

THE
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Court Declares Right to Obtain Counsel in Domestic Violence Cases

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On May 9, 2019, the Appellate Division of the Superior Court ruled that defendants in domestic violence cases must be informed of the right to obtain counsel and of the serious consequences that could result from the entry of a Final Restraining Order (FRO).

In B.P. v. R.P. the appellate court reaffirmed its previous caution that an FRO “is not merely an injunction entered in favor of one private citizen against another” but has “serious consequences to the personal and professional lives of those who are found guilty of what the Legislature has characterized as a serious crime against society.” Consequences can include fingerprinting and entry in a central registry of offenders, as well as potential imprisonment for violations of an FRO.

Based on the above, the Court determined that the right to seek counsel is “an important due process right” to domestic violence defendants.

The decision did not go so far as to say that a defendant has a right to appointed court-counsel, but rather “the reasonable opportunity to retain an attorney.” In this case, the trial judge had failed to inform the defendant of the “serious consequences” if found guilty, or conduct any exploration of the defendant’s right to an attorney. As a result, the FRO was vacated and the case remanded for a new hearing.

The New Jersey Legislature having declared that domestic violence is a “crime against society,” the Court was properly mindful of its responsibility toward the administration of justice. While some observers may contend that the ruling should have included a right to court-appointed counsel, this argument is left for another day.

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