepared by the NJSBA's Right to Counsel Committee, and adopted by the NJSBA Trustees on April 16, 2021; and

WHEREAS, the NJSBA Report makes the following statements:

1. "The state has the primary obligation to provide effective counsel in matters affecting fundamental rights. That obligation is established by the federal and state constitutions, case law and, in some cases, statutory law." (NJSBA Report, p. 2)
2. "Principles of fundamental fairness dictate that if representation is constitutionally mandated, that representation must be effective." (NJSBA Report, p. 4)
3. "History and research have shown that the only method of providing effective counsel is through adequate funding of counsel by the Legislature. One only needs to look at New Jersey's Office of the Public Defender to see that adequate funding of a professional system of counsel is the underpinning for justice for litigants who cannot afford to retain counsel. All other methods, such as *Madden* assignments, are inadequate in comparison." (NJSBA Report, p. 18)

4. “While the current [*Madden*] system provides representation, it does not provide people who are indigent with equal access to justice.” (NJSBA Report, p. 3)
5. “Appointment of unqualified, inexperienced attorneys in matters involving fundamental rights does little to promote the public’s confidence in the independence, integrity and impartiality of the Judiciary.” (NJSBA Report, p. 2)

AND WHEREAS, on pages 23 and 24, the NJSBA Report cites recent studies showing that the failure to provide compensated counsel in matters of fundamental rights falls disproportionately on people of color, and recommends that the Supreme Court should officially recognize the *Madden* system is an “obstacle to equality” and take all necessary steps to address this barrier to access and justice;¹ and

WHEREAS, on pages 29, 30 and 34, the NJSBA Report recommends that the right to counsel should be fully accessible, transparent, and consistent, and that the Administrative Office of the Courts (AOC) should publish comprehensive data on right to counsel matters and assignments, and address the problem of ever-increasing exemption categories that exclude thousands of attorneys from the *Madden* list and thus “unfairly casts the full burden of providing representation on a smaller pool of attorneys”; and

WHEREAS, for the above reasons, and many others, the NJSBA Report concludes, on pages 22 and 23, that the state and the courts should not continue to shift the sole responsibility for providing representation in matters not handled by the Office of the Public Defender to the private bar, and that by doing so the state and the courts “abdicate their primary responsibility and fail to full their obligations to the citizens of New Jersey”; instead, the NJSBA Report recommends that the *Madden* system of random assignments of uncompensated counsel should be abolished

¹ This section of the NJSBA Report concludes by stating, simply and firmly, “The *Madden* system of mandatory assignments must end.” (NJSBA Report, p. 24)

and replaced with publicly funded systems for the provision of effective representation in all cases in which there is right to counsel; and

WHEREAS, the Supreme Court implemented the *Madden* system of random assignments in 1992 as a “stop-gap measure” to represent defendants in municipal courts pending proper legislative action, in the belief that “other branches of government, state, county, and local, are equally able to address the problem, equally committed to meeting the constitutional obligation, and equally concerned with the unfairness that inevitably affects the present system,” *Madden v. Township of Delran*, 126 N.J. 591, 596 (1992); and

WHEREAS, the Supreme Court itself acknowledged that “we cannot forever accept a system so clearly inefficient, historically unfair, and potentially unconstitutional,” *Id.* at 595-96 (underlined emphasis added); and

WHEREAS, rather than ending the *Madden* system the Supreme Court, over the past thirty years, has institutionalized it; expanded it; removed it from the vicinage-based control of assignment judges; hidden its operational details; and made it permanent; and

WHEREAS, by withholding the *Madden* system’s operational data from attorneys and the general public, the AOC effectively conceals the true nature and extent of the funding problem from the Legislature and the Office of the Public Defender, thereby perpetuating the funding failure and, as a consequence, the ongoing need for the *Madden* system;² and

WHEREAS, although not addressed in the NJSBA Report, the *Madden* system imposes unconstitutional involuntary servitude upon non-exempt attorneys, an issue that was neither raised by the *Madden* plaintiffs nor subjected to legal analysis by the *Madden* Court; and

