



SOMERSET COUNTY BAR ASSOCIATION

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June 18, 2023

Transmitted Electronically to Comments.Mailbox@njcourts.gov

Administrative Office of the Court

Attn.: Honorable Glenn A. Grant, Administrative Director

Hughes Justice Complex

P.O. Box 037

Trenton, NJ 08625-0037

Re: Comments on Report and Recommendation of Judiciary Working Group on
Attorney Pro Bono Assignment

Dear Judge Grant,

Please accept this letter, with attachment, as the Somerset County Bar Association's ("SCBA") comments in response to your May 8, 2023 Notice to the Bar inviting written comments on the report entitled "Working Group on Attorney Pro Bono Assignment Report and Recommendations." For the reasons set forth in the attached resolution, the SCBA remains opposed to the *Madden* pro bono system and supports the New Jersey State Bar Association's position that same should be abolished.

Thank you for your time and attention to this matter.

Sincerely,

s/ Ryan S. Carey, Esq.

President, Somerset County Bar Association

cc: Lisa Chapland, Esq., Sr. Managing Director of Gov't Affairs, NJSBA
(transmitted electronically to lchapland@njsba.com)



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