



CLERKS' AND WORKERS' GUIDE

Military Support Enforcement and The Servicemembers Civil Relief Act



A FACTSHEET AND RESOURCE GUIDE FOR NORTH
CAROLINA CLERKS OF COURT, OTHER COURT
PERSONNEL, AND CHILD SUPPORT CASE WORKERS.

**The North Carolina State Bar
Standing Committee on Legal Assistance for Military Personnel
August 2012**

For comments and corrections, contact Mark E. Sullivan,
an attorney in Raleigh, N.C., at mark.sullivan@ncfamilylaw.com

TABLE OF CONTENTS

INTRODUCTION	3
REQUIREMENTS OF THE SCRA	3
VERIFYING MILITARY STATUS	4
REQUESTING A STAY	5
REQUESTING ADDITIONAL STAYS	7
APPOINTING AN ATTORNEY	7
DEFAULT JUDGMENTS.....	8
WHERE CAN I GET HELP?	9
APPENDIX A: Websites and On-line Resources	10
APPENDIX B: Judge’s Checklist.....	11
APPENDIX C: Flow Charts	15
APPENDIX D: Questions for the Servicemember	16
APPENDIX E: Sample forms and letters	17
APPENDIX F: Guide for Appointed Counsel.....	20

I. INTRODUCTION

The Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. 501 *et seq.*, was originally enacted in 1940.¹ Its purpose is to ensure that servicemembers (SMs) are not placed at a legal or financial disadvantage as a result of their military duties. To enable SMs to devote their entire energy to their duties, the SCRA provides for a number of different types of relief, such as prohibiting default judgments against SMs and allowing or requiring the suspension of proceedings that may adversely affect the civil rights of a SM. This means the court or administrative body will order a delay in a proceeding where a servicemember meets the requirements of the SCRA as set forth below.

This guide will focus on these delays as well as other rights of SMs. One area of the law where such additional time may be needed is family law, particularly in cases involving child support and custody. Military service and prolonged involuntary absence often have a profound effect on military families and their finances. While absence can give rise to situations requiring the attention of the absent parent, it can also be used to the disadvantage of that parent. The SCRA is designed to address these issues.

The purpose of this Guide is to provide assistance to clerks, court staff and child support caseworkers involved in the establishment and enforcement of child support orders for persons in the military. The following areas will be highlighted:

Requirements of the SCRA	Verifying Military Status
Requesting a Stay	Requesting Additional Stays
Appointing an Attorney	Setting Aside an Order

The appendices at the end of this guide provide additional resources for the reader.

II. REQUIREMENTS OF THE SCRA

The SCRA provides a **mandatory ninety-day stay of proceedings** in two circumstances. The first is found in § 521 (that is, 50 U.S.C. Appendix § 521) when a SM has not made an appearance in a civil court proceeding. The second is addressed in § 522, and it involves a SM who requests a stay of proceedings. While a stay of proceedings includes hearings before an administrative agency, criminal cases are not covered.

To obtain a stay, the person requesting it must be covered under 50 U.S.C. App. § 511. A covered individual means:

- (1) Members of the Army, Navy, Air Force, Marine Corps and Coast Guard who are on active duty under 10 U.S.C. § 101(d)(1).
- (2) A SM is also covered for periods of time when he or she is absent from duty because of sickness, wounds, leave or other lawful cause.

¹ Originally titled the Soldiers' and Sailors' Civil Relief Act of 1940, the Act underwent a comprehensive overhaul in 2003 with the enactment of Public Law 108-189. This makeover expanded the protections to the civil rights of servicemembers in several areas of law including tax and landlord-tenant law.

- (3) Members of the National Guard who are called to active duty as authorized by the President or the Secretary of Defense for over 30 consecutive days under 32 U.S.C. § 502(f) to respond to a national emergency declared by the President and supported by federal funds. Under 50 U.S.C. App. § 516, the protections of the Act are extended to members of the Reserve Components (RC) – the National Guard and Reserve – from receipt of orders to report for duty to the date that they report.
- (4) Commissioned members of the Public Health Service and the National Oceanographic and Atmospheric Administration are also covered.

