

Judge's Guide

Servicemembers Civil Relief Act (**SCRA**)



This Judge's Guide was originally developed by the North Carolina Bar Association Legal Assistance for Military Personnel (LAMP) program. The Office of The Kentucky Attorney General has revised the Guide to reflect changes in the law resulting from Congress' amendment of the law in December, 2003.

JUDGE'S GUIDE TO THE SERVICEMEMBERS' CIVIL RELIEF ACT (SCRA)



You may encounter plaintiffs or defendants who are on active duty in the armed forces. This Guide highlights some of the issues related to the impact of military service on civil litigation, financial obligations, mortgages, leaves, and other matters.

Congress passed The Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA) to provide protection to those called to active duty in the U.S. Armed Forces or who are deployed. The Act was amended in December 2003 and renamed the Servicemembers' Civil Relief Act and here after referred to as SCRA. Reservists and members of the National Guard (when activated under Title 10, United States Code) are also protected under the SCRA: The protection begins on the date of entry on active duty and generally ends within 30 to 90 days (and in certain cases for up to six months) after release from active duty. The current law is in 50 U.S.C. App. 501-549, 560-596. Courts have generally constructed the SCRA liberally to protect those in uniform. The U.S. Supreme Court has said that the statute should be read "with an eye friendly to those who dropped their affairs to answer their country's call." *LeMaistre v. Leffers*, 333 U.S. 1, 6 (1948).

QUESTIONS AND ANSWERS

Q: WHAT DOES THE SCRA SAY ABOUT DELAY OF JUDICIAL PROCEEDINGS?

A: Under 50 U.S.C. App. 521:

- A servicemember who is a party in civil (not criminal) judicial proceedings is automatically entitled to at least a 90-day stay of these proceedings if certain conditions are met.
- The request for stay can be a motion by the member, by someone on the member's behalf (e.g., a commanding officer or spouse) or on the court's own motion.
- The court must find that the member's ability to prosecute or defend is "materially affected" by reason of his or her active duty service.
- Once this finding of material effect is made, the member is entitled to a stay for such period as is necessary until the material effect is removed.
- Since courts are reluctant to grant long-term stays of proceedings, they can and should require members to act in good faith and be diligent in their efforts to appear in court.

Q: WHAT IS "MATERIAL EFFECT"?

A: There is no one definition of "material effect." The court should make a finding of "material effect" when a military member's ability to prosecute or defend a civil suit is impaired by military duties which prevent the member from appearing in court at the designated time and place, or

from assisting in the preparation or presentation of the case. An adverse material effect might also be found when military service impairs substantially the member's ability to pay financial obligations.

Q: IF THE MEMBER ISN'T IN COURT BEFORE ME, HOW CAN I INQUIRE INTO "MATERIAL EFFECT"?

A: Here are some points to consider:

- Require an affidavit setting out all the facts and circumstances, usually executed by the member or the member's commander.
- Ask for a copy of the member's Leave and Earnings Statement (the military equivalent of a pay stub) to show his or her Base Pay, Basic Allowance for Housing, Basic Allowance for Subsistence, tax withholdings, voluntary allotments to pay bills or support, and accrued leave.
- Remember that members from all branches of military service, whether buck private or rear admiral, get thirty days' leave annually, accruing at a rate of 2.5 days per month (although military necessity may limit when the leave may be taken).
- Request a more specific affidavit detailing the member's efforts to appear in court, for example, and the next court date when he or she would be available.
- Keep in mind that members who are going through basic or advanced training may be unable to appear in court due to the training schedule; there are no extra days built into the schedule to accommodate court dates, depositions, or family emergencies, and being gone from training frequently means that the trainee will have to repeat the same training program from the beginning.

Q: CAN A DEFAULT JUDGMENT BE ENTERED AGAINST A SERVICEMEMBER IN HER ABSENCE?

A: Yes, but there are restrictions under the SCRA:

- When the plaintiff applies for a default judgment or when the moving party attempts to have a hearing in the absence of the defendant, the SCRA applies. It requires the movant to sign and file an affidavit with the court stating that the other party is in the military, is not in the military, or the movant is unable to determine whether the defendant is in the military. The SCRA indicates the court shall not enter a judgment against the defendant until after the court has appointed an attorney to represent the absent servicemember. These provisions do not apply unless the member failed to appear at all. If, for example, the member has counsel of record, or has filed pleadings in the case, this provision does not apply. 50 U.S.C. App. 520 governs default entries and reopening defaults. If the default is obtained by means of a false affidavit, it can be a criminal offense.
- If the court cannot determine whether the defendant is in the military, the court may require the movant to execute a bond in an amount approved by the court to indemnify the defendant against any loss should the judgment be set aside.

