



20 WEST STREET, BOSTON, MA 02111-1204 • COMMUNICATIONS@MASSBAR.ORG

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CONTACT: Jason Scally, (617) 338-0682; Cameron Woodcock, (617) 338-0675

Mass. Bar Association Urges SJC to Adopt Right to Counsel for Defendants Facing Risk of Incarceration for Debt

BOSTON, Mass. — The Massachusetts Bar Association (MBA) has filed an amicus curiae (“friend of the court”) brief in the case of *Department Of Revenue Child Support Enforcement & Another v. Grullon* (SJC 12784), urging the Supreme Judicial Court to recognize a defendant’s constitutional right to a lawyer in civil contempt hearings due to nonpayment of child support when there is a possibility of imprisonment. The MBA’s brief was joined by the Boston Bar Association and Boston College Law School Professor Mark Spiegel, and it also received a letter of endorsement from the American Civil Liberties Union of Massachusetts. The SJC will hear oral arguments in the case on Thursday, Jan. 9.

In the underlying case, the defendant, Joshua Grullon, was found in civil contempt for nonpayment of child support and sentenced to 10 days in jail, which he has since served. During the civil contempt hearing, Department of Revenue (DOR) lawyers represented the interests of the defendant’s former spouse, but the defendant did not have a lawyer. The defendant argues on appeal that the finding of contempt was in error since his due process rights were violated when he was not appointed counsel during the hearing where he faced the possibility of going to jail.

In its brief, the MBA argues that legal precedents under both the U.S. Constitution and the Massachusetts Constitution, which provides even stronger protections under its Declaration of Rights, require a reversal of the contempt order and a determination that the right to counsel attaches whenever an indigent defendant is facing government lawyers and has a realistic risk of incarceration for nonpayment of debt.

“When the government has counsel and the other party does not, it creates an unequal playing field and increases the likelihood of a miscarriage of justice,” said MBA Chief Legal Counsel Martin W. Healy. “We’re asking the court to send a clear statement that, in Massachusetts, the right to have a lawyer represent you when loss of liberty is at stake is a fundamental right. No one should face the possibility of jail time for being unable to pay a debt without the constitutionally required safeguard of representation.”

The MBA’s amicus curiae brief is available at www.massbar.org/grullonbrief.

Incorporated in 1911, the Massachusetts Bar Association is a non-profit organization that serves the legal profession and the public by promoting the administration of justice, legal education, professional excellence and respect for the law. The MBA represents a diverse group of attorneys, judges and legal professionals across the commonwealth.