

## **Frequently Asked Questions— Pro Bono Assignments**

### **Why are New Jersey attorneys required to represent indigent defendants for free when assigned those cases by the court?**

In Madden v. Delran, 126 N.J. 591 (1992), the Supreme Court reaffirmed the bar's duty to represent indigent defendants without pay where the Legislature has made no provision for the Public Defender to represent defendants who are entitled to counsel. The Court recognized that it was placing a burden on the bar that should be more generally shared by the public at large. The Court said: "We realize it is the bar that is bearing the burden . . . We trust the bar understands the strong policy considerations that have persuaded us. As has so often been the case, it is the bar that makes the system work, often without compensation." 126 N.J. at 614.

### **How are attorneys chosen for pro bono assignment?**

Pro bono cases are assigned from a computer list each county maintains of all the attorneys eligible for pro bono assignment in that county. Cases are assigned strictly in order of the list. At the top of the list are attorneys who have had no pro bono assignments, in alphabetical order.

### **How many hours of pro bono service a year must an attorney provide?**

Attorneys are not required to do a certain number of hours per year. Rather, attorneys are required to complete an assigned pro bono case, no matter how many hours that may require. Further, there is no requirement that an attorney complete a certain number of pro bono cases a year. Attorneys are called upon whenever their name reaches the top of the list. For example, depending on the county, an attorney may be required to complete two cases a year or one case every two years.

### **Must all New Jersey attorneys complete pro bono assignments?**

No, certain attorneys, such as most full-time government attorneys, are exempt from mandatory pro bono service. Each year, the director of the Administrative Office of the Courts issues a list of all the categories of attorneys who are exempt. To be exempt, the attorney must request the exemption on the annual pro bono questionnaire which is part of the online annual attorney registration. **If an attorney fails to request an exemption on the pro bono questionnaire, he or she will be assigned a case when his or her name rises to the top of the list.**

### **What types of cases are assigned as pro bono cases?**

Most mandatory pro bono cases fall within three categories: violation of domestic violence restraining orders; municipal appeals; and parole revocation hearings.

**What if the assigned attorney has no previous experience in the type of case he or she is assigned?**

The Supreme Court addressed this issue in Madden v. Delran, 126 N.J. at 607-08. It recognized that frequently attorneys who have no experience in the substantive area of the law involved in the pro bono case will be called upon. As the Court said: "Real estate attorneys, corporate counsel, experts in commercial leases, all have been assigned to represent indigent defendants charged with simple assault, driving while intoxicated; all were required not only to learn how to defend those cases but to find out where the courthouse is." 126 N.J. at 607. If, however, the trial judge is convinced that the assigned counsel will provide ineffective assistance of counsel, the judge should direct the assigned counsel to obtain a substitute. 126 N.J. at 608.

Additionally the Administrative Director of the Courts has made available training materials to assist attorneys in preparation for assignments, <http://www.judiciary.state.nj.us/probono/index.htm>

**I am completely retired from the practice of law. Am I required to do pro bono cases?**

No, you are exempt from mandatory pro bono. You should request exemption code 86 on the annual pro bono questionnaire that is part of the online annual attorney registration.

**I do not have malpractice insurance. Am I required to do pro bono cases?**

Yes. The Supreme Court has determined that having malpractice insurance is not a prerequisite for handling Madden *pro bono* assignments. In fact, there is no requirement that any practicing attorney maintain malpractice insurance.

**I recently lost my job with a law firm and have not yet found another law job. Am I required to do pro bono cases?**

No, while you are not practicing law you are exempt from mandatory pro bono. You should request exemption code 86 on the annual pro bono questionnaire that is part of the online annual attorney registration. When you obtain new legal employment, you are required to update your online attorney registration.

**I am an attorney, admitted in New Jersey, but I practice law and have a bono fide office in another state. I do not practice law in New Jersey. Am I required to do pro bono cases?**

No, you are exempt from mandatory pro bono. You should request exemption code 90 on the annual pro bono questionnaire that is part of the online annual attorney registration.

**I am an attorney, admitted in New Jersey and I am employed as an in-house counsel with my primary office in New Jersey. I do not engage in private practice. Am I required to do pro bono cases?**

Yes. The Supreme Court has determined that attorneys who are in-house counsel with offices in New Jersey and who are in good standing are eligible to receive pro bono assignments, because their work constitutes practicing law.

**I am an out of state attorney who is admitted in NJ, and recently claimed exemption code 90. Am I still exempt under exemption code 90 if I do volunteer legal work in NJ?**

No. You are not eligible for exemption code 90 if you are practicing law in New Jersey even on a volunteer basis. However, if you volunteer 25 hours of pro bono service for one of the approved organizations, you are exempt under exemption code 88 in the following year.

**I am an in-house counsel for an out-of-state corporation and my office is also out-of-state. But the corporation does have stores in New Jersey. Am I eligible to claim an exemption?**

Yes. The Supreme Court has determined that attorneys in this situation are eligible to claim exemption code 90, because they are not practicing law in New Jersey, in any capacity.

