

**ABA Working Group
On
Protecting the Rights of Service Members**

Introduction:

The shape and face of the armed services are in great transition, with the role of the citizen-soldier increasing in prominence and importance, and with the nation's role in international peace-keeping efforts expanding. Secretary of Defense Donald Rumsfeld is working to transform how the Defense Department and the Armed Services organize, train and equip for the 21st century, so that they may meet the changing threats of a new era. The American Bar Association looks forward to contributing to Secretary Rumsfeld's reforms. While Secretary Rumsfeld has focused on force structures and weapons systems, the ABA believes it is also necessary to look at the legal impact these transformations will have on the lives of our service members. ABA President Dennis Archer, continuing the ABA's long-standing tradition of support of our armed forces, has appointed a Working Group on Protecting the Rights of Service Members that will take the lead in analyzing and recommending what new legal protections may be needed to ease the burden of our men and women in uniform, as they are deployed around the globe to protect our freedom.

As the military actions in Afghanistan and Iraq illustrate, the role of reservists and the National Guard has been expanded greatly, with these "citizen-soldiers" being called on to serve greater lengths of time in fulfillment of their military missions. The role of our armed forces in international peace-keeping and nation-building efforts is also expanding, with men and women in uniform facing, for example, potential long-term deployment to Liberia. Future military undertakings, as well as the continued war on

terrorism, will only further expand our country's reliance on long-term mobilizations, including the overseas presence of service members.

Such service does not come without a price. Extended periods away from home can bring serious legal challenges to the men and women of our armed forces, both in preparing for and returning from their tours of duty. In some situations, service members have risked losing custody of their children in the face of a challenge by an ex-spouse because they were unable to attend a custody hearing while deployed or in boot camp. There have been reports of reservists returning home from active duty to find their businesses in financial trouble, life savings spent, and credit records tainted. Service members, in the wake of rapid deployment, have needed to terminate leases or personal property agreements when they are called upon to move out of state or even out of the country.

The Working Group on Protecting the Rights of Service Members will address the pressing legal issues that confront our men and women in the armed services, with particular attention paid to the broad areas of consumer law and family law, that often present unique challenges to deployed service members.

Clearly, there is a need for such legal assistance. There is a pending tax bill in Congress designed to help members of the armed forces and the National Guard, which would, among other measures, extend tax deadlines for deployed service members. This bill has languished for some time, despite the fact that more than 200,000 reservists and members of the National Guard have been called up for active duty since the terrorist attacks of September 11th. In addition, more than 200 service members have been killed

in Iraq. More everyday issues also face the men and women of our armed services, relating to creditors, home ownership and rental, maintaining a business, childcare and child support among others.

Working Group:

The working group will function under the auspices of the ABA Standing Committee on Legal Assistance for Military Personnel (LAMP), building upon and expanding the substantial success of the committee's efforts in Operation Enduring LAMP in mobilizing volunteer civilian lawyers to augment the work of military legal assistance attorneys in providing free legal help to reservists. The working group will provide institutional continuity to existing ABA programming and policy, as well as review the often incongruent state and federal regulations that affect service members. The group will also identify states with existing laws that can serve as models for others. At present, New York and Florida have good examples of laws that protect service members. Finally, the working group will produce a report proposing model rules and procedures suitable for submission to the National Conference of Commissioners on Uniform State Laws.

The working group's efforts will build upon already-existing ABA policy related to the military. Among these are policies on access to counsel in the military, delivery of legal services in the military, the Judge Advocate Career Program, legal assistance for active duty military personnel, military lawyers, the Reserve Judge Advocate Program

and reserve or guard attorneys, as well as numerous policies pertaining to the Soldiers' and Sailors' Civil Relief Act.

The working group will include representatives from a number of ABA entities:

- Section of Family Law
- Section of Real Property, Probate and Trust Law
- Section of Labor and Employment Law
- Section of Taxation
- General Practice, Solo and Small Firm Section Military Lawyers Committee
- Government and Public Sector Lawyers Section
- Section of State and Local Government Law
- Section of Public Contract Law

Issues:

Although there are a number of issues that the working group can explore, it will first focus on four central policy initiatives:

1. Soldiers' and Sailors' Civil Relief Act (SSCRA)/Consumer Law/Family Law

The Soldiers' and Sailors' Civil Relief Act provides important protections that require comprehensive review and integration or correlation with individual state's legislation, including adoption of SSCRA-like protections at the state and local level.

