

“ARE WE THERE YET?” – A Roadmap for Appointed Counsel Under the Servicemembers Civil Relief Act

by Mark E. Sullivan*

You’ve just been appointed as the attorney for a servicemember under the SCRA (Servicemembers Civil Relief Act). So what do you do now?

The SCRA is found at 50 U.S.C. Appendix §501. It provides that, under certain circumstances, an attorney must be appointed for a servicemember (SM) by the court. An overview of the Act is found at “A Judge’s Guide to the Servicemembers Civil Relief Act,” located at www.nclamp.gov > Resources (website of the military committee, North Carolina State Bar), or at www.abanet.org/family/military (website of the military committee, Family Law Section, American Bar Association).

This guide will help you understand the requirements and protections of the SCRA, the steps you should take to comply with your obligations under the Act, what you need to do to protect “your newest client” (the one you’ve never met!), and how to complete your job and be discharged by the court.

Let’s say the name of the party involved is Sergeant Jake Wilson. We’ll take a trip below through the steps of locating him, informing him of the court proceeding, and representing him under the SCRA. [Note that, although we’ll be talking about “court,” the SCRA applies as well to all administrative agency proceedings also. Thus “judge” might really be “administrative hearing officer,” and “trial” might be “administrative hearing.”]

Orders and Duties

1. First of all, get a copy of the appointment order. Ask the clerk, magistrate or judge to provide you with a document appointing you under the SCRA. You’ll need it. Also ask the court if there is any other information about the new client, perhaps in the court file or in communications with the court by the SM or a JAG officer on his behalf.
2. Determine your duties. Under what section of the SCRA were you appointed? It could have been under either -
 - a. 50 U.S.C. App. Section 521(b)(2) (if the SM hasn’t entered an appearance), or
 - b. Section 522(d)(2) (if request for “additional stay” has been denied).

Ask the court if there any special instructions on what you need to do. The judge, for example, might instruct you, “Contact SGT Wilson, educate him on what’s going on, and tell him that I want to know his position in this litigation by three weeks from today. This looks

like a simple uncontested divorce, but I don't want to enter a judgment against him until I know what he'd like to do."

Section 521

3. If the SM hasn't entered an appearance in the case, then it's under Section 521. The court may not enter a default judgment against the SM who has not entered an appearance in the case without appointing an attorney for him. "Default judgment" means any order or ruling adverse to the SM's interest. It doesn't mean only a final judgment on the merits as to the claims for relief involved in the lawsuit.
4. Under Section 521, once counsel is appointed, the court needs to decide on a stay of proceedings. The court must stay the proceedings for at least 90 days (upon application of counsel or on the court's own motion) if the court determines that:
 - a. there may be a defense to the action and a defense cannot be presented without the presence of the SM, or
 - b. after due diligence, counsel has been unable to contact the SM or otherwise determine if a meritorious defense exists.

A flow chart illustrating what happens when there is no appearance by the SM is found at ATCH 1 below.

5. Under Section 521, counsel should ensure that the stay has been granted for at least 90 days. Remind the court that -
 - a. You cannot determine whether there is a defense, since you were just appointed!
 - b. And you haven't yet had a chance to contact the SM or otherwise find out whether a meritorious defense exists – for the same reason.

The point to make with the court is that it will be virtually impossible for you to prepare and present the case without the assistance of the unavailable SM.

Section 522

6. When Section 522 is involved, it means that the court has denied a SM's additional (not initial) request for a stay of proceedings. The court must appoint an attorney to represent the SM in the action or proceeding when a Section 522 "additional stay request" has been denied. 50 U.S.C. App. § 522(d)(2).
 - a. Note that a stay request need not be in a particular format. Such a request need not be made in person, and often doesn't involve a motion filed by an "attorney of record" for the SM. The request could be made in a phone call to the judge's clerk, in a letter by a JAG officer to the court, or even by e-mail. It need not be a "motion for a stay."

