

## NOTICE TO THE BAR

### Revised Exemptions from *Madden v. Delran* Pro Bono Counsel Assignments for 2004

Beginning in 1993 with a memorandum to the Bar implementing its holding in *Madden v. Delran*, 126 N.J. 591 (1992), the Supreme Court has annually issued the list of permitted exemptions from pro bono counsel assignments. Set forth below is the list of Exemption Categories approved for use during 2003.

This year the Supreme Court has created a new exemption, Exemption Code 90, which exempts out-of-state attorneys who do not have a bona fide office in New Jersey **and** do not practice in New Jersey. This change was prompted by the Court's modification of the bona fide office rule. Also note that the definition of Exemption Code 86, regarding "ineligible to practice law," has been revised to give examples of those attorneys who are exempt under this category.

Additionally, the Supreme Court previously has considered the exemption eligibility of attorneys who practice law on a per diem basis or through a temporary employment agency. Specific guidance in that regard is set forth below.

This information is also included with the 2004 Pro Bono Counsel Assignment Questionnaire, which is distributed as part of the annual attorney registration package.

#### **Exemption Code**

#### **2004 Exemption Categories**

81. Attorneys who work full time for any local, county, State or Federal agency or authority and who by statute, rule, administrative directive, Executive Order, published Ethics Codes or Opinions are prohibited from the private practice of law are exempt. A claim for exemption under this category must cite the specific authority under which private practice is prohibited.
82. All Supreme Court Justices, all Superior Court and Tax Court Judges, all retired Justices and Judges, all Workers' Compensation Judges, all Administrative Law Judges, all Surrogates and Deputy Surrogates, all Child Support Hearing Officers or Juvenile Referees, all Federal Court Judges, and all Municipal Court Judges are exempt.
83. All attorneys working full time for the Administrative Office of the Courts or on the staff of any State or Federal Judge or any vicinage of the Superior Court or any Municipal Court, County Clerk or Surrogate are exempt. Attorneys serving as part-time municipal court directors, administrators, deputy administrators and violations bureau clerks are also exempt.

84. All County and full-time Municipal Prosecutors and Assistant Prosecutors, all attorneys in the Office of Counsel to the Governor, the Attorney General and all Deputy Attorneys General, the Public Defender and all Deputy Public Defenders and all full-time Municipal Public Defenders are exempt. Part-time Municipal Prosecutors, part-time Municipal Public Defenders and Public Defender Pool Attorneys are not exempt.
85. All attorneys who work full time for criminal law enforcement or investigative agencies, such as police forces, the Federal Bureau of Investigation, County Sheriff, Federal Marshals, Casino Control Commission or the Internal Revenue Service, are exempt.
86. Attorneys who are ineligible to practice law in New Jersey pursuant to a statute, Rule of Court or court order are exempt. Attorneys who do not maintain a bona fide office in any state, including New Jersey, are thus exempt. Attorneys who are completely retired from the practice of law are exempt. Attorneys are also exempt if the legal services performed in New Jersey during the period in which the attorney seeks to maintain an exemption are limited exclusively to (1) appearing pro se or pro hac vice or (2) appearing as the guardian of a party in interest. Attorneys who serve as in-house counsel in New Jersey are not exempt under this category. **Attorneys claiming an exemption must include a certification that the specific requirements for exemption have been met.**
87. Attorneys employed full time by a Legal Services Organization, as described in R. 1:21-1(e), or by a Legal Aid Society are exempt.
88. Attorneys who certify that they have performed at least twenty-five (25) hours of pro bono services in the form of legal assistance to the poor, in conjunction with a R. 1:21-1(e) legal services organization, Legal Aid Society, the United States Bankruptcy Court Pro Bono Program, Domestic Violence Service Programs, the U.S. Immigration Court Pro Bono Program, the United States District Court Civil Pro Bono Program or a county or regional pro bono program that has been approved by the Supreme Court in the year prior to the annual New Jersey Lawyers' Fund for Client Protection registration date are exempt. Additionally, attorneys who satisfy the same twenty-five (25) hour requirement by serving as a court-appointed attorney-trustee pursuant to R. 1:20-19 or who volunteer to handle Termination of Parental Rights Appeals as compensated Public Defender Pool Attorneys are also exempt under this category.
89. Attorneys who are members of a District Ethics Committee, a Fee Arbitration Committee, the Disciplinary Review Board, the Disciplinary Oversight Committee, the Board of Trustees for the New Jersey Lawyers Fund for Client Protection, the Supreme Court Committee on the

Unauthorized Practice of Law, the Supreme Court Committee on Attorney Advertising, the Advisory Committee on Professional Ethics, the Committee on Character or the Advisory Committee on Judicial Conduct are exempt.

90. Attorneys who have an out-of-state bona fide office but do not have a bona fide office in New Jersey **and** who do not practice law in New Jersey are exempt. **Attorneys claiming this exemption must include a certification that they do not have a New Jersey bona fide office and that they have not practiced law in New Jersey during the previous calendar year.**

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**Special Instructions to Attorneys who Practice Law on a Per Diem Basis or through a Temporary Employment Agency**

The following information is provided as guidance for attorneys who practice law in New Jersey on a per diem basis or through a temporary employment agency and who do not maintain a bona fide office for the practice of law. All other attorneys should disregard these special instructions.

The Supreme Court has determined that attorneys who practice law in New Jersey at a law firm, corporation or other entity on a per diem basis or through a temporary employment agency and who do not maintain a bona fide law office are not eligible to claim an exemption from pro bono assignments under exemption category #86. These attorneys may claim an exemption only if they qualify under one of the other exemption categories; otherwise, they will be eligible to receive Madden pro bono assignments.

The Court has further determined that these attorneys are eligible to receive assignments only during the time that they are practicing law. Therefore, if an attorney receives an assignment when not actively practicing law, the attorney must immediately contact the office of the Assignment Judge of the assignment county for specific information regarding the attorney's assignment eligibility.

Additionally, attorneys in this category are required to indicate on the enclosed Pro Bono Questionnaire, in the "Assignment County" box, the county in which they will be eligible to receive Madden pro bono assignments. At the attorney's option, this can be either the attorney's New Jersey home residence county or the New Jersey county where the attorney believes he or she will typically be practicing law. (Note: "Out of State" may not be designated in this box.) Once designated, the assignment county can be changed only if the attorney's employment status changes (i.e., the attorney no longer works as a per diem attorney or for an employment agency) or when he or she completes next year's Pro Bono Questionnaire.

As with all pro bono counsel assignment matters, if you have any questions, please call the telephone number indicated in the Pro Bono Questions box found on the front portion of your Pro Bono Questionnaire. If no number is listed, questions should be directed to (609) 984-1560.

/s/ Richard J. Williams  
Richard J. Williams, J.A.D.  
Administrative Director of the Courts

Dated: March 4, 2004