Q: WHAT IF THE AFFIDAVIT SHOWS THAT THE PARTY TO BE DEFAULTED IS IN THE ARMED FORCES?

A: When this happens, no default can be taken until the court has appointed an attorney to represent the member. If the court fails to appoint an attorney, then the judgment or decree is voidable.

Q: WHAT DOES THE COURT-APPOINTED ATTORNEY DO?

A: The SCRA does not say what the appointed attorney does, but the probable role of the attorney is to protect the interests of the absent member, much as a guardian ad litem protects the interests of a minor or incompetent party. This would include contacting the member to advise that a default is about to be entered and to ask whether that party wants to request a stay of proceedings. No provision of the SCRA says who pays the appointed attorney.

Q: CAN I REQUIRE A BOND TO BE POSTED BEFORE ENTRY OF A DEFAULT JUDGMENT?

A: Yes. The SCRA allows the court to require the moving party to file a bond as a condition for the entry of a default judgment, in addition to the other provisions set out above, in order to indemnify the absent servicemember against loss or damage in case the decree is later overturned. The court can also make such other provisions as are deemed necessary to protect the member's rights.

Q: WHAT ARE THE PROVISIONS FOR REOPENING A DEFAULT JUDGMENT?

A: When a default has already been entered, a member has the right to have it reopened upon certain conditions. If the default is granted during the period of military service or within 30 days thereafter, the member can apply to have it set aside, provided that the member requests reopening the decree within 90 days after the end of military service and that no appearance has been entered, either pro se or through an attorney. The member's application to set aside the decree should be granted if the member can show that he or she has a good and legal defense to the claim, and can show prejudice resulting from not being able to appear in person to defend or prosecute.

Q: ARE THERE ALSO PROVISIONS FOR STAYING THE EXECUTION OF A JUDGMENT?

A: Yes. They are found at 50 U.S.C. App. 523. As to any case filed against a member, the court may grant a stay of execution of a judgment or order entered against the member, and vacate or stay an attachment or garnishment on its own motion. When this is upon motion by the member or someone on the member's behalf, the court must grant the above relief unless the court determines that the member's ability to comply with the judgment or order is not materially affected by reason of military service.

Q: WHAT DOES THE SCRA SAY ABOUT STATUTES OF LIMITATION?

A: This is covered in 50 U.S.C. App. 525, which states that the period of military service shall not be included in computing any limitation period for filing suit, either by or against any person in military service. This also includes suit by or against the heirs, executors, administrators, or assigns of the member, when the claim accrues before or during the period of service. Thus, this SCRA section "tolls" the statutes of limitations during the military service of any military plaintiff or defendant. The statute does not, however, affect time periods within a suit, such as time periods to avoid motions to dismiss for failure to prosecute an action. Once military service is shown the period of limitations is automatically tolled for the duration of the service.

Q: CAN A SERVICEMEMBER GET OUT OF A LEASE OR RENTAL AGREEMENT?

A: Yes. Lease terminations are covered in 50 U.S.C. App. 535.

Residential Leases

A lease covering property used for dwelling, professional, business, agricultural, or similar purposes may be terminated by a member or dependant if two conditions are met:

- The lease/rental agreement was signed before the member entered active duty; and
- The leased property has been occupied or possessed for the above purposes by the member or his or her dependents.

Motor Vehicle Leases

A lease covering motor vehicles may be terminated:

- If the lease was entered prior to military service and the member subsequently enters military service under a call, or orders for at least 180 days; or
- Servicemembers, and family members who sign a lease while in military service, and the member subsequently receives orders for a permanent change of duty station outside the continental United States or are deployed with a military unit for at least 180 days.

Q: HOW DOES THE SERVICEMEMBER GO ABOUT TERMINATING THE LEASE?

A: Residential Leases

To terminate a real property lease, the military member must deliver written notice to the landlord after entry on active duty or receipt of orders for active duty. Oral notice is not sufficient. The effective date of termination is determined as follows:

- For month-to-month rentals, termination becomes effective 30 days after the first date on which the next rental payment is due after the termination notice is delivered. For example: if rent is due on the first of the month and notice is mailed on August 1, then the next rent payment is due on September 1. Thirty days after that date would be October 1, the effective date of termination.

