

NOTICE TO THE BAR

Supplement to Directive 2-04 - Counsel -- Appellate Division Decision in Pasqua v. Council

Supplement to Directive #2-04

To: Assignment Judges

From: Theodore J. Fetter
Deputy Administrative Director of the Courts

Subj: Supplement to Directive #2-04 -Child Support Enforcement - Counsel - Appellate Division Decision in Pasqua v. Council

Date: September 14, 2004

On September 10, 2004, the Appellate Division issued a "not for publication" opinion in Pasqua v. Council, A-6875-02T3, and a copy was e-mailed to you by the Clerk of the Appellate Division. In its decision the Appellate Division reversed the order of the Law Division in Pasqua v. Council, MER-L-406-03, entered on April 24, 2003 (supplemental opinion about counsel fees entered on July 11, 2003), which had held that child support obligors facing coercive incarceration at a hearing to enforce litigants rights have a constitutional right to counsel.

On March 16, 2004, the Administrative Director of the Courts issued [Directive #2-04, "Use of Warrants and Incarceration in the Enforcement of Child Support Orders."](#) That Directive set forth statewide standards and procedures recommended by the Conference of Family Presiding Judges and approved by the Judicial Council that regularized the practices relating to the use of warrants and incarceration in child support enforcement. The Directive redefined certain terminology, promulgated forms, and carefully defined the nature of hearings under R. 1:10-3. It addressed the timing of hearings to enforce litigant's rights, the manner of determining warrant release amounts, and the form to be used for payment receipts. The Directive also included provisions relating to indigency and the right to counsel in these matters, the subject of the Law Division and Appellate Division Pasqua decisions.

In view of the Appellate Division's Pasqua decision, and pending further developments on this issue, I am issuing this supplemental Directive to provide interim guidance as to those provisions of Directive #2-04 affected by the decision.

In accordance with the Appellate Division holding in Pasqua, those provisions of Directive #2-04 relating to indigency review and the right to counsel are hereby withdrawn. Specifically, this includes the following sections of the Directive: B.1.a. (as to the requirement in the last paragraph that hearing officers make findings with respect to the indigency of the obligor), B.2.c. (last bullet deleted), B.3.c. (deleted in full), B.4.c. (deleted in full), G. (reference to indigency review procedure), K. (second paragraph, sentence on right to have counsel appointed), and Appendix C, Order for Coercive Incarceration (second sentence relating to finding of indigence and appointment of counsel).

All other provisions of Directive #2-04 remain in force, pending further review.

T.J.F.

