

# Domestic Violence Victim Representation Information Session for Attorneys

Presented By Members of:

United States District Court for the District of New Jersey  
Family Law Section of the New Jersey State Bar Association  
Partners for Women and Justice  
Womanspace

# Madden Appointments and *Pro Bono* Cases

Presented by:

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## Madden v. Delran, 125 NJ 591 (1992)

New Jersey Supreme Court case affirming the constitutionality of the system of appointing *pro bono* counsel to represent indigent defendants.

# The Madden Rule

The bar has a 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.

# Madden Appointment Process

Attorneys are assigned *pro bono* cases through the Administrative Office of the Court's *pro bono* computer system, which maintains an alphabetical list of attorneys eligible for *pro bono* assignment for each county.

# Common Madden Appointments

- Violation of Domestic Violence Restraining Orders
- Municipal Appeals
- Parole Revocation Hearings
- Suspension of Drivers License Hearings for Non-Payment of Child Support (pending)

# Madden Exemptions

- Attorneys who certify that they have performed at least 25 hours of voluntary qualifying *pro bono* service in New Jersey are exempt from being appointed to take a Madden v. Delran *pro bono* case for the following year.
- Qualifying *pro bono* services are defined as legal services performed for a certified *pro bono* organization pursuant to R. 1:21-11 and 12, or for a *pro bono* organization approved by the Supreme Court, or service as a court-appointed attorney-trustee pursuant to R. 1:20-19, or volunteering to handle Termination of Parental Rights Appeals as a compensated Public Defender Pool Attorney.

# Qualifying *Pro Bono* Service

R. 1:21-11(a)(1) defines qualifying *pro bono* service as follows:

- (i) legal assistance to low-income persons;
- (ii) legal assistance to nonprofit charitable, religious, civic, community, or educational organizations or governmental entities in matters that are designed primarily to address the needs of low-income persons;
- (iii) legal assistance to individuals, groups, or organizations seeking to secure, protect, or advance civil rights, civil liberties, or other rights of great public importance; or
- (iv) legal assistance to nonprofit charitable, religious, civic, community, or educational organizations or governmental entities in matters in furtherance of their purposes, where payment of standard legal fees would significantly deplete the organization's or entity's economic resources or would otherwise be inappropriate.

Qualifying *pro bono* service does not include partisan political activity or service on a nonprofit board of directors or other service that is unrelated to the provision of legal representation or legal advice. It does include legal mentoring and training to prepare attorneys, or students in a law school clinical or *pro bono* program as defined in subsection (a)(3), to provide qualifying *pro bono* service.

Qualifying *pro bono* service is undertaken outside the course of ordinary commercial practice and is performed without a fee from the client. If a fee-shifting statute applies in a qualifying *pro bono* case, attorneys or firms in commercial practice may seek fees and are strongly encouraged to donate them to a legal services or public interest organization or law school clinical or *pro bono* program as defined in subsections (a)(2) and (3). If an attorney or firm in commercial practice retains fees in a qualifying *pro bono* case, no attorney may claim an exemption from court-appointed *pro bono* service based on the hours expended on that case. Cases accepted on a contingency-fee basis do not constitute qualifying *pro bono* service regardless of whether the attorney receives a fee.



# Further Madden Exemptions

- 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 Code or Opinion, are prohibited from the private practice of law.
- All Supreme Court Justices, all Superior Court and Tax County Judges, all Federal Court Judges, all Workers' Compensation Judges, all Administrative Law Judges, all retired Justices and Judges, all Surrogates and Deputy Surrogates, all Child Support/Domestic Violence Hearing Officers or Juvenile Referees, and all Municipal Court Judges.

# Further Madden Exemptions

- 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.
- Attorneys serving as part-time municipal court directors, administrators, deputy administrators and violations bureau clerks.

# Further Madden Exemptions

- All County and full-time Municipal Prosecutors and Assistant Prosecutors, all attorneys working in the Office of Counsel to the Governor, the Attorney General and Deputy Attorney Generals, the Public Defender and Deputy Public Defenders, fulltime Municipal Public Defenders, the Public Advocate and Deputy Public Advocates.
- All attorneys who work full time for criminal law enforcement or investigative agencies, such as but not limited to, police forces, the Federal Bureau of Investigation, County Sheriff, Federal Marshals, Casino Control Commission, or the Internal Revenue Service.

# Further Madden Exemptions

- Attorneys who are not currently practicing law, and those who are completely retired. Attorneys are considered not practicing law or retired if the following applies:
  - the attorney's employment is not related to the practice of law;
  - the attorney does not have to be an attorney to hold his or her position;
  - the attorney does not review legal documents;
  - the attorney does not render legal assistance or advice on the law;
  - the attorney does not teach law; and
  - the attorney does not serve in the judiciary in any capacity, in any jurisdiction.

# Further Madden Exemptions

- Attorneys employed full time by a Legal Assistance Organization, as described in R. 1 :21-1(e), or by a Legal Aid Society.
- 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 and attorneys who are employed as peer counselors for the Judge Assistance Program.

# Further Madden Exemptions

- Attorneys who practice law out of state and do not practice in New Jersey in the year 2018 are exempt. An attorney who appears *pro se* or *pro hac vice* or as the guardian of a party in interest may still claim this exemption if those are the only legal services performed in New Jersey.
- Attorneys who serve as part-time Municipal Prosecutors are exempt from all criminal and quasi-criminal *pro bono* cases. However, they may still be assigned civil *pro bono* cases.

## **HOST**

Chief Judge Freda Wolfson  
United States Magistrate Judge for the District of New Jersey

## **PANELISTS**

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