- b. You should find out how the stay request was made; this might provide valuable information on your client and how to contact him or her.
7. If you're appointed under Section 522, your first duty is to renew that stay request for your client. Ask the court to reconsider, after you've gotten the case file and combed through it to find out any information favorable to a stay. Here is what you need to know:
- a. When the SM has made a request for a stay, 50 U.S.C. App. §522 states that the court may (upon its own motion) and shall (upon the application of the SM) enter a stay of proceedings for at least 90 days if the motion includes information required by the Act for the court to determine whether a stay is needed.
- b. What information is needed? This "90-day stay" (although it can be for a longer period of time) requires four elements. Here are the requirements:

Punchlist for the Initial 90-Day Stay

Elements of a Valid 90-Day Stay Request. Does the request contain...

- A statement as to how the SM's current military duties materially affect his ability to appear...
- and stating a date when the SM will be available to appear?
- A statement from the SM's commanding officer stating that the SM's current military duty prevents appearance...
- and stating that military leave is not authorized for the SM at the time of the statement?

- c. Don't worry that your actions might expose your new client to the waiver of a defense, such as lack of personal jurisdiction. The Act makes it clear that a stay request doesn't constitute an appearance for jurisdictional purposes or a waiver of any defense, substantive or procedural. 50 U.S.C. App. §522(c).
- d. The same section of the statute says that actions by the attorney in the case shall not otherwise bind the servicemember. Thus if you eventually receive instructions from the SM as to a stipulation or response, make sure that you can give the judge a written statement from the client to that effect, since you cannot bind the member.

- e. If the court has appointed you because of denial of an additional stay (after the initial 90-day stay), then you still need to request the court's reconsideration of that stay request. The SM may request an additional stay based on the continuing effect of his military duty on his ability to appear. He may make this request at any time when it appears that he is unavailable to defend or prosecute. He must provide the same information as given in the above punchlist. 50 U.S.C. App. §522(d)(1).

Getting Information

8. If you're in court when the appointment takes place, talk to opposing counsel. She's the one who represents the other party in the lawsuit, and she's likely in the best position to give you information about your new client.
 - a. If it's a domestic lawsuit, the odds are that her client will know something about your new client – last known address (hopefully a military base!), Social Security Number (SSN), rank, etc. Perhaps even an e-mail address or the name of a family member who might assist you in getting in touch with SGT Jake Wilson.
 - b. If the lawsuit involves something else, however – a personal injury matter, a contract claim or a commercial suit – it might take a lot of digging to find out information about your new client. This is especially true regarding the single item that, after the client's name, is most essential to the job of locating him – the SSN. You'll need this to contact him. Perhaps a trip to the state Department of Motor Vehicles will be needed. You might find it on the lease he signed or in other documents available through discovery. Possibly a witness or one of the other attorneys may have information on Jake.

Communicating with the Servicemember

9. Once you're armed with your order of appointment and the name and SSN (and possibly Jake's rank – "sergeant"), you should contact any military base – but preferably a base of the same branch of service as Jake – for assistance in locating him. If you use a base from the same branch, you're more likely to be "in the same network," so to speak.
 - a. Call the lawyers on base. This is typically the staff judge advocate office, but it also might be listed as the "legal assistance office." You can find telephone numbers for military legal assistance offices at: <http://legalassistance.law.af.mil/content/locator.php>.
 - b. The lawyers in military legal assistance offices are known as "legal assistance attorneys." They may be either JAG officers or civilian attorneys employed by the U.S. government.

- c. Ask the attorney you speak with – let’s call her Captain Susan Clark – to help you locate and get in touch with your new client, SGT Jake Wilson.
 - d. Captain Clark will probably ask you for verifying information, such as a copy of your orders; be ready to fax them to her.
 - e. She will also need the full information that you have about Jake – full name, SSN and rank. If you know the place he was last assigned, give her that information as well.
 - f. Then let her go to work.
10. When CPT Clark next contacts you, she might tell you that, ever since “9/11,” the military cannot provide outside individuals with information on the location of SM’s. In this situation, she should offer to get a message to Jake that you’re attempting to contact him. If this happens, then you should ask her to send to Jake the order of appointment as well as a letter or e-mail from you regarding the situation in court; more on the latter below. You should ask that Jake initiate e-mail correspondence with you so that you can comply with your duties under the SCRA and give a report back to the court.
11. Of course, it’s possible that when CPT Clark contacts you, she might have an answer which looks like this:

**Sergeant Jacob Wilson, 275-00-9087.
Company B, 3rd Battalion, 4th Mechanized Infantry Brigade
Ft. Carson, Colorado 98765**

12. If the base is “stateside,” then use the phone, call the base locator at Ft. Carson, get the number for the above unit, place a call there and ask to speak to your client. In the alternative, write him a letter (see ATCH 2 below), letting him know the court has appointed you, the nature of your duties, what the court asked you to do, and what his options are.
13. But what if the information looks like this?