² According to the Report, the NJSBA requested data from the AOC on *Madden* assignments by type of case and county of assignment but the AOC did not provide the information. (NJSBA Report, pp. 29 and 30)

WHEREAS, the Supreme Court should compel the Legislature to fulfill the Legislature's obligations under Article I, Section 1 of the New Jersey Constitution³; instead, by "staying its hand" against the Legislature and raising its hand against non-exempt New Jersey attorneys, the Court itself is effectively perpetrating two additional constitutional violations, those being of Article VI, Section 2, paragraph 3 of the New Jersey Constitution⁴, and the Thirteenth Amendment of the United States Constitution⁵; and

WHEREAS, the current institutionalized *Madden* system of forced attorney labor ignores the specific needs of indigent clients, as well as the professional qualifications, work schedules, and personal inclinations of attorneys who are appointed to represent them; it is based on the incorrect presumption that "non-exempt" attorneys are fungible as to their qualifications and abilities, and that indigent defendants are fungible as to their needs, and as such it demeans and disserves all parties; and

WHEREAS, the mandatory pro bono system eliminates remunerative work opportunities for those lawyers who are qualified and willing to perform legal services through the Public Defender's office and other publicly funded agencies; and

WHEREAS, in summary, indigent persons facing consequences of magnitude should receive *effective* representation from *qualified* attorneys who work *voluntarily* and are *paid*; and

³ "All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness." (The right to due process of law has been determined to be implicit in this paragraph – see *Pasqua v. Council*, 186 N.J. 127, 147 n.5 (2006), cited on page 2 of the NJSBA Report.)

⁴ "The Supreme Court shall make rules governing the administration of all courts in the State and, subject to the law, the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted." (Underlined emphasis added.) The Legislature has enacted no law authorizing court-ordered conscription of attorneys to perform free legal services.

⁵ "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

WHEREAS, any decision to provide pro bono legal services should be left to the sole discretion of the attorney who is willing to provide such services without payment; put more simply, pro bono legal services should be rendered only on a *voluntary* basis; and

WHEREAS, the Resolution adopted by the New Jersey State Bar Association Board of Trustees on January 12, 2023, calls upon the Supreme Court of New Jersey to abolish the *Madden* system of assignments, and calls upon the New Jersey Legislature to publicly fund the provision of effective legal representation in all cases in which there is a right to counsel;

NOW, THEREFORE, BE IT RESOLVED, by the Gloucester County Bar Association, as follows:

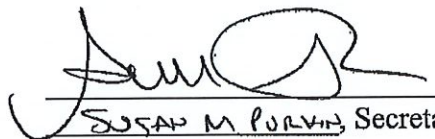
1. The Gloucester County Bar Association hereby joins the New Jersey State Bar Association in the NJSBA's opposition to the *Madden* mandatory pro bono system, and hereby joins the NJSBA's calls for abolition of the mandatory pro bono system, and for proper public funding for effective legal representation of indigent persons.
2. The Gloucester County Bar Association hereby adopts, as its official policy in opposition to the mandatory pro bono system, all of the foregoing statements of this Resolution, and all of the findings, conclusions, and recommendations presented in the NJSBA Right to Counsel Committee's Report entitled "Achieving Effective Representation in Right to Counsel Matters" dated April 6, 2021.

BE IT FURTHER RESOLVED, that copies of this Resolution, the NJSBA's January 12, 2023 Resolution, and the NJSBA Right to Counsel Committee's Report entitled "Achieving Effective Representation in Right to Counsel Matters" dated April 6, 2021, shall be distributed by the Executive Committee of the Gloucester County Bar Association to the Trustees and Officers of the New Jersey State Bar Association; all other New Jersey bar associations; and any members

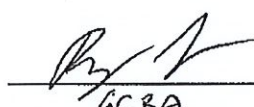
of the New Jersey Legislature and Judiciary and such other persons or organizations as may be deemed appropriate by the Gloucester County Bar Association Executive Committee for the purpose of publicizing the Gloucester County Bar Association's position on this issue and furthering the objectives expressed herein.