1. Q. Is making a request for a stay the same as making an “appearance?”

A. No. The SCRA states that a request for a stay is not, in and of itself, an “appearance” for purposes of § 521.

2. Q. Can a defendant in a child support case get a delay for a hearing even if he has had proper notice?

A. That’s correct. The SCRA allows for a stay, even when there has been proper notice and the court has jurisdiction.

3. Q. Who is covered?

A. A covered SM is a member of the Army, Navy, Air Force, Marine Corps or Coast Guard who is on active duty, as well as commissioned officers of the Public Health Service and the National Oceanographic and Atmospheric Administration. The Act also covers members of the Army and Air National Guard under the specific circumstances at (3) in the above section.

4. Q. What courts are covered?

A. The SCRA is applicable to any civil court or administrative agency of the United States, a state or a political subdivision thereof. 50 U.S.C. App. § 511(5).

III. VERIFYING MILITARY STATUS

5. Q. How am I supposed to know whether a party to a lawsuit is in the military?

A. The party filing a new lawsuit or motion in a case is supposed to indicate, in his or her motion or pleadings and also at the hearing, whether the other party is in the military. That is spelled out in the SCRA. Does this happen all the time? No – compliance is not 100%. So court staff and child support caseworkers need to be especially vigilant to make an inquiry to determine if a party is in the military.

6. Q. Why would I bother to check if the person filing the lawsuit doesn’t say anything about military status?

A. First of all, it’s the right thing to do. It’s a professional duty. But also, the hazards of getting it wrong include having to start a case over again from scratch - after many weeks and months of preparation and of court time have gone into a case. That means wasted staff time and resources.

7. Q. What are the nuts and bolts of determining military status?

A. The first step in determining whether a stay of proceedings is necessary or available, when a party has been served but has made no appearance, is to determine his or her military status. In order to determine whether a party is in the military, either side or the court may request information from the Department of Defense (DoD), and DoD must issue a statement as to military service.² The office within DoD to contact

² 50 U.S.C. App. § 582.

for military verification information is

Defense Manpower Data Center
1600 Wilson Blvd., Suite 400
Attn: Military Verification
Arlington, VA 22209-2593
Telephone: 703-696-6762 or -5790
Fax: 703-696-4156

Alternatively, visit the Defense Manpower Data Center (DMDC) website for SCRA inquiries, <https://www.dmdc.osd.mil/appj/scra/welcome.xhtml>, choose either a single or multiple record request and click on SUBMIT. At the next screen, enter the individual's Social Security number, last name and date of birth (DOB). These are mandatory entries; the form on the main page also asks for a first and middle name, which will help with the search.

The website allows one to check the active duty status of a SM based on a specific date, called the "Date of Interest." This may be any date later than September 30, 1985. The default Date of Interest is the current date. This is helpful if one needs to determine whether John Doe was on active duty on June 1 of last year, even though he might not be on active duty today, to see whether the SCRA applies to his failure to answer the complaint at that time and the subsequent default judgment which was entered by the court.

8. Q How do I get a printed report?

A. To execute a report, fill in the requested data and then click on "LookUp", which will open a small box asking if you want to OPEN, SAVE or CANCEL. Once you make your choice, a window containing the report generated by DMDC will be displayed. If the individual is on active duty, the report will show his or her branch of service and beginning date of active duty status.

DMDC will check:

- (1) The individual's active duty status on the Date of Interest;
- (2) Whether the individual left active duty within 367 days preceding the Date of Interest;
- (3) Whether the individual or his/her unit received notification to report for active duty on the Date of Interest.

9. Q. What if we don't know the Social Security Number?

A. If DMDC does not have information as to whether the individual is on active duty, the generated report will list only the supplied last name, first name, and middle initial (if supplied), with the text:

Based on the information you have furnished, the DMDC does not possess any information indicating that the individual is currently on active duty.

The report is signed by the DMDC Director. If the individual's Social Security number is unavailable, the requester may request by mail a manual search, using the DOB of the individual instead of the SSN. You must send a stamped, self-addressed envelope with your mail request to the DMDC at the address above.

