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MEMORANDUM

TO: Members of the Bar

FROM: Glenn A. Grant, J.A.D., Acting Administrative Director

SUBJECT: 2021 Pro Bono Exemption Categories

DATE: January 29, 2021



In Madden v. Delran, 126 N.J. 591 (1992), the Supreme Court affirmed the bar's duty to represent indigent defendants without receiving compensation, where the Legislature has made no provision for the Public Defender to represent defendants who are entitled to counsel. Attorneys may be exempt from pro bono assignments for various reasons which are categorized by code.

The 2021 exemption codes for pro bono assignments are listed below and may also be found at <https://www.njcourts.gov/attorneys/assets/probono/memotothebaronexemptions.pdf?c=OW3>. If you qualify for any of the exemptions, please select the appropriate exemption code number in the pro bono section of the online annual registration form.

The online form also asks you identify your "assignment vicinage" or county for pro bono assignments. Your assignment county must be related to (1) the New Jersey county where you reside; (2) the New Jersey county where you serve as corporate counsel; or (3) the New Jersey county where you or your firm has an office that you work out of. You should select "out of state" or "out of country" if either applies. Attorneys using the paper registration form who qualify for an exemption should write the appropriate exemption code number in the pro bono section of the form. Attorneys using the paper registration form must also identify their "assignment vicinage," or select "out of state," or "out of country," in the appropriate location on the paper form. Please note that different sections of the form serve different purposes and an exemption in one section does not necessarily entitle you to an exemption in another.

Information about the Judiciary's pro bono counsel assignment program, along with training materials to assist attorneys receiving domestic violence contempt, parole revocation, and municipal court appeal assignments is located at <https://www.njcourts.gov/attorneys/probono.html>. Questions may be directed to (609) 421-6100 or to probono.mailbox@njcourts.gov.

Change of Exemption Status

Attorneys who need to make a change to their exemption status and who are registering online must make the change through the Attorney On-line Registration and Payment Center at <http://www.njcourts.gov>. Those attorneys who registered on paper must immediately notify the Superior Court Clerk's Office of any exemption status changes during the course of the year. If "out of state" is indicated as your assignment vicinage, the request for a change in exemption status should be submitted in writing, to the Superior Court Clerk's Office, Administrative Office of the Courts, P.O. Box 971, Trenton, N.J. 08625.

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

The Supreme Court has determined that attorneys who practice law in New Jersey on a per diem basis or through a temporary employment agency are not eligible to claim an exemption from 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 vicinage.

2021 Pro Bono 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 Code or Opinion, are prohibited from the private practice of law, are exempt.
82. All Supreme Court Justices, all Superior Court and Tax Court 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 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 working in the Office of Counsel to the Governor, the Attorney General and Deputy Attorney Generals, the Public Defender and Deputy Public Defenders, full-time Municipal Public Defenders, the Public Advocate and Deputy Public Advocates are exempt. **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 but not limited to, 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 not currently practicing law, and those who are completely retired, are exempt. 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.

Attorneys who are ineligible to practice law in New Jersey under statute, Rule of Court, or court order are also 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 in-house counsel in New Jersey are **not** exempt.

87. Attorneys employed full time by a Legal Assistance 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 qualifying pro bono service in New Jersey for a certified pro bono organization or for a pro bono organization approved by the Supreme Court, in the year ending on **December 31, 2020**, are exempt under this category. See, R. 1:21-11 and 12. 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 and attorneys who are employed as peer counselors for the Judge Assistance Program are exempt.
90. Attorneys who practice law out of state, who do not practice in New Jersey in the calendar year (2021), 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.
91. 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.