The undersigned Ryan P. Foran, Esq., President of the Gloucester County Bar Association, hereby certifies that this resolution was duly adopted by the members of the Gloucester County Bar Association on 2/22/23.

Attest:



Susan M. Purvin, Secretary



GCBA, President

**RESOLUTION OF THE HUNTERDON COUNTY BAR ASSOCIATION
JOINING THE NEW JERSEY STATE BAR ASSOCIATION
IN OPPOSITION TO
THE *MADDEN* MANDATORY PRO BONO SYSTEM**

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

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

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

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

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

WHEREAS, the NJSBA convened the Right to Counsel Committee to examine the history of the right to counsel in New Jersey, how that right was established, how the right to counsel was fulfilled in each area of the law, and the effectiveness of assigned counsel under the system developed following the Supreme Court's decision in *Madden*; and

WHEREAS, the Right to Counsel Committee issued a report, *Achieving Effective Representation In Right to Counsel Matters*, outlining thirteen separate recommendations to consider in addressing the issue of effective counsel in matters where there is a right to counsel in New Jersey; and

WHEREAS, chief among the recommendations was to abolish the *Madden* system of assignments to uncompensated counsel in favor of a publicly funded system for the provision of effective representation; and

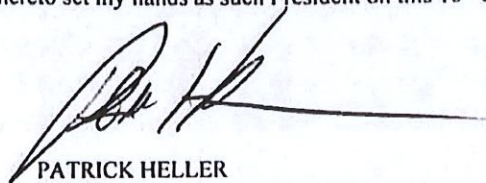
WHEREAS, the NJSBA Board of Trustees adopted this report on April 16, 2021; and

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

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

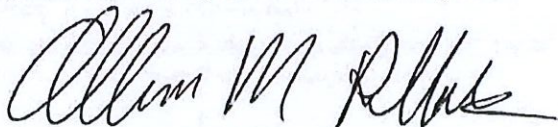
LET IT BE FURTHER RESOLVED, the Hunterdon County Bar Association Board of Trustees joins the New Jersey State Bar Association Board of Trustees and hereby calls upon the Legislature to publicly fund the provision of effective legal representation, including the costs associated with implementation and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

I, Patrick Heller, Esq., President of the Hunterdon County Bar Association Board of Trustees, do hereby certify that the above is a full, true and accurate copy of a resolution passed by the Hunterdon County Board of Trustees on March 9, 2023. In witness thereof, I have hereto set my hands as such President on this 10th day of March, 2023.



PATRICK HELLER
PRESIDENT
HUNTERDON COUNTY BAR ASSOCIATION

I, Allison Mattia Roberts, Esq., Secretary of the Hunterdon County Bar Association Board of Trustees, do hereby certify that the above is a full, true and accurate copy of a resolution passed by the Hunterdon County Board of Trustees on March 9, 2023. In witness thereof, I have hereto set my hands as such Secretary on this 10th day of March, 2023.



ALLISON MATTIA ROBERTS
SECRETARY
HUNTERDON COUNTY BAR ASSOCIATION

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

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

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

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

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

WHEREAS, the New Jersey State Bar Association convened the Right to Counsel Committee to examine the history of the right to counsel in New Jersey, how that right was established, how the right to counsel was fulfilled in each area of the law, and the effectiveness of assigned counsel under the system developed following the Supreme Court's decision in *Madden*; and

WHEREAS, the Right to Counsel Committee issued a report, *Achieving Effective Representation In Right to Counsel Matters*, outlining thirteen separate recommendations to consider in addressing the issue of effective counsel in matters where there is a right to counsel in New Jersey; and

WHEREAS, chief among the recommendations was to abolish the *Madden* system of assignments to uncompensated counsel in favor of a publicly funded system for the provision of effective representation; and

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

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

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

I, Ayesha K. Hamilton, Secretary of the Mercer County Bar Association, do hereby certify that the above is a full, true and accurate copy of a resolution passed by the Board of Trustees on February 7, 2023. In witness thereof, I have hereto set my hands as such Secretary on this 7th day of February 2023.