**Sergeant Jacob Wilson, 275-00-9087.
Company B, 3rd Battalion, 4th Mechanized Infantry Brigade
APO AE 10765**

- a. It’s a sure thing that this means he’s in a foreign country. APO means Army Postal Office, which refers to Europe, Africa and Southwest Asia. FPO stands for “Fleet Postal Office,” and that’s the Pacific and the Far East.
- b. Ask the captain if she can find out where he is and contact his servicing JAG office to determine if they can send a message to him about your appointment.
- c. Perhaps you can obtain his e-mail address. Maybe Captain Clark can fax or e-mail a

copy of your appointment order to his nearest JAG office. Perhaps the office over there can arrange a time when he can phone you from the overseas JAG office to catch up on the litigation.

- d. If all the above efforts fail in tracking down a current military address for your new client, you can use one of the military locator services found at: www.defense.ink.mil/faq/pis/PC04MLTR.html. These services cost a nominal fee, and it may take up to four weeks to get a reply with your client's current military duty address.
- e. If all else fails, use the U.S. Postal Service. Once again, the letter format at ATCH 2 should allow you to reach Jake, inform him of the court proceedings, and request instructions from him on reporting back to the court.
- f. See if you can get an e-mail address for Jake. All servicemembers have military e-mail accounts. For example, an Army Knowledge Online – or “AKO” – account might have this address: jacob.q.wilson@us.army.mil. Many SM's also retain a “civilian” e-mail account.
- g. When writing Jake, you need to explain to him what's going on, what his options are, and what you need to report to the court. If possible, tell him what your opinions are regarding the litigation, and what position he might take (if you are able to do so from the limited review you've done). Don't invoke the SCRA if the only purpose is to incur delay. The SCRA was passed to try to protect servicemembers from the distractions of litigation when their full attentions should be on the military missions at hand. If there is no purpose in delay, or if the lawful delays of the SCRA will likely result in later adverse consequences for Jake, tell him so. Thus, in a child support case, you might advise:

It looks like your case would involve what we call *guideline child support*. Assuming that you're not denying paternity, I can run some calculations for you if you'll send me a copy of your LES [Leave-and-Earnings Statement], but I think that the amount would be about \$500 a month, maybe less. If you start by agreeing to pay now, and you agree to do it with a garnishment, then that'll impress the judge. If you deny paternity or want to demand paternity testing, let me know immediately.

If there is no paternity challenge, you're not paying child support at all and you demand a delay, however well-grounded in the SCRA, you should be aware that the judge will remember that. And – when your eventual day in court arrives – she'll still remember that you refused to pay child support while the case was pending. She will not take kindly to an SCRA stay application

when it means no child support for these two children.

When it comes time for her to decide how you make up those back payments, she'll remember. It's in her discretion to make you pay, for example, \$10 a month or \$100 a month.

And her memory will still be fresh when the other attorney asks her to order you to pay attorney fees. It's in her discretion to allow or deny attorney fees, to decide on the amount, and to decide how much per month the payor shells out – again, \$10 or \$100!

Directions from the Servicemember

14. If Jake doesn't want to delay the proceedings and wishes to proceed – after you've given him the pro's and cons – then make a record of this. If possible, ask him to confirm it in writing so you can tender to the judge that communication. Then submit a report to the court. Your duties are over. A sample report is at ATCH 4.
15. If, however, Jake wants you to make or renew a stay request, then tighten your seat belt and get ready. The details for the initial 90-day stay, which is mandatory if all elements are supplied, are found above. The “additional stay” requires the court to find that Jake'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 SM is entitled to a stay for such period as is necessary until the material effect is removed. While this is not explicitly stated in the SCRA, it was the rule with the SSCRA [the Soldiers' and Sailors' Civil Relief Act, which preceded the SCRA] and most likely will be the rule under the current Act as well. Finally, since courts are reluctant to grant long-term stays, they can and should require members to act in good faith and be diligent in their efforts to appear in court.

