

**To: New Jersey Law Revision Commission**  
**From: Jayne Johnson**  
**Re: New Jersey Servicemembers' Civil Relief Act**  
**Date: December 9, 2013**

## MEMORANDUM

At the April Commission meeting, Staff presented a memorandum examining the two statutes in force in New Jersey that provide protections to active duty, service men and women, the Federal statute, the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C. App. 501 et seq; and the state statute, the New Jersey Soldiers' and Sailors' Civil Relief Act ("NJSSCRA"), N.J.S. 38:23C-1 et seq. The NJSSCRA provides the initial reference point for New Jersey courts when faced with matters involving relief provided by both the NJSSCRA and the SCRA. Legal practitioners have identified certain recurring issues that arise when representing servicemembers in New Jersey courts; particularly, a court's ability under the NJSSCRA to exercise discretion when determining whether to stay a proceeding, to vacate or set aside a judgment or decree against a servicemember, or to appoint an attorney to represent the servicemember. While the NJSSCRA mirrors the SCRA in many respects, the noted conflicts between the NJSSCRA and the SCRA might challenge consistent application to servicemembers in New Jersey. Consequently, the potentially unavoidable result might be court resolution of these matters in a manner not entirely consistent with the SCRA's prescriptions.

In April, Staff presented this matter to the Commission and proposed a project to determine whether the NJSSCRA continues to present problems for legal practitioners and, if so, to evaluate the extent to which it may be practicable to remediate them. Just prior to the April Commission meeting, an interested member of the bar informed Executive Director Laura Tharney that the Military Law and Veterans' Affairs Section of the New Jersey State Bar Association (NJSBA) anticipated drafting a state statute by the end of the summer that harmonized the NJSSCRA with federal law. At the April meeting, the Commission determined that it would not take action on this project pending further outreach to determine if the NJSBA or other entities were preparing draft legislation, and would consider at a later meeting whether to move forward with a Tentative Report. In the ensuing months, Staff reached out to the NJSBA to determine the status of the draft legislation. In the most recent conversation with the NJSBA, Staff was informed that the NJSBA is not involved in or aware of any draft legislation reconciling inconsistencies between the NJSSCRA and the SCRA, and it is not the intention of any section or subcommittee to begin work on such legislation in the near future.

Consequently, this memorandum is submitted to request Commission authorization to move forward with this project and to further investigate whether there are legal or practical issues presented by the NJSSCRA that may require amendment to ensure its compatibility with the SCRA.