AYESHA K. HAMILTON
SECRETARY
MERCER COUNTY BAR ASSOCIATION



MIDDLESEX COUNTY BAR ASSOCIATION
87 Bayard Street
New Brunswick, NJ 08901
(732) 828-3433/Fax (732) 828-5862



RESOLUTION

WHEREAS, the Middlesex County Bar Association (“MCBA”) is a professional association whose mission and goals include providing a proactive voice to represent the views, interests and concerns of the legal community of Middlesex County on all issues affecting the practice of law and administration of justice;

WHEREAS, the MCBA is governed by a Board of Trustees (“BOT”) which is called upon regularly to make decisions concerning the interests of the MCBA’s members and its mission and goals;

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

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

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

WHEREAS, the New Jersey State Bar Association (“NJSBA”) convened a Right to Counsel Committee to examine the history of the right to counsel in New Jersey, how that right was established, how the right to counsel was fulfilled in each area of the law, and the effectiveness of assigned counsel under the system developed following the Supreme Court’s decision in *Madden*; and

WHEREAS, the NJSBA Right to Counsel Committee issued a report, “Achieving Effective Representation In Right to Counsel Matters,” outlining thirteen separate recommendations to consider in addressing the issue of effective counsel in matters where there is a right to counsel in New Jersey; and

WHEREAS, chief among the recommendations was to abolish the *Madden* system of assignments to uncompensated counsel in favor of a publicly funded system for the provision of effective representation; and

WHEREAS, the recommendations advocate using a multi-pronged approach to funding the right to counsel including additional funding to the Office of the Public Defender to handle cases most aligned with their current work (parole revocation, contempt of domestic violence hearings, civil commitments, and other such cases); authorizing municipal public defenders to handle municipal appeals; funding non-

profit providers with expertise in particular types of cases (private adoptions, guardianship, paternity); and increasing pool attorney rates, among other recommendations;

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

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

I HEREBY CERTIFY that the foregoing is a true copy of the Resolution adopted by the Officers and Board of Trustees of the Middlesex County Bar Association.



John F. Gillick
President
February 10, 2023

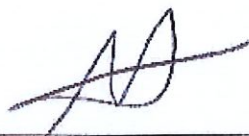


A Morris County Bar Association Resolution

Calling Upon the Supreme Court to Abolish the Madden Assignment System

- WHEREAS**, the Supreme Court of New Jersey held in *Madden v. Twp of Delran*, 126 N.J. 591 (1992) that indigent defendants are constitutionally entitled to counsel when facing a consequence of magnitude; and
- WHEREAS**, the Supreme Court in *Madden* noted its limited power in ensuring equal access to justice and the judicial system in lieu of a legislative fix and developed a random assignment system to ensure indigent defendants had attorney representation when facing a consequence of magnitude; and
- WHEREAS**, although the *Madden* system of pro bono assignments was meant to be a stop-gap measure until the Legislature acted, *Madden* assignments continue to be made more than 30 years after the original decision; and
- WHEREAS**, the NJSBA convened the Right to Counsel Committee to examine the history of the right to counsel in New Jersey, how that right was established, how the right to counsel was fulfilled in each area of the law, and the effectiveness of assigned counsel under the system developed following the Supreme Court's decision in *Madden*; and
- WHEREAS**, the Right to Counsel Committee issued a report, *Achieving Effective Representation In Right to Counsel Matters*, outlining thirteen separate recommendations to consider in addressing the issue of effective counsel in matters where there is a right to counsel in New Jersey; and
- WHEREAS**, chief among the recommendations was to abolish the *Madden* system of assignments to uncompensated counsel in favor of a publicly funded system for the provision of effective representation; and
- WHEREAS**, the NJSBA Board of Trustees adopted this report on April 16, 2021; and
- WHEREAS**, the recommendations advocate using a multi-pronged approach to funding the right to counsel including additional funding to the Office of the Public Defender to handle cases most aligned with their current work (parole revocation, contempt of domestic violence hearings, civil commitments, and other such cases); authorizing municipal public defenders to handle municipal appeals; funding non-profit providers with expertise in particular types of cases (private adoptions, guardianship, paternity); and increasing pool attorney rates, among other recommendations;
- NOW, THEREFORE IT IS RESOLVED**, that the Morris County Bar Association Board of Trustees hereby calls upon the Supreme Court of New Jersey to abolish the *Madden* system of assignments; and
- LET IT BE FURTHER RESOLVED**, the Morris County Bar Association Board of Trustees hereby calls upon the Legislature to publicly fund the provision of effective legal representation, including the costs associated with implementation and administration of the