IV. REQUESTING A STAY

10. Q. What is the basis for a stay of proceedings?

A. There are two grounds for getting a stay of proceedings. The first, under 50 U.S.C. App. § 521, is reserved for those cases in which the SM has not made an appearance. The other party must first file an

affidavit with the court stating whether or not the SM is in the military. After that, an attorney must be appointed by the court to protect the SM's interests.

11. Q. Then what does the court do?

A. If the court determines that there is (or may be) a defense to the action, the court *shall* grant a 90-day stay upon its own motion or upon application by the appointed attorney. Alternatively, the court must also grant a stay if, after due diligence, the court-appointed attorney has been unable to make contact with the SM or is unable to determine if there is a meritorious defense.

12. Q. What is the second basis for a stay?

A. The stay of proceedings provision of § 522 of the SCRA is for those cases in which the SM needs a stay because military duties prevent him or her from participating in the case. The section mandates a stay of proceedings for **no less than 90 days** upon proper application to the court. There is no requirement to demonstrate that a defense exists.

13. Q. What does the SM have to do to get a stay under this section?

A. To obtain a stay under § 522, the SM needs to submit:

(1) a letter or other communication setting forth facts stating the manner in which **current military duty requirements materially affect** the SM's ability to appear and **stating a date when the SM will be available to appear; and**

(2) a letter or other communication from the SM's commanding officer stating that the SM's **current military duty prevents appearance** and that **military leave is not authorized** for the SM at the time of the letter.

These requirements may be combined in one letter, e-mail or other communication.³ The communication does not have to be written, and it doesn't have to be in an affidavit, on a court form or in a particular format. The following checklist may be helpful to you.

SCRA Stay Request – a Checklist

✓	Elements of a Valid 90-Day Stay Request. Does the request contain...
	A statement as to how the servicemember'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 his appearance?
	And stating that military leave is not authorized for the SM at the time of the statement?

³ There is no indication that either of these must be in contained in a formal letter or affidavit or, for that matter, in any particular format whatsoever. Sample letters can be found in Attachment 2.

Note that there are no “technical requirements” for the request. It can be in an e-mail or a letter, on an affidavit or the back of a cocktail napkin, in a phone call or through a Western Union telegram. It does not have to be on “the appropriate court form” – after all, some of these requests may be written while the SM is literally getting on the plane for a deployment at the “green ramp” at Ft. Bragg, or from primitive conditions at Forward Operating Base Cobra. The application does not have to be notarized, it doesn’t have to be witnessed, and it is not required to have the court and case heading on the document (IF a document is used).

14. Q. If the SM contacts the court and asks about the case, doesn’t that mean that he has notice and the SCRA doesn’t apply?

A. No. Just because you received a call or letter from a SM inquiring about his case and asking about a stay, do not assume that he has notice and has to appear. As mentioned earlier, the SCRA is not about legal notice of a hearing – it is about extra rights for the SM.

V. REQUESTING ADDITIONAL STAYS

15. Q. Can a SM ask for an additional stay?

A. Yes. An application for an additional stay may be made at the time of the original request or later.

16. Q. Is there a special procedure for requesting additional stays?

A. A SM may apply for an additional stay in the same manner as the initial 90-day stay and at any time “it appears that the SM is unavailable to prosecute or defend.”

17. Q. Does the court have to grant those requests?

A. The court may deny requests for additional stays above and beyond the 90-day mandatory period if the military duties of the SM do not have a material effect on his ability to appear and present his case or defense. However, if the court denies a request for an additional stay, the SCRA requires appointment of an attorney to represent the SM in the action or proceeding.

VI. APPOINTING AN ATTORNEY

18. Q. When does the court have to appoint an attorney?

A. The court must appoint an attorney on behalf of the SM in the following two situations:

(1) Under § 521 of the SCRA, the plaintiff should file an affidavit with the court stating whether or not the defendant is in the military. If the affidavit affirms the defendant’s military status, an attorney must be appointed by the court to protect the SM’s interests.

(2) Under § 522 of the SCRA, if the court refuses to grant an additional stay after the initial mandatory 90-day stay, then the court must appoint counsel to represent the SM in the action.

At Appendix F, there is a guide for appointed counsel.

