

PRESIDENT'S PERSPECTIVE

JERALYN L. LAWRENCE

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



The 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

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. ■



NJSBA

PRO BONO
AWARDS RECEPTION

PRESENTED BY
NJSBA
Pro Bono Committee

SPONSORED BY



PEAPACK-GLADSTONE BANK

Private Banking since 1921

WEDNESDAY, FEB. 15 | 6-8:30 P.M. | FREE ADMISSION
NEW JERSEY LAW CENTER, NEW BRUNSWICK | REGISTER NOW AT NJSBA.COM