compensated counsel system, in all cases in which there is a right to counsel consistent with the decision in *Madden*.

A handwritten signature in black ink, appearing to be 'S. Loewenthal', written over a horizontal line.

Steven J. Loewenthal, Esq.
President Morris County Bar Association

Dated: February 9, 2023



PASSAIC COUNTY BAR ASSOCIATION

PASSAIC COUNTY COURT HOUSE
401 GRAND STREET, PATERSON, NEW JERSEY 07505
Telephone: (973) 345-4585 ~ Facsimile: (973) 279-6015
www.passaicbar.org

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NJSBA TRUSTEE

Jessica Ragno Sprague

EXECUTIVE DIRECTOR

Karen A. Corsi
karen.corsi@verizon.net

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

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

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

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

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

WHEREAS, the NJSBA convened the Right to Counsel Committee to examine the history of the right to counsel in New Jersey, how that right was established, how the right to counsel was fulfilled in each area of the law, and the effectiveness of assigned counsel under the system developed following the Supreme Court's decision in *Madden*; and

WHEREAS, the Right to Counsel Committee issued a report, *Achieving Effective Representation In Right to Counsel Matters*, outlining thirteen separate recommendations to consider in addressing the issue of effective counsel in matters where there is a right to counsel in New Jersey; and

WHEREAS, chief among the recommendations was to abolish the *Madden* system of assignments to uncompensated counsel in favor of a publicly funded system for the provision of effective representation; and

WHEREAS, the NJSBA Board of Trustees adopted this report on April 16, 2021; and

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

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

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

I, Stephen T. Raff, President of the Passaic County Bar Association, do hereby certify that the above is a full, true and accurate copy of a resolution passed by the Board of Trustees on January 12, 2023. In witness thereof, I have hereto set my hands as such President on this 27th day of February, 2023.

Stephen Raff

Stephen T. Raff
President
Passaic County Bar Association

SALEM COUNTY BAR ASSOCIATION

RESOLUTION
JOINING THE NEW JERSEY STATE BAR ASSOCIATION
IN OPPOSITION TO
THE *MADDEN* MANDATORY PRO BONO SYSTEM

WHEREAS, on January 12, 2023, the New Jersey State Bar Association Board of Trustees adopted a Resolution in opposition to the *Madden* mandatory pro bono system; and

WHEREAS, the reasons for NJSBA's opposition are set forth in a report entitled "Achieving Effective Representation in Right to Counsel Matters" dated April 6, 2021, which was prepared by the NJSBA's Right to Counsel Committee, and adopted by the NJSBA Trustees on April 16, 2021; and

WHEREAS, the NJSBA Report makes the following statements:

1. "The state has the primary obligation to provide effective counsel in matters affecting fundamental rights. That obligation is established by the federal and state constitutions, case law and, in some cases, statutory law." (NJSBA Report, p. 2)
2. "Principles of fundamental fairness dictate that if representation is constitutionally mandated, that representation must be effective." (NJSBA Report, p. 4)
3. "History and research have shown that the only method of providing effective counsel is through adequate funding of counsel by the Legislature. One only needs to look at New Jersey's Office of the Public Defender to see that adequate funding of a professional system of counsel is the underpinning for justice for litigants who cannot afford to retain counsel. All other methods, such as *Madden* assignments, are inadequate in comparison." (NJSBA Report, p. 18)

