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Parties in Domestic Violence Matters Should Have a Right to Counsel

John Pollock, New Jersey Law Journal

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In a major decision that went almost completely unnoticed earlier this year, the Supreme Court of New Jersey refused to answer whether victims and alleged abusers in a domestic violence protective order proceeding have a constitutional right to a lawyer provided by the state if they can't afford one.

Last year, the New Jersey Court of Appeals (a lower court) held that there is no such right to counsel, even though longstanding New Jersey law says there is such a right whenever someone faces a "consequence of magnitude." Yet the potential consequences at stake in a domestic violence case are undeniably extreme: besides the obvious risk of serious physical and psychological harm, the victim also faces a loss of access to home and children, loss of employment, and severe effects on other basic human needs. And the alleged abuser can lose these same things while also being deprived of access to firearms or cars, subjected to involuntary psychiatric evaluations, having their name placed in an offender registry and being jailed for any violations of the order. Consequences of magnitude indeed.

The Supreme Court of New Jersey could have fixed this, but it said it was refusing the appeal because such a right to counsel would "affect thousands of cases annually," as if a person's constitutional rights should vanish if too many other people are in the same boat. Justice Albin, objecting to the court's refusal, rightly pointed out that, "Our approach has not been that if too many indigent defendants require counsel, we will provide counsel to none." Commenting on the U.S. Supreme Court's recognition in *Gideon v. Wainwright* of a right to counsel for criminal cases, Justice Albin observed, "Had the United States Supreme Court taken the cost-analysis approach, *Gideon* would not be on the books...."

The Supreme Court of New Jersey also said it wouldn't take the case because the plaintiff didn't ask for a lawyer at trial, and so the right to counsel issue was "purely academic." But once the Court of Appeals issued a ruling, how could it be "academic"? As Justice Albin explained, the Court of Appeals ruling "stands as the law of the state until this court says otherwise." In fact, it has been relied on several times—most recently in June—to deny requests from other victims or alleged abusers seeking counsel, showing the true harm caused by the Supreme Court's refusal to review that ruling.

We hope that if the high court is given another opportunity, it won't decline to decide this

important issue, but instead will act to protect the important rights and needs of all low-income New Jerseyans facing such dire consequences. •

Pollock is the coordinator of the National Coalition for a Civil Right to Counsel in Baltimore.

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