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- For all other real property leases, termination becomes effective on the last day of the month after the month in which proper notice is delivered. For example: if the lease calls for a yearly rental and notice of termination is given on July 20, the effective date of termination would be August 31.

Motor Vehicle Leases

- For motor vehicle leases the servicemember must deliver written notice to the lessor or the lessor's agent, and
- Return the motor vehicle to the lessor within 15 days of delivery of the written notice.

Q: CAN A SERVICEMEMBER GET A REFUND OF SECURITY DEPOSIT OR PREPAID RENT?

A: If rent was paid in advance, the landlord must refund the unearned portion. If a security deposit was required, it must be refunded to the member upon termination of the lease. The member is required to pay rent only for those months before the lease is terminated.

Q: CAN I STOP AN EVICTION ACTION BY A LANDLORD?

A: If the property is rented for \$2400 per month or less, the court shall delay the eviction action for at least three months. The court must grant the stay if the member requests it and can prove that his or her ability to pay was materially affected by military service.

Q: DOES THE ACT APPLY TO TIME PAYMENTS OR INSTALLMENT CONTRACTS?

A: Yes. Under 50 U.S.C. App. 532, military members who signed an installment contract for the purchase of real or personal property, including motor vehicles, before active duty will be protected if their ability to make the payments is "materially affected" because of active duty service.

Remember:

- a. Before entry into active duty, the member must have paid a deposit or installment payment under the contract.
- b. If the member is not able to make payments because of his or her military duty, the SCRA applies.
- c. The vendor is thereafter prohibited from exercising any right or option under the contract; such as to rescind or terminate the contract or to repossess the property, unless authorized by a court order.
- d. The court may determine whether a member's financial condition is "materially affected: by comparing the member's financial condition before entry on active duty with his financial condition while on active duty.

Q: WHAT ABOUT INTEREST RATES ON DEBTS AND MORTGAGE PAYMENTS? DO THEY GO DOWN WHEN A PERSON ENTERS MILITARY SERVICE?

A: Yes. When an obligation was incurred before entry on active duty, the interest rate goes down to 6%, unless the creditor (bank, finance company, credit card issuer, etc.) can prove in court that the member's ability to pay was not materially affected by military service. The term "interest" includes service charges. This is covered in 50 U.S.C. App 527.

Q: ARE THERE PROTECTIONS AGAINST MORTGAGE FORECLOSURES?

A: The SCRA (50 U.S.C. App. 533) protects members against foreclosures of mortgages, deeds of trust, and similar security devices, provided the following conditions are met:

- a. The relief is sought on an obligation secured by a mortgage, deed of trust, or similar security on either real or personal property;
- b. The obligation originated prior to entry into active duty;
- c. The property was owned by the member or dependent before entry into active duty;
- d. The property is still owned by the member or dependent at the time relief is sought;
- e. The ability to meet the financial obligation is "materially affected" by the member's active duty obligation.

Courts can stay proceedings until members are available to answer and can extend the mortgage maturity date to allow reduced monthly payments.

Q: ARE THERE SCRA RESOURCES ON THE INTERNET?

A: Visit the home page of the Army JAG School, <http://www.jagcnet.army.mil/TJAGSA>, click on "TJAGLCS Publications" on the left side, then scroll down to "Legal Assistance" and look for JA 260, "Servicemembers' Civil Relief Act Guide," a thorough examination of every section of the SCRA by the faculty of the Army JAG School (updated 2000). You can also find useful material at these URL's:

- Servicemembers' Civil Relief Act Provides Umbrella of Protection" - Department of Defense article, Armed Forces Information Service:
http://www.dod.mil/specials/Relief_Act_Revision/
- US Coast Guard article on SCRA:
http://www.uscg.mil/legal/la/topics/sscra/about_the_sscra.htm
- Coast Guard Fact Sheet on SCRA:
http://www.uscg.mil/legal/la/topics/sscra/SSCRA_Factsheet.htm
- Air Force Academy article on SCRA: <http://www.usafa.af.mil/10ja/ssra.htm>
- Article by Carreon and Associates, Cypress, CA, on SCRA:
<http://www.carreonandassociates.com/soldiersact.html>

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- Office of Child Support Enforcement's "A Caseworker's Guide to Child Support Enforcement and Military Personnel" - section on SCRA:
<http://www.acf.dhhs.gov/programs/cse/fct/militaryguide2000.htm>
 - Legal Services, <http://www.jagcnet.army.mil/legal>, the Army Judge Advocate General's Corps public preventive legal information site. (Servicemembers' Civil Relief Act information center.)

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