4. “While the current [*Madden*] system provides representation, it does not provide people who are indigent with equal access to justice.” (NJSBA Report, p. 3)
5. “Appointment of unqualified, inexperienced attorneys in matters involving fundamental rights does little to promote the public’s confidence in the independence, integrity and impartiality of the Judiciary.” (NJSBA Report, p. 2)

AND WHEREAS, on pages 23 and 24, the NJSBA Report cites recent studies showing that the failure to provide compensated counsel in matters of fundamental rights falls disproportionately on people of color, and recommends that the Supreme Court should officially recognize the *Madden* system is an “obstacle to equality” and take all necessary steps to address this barrier to access and justice;¹ and

WHEREAS, on pages 29, 30 and 34, the NJSBA Report recommends that the right to counsel should be fully accessible, transparent, and consistent, and that the Administrative Office of the Courts (AOC) should publish comprehensive data on right to counsel matters and assignments, and address the problem of ever-increasing exemption categories that exclude thousands of attorneys from the *Madden* list and thus “unfairly casts the full burden of providing representation on a smaller pool of attorneys”; and

WHEREAS, for the above reasons, and many others, the NJSBA Report concludes, on pages 22 and 23, that the state and the courts should not continue to shift the sole responsibility for providing representation in matters not handled by the Office of the Public Defender to the private bar, and that by doing so the state and the courts “abdicate their primary responsibility and fail to full their obligations to the citizens of New Jersey”; instead, the NJSBA Report recommends that the *Madden* system of random assignments of uncompensated counsel should be abolished

¹ This section of the NJSBA Report concludes by stating, simply and firmly, “The *Madden* system of mandatory assignments must end.” (NJSBA Report, p. 24)

and replaced with publicly funded systems for the provision of effective representation in all cases in which there is right to counsel; and

WHEREAS, the Supreme Court implemented the *Madden* system of random assignments in 1992 as a “stop-gap measure” to represent defendants in municipal courts pending proper legislative action, in the belief that “other branches of government, state, county, and local, are equally able to address the problem, equally committed to meeting the constitutional obligation, and equally concerned with the unfairness that inevitably affects the present system,” *Madden v. Township of Delran*, 126 N.J. 591, 596 (1992); and

WHEREAS, the Supreme Court itself acknowledged that “we cannot forever accept a system so clearly inefficient, historically unfair, and potentially unconstitutional,” *Id.* at 595-96 (underlined emphasis added); and

WHEREAS, rather than ending the *Madden* system the Supreme Court, over the past thirty years, has institutionalized it; expanded it; removed it from the vicinage-based control of assignment judges; hidden its operational details; and made it permanent; and

WHEREAS, by withholding the *Madden* system’s operational data from attorneys and the general public, the AOC effectively conceals the true nature and extent of the funding problem from the Legislature and the Office of the Public Defender, thereby perpetuating the funding failure and, as a consequence, the ongoing need for the *Madden* system;² and

WHEREAS, although not addressed in the NJSBA Report, the *Madden* system imposes unconstitutional involuntary servitude upon non-exempt attorneys, an issue that was neither raised by the *Madden* plaintiffs nor subjected to legal analysis by the *Madden* Court; and

² According to the Report, the NJSBA requested data from the AOC on *Madden* assignments by type of case and county of assignment but the AOC did not provide the information. (NJSBA Report, pp. 29 and 30)

WHEREAS, the Supreme Court should compel the Legislature to fulfill the Legislature's obligations under Article I, Section 1 of the New Jersey Constitution³; instead, by "staying its hand" against the Legislature and raising its hand against non-exempt New Jersey attorneys, the Court itself is effectively perpetrating two additional constitutional violations, those being of Article VI, Section 2, paragraph 3 of the New Jersey Constitution⁴, and the Thirteenth Amendment of the United States Constitution⁵; and

