**To: New Jersey Law Revision Commission**

**From: Jayne Johnson**

**Re: Bill revising the statutes governing the affidavit of merit**

**Date: January 19, 2017**

Staff presented, at the May 2016 Commission meeting, a Memorandum carried forward from the April meeting agenda, concerning the statutes governing the Affidavit of Merit (AOM). The Memorandum was prepared in response to a New Jersey Law Journal article which discussed the concerns expressed by a federal district court judge, who called on the State Legislature to update the AOM statutes. The Commission preliminarily discussed the inconsistent rulings generated from the statutory requirements, and decided to hold further consideration of the issues until the N.J. Supreme Court decided *Meehan v. Antonellis*, 226 N.J. 216 (2016).

Following the *Meehan* decision in August of 2016, the Commission considered the AOM statutes again at the September Commission meeting. Staff, however, did not engage in additional outreach or drafting after that time in deference to the ongoing work of the Legislature, evidenced by the introduction of a bill proposing statutory revisions to address many of the issues arising from the AOM statutes. Last week, Commission Staff was asked to join discussions concerning the bill, which is recommended to:

* Revise the affidavit of merit requirement to provide that the affidavit must be filed at the time the plaintiff files the complaint, instead of within 60 days following the date of the filing of the answer to the complaint by the defendant.
* Require that the affidavit include a specific articulation of the duty of care allegedly breached and the conduct that constituted that breach, and shall provide the basis for identifying that duty.
* Revise the circumstances under which a court may waive the same specialty or subspecialty requirements of N.J.S. 2A:53A-41, in medical malpractice cases.
* Provide that the specialty or subspecialty requirement can be waived upon motion by the party seeking a waiver, if the moving party has demonstrated extraordinary circumstances, the court has determined that an appropriate expert otherwise would not be available, and the court determines that the proposed expert possesses sufficient training, experience and knowledge to provide the testimony as a result of active involvement in, or full-time teaching of, medicine in the applicable area of practice or a related field of medicine.
* Remove the requirement that the moving party demonstrate to the

satisfaction of the court that a good faith effort has been made to identify

an expert in the same specialty or subspecialty.

The full text of the bill is provided, along with this Memorandum, for further review. Thank you for your time and consideration of this latest development concerning the Commission project.