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Offering Military Legal Assistance to the New Jersey Reservist: The State Bar Association's Response

by William S. Greenberg

On the cover of the March 26, 2007, edition of *The New Yorker* appeared a haunting and ambiguous reminder of the nation at war. A wounded soldier in combat uniform, in a wheelchair at the bottom of a steep and daunting staircase leading to a medical facility, was alone. Preoccupied with other matters were three medical personnel in the standard light blue of hospital workers, oblivious to the existence and the plight of the soldier.

This combat veteran might have faced the very same challenges if it were March 1967, 1951, 1943, 1918, or even 1863. In each of those years unredeemed promises of medical and financial care had been made. In each of those years, there was no end in sight to a war in which the soldiers served and suffered. In each of those years plans were already being formulated, and programs begun, to treat the physical and emotional wounds of war, by government and private organizations.

In Sept. 2006, the New Jersey State Bar Association launched a structured program of public service directed to all New Jersey Reserve component personnel called to active duty and deployed to Iraq or Afghanistan after Sept. 11, 2001.

Not all of the grievous consequences of war suggested by the soldier depicted on *The New Yorker* cover are possible to redress with the implementation of the NJSBA

program, but participants are manifestly at work, doing their part in the war effort for the service members regardless of their view of this or any war.

The Program

Every lawyer who volunteers as a participant is required to agree to two main contingencies in order to be of public service to the soldier. First, the volunteer attorney must be a New Jersey lawyer in good standing (though not necessarily a member of the New Jersey State Bar Association). Second, participants must forego all professional fees and reimbursement of out-of-pocket expenses, and further agree that if fee-shifting statutes provide fees or other reimbursement, all such monies will be donated to the military charity or military aid program of the lawyer's choice, and in that lawyer's name.

Each participating lawyer registers with the program office at the New Jersey Law Center and lists the area of law or legal specialties he or she is willing to provide in litigation or litigation-directed legal assistance. It is not necessary to be proficient, or even knowledgeable in military law, nor in the substantive law particular to the status of the client as a Reserve service member.

The important element for the volunteer lawyer is the comfort level with litigation, or representation likely to lead to litigation, in the particular specialty or area of the law. The NJSBA program is intended to provide representation to eligible service members when all other efforts at settlement or redress have failed, and litigation is the most likely means of providing a remedy. Litigation includes traditional court proceedings, administrative agency determinations, and alternate dispute resolution proceedings, including arbitration and mediation.

The armed forces are unable to provide a uniformed lawyer qualified to represent the service member in civil litigation, either because of lack of lawyer resources or because military regulations prohibit such representation. While the military establishment has recently devoted considerable resources to increasing legal assistance (a military term of art generally encompassing all civil matters involving individual soldiers), there is insufficient personnel and uneven geographical distribution of military lawyers, to provide a stable source of representation now, and in the foreseeable future. This makes a legal assistance program a practical necessity for these troops.

Experience has long been a good predictor of what the program may expect, and therefore what the program will need by way of lawyer volunteer specialty. All legal assistance is civil. The military provides lawyers in criminal or military justice cases. To the extent that there is a civil law component to what is an essentially quasi-criminal or criminal matter, our program lawyers may participate. But the heart and soul of this program is to provide for the service member in the everyday areas encountered by civilians and their attorneys.

Employment and reemployment rights and responsibilities; creditor and debtor relationships; matrimonial and family matters, especially divorce and custody, and access to veterans and other military medical and financial and professional service benefits, are the bedrock issues upon which our program has been established.

From High Point to Cape May lawyers have volunteered for The State Bar Program administered at New Brunswick. Twenty New Jersey partners at McCarter &

English alone, have agreed to participate. The program must grow through awareness created by articles such as this, by the testimony to the New Jersey Assembly Military And Veterans Affairs Committee delivered early in March, through the annual military law institute in April, and by individual appearances before county and special bar associations during the next few months. Most importantly in the expansion of this program will be the power of word of mouth persuasion, lawyer to lawyer.