WHEREAS, the current institutionalized *Madden* system of forced attorney labor ignores the specific needs of indigent clients, as well as the professional qualifications, work schedules, and personal inclinations of attorneys who are appointed to represent them; it is based on the incorrect presumption that "non-exempt" attorneys are fungible as to their qualifications and abilities, and that indigent defendants are fungible as to their needs, and as such it demeans and disservices all parties; and

WHEREAS, the mandatory pro bono system eliminates remunerative work opportunities for those lawyers who are qualified and willing to perform legal services through the Public Defender's office and other publicly funded agencies; and

WHEREAS, in summary, indigent persons facing consequences of magnitude should receive *effective* representation from *qualified* attorneys who work *voluntarily* and are *paid*; and

³ "All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness." (The right to due process of law has been determined to be implicit in this paragraph – see *Pasqua v. Council*, 186 N.J. 127, 147 n.5 (2006), cited on page 2 of the NJSBA Report.)

⁴ "The Supreme Court shall make rules governing the administration of all courts in the State and, subject to the law, the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted." (Underlined emphasis added.) The Legislature has enacted no law authorizing court-ordered conscription of attorneys to perform free legal services.

⁵ "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

WHEREAS, any decision to provide pro bono legal services should be left to the sole discretion of the attorney who is willing to provide such services without payment; put more simply, pro bono legal services should be rendered only on a *voluntary* basis; and

WHEREAS, the Resolution adopted by the New Jersey State Bar Association Board of Trustees on January 12, 2023, calls upon the Supreme Court of New Jersey to abolish the *Madden* system of assignments, and calls upon the New Jersey Legislature to publicly fund the provision of effective legal representation in all cases in which there is a right to counsel;

NOW, THEREFORE, BE IT RESOLVED, by the Salem County Bar Association, as follows:

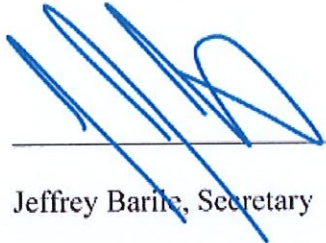
1. The Salem County Bar Association hereby joins the New Jersey State Bar Association in the NJSBA's opposition to the *Madden* mandatory pro bono system, and hereby joins the NJSBA's calls for abolition of the mandatory pro bono system, and for proper public funding for effective legal representation of indigent persons.
2. The Salem County Bar Association hereby adopts, as its official policy in opposition to the mandatory pro bono system, all of the foregoing statements of this Resolution, and all of the findings, conclusions, and recommendations presented in the NJSBA Right to Counsel Committee's Report entitled "Achieving Effective Representation in Right to Counsel Matters" dated April 6, 2021.

BE IT FURTHER RESOLVED, that copies of this Resolution, the NJSBA's January 12, 2023 Resolution, and the NJSBA Right to Counsel Committee's Report entitled "Achieving Effective Representation in Right to Counsel Matters" dated April 6, 2021, shall be distributed by the Executive Committee of the Salem County Bar Association to the Trustees and Officers of the New Jersey State Bar Association; all other New Jersey bar associations; and any members of the

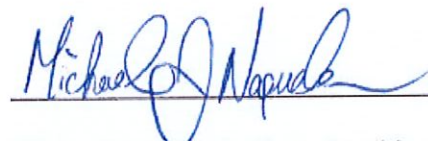
New Jersey Legislature and Judiciary and such other persons or organizations as may be deemed appropriate by the Salem County Bar Association Executive Committee for the purpose of publicizing the Salem County Bar Association's position on this issue and furthering the objectives expressed herein.

The undersigned Michael J. Napuda, Esq., President of the Salem County Bar Association, hereby certifies that this resolution was duly adopted by the members of the Salem County Bar Association on January 24, 2023.