19. Q. Why does the judge have to appoint an attorney? What if the SM isn’t deployed overseas?

A. The status of the SM – deployed or in garrison, stateside or overseas – isn’t an issue under the Act. It simply doesn’t matter. Nor does it matter whether the SM is an officer or enlisted or whether he can or cannot afford to hire a lawyer. The only status which matters is whether the individual requesting a stay is on active duty and meets the criteria for a “covered person” listed above.

20. Q. We don't have enough attorneys on our indigent appointment list to cover all these appointments. What can we do?

A. Who said anything about being indigent? This is not an indigent issue. The court must appoint an attorney to help sort out the initial issues. This means finding the SM. It means communicating with the SM. It requires that the attorney find out why a SM may not be able to appear in court and whether he/she might have a valid defense against the court action, which may be lost by his/her failure to appear in court. It's not an issue of finances – an admiral has the same rights as a seaman, and it doesn't matter if the SM is a colonel, a captain or a corporal. Petty officers and privates are treated the same. Furthermore, the SCRA doesn't apply in criminal cases; this is a civil matter, and there's no connection with the list of attorneys to be appointed for criminal cases.

21. Q. Then who is supposed to pay for these appointed attorneys, and how are they picked?

A. An excellent question. But don't look to the SCRA for an answer; there aren't any in the Act. The answer may be similar to jury duty – we all have to take our turn at it, and perhaps some pro bono work will be necessary for lawyers who appear before the court. Judges, based on experience, need to find some mechanism for filling this federal requirement. This might be a matter in which being an “officer of the court” comes with some social responsibilities. Conceivably, local bar associations could be used as a conduit for appointing appropriate lawyers. In any case, there is no simple answer except that a lawyer *must* be appointed. Judges faced with this problem must find creative ways to implement this unfunded mandate.

22. Q. What about the additional stay request – does the judge have to appoint an attorney if the additional stay request is denied?

A. Yes. If the court refuses to grant an additional stay, then an attorney must be appointed to represent the SM⁴ Since this could be a much more involved matter than with an initial stay, the judge should carefully think through the decision as to whom to appoint.

VII. DEFAULT JUDGMENTS

23. Q. What happens if a SM does not appear and the judge grants a default judgment?

A. If a judgment has been entered against the SM during his period of military service (or within 60 days after the end of service), the judgment can be reopened.

24. Q. What are the rules for reopening a default judgment?

A. The court must reopen the judgment to allow the SM to defend if:

(1) The SM was materially affected as a result of his military service in asserting a defense; and

(2) The SM has a meritorious or legal defense to the action or some part of it, so long as the application is filed within 90 days after the end of military service⁵; and

(3) The SM did not knowingly and voluntarily waive his rights under the SCRA.⁶ A waiver of SCRA rights is only effective if it is made during the period of military service.

25. Q. What does the SM have to show the judge to do this?

⁴ 50 U.S.C. App. § 522(d)(2).

⁵ 50 U.S.C. App. § 521(g).

⁶ 50 U.S.C. App. § 517.

A. The SM must prove to the judge that, at the time the judgment was rendered, he was prejudiced in his ability to defend himself due to military service. In addition, he must show that there is a meritorious or legal defense to the initial claim.

26. Q. What does a SM need to put in this motion or petition?

A. To reopen a default judgment or order, a motion or petition should state the reasons why the SM's military duties had a material effect on his ability to appear or present his case, and it should also clearly state the SM's defense which he would have raised.

27. Q. Are there any other suggestions?

A. Court officials and caseworkers confronted with such a motion should try to find a way to work with the SM to resolve a dispute in lieu of reopening an order or judgment, if possible. For example, in a child support case in which paternity was established by default and is now being challenged by a soldier who happens to be out of the country, the court or the child support enforcement agency could facilitate the collection of a DNA sample from the soldier at his foreign duty station, rather than insisting that he return to the U.S. for testing. These officials should also be prepared to move to vacate the judgment if the tissue-testing results come back negative. If the test results come back positive, then the only issue would be a determination of the amount of child support allowed under state guidelines (or in a variance).