While we are working today on our individual cases and clients, we must be building the program through volunteer lawyers who will be available for the all but certain dramatic increase in clients that the new troop deployments and the ultimate end of the war will engender.

The program also anticipates the creation and customizing for New Jersey lawyers, training programs geared to the special needs of our reservists and the special requirements of federal and state law when servicemembers are the subject of civil or administrative legal proceedings.

Finally, the program anticipates that, consistent with professional responsibility and client privacy, appropriate public recognition of the lawyer volunteer will be offered by a grateful nation, state and local practice region.

THE SERVICEMEMBER.

All New Jersey residents who were called to active duty after September 11, 2001, as members of a reserve component of the armed forces, who were deployed to, or overseas in support of, Iraq or Afghanistan are eligible. The only other requirement is that the need for legal assistance arose out of the military status of the servicemember and was the result of the call to active duty.

For example, a member of the New York Army National Guard but a resident of New Jersey on active duty in Iraq is entitled to the benefits of the program in a dispute with his landlord over rent or the lease provisions, which arose because of his deployment. On the other hand, a member of the Army Reserve also a New Jerseyan, who is deployed after September 11, 2001, successfully completes the deployment and leaves military service, and thereafter enters into a lease, is ineligible for the program when a subsequent dispute arises between landlord and former servicemember tenant.

In short, the program is intended for the current, or former reservist, who, but for deployment to or in support of, Iraq or Afghanistan would not have had the specific civil litigation problem.

A helpful way of regarding the servicemember and the specific intent behind this program is to examine the definitions and purposes behind the two most important federal statutes in this universe of military legal assistance.

The Servicemembers Civil Relief Act, effective in December 2003, had its origin in 1918 and 1940. Among its purposes were provisions for, and strengthening and expediting the national defense “through protection...to servicemembers...to enable...(them)...to devote their entire energy to the defense needs of the Nation”; and “to provide for the temporary suspension of...proceedings...that may adversely affect the civil rights of servicemembers during their military service”. 50 Appendix USCA 501, 502.

The Uniformed Services Employment And Reemployment Rights Act, effective in October, 1996, was intended “to encourage non career service...by eliminating or minimizing the disadvantages to civilian careers and employment...to minimize the disruption to the lives of persons performing service...as well as to the employers, fellow employees, and their communities, by providing...prompt reemployment...and...prohibits discrimination against persons because of their service in the uniformed services”. 38USCA4301.

The spirit of the law has been enforced and reinforced through many state and federal proceedings over the years, and much litigation is to be expected because of the complexity of some specific provisions and because of ever changing attitudes of courts and employers to military service. This is particularly true with regard to reserve components service in time of war. It is well to remember that this is the first truly extended period of war since the end of conscription in 1973, and the first war without

full scale national mobilization which has depended substantially upon the deployment of strategic reserve components for the tactical prosecution of the war.

New Jersey will face more than the fair share of medical and financial civil litigation problems arising from the deployment and redeployment of reserve component forces when there is this level of commitment.

During the past year alone, in any given month, the number of reservists deployed in Iraq or Afghanistan has been between ninety thousand and one hundred and ten thousand. At any given time, the average composition of all deployed forces has included from forty to fifty percent reservists. More than half the married reservists report a loss of income because of mobilization. Three quarters of reservists cite family burdens as the reason to leave the military. More than half cite too many deployments as the reason for leaving the military. The, See, US Department of Defense Annual Survey Of The Status Of Forces.

These statistics, recent public revelations of bureaucratic bungling in the military and veterans medical and social services conceal a far more serious threat to the fabric of our military and to our society. With more than one million military personnel who will have been deployed and redeployed to combat or combat support before the end of this year, half of whom will have been reservists, the time for volunteers, and public service among New Jersey lawyers is now.

To quote the French Novelist Emile Zola, “the truth is on the march and nothing will stop it”.

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