**I am an attorney who maintains a bona fide law office in New Jersey. However, I have not represented a private client out of that office for more than a year. Am I required to do pro bono cases?**

Yes. The Supreme Court has determined that any attorney who maintains a bona fide law office in New Jersey, regardless of the amount of activity out of that office, is eligible to receive assignments.

**I am an attorney with a bona fide office in another state, but will occasionally appear in the Federal court system in New Jersey. I have no cases in the New Jersey State courts. Am I eligible for an exemption under exemption code 90?**

Yes. Practicing in a Federal court in New Jersey does not count as practicing in New Jersey, since Federal courts are a separate jurisdiction.

**I am an attorney who occasionally works for a local law firm. I am not formally affiliated with that firm, but only work on an as needed basis. Am I eligible to claim an exemption?**

No. The Supreme Court has determined that attorneys who work on a per diem basis are eligible to receive pro bono assignments. However, the Court has

further determined that an assignment should only be made during a time that these attorneys are actively practicing law in New Jersey.

**I am an attorney who practices law by being placed by a temporary employment agency in law firms or corporations. Am I eligible to claim an exemption?**

No. The Supreme Court has determined that attorneys who practice law through temporary employment agencies are eligible to receive pro bono assignments. However, the Court has further determined that an assignment should only be made during a time that these attorneys are actively practicing law in New Jersey.

**I am an attorney who has worked 25 hours during the past year for various programs listed under category #88. I have worked 15 hours for one of the programs and 10 hours for another. Am I eligible to claim an exemption?**

Yes. The 25-hour requirement is not tied directly to service for one program. If the attorney volunteers 25 hours for any one program or for a combination of programs listed under category #88, then the attorney is eligible to claim an exemption.

**I am an attorney licensed in New Jersey with a bona fide office both in New Jersey and Philadelphia. I volunteer to provide over twenty-five hours of legal services to a domestic violence prevention program in Philadelphia. May I claim an exemption for this volunteer work?**

No. Under exemption code 88, an attorney may claim an exemption if he or she can certify that he or she has performed at least twenty-five (25) hours of pro bono services for domestic violence service providers. However, the volunteer work must be done in New Jersey in order to claim the exemption.

**I am a retired municipal court judge, am I exempt from pro bono assignments?**

No. Exemption code 82 identifies retired judges as Supreme Court Justices, Superior Court and Tax Court Judges, Federal Court Judges, Workers' Compensation Judges and Administrative Law Judges. Only these judges are exempt after retirement.

**I am an attorney admitted into practice for 50 years or more. I am granted an exemption from payment from New Jersey Lawyers' Fund for Client Protection. Am I required to do pro bono work?**

No. If you have an exemption from payment for 50 years or more you are also exempt from pro bono. There is no exemption code number to fill in on the pro bono section of the card; it is automatic.

**I am active military service and exempt from payment from Lawyer's Fund for Protection. Am I required to do pro bono work?**

No. If you have an exemption from payment from Lawyers' Fund for Protection and have completed its form, you are also exempt from pro bono assignments. There is no exemption code number to fill in on the pro bono section of the card; it is automatic.

**I am a stay at home mom and only work part-time on occasional real estate transactions, or wills, and such; am I required to do pro bono work?**

Yes. If you are a licensed attorney in New Jersey and perform occasional attorney transactions you are still required to do pro bono.

**I am a mediator, and or, arbitrator am I exempt from pro bono?**

No. The Advisory Committee on Professional Ethics and the Committee on Attorney Advertising consider attorneys serving as third-party neutrals, such as mediators and arbitrators, as engaging in the practice of law.

**I am a limited license attorney, under R 1:27-2, who works for a corporation. Am I required to do Madden pro bono cases?**

No. These circumstances do not require you to take a pro bono assignment.

**Are free transcripts provided for pro bono cases?**

**Yes. For Appeals to the Appellate Division, see R.2:5-3(d): "If the appellant is indigent and is entitled to have a transcript of the proceedings below furnished without charge for use on appeal, either the trial or the appellate court on application, may order the transcript prepared at public expense."**

**For Municipal Court Appeals to the Law Division, see R.3:23-8(a)(3) (emphasis added): "If the appellant, upon application to the court appealed to, is found to be indigent, the court may order the transcript of the proceedings below furnished at the **county's expense** if the appeal involves **violation of a statute** and at the **municipality's expense** if the appeal involves **violation of an ordinance**."**

**I am an attorney and would like to complete my annual attorney registration on-line. Where can I get information?**

You may go to: <http://www.judiciary.state.nj.us/attyreg/index.htm>

**I am having trouble with the on-line registration system, who do I contact for help?**

855-533-3863,option#2, or [CPF.mailbox@judiciary.state.nj.us](mailto:CPF.mailbox@judiciary.state.nj.us)

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