Attest:



Jeffrey Barile, Secretary



Michael J. Napuda, Esq., President



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

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

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

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

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

WHEREAS, the NJSBA convened the Right to Counsel Committee to examine the history of the right to counsel in New Jersey, how that right was established, how the right to counsel was fulfilled in each area of the law, and the effectiveness of assigned counsel under the system developed following the Supreme Court's decision in *Madden*; and

WHEREAS, the Right to Counsel Committee issued a report, *Achieving Effective Representation In Right to Counsel Matters*, outlining thirteen separate recommendations to consider in addressing the issue of effective counsel in matters where there is a right to counsel in New Jersey; and

WHEREAS, chief among the recommendations was to abolish the *Madden* system of assignments to uncompensated counsel in favor of a publicly funded system for the provision of effective representation; and

WHEREAS, the NJSBA Board of Trustees adopted this report on April 16, 2021; and

WHEREAS, the recommendations advocate using a multi-pronged approach to funding the right to counsel including additional funding to the Office of the Public Defender to handle cases most aligned with their current work (parole revocation, contempt of domestic violence hearings, civil commitments, and other such cases); authorizing municipal public defenders to handle municipal appeals; funding



non-profit providers with expertise in particular types of cases (private adoptions, guardianship, paternity); and increasing pool attorney rates, among other recommendations;

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

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

I, Steven K. Warner, President of the Somerset County Bar Association, do hereby certify that the above is a full, true and accurate copy of a resolution passed by the Board of Trustees on February 16, 2023. In witness thereof, I have hereto set my hands as such Secretary on this 16th day of February, 2023.

STEVEN K. WARNER
PRESIDENT
SOMERSET COUNTY BAR ASSOCIATION

Steven K. Warner, Esq.



SUSSEX COUNTY BAR ASSOCIATION

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

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

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

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

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

WHEREAS, the New Jersey State Bar Association convened the Right to Counsel Committee to examine the history of the right to counsel in New Jersey, how that right was established, how the right to counsel was fulfilled in each area of the law, and the effectiveness of assigned counsel under the system developed following the Supreme Court's decision in *Madden*; and

WHEREAS, the Right to Counsel Committee issued a report, *Achieving Effective Representation In Right to Counsel Matters*, outlining thirteen separate recommendations to consider in addressing the issue of effective counsel in matters where there is a right to counsel in New Jersey; and

WHEREAS, chief among the recommendations was to abolish the *Madden* system of assignments to uncompensated counsel in favor of a publicly funded system for the provision of effective representation; and

WHEREAS, the New Jersey State Bar Association Board of Trustees adopted this report on April 16, 2021; and

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

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

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

Dated: March 11, 2023

S/ Kelly A. Sherwood

Kelly A. Sherwood, President of the Sussex County Bar Association



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

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

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

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

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

WHEREAS, the New Jersey State Bar Association convened the Right to Counsel Committee to examine the history of the right to counsel in New Jersey, how that right was established, how the right to counsel was fulfilled in each area of the law, and the effectiveness of assigned counsel under the system developed following the Supreme Court's decision in *Madden*; and

WHEREAS, the Right to Counsel Committee issued a report, *Achieving Effective Representation In Right to Counsel Matters*, outlining thirteen separate

recommendations to consider in addressing the issue of effective counsel in matters where there is a right to counsel in New Jersey; and

WHEREAS, chief among the recommendations was to abolish the *Madden* system of assignments to uncompensated counsel in favor of a publicly funded system for the provision of effective representation; and

WHEREAS, the HBA-NJ Board of Trustees adopted this report on April 16, 2021; and

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

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

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

I, Albertina Webb, Esq., President of the Hispanic Bar Association of New Jersey, do hereby certify that the above is a full, true and accurate copy of a resolution passed by the Board of the Hispanic Bar Association, on March 3, 2023. In the witness thereof, I have hereto set my hands as President, on this 3rd day of March, 2023.


ALBERTINA WEBB, ESQ., PRESIDENT,
HISPANIC BAR ASSOCIATION OF NEW JERSEY