More Information Needed?

16. Here are some questions, ideas and comments which may be helpful in evaluating the strength of your additional stay request:
 - a. How much leave is available to Jake? Ask him. To verify, get a copy of his Leave-and-Earnings Statement to find out. It's one thing if he has no available leave. It might not go down well with the court, however, if there's plenty of leave, and he's even used some of it in the last few months (unless you can show that the reason for use of leave was a hardship or family emergency).

- b. What is the nature of the “military necessity” that prevents Jake’s attending a hearing or responding to discovery? Is he serving in Iraq, where he cannot be given leave and is facing hostile fire on a daily or weekly basis? Or is he serving as “backfill” at Ft. Carson so that others may deploy overseas, working a comfortable day shift of 7:30 a.m. to 4:30 p.m., with weekends and holidays off?
 - c. Whatever the reason or reasons, make sure that you give a detailed request for the additional stay. Mere conclusory statements cannot help; you want to specify what Jake is doing, how he has applied for leave, who denied the request and when, what he said in the leave request, and so on. Avoid use of military terms and acronyms. “Civilian language” will be better understood by the civilian judge. Thus “the infantry division’s artillery unit” might be better than “division artillery” or, even worse, “DivArty.” You should say “7:30 a.m.,” not “0730 hours.”
 - d. When you return to court, make a record of the stay request and your evidence. A sample motion is at ATCH 3 below. Get all the documents admitted as part of your request. That means LES, military orders, communications from the SM, communications from the commanding officer, etc. Demand a written ruling from the court, whether as an interim order or as part of the final decree. In those small number of cases which involve an appeal, this kind of “due diligence” is essential.
17. What if the judge isn’t persuaded? If the court is not convinced of “material effect,” it has the discretion to:
- a. Request an affidavit setting out all the facts and circumstances, usually executed by the member or the member's commander.
 - b. Ask for a copy of the member's Leave and Earnings Statement (the military equivalent of a pay statement) to show his basic pay, Basic Allowance for Housing, Basic Allowance for Subsistence, other pay or allowances, tax withholdings, voluntary allotments to pay bills or support, and accrued leave.
 - c. 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.
18. Some courts require specific information whenever a stay application does not contain sufficient facts. One example is a set of questions to an individual’s commander used by the

courts in Monterey County, California; it is particularly useful in getting information to allow evaluation of a stay request.¹ The author has added several additional inquiries, and these are formatted below as interrogatories to the servicemember (as opposed to questions by the court):

- a. What have you done to obtain ordinary and/or emergency leave to attend any necessary hearings and/or trial in this court?
 - b. What results did these efforts produce?
 - c. How much leave did you request?
 - d. When did you request this leave?
 - e. Give the name, rank, title, address and commercial telephone number (if available) of the individual who denied your leave request.
 - f. Have you taken any leave in the last three months?
 - g. If so, how much and for what purpose?
 - h. How much leave do you currently have as reflected on your latest Leave and Earnings Statement (LES)?
 - i. Provide a copy of your last three Leave and Earnings Statements with your responses to these questions.
 - j. What have you done to obtain a transfer to a military installation near this court on either a temporary or permanent basis?
 - k. What results did these efforts produce?
 - l. When were you assigned to the present duty station?
 - m. When are you due to be transferred on normal rotation or reassignment?
 - n. To what station will you probably be transferred?
 - o. (If the SM is an enlisted person) What is the date of your present enlistment contract?
 - p. When does the enlistment expire?
 - q. Do you intent to re-enlist?
 - r. Does your service record contain a bar to re-enlistment?
 - s. Is there any likelihood that you will obtain an early release from active duty and, if so, when is this expected to occur?
 - t. State any and all reasons why you cannot respond to written interrogatories in this case.
 - u. State any and all reasons why you cannot respond to written document requests in this case, so long as the documents requested are readily available to you.
 - v. State any and all reasons why you cannot respond to written requests for admissions in this case.
 - w. Give the location (and distance) of the nearest legal assistance office (JAG office or staff judge advocate office) to you.
 - x. State your duty hours during the week.
 - y. State your duty hours on weekends.
 - z. State what means of communication are available between you and this court, specifically including telephone, e-mail, regular mail and videoteleconference (both individually and through your JAG office).
19. Note that members from all branches of military service, whether buck private or rear admiral, get thirty days of leave annually, accruing at the rate of 2.5 days per month (although