VIII. WHERE CAN I GET HELP?

OCSE Military Liaison

The Office of Child Support Enforcement has a military liaison officer, whose duties include working with the DoD on child support related statutes and regulations, providing guidance to child support agencies on military matters, and resolving issues between DoD and CSE agencies. You may contact him at:

Larry Holtz
Court and Military Liaison Officer
Office of Child Support Enforcement, 4th floor
370 L'Enfant Promenade, SW
Washington, DC 20447
Phone: (202) 401-5376
Fax: (202) 205-4342
Email: larry.holtz@acf.hhs.gov

APPENDIX A: Websites and On-line Resources

1. CHILDREN SERVICES:

Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement: Working with the Military as an Employer, A Quick Guide, (Updated April 2010.) In an effort to assist states in their interaction with the military, the federal Office of Child Support Enforcement (OCSE) has prepared this resource document. The purpose of this document is to provide policy and procedural guidance to child support staff working with the military.

http://www.acf.hhs.gov/programs/cse/newhire/employer/publication/military_quick_guide.pdf

2. MILITARY LEGAL WEBSITES:

- a. The Armed Forces Legal Assistance Website - <http://legalassistance.law.af.mil/index.php>

This website contains a legal services locator which will give you the address and phone number for military legal services nationwide. It also will direct you to those offices in your area using zip code or location.

- b. ABA Section of Family Law, Military Legal Assistance Committee – www.abanet.org/family/military

The best source of quick information on the SCRA is “A Judge’s Guide to the Servicemembers Civil Relief Act,” and other relevant topics. The above website also contains the “Silent Partner” series and other publications of the committee of value to the family law practitioner.

- c. Army JAG School Publications - www.jagcnet.army.mil >TJAG Legal Center and School

The Army JAG School’s SCRA guide is available at the School’s website, Click on TJAGLCS Publications and then look for the publication, which is JA 260.

- d. Army JAG Corps Public Page - www.jagcnet.army.mil/legal

This website contains a wide variety of facts sheets for servicemembers and their dependents.

APPENDIX B: Judge's Checklist

The Servicemembers Civil Relief Act: A Judge's Checklist

[NOTE: The SCRA can be found at 50 U.S.C. Appendix § 501 et seq.]

In using this checklist, keep in mind the purpose of the Act: to enable servicemembers (servicemembers) to devote their entire energy to the defense needs of the nation, and to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service. (50 U.S.C. App. § 502)

✓ **Who is covered?** (50 U.S.C. App. § 511) Those covered include:

1. Members of the Army, Navy, Air Force, Marine Corps and Coast Guard on active duty under 10 U.S.C. 101(d)(1)
2. National Guard members called to active duty by President or Secretary of Defense for over 30 days under 32 U.S.C. 502(f) (national emergency declared by the President and supported by federal funds)
3. Commissioned members of the Public Health Service and the National Oceanographic and Atmospheric Administration

✓ **Default situation**– no appearance by servicemember (servicemember) (50 U.S.C. App. § 521). You must –

1. Require affidavit of military status by moving party
2. Inquire into whether missing party is in military service by requesting check of records by Dept. of Defense⁷
3. Don't enter default decree against servicemember – appoint an attorney to represent him/her
4. If you cannot determine whether missing party is in military, require movant to post bond to indemnify the non-movant if:
 - a. there may be a defense, and presence of servicemember is needed to make it, OR
 - b. with due diligence, appointed attorney can't contact client or otherwise determine whether defense exists

✓ **Use of bond?** (50 U.S.C. App. § 522(b)(3))

As condition of entry of default judgment, require bond if you cannot determine whether defendant is in military service.

Bond may be used to indemnify defendant against loss/damage from default judgment (if later set aside) should he/she later be found to be a servicemember.

✓ **Request for stay** – servicemember or attorney requests suspension of case (50 U.S.C. App. § 522)

Grant stay of proceedings (discretionary on court's own motion, mandatory on servicemember's motion) for at least 90 days if motion includes-

1. Statement as to how the servicemember's current military duties materially affect his ability to appear, and
2. stating a date when the servicemember will be available to appear, and
3. Statement from the servicemember's commanding officer that servicemember's current military duty prevents his appearance, and
4. military leave is not authorized for the servicemember at the time of the statement

⁷ Upon application by either side or the court, the military service must issue a statement as to military service. 50 U.S.C. App. § 582. Contact: Defense Manpower Data Center, 1600 Wilson Blvd., Suite 400, Attn: Military Verification, Arlington, VA 22209-2593, [telephone 703-696-6762 or -5790/fax 703-696-4156]

