



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

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

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

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

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

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

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

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

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

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

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

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

I, G. Glennon Troublefield, Secretary of the New Jersey State 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 Secretary on this 12th day of January, 2023.

A handwritten signature in blue ink, reading "G. Glennon Troublefield", is written over a horizontal line.

G. GLENNON TROUBLEFIELD
SECRETARY
NEW JERSEY STATE BAR ASSOCIATION