1. ¹ Hooper, "The Soldiers' and Sailors' Civil Relief Act of 1940 as Applied in Support Litigation: A Support Attorney's Perspective," 112 MIL. L. REV. 93, 95-96 (1986).

military necessity may limit when the leave may be taken).

20. Also 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.

The End Is in Sight

21. When can the judge terminate the appointment? While there is nothing written on this, the logical explanation is that the judge may terminate the appointment when there is no longer a need or a desire for the appointment. And that, in turn, means –
 - a. No need. Either the case has concluded and there is no reason to continue the appointment, or else the original need for the appointment [default or denial of additional stay] no longer exists; -- OR ELSE --
 - b. No desire. The servicemember has signed a waiver (in at least 12-point typeface) specifying that he/she waives the appointment or continuation of the appointment.

* * *

ATCH 2 – Letter to Servicemember

Sergeant Jacob Wilson, 275-00-9087.
Company B, 3rd Battalion, 4th Brigade
Ft. Carson, Colorado 98765

Re: Wilson v. Wilson, Case #08-CI-501580, Jefferson County, KY

Dear SGT Wilson,

I am an attorney in Louisville, Kentucky. I have been appointed to represent you under the Servicemember's Civil Relief Act (SCRA). The Clerk of the Jefferson Circuit Court, Family Division, mailed a copy of the appointment order to you at the above address. Did you receive it?

I was appointed to advise you that Amanda G. Wilson has filed for divorce in Jefferson County and requested a default judgment against you in this divorce. I am also appointed to determine whether you want to request a stay of these proceedings.

In addition, your wife's attorney, Gladys C. Hughes, certified that she mailed to you on October 22nd, 2008, also at the above address, the Petitioner's Mandatory Case Disclosure. Did you get that document as well? If you have not received the Petition, Order, and Mandatory Case Disclosure, let me know. I will be happy to scan and email those to you.

You are entitled to a 90-day stay of these proceedings if you can provide:

1. a statement as to how your current military duties materially affect your ability to appear in Court proceedings in Jefferson County, Kentucky;
2. a date when you will be able to appear;
3. a statement from your commanding officer stating that your current military duty prevents your appearance; and
4. a statement from your commander that military leave is not authorized for you at this time.

You may request a stay longer than 90 days if the Court finds that your ability to prosecute or defend your case is materially affected by reason of your active duty service.

Please contact me to discuss the issues involved in your divorce case. The only issue for the present is the dissolution of the marriage. That has been "bifurcated" from the other matters – child support, custody and property division (there is no alimony claim). So you do not have to decide on anything other than "getting a divorce" at this time.

Also please advise me of your wishes regarding your rights under the SCRA to request the case not proceed until you are able to appear. If even the issue of a simple divorce is something you cannot consider right now due to your military duties, I can understand that.

My email address is bonnietan@tanlawfirm.com. Let me know if it is acceptable to you that we communicate by e-mail, since it is faster and easier than regular mail.

Very truly yours,
Bonnie M. Tan

ATCH 3 - Sample motion for stay of proceedings under SCRA

[HEADING OF CASE]

MOTION FOR STAY OF PROCEEDINGS

Pursuant to the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. § 522, the defendant moves this court for [an initial 90-day stay of proceedings][a further stay of proceedings], showing that his ability to defend herein is materially affected by his military duties. In support of this motion and in compliance with the SCRA, the defendant has included --

As Encl #1, a letter or other communication that:

- >states how current military duty requirements materially affect the defendant=s ability to appear, and
- >gives a date when the defendant will be available to appear; and

As Encl #2, a letter or other communication from the defendant's commanding officer stating that:

- >the defendant's current military duty prevents his appearance, and
- >that military leave is not authorized for him at the time of the letter.

WHEREFORE the defendant prays that this court grant him a stay of proceedings until [date] and such other relief as is just and proper.