- ✓ **Grant additional stay (beyond initial 90 days)?**
 1. Yes if continuing material effect of military duty on servicemember's ability to appear.
 2. Same information required as above.
- ✓ **Deny additional stay?**
 1. Only if you appoint attorney to represent the servicemember in the action or proceeding (50 U.S.C. App. § 522(d)(2)).
 2. Expect attorney to renew stay request since he/she cannot prepare, present case without assistance from the unavailable servicemember.
- ✓ **Unsure whether to grant or deny additional stay?**
 1. Ask for a copy of the servicemember's current LES (Leave and Earnings Statement), issued twice a month, to see how much leave servicemember has accrued, used in the past few months.
 2. Propound questions from the court to servicemember's commanding officer as to duty hours, days for the servicemember, his or her availability to attend court or to participate by telephone, Internet or videoteleconference
- ✓ **Execution of orders, judgments (50 U.S.C. App. § 524)**
 1. Must stay execution of any judgment, order entered against servicemember if servicemember shows military duties materially affect his/her ability to comply with court decree.
 2. Also vacate or stay any attachment or garnishment of property, money or debts in possession of the servicemember or third party
- ✓ **Anticipatory relief (50 U.S.C. App. § 591)**
 1. Grant relief from obligation or liability incurred by servicemember before his/her military service
 2. Also for tax or assessment falling due before or during the servicemember's military service
- ✓ **Reopen judgment(50 U.S.C. App. § 521(g))**
Must reopen order, judgment against servicemember if –
 1. Servicemember was materially affected due to military service in asserting defense, and
 2. He/she has meritorious defense
- ✓ **Are waivers allowed?(50 U.S.C. App. § 517)**
 1. Only effective if made during period of military service.
 2. Usually must be in writing.
- ✓ **Don't penalize servicemember in stay request.(50 U.S.C. App. § 522(c))**
 1. Request for stay does not constitute appearance for jurisdictional purposes
 2. Also doesn't constitute waiver of any defense, substantive or procedural
- ✓ **Statute of limitations (50 U.S.C. App. § 526)**
Period of military service may not be included in computing any limitation period for filing suit, either by or against servicemember.
- ✓ **Protect against mortgage foreclosure (50 U.S.C. § 533)**
Court may stay foreclosure proceedings until servicemember can answer, extend mortgage maturity date to allow reduced monthly payments, grant foreclosure subject to being reopened if challenged by servicemember, or extend the period of redemption by period equal to the servicemember's military service.

Conditions for above: if –

1. Relief is sought on security interest in real/personal property
2. Obligation originated before active duty
3. Property owned by servicemember or dependent before active duty
4. Property still owned by servicemember or dependent
5. Ability to meet financial obligation is materially affected by servicemember's military service
6. Action is filed during (or within 90 days after) servicemember's military service. (50 U.S.C. App. § 533)