Testifying before the House Subcommittee on Benefits, Committee on Veterans' Affairs in July 2002, Craig W. Duehring, principal deputy assistant secretary of defense,

reserve affairs, noted that a recent canvas determined that 21 states and territories have laws providing some type of SSCRA protections, with 12 of those states providing protections that are identical or nearly identical to those outlined under SSCRA.

The working group would, among other actions, undertake efforts to:

- Develop laws similar to the SSCRA that apply to National Guard members who are serving on state active duty, including capping the interest on installment loans at six percent;
- Require state and municipal employing authorities to continue pre-active duty rights and privileges, including health insurance, seniority and other existing benefits;
- Exempt National Guard and reservists from penalties regarding expiration of mobile home and motor vehicle registrations when these registrations expire while the service member is serving on federal or state active duty;
- Provide requirements for the termination of a telecommunications service contract;
- Provide requirements for the termination of an agreement to purchase real estate by a service member;
- Extend the scholarship program eligibility periods for students who are attending postsecondary institutions and are in the National Guard or Reserve and called to federal or state active duty;
- Provide full or prorated refunds of tuition payments made by reservists and National Guard members when they are mobilized during the academic year.

2. Child Support/Child Custody/Family Law

The military has a large number of married, divorced, and single-parent reservists, and a significant percentage of service members are divorced with children and have child support obligations, as well as visitation or custodial rights. However, many court systems do not have procedures in place to allow for expedited hearings to provide legal protection for child visitation, custody, and review or modification of child support orders.

3. Uniform Services Employment and Reemployment Rights Act (USERRA)/ Employment Law

Large-scale mobilizations mean that significant numbers of reservists leave the civilian work force and need job protection during their mobilization and upon their return. Also, small businesses face the loss of key personnel—owners and other senior-level staff—as well as of many rank-and-file employees. These businesses require legal support, to avoid foundering or failing.

4. Expanded Legal Assistance Program (ELAP)

Since 1943, the military services through their legal assistance programs have provided free legal aid to help service members and their families deal with personal legal issues. Among the services provided are the drafting and executing of wills, establishing powers of attorney, health care directives, and marital separation agreements.

Most legal assistance is provided within the confines of military bases and aboard ships at sea. However, many service members cannot afford to hire lawyers to adequately represent them in certain civil actions. Further, some military clients find it difficult to hire counsel because their legal matter involves financial amounts that many private practitioners consider uneconomical to handle.

To address these problems, the armed services have established Expanded Legal Assistance Programs, to allow for limited representation by a military attorney in a state civil court for military members who qualify for assistance.

Military lawyers are frequently assigned to many different locations during their careers, and thus are most likely not members of the bar of the state in which they are providing legal assistance. In response some states have passed rules or laws to authorize in-court representation by military lawyers not admitted to the bars of their states. A model ELAP rule is now policy of the ABA, and we urge more states to join the nine states that currently allow practice by military lawyers under the prescribed state regulations.

Additional Issue Areas:

Although the four issue areas described above constitute the most immediate concerns to be addressed by the working group, and are particularly suitable for the working group's attention because existing ABA policy complements their address, other areas of inquiry exist.

In particular, the working group may review in-state tuition assistance programs and loan deferral and repayment assistance programs for service members and their families.

In-State Tuition Assistance

Of concern to a number of service members is in-state tuition assistance. As our armed forces become more mobile, the intricacies of who among them is eligible for in-state tuition, including restrictions and guidelines such as length of residency, grow more complicated.

Loan Repayment

All branches of the military offer some sort of student loan forgiveness for military lawyers. For example, the U.S. Army offers a loan repayment program, which provides that individuals participating in the Loan Repayment Program earn 33 1/3 percent, or \$1,500 (whichever is greater) toward the remaining original unpaid principal on all qualifying loans for each completed year of enlisted active duty up to \$65,000. “Qualified Loans” include Stafford and Perkins loans; private loans are not covered. The Army authorizes program payments toward the remaining original unpaid principal balances when the soldier enters active duty, but will not repay loans incurred after the soldier enters active duty. Other military entities also offer incentives for service members to remain on active duty.

With the creation of the working group, the ABA is taking the lead to ensure that all service members and their families are protected from unequal treatment, discrimination and economic disadvantage, while also establishing the mechanisms to ameliorate the inconsistency among state and federal benefit programs, so that members of the armed services may avail themselves of the full extent of the rights and protections that flow from their service to our nation.