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**VIA E-MAIL**

Glenn A. Grant, J.A.D.  
Administrative Director of the Courts  
Hughes Justice Complex  
P.O. Box 037  
Trenton, New Jersey 08625-0037

Re: Comments on Report and Recommendations of the Judiciary Working Group on Attorney Pro Bono Assignments

Dear Judge Grant:

Please accept these written comments to the Report and Recommendations of the Judiciary Working Group on Attorney Pro Bono Assignments.

I am a Partner at Pashman Stein Walder Hayden, P.C., and the Director of the firm's Justice Gary S. Stein Public Interest Center. Although the bulk of our work is on behalf of non-profit organizations serving as amicus curiae in the appellate courts, over the years our attorneys have also provided pro bono representation to individuals via assignments from the court and our partnerships with the Office of the Public Defender, Volunteer Lawyers for Justice, and other legal services organizations.

We write to agree with the Working Group's recommendations but to make our own recommendations regarding an issue that is not addressed in the Report: **the provision of legal counsel to a non-paying parent in a child support enforcement hearing.**

A. The Problem

In Pasqua v. Council, 186 N.J. 127 (2006), the Supreme Court held that indigent parents charged with violating child support orders who are subject to coercive incarceration at hearings to enforce litigants' rights have a constitutional right to appointed counsel. However, the Court also held that it would not use its authority to require lawyers to serve as attorneys in such proceedings on a pro bono basis. Id. at 153. As a result, there are no mandatory pro bono assignments from the court and "unless a method is found to provide counsel to obligors who are determined to be indigent, incarceration may not be used as an option to coerce compliance with support orders." Administrative Directive #07-23, at 13, 17.

The Supreme Court left it to the Legislature to "provide funding to assure the availability of constitutionally mandated counsel to the poor." Pasqua, 186 N.J. at 153. Unfortunately, the Legislature has not acted. Thus, trial courts are largely unable to use the threat of incarceration as a method to coerce indigent parents to comply with child support orders. We understand child

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support collections went down after Pasqua was fully implemented throughout the state. When child support collection is reduced, the state must pay for the needs of indigent children.

We believe the lack of counsel is harmful in two additional ways. First, the parent who is owed child support loses an important tool to ensure compliance with a child support order. Indigent non-payers have become aware that a court cannot order their incarceration if they are unrepresented, removing an effective incentive to comply with the child support order. Second, when the obligee learns that the court's prior support order threatening incarceration for noncompliance will not be enforced, that obligee loses faith in the judicial system. The court itself also loses credibility if its orders are unenforceable.

#### B. Possible Remedies

We encourage the Supreme Court to expand Recommendation #1 and #2 of the Report to include child support enforcement hearings. We believe that the Office of Public Defender should also be funded and charged with providing counsel to indigent non-paying parents in such proceedings or that additional funding should be provided to Legal Services of New Jersey to ensure representation is provided in such hearings.

Until such legislation is passed, we urge the Court to include child support enforcement hearings in Recommendation #3, which encourages county governments to fund counsel in those areas that the Legislature fails to fund.

We note that in the past, Bergen County had a County program that funded attorneys to represent non-paying parents in child support enforcement proceedings. Paired with a work-release program attached to the Bergen County Jail that permitted non-paying parents to leave the jail during business hours to find employment, it was quite successful. The County also provided job listings and job training to assist the non-paying parent to find employment, which benefited both the non-paying parent and the custodial parent and children owed child support.

There are other creative methods of providing counsel to indigent non-paying parents, such as Rule changes that would permit law school clinics and third-year law students to provide such representation. However, we note that this program would be feasible only in the courts within a reasonable distance of the law schools—primarily Essex and Camden counties.

Child support enforcement hearings are important proceedings that were not addressed by the Working Group, and we encourage the Supreme Court to advocate to ensure the availability of the constitutionally mandated counsel recognized by Pasqua.

If you have any questions, please feel free to contact me at 201-270-4930 or [cgriffin@pashmstein.com](mailto:cgriffin@pashmstein.com).

Very truly yours,

CJ Griffin