Date:

Janet A. Smith, Attorney for Defendant
 123 Bartlett Street, Salisbury, NC 26799
 919-555-1234

.....

[Notes: While this motion is written by the defendant’s attorney, the SCRA mentions the “application of the servicemember,” which means the SM or his legal representative could file the motion, application, petition or other document requesting a stay of proceedings. The “SM’s legal representative” would be his lawyer (civilian or military attorney) or an individual who holds his power of attorney. It may be addressed to the court, the clerk, the presiding judge, the defendant=s attorney, or the opposing counsel.

The statute appears to call for two statements, but the information required may be conveniently combined into *one* statement if that comes from the SM’s commanding officer. While the examples here are two statements which give limited information, a good letter should set out the facts in detail -- not merely conclusions -- as to how the defendant=s military duties adversely affect his ability to prepare and present the case, including appearances at depositions, responses to interrogatories and document requests, and appearance at trial. Although not required by the SCRA, it is a wise idea to set out how much leave the defendant has accrued, whether he has asked for leave, how much leave was requested, and whether the request has been approved or denied, including who approved or denied it, the date of such action, the limitations, if any, on an approved leave, etc. The purpose of this is to show that the defendant is exercising good faith and due diligence in his application for a stay, rather than using the stay request purely for tactical advantage.]

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Encl #1

Sergeant Leopold Legume, SSN 123-45-6789
Company C, 3d Battalion
123d Underground Balloon Regiment
V Corps, U.S. Army
APO AE 91099

[date]

TO WHOM IT MAY CONCERN:

My current military duty requirements materially affect my ability to appear in the following manner:

I am currently serving as a truck driver at Camp Bondsteel in Kosovo. My tour of duty is for 180 days, beginning November 1, 2009. I was recalled to active duty in the U.S. Army from my assignment in the Army Reserve, which is the 122d Transportation Battalion, Salisbury, North Carolina. I am in the motor pool, where I am the supervisor, and in the field every day of the week. I am unavailable to appear at my hearing on child support.

I have twelve days of leave currently available. Last week I asked my commander for one week=s leave in order to fly back to North Carolina and attend the hearing. My commander denied this request.

I need to be personally present in court on my hearing date of February 1, 2010, to testify as to my compensation, both civilian (before the Reserve call-up) and military (a substantial reduction from my civilian pay), my reasonable living expenses (before and after the call-up) and certain bills of the plaintiff that I have taken over at her request since the last child support order herein that would constitute grounds for a variance from the Child Support Guidelines. I will be available to appear on or after May 10, 2010.

[signature of defendant]

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Encl #2

Major Regina Richards, Commander
Company C, 3d Battalion
123d Underground Balloon Regiment
V Corps, U.S. Army
APO AE 19099

[date]

TO WHOM IT MAY CONCERN:

1. I am the commanding officer of SGT Leopold Legume, SSN 123-45-6789.
2. His current military duty prevents his appearance in court on February 1, 2010. I have assigned him to the job of motor pool supervisor. His responsibilities include:

- >daily inspection of all vehicles in the Battalion Motor Pool
- >assigning mechanics for truck and tank repairs and maintenance
- >ordering replacement parts
- >obtaining petroleum, oil and lubricants for assigned vehicles
- >going out into the field every day to assist with urgent repair and maintenance work there
- >advising the battalion leadership on new needs for transportation, current problems in servicing vehicles, and ways to improve our transportation readiness posture.

This is only an overview of what he does on an everyday basis. He has many more duties, and he is a key member of my transportation section. We cannot do without him. I have no one who can replace him. He typically works 10-12 hours a day, with only slightly less time on weekends. The absence of SGT Legume – even for just a few days – would leave us without an essential NCO (noncommissioned officer) to lead the lower-ranking soldiers here. We would not be able to effectively manage the battalion's vehicles, and our readiness position would be significantly lowered.

3. SGT Legume has requested one week=s leave for this court appearance. I denied his request, and military leave is not authorized for him at this time.

