

## **RESPONSE OF NJSBA CLASS ACTIONS COMMITTEE REGARDING A-4135**

At the request of the NJSBA, the Class Actions Committee convened to discuss Assembly Bill A-4135. Committee members participating included an approximately equal number of attorneys who primarily represent plaintiffs and attorneys who primarily represent defendants.

All participants agreed that, at a minimum, there is a possible constitutional issue with A-4135. That constitutional issue arises from article VI, section II, paragraph 3 of the New Jersey Constitution, as authoritatively construed by the Supreme Court of New Jersey in Winberry v. Salisbury, 5 N.J. 240 (1950). In that case, which involved legislation fixing the time to appeal, the Court held that matters of Court practice and procedure were reserved to the Court pursuant to its rulemaking authority under article VI, section II, paragraph 3, and the Legislature had no power to promulgate such rules.

Certain of the Committee's participants, including some from both sides of the "v.," believed that Winberry makes A-4135 unconstitutional without more. For that reason, those members found it unnecessary to address the merits of the bill. Other participants believed that the Legislature might have authority to enact legislation such as A-4135 because a right to appeal a class certification decision may be deemed substantive, not merely a matter of practice and procedure, and/or that the Committee should pass over the constitutional issue and reach the merits of the bill.

On the merits, independent of the constitutional issue, the Committee did not reach consensus. The following summarizes some of the views of both sides, without attempting to list all arguments made or all the details of the positions summarized in this Response.

Some participants endorsed the immediate appeal provision of A-4135 on the grounds that rulings on class certification are often determinative, as a practical matter, of a class action case. Those participants believed that the parties should be entitled to immediate appellate review as of right given the importance of that decision to the overall case. Other participants opposed the immediate appeal provision on the grounds that the current Court Rules and the Appellate Division's decisions under those Rules have struck the proper balance in granting leave to appeal, of both grants and denials of class certification, in appropriate cases. Those participants noted that the Supreme Court had declined, for that very reason, to import into the Court Rules the provisions of Federal Rule of Civil Procedure 23(f), which provides for appeals of class certification decisions in some cases, and that A-4135 goes well beyond Rule 23(f) by allowing appeals in every case.

The Committee also could not reach consensus on the automatic stay provision of A-4135. While some participants endorsed the stay as necessary to avoid altering the status quo during the pendency of an appeal, other participants opposed an automatic stay on the grounds that some, if not most, class certification decisions will not be overturned under the applicable "abuse of discretion" standard of review, and there is no reason to halt proceedings in such cases for a year or more while appeals proceed. Others felt that the issue of possible delay could be addressed, possibly through Court rulemaking, through expedited procedures for such appeals.