[signature of commanding officer]

STATE OF KENTUCKY
JEFFERSON COUNTY

AMANDA G. WILSON,
Plaintiff

v.
JACOB Q. WILSON,
Defendant

FAMILY COURT DIVISION
Case #08-CI-501580

REPORT OF APPOINTED ATTORNEY

The undersigned attorney hereby reports to the court as follows:

1. I was appointed pursuant to the Servicemember Civil Relief Act, Section 50 U.S.C. Appendix §521 on April 23, 2009.
2. I have examined the case file in this matter. The complaint herein requests only a “status divorce,” that is, a dissolution of the marriage of the parties.
3. I have been in telephone and e-mail contact with Army Sergeant Jake Wilson, the defendant, in the past two weeks.
4. SGT Wilson is assigned to the 8th Ordinance Company, Ft. Carson, Colorado.
5. SGT Wilson advises that:
 - a. He is on duty “24/7” in regard to EOD (explosive ordinance disposal) for his unit. He is assigned to Camp Whitebread, which is near Ft. Carson, and which contains a replica of an Iraqi village. He is occupied on a daily basis teaching ordinance-qualified NCO’s (noncommissioned officers) the techniques of bomb detection, defusing and removal.
 - b. His work is classified Top Secret, due to the techniques employed, and he performs his training sessions from 8 a.m. until 5: 30 p.m., with regular “night sessions” every week that last until 11:30 p.m.
 - c. He has half an hour each morning, midday and evening for meals. He is allowed half a day on Saturdays and Sundays for rest and personal matters, including Sunday morning church.
 - d. He is due to retrain at Ft. Meade, Maryland June 1 – July 23, 2009 regarding the new magneto bomb which is being shipped into Iraq from East Anglia. He cannot take leave during a training cycle.
 - e. In order to obtain leave at other times, he must submit a leave request to his commander, Major Flapp, at least 30 days in advance of the proposed leave. According to his current Leave and Earnings Statement, which I have reviewed, he only has two days of accumulated leave as of May 1, 2009.
 - f. With advance notice of 10 days, he can appear telephonically for testimony in this matter.
 - g. He does not consent to the plaintiff’s request for a divorce because he states that she has not been separated from him for the statutory period of 12 months, and she is not a legal resident of East Virginia. I advised him that he needed to prepare and file an answer stating those defenses.
 - h. SGT Wilson can be reached at the following address:
*Unit: Sergeant Jacob Wilson, 275-00-9087, Company B, 3rd Battalion, 4th Brigade, Ft. Carson, Colorado 98765. Unit phone: 129-009-2234.
*Home: 123 Green Street, Lincoln, CO 55678. His phone number is 129-123-1111.

WHEREFORE the undersigned requests that this court enter the proposed order set forth below.

Date:

Bonnie M. Tan, Attorney at Law
260 Metzger Street
Green City, Kentucky 40202
(502) 589-9601

[certificate of service – serve on plaintiff’s attorney and servicemember]
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STATE OF KENTUCKY
JEFFERSON COUNTY

FAMILY COURT DIVISION
Case #09-CIV-60950

AMANDA G. WILSON,
Plaintiff

ORDER

v.
JACOB Q. WILSON,
Defendant

This cause came before the court on the report of Bonnie M. Tan, appointed attorney for the defendant, pursuant to the Servicemember Civil Relief Act (SCRA), Section 50 U.S.C. Appendix §521 on April 23, 2009.

The court finds and concludes that the report should be followed, and same is incorporated herein by reference. The defendant is entitled to the protections afforded below, pursuant to the SCRA.

IT IS THEREFORE ORDERED THAT:

1. Nothing herein shall constitute a waiver of any nature of any rights of the defendant.
2. Any future matters docketed in this action shall be served on defendant such that he has at least 35 days’ notice received in hand to enable him to request leave from his commander with at least 30 days’ advance notice.
3. Defendant shall be provided with a telephone number from this court to enable him to call in at an appointed time and place to testify telephonically for any scheduled proceeding.
4. [When case involves other issues...] Due to the nature of the defendant’s military duties, any orders entered by this court in which defendant does not appear in person or telephonically shall be deemed temporary, including but not limited to custody, visitation and child support.
5. The responsibilities of Bonnie M. Tan under this court’s order of April 23, 2009 having been completed, her appointment is, accordingly, terminated.

Date:

Judge Presiding