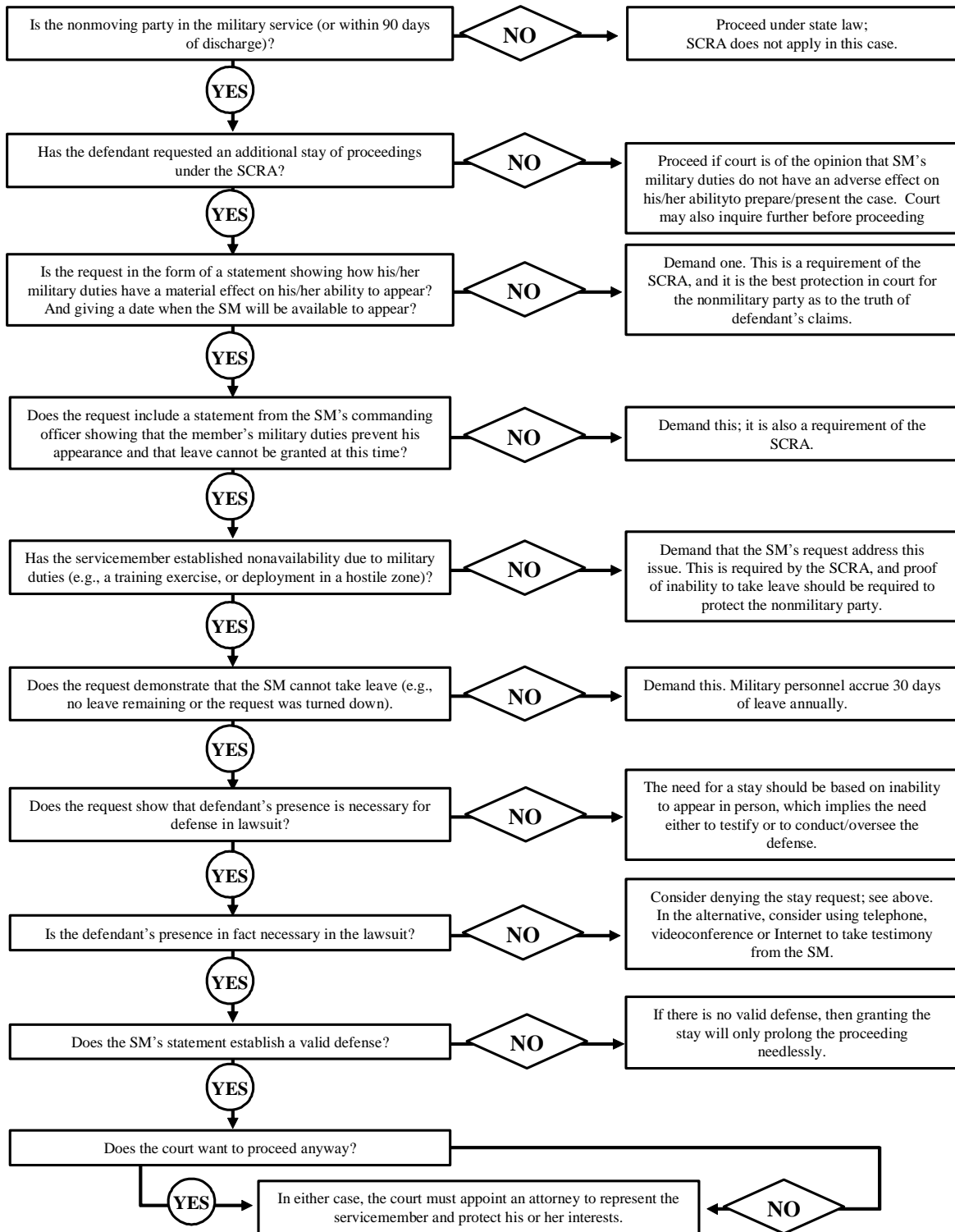
✓ **Protect servicemember-tenant.**

1. If the rent is paid in advance, require landlord to refund unearned portion. The servicemember is required to pay rent only for those months before the lease is terminated. (50 U.S.C. § 535(f))
2. It is a misdemeanor for a landlord to seize, hold or detain the security deposit or personal property of a servicemember or dependent when there is a lawful lease termination under the SCRA, or to knowingly interfere with the removal of said property because of a claim for rent after the termination date. A security deposit must be refunded to the servicemember upon termination of the lease. 50 U.S.C. § 535(h)(1).

* * *

APPENDIX C: FLOW CHARTS

ATCH 3 - SCRA Flow Chart for "Additional Stay"



SCRA Flow Chart for Opposing “Additional Stay”

Is the defendant a person in the military service (or within 90 days of discharge)?

YES

NO

Proceed under state law; SCRA does not apply in this case.

Has the defendant requested an additional stay of proceedings under Section 202 of the SCRA?

YES

NO

Proceed under state law; SCRA inapplicable.

Is the request in the form of a statement showing how his/her military duties have a material effect on his/her ability to appear? And giving a date when the SM will be available to appear?

YES

NO

Demand one. This is a requirement of the SCRA, and it is the best protection in court for the nonmilitary party as to the truth of defendant’s claims.

Does the request include a statement from the SM’s commanding officer showing that the member’s military duties prevent his appearance and that leave cannot be granted at this time?

YES

NO

Demand this; it is also a requirement of the SCRA.

Has the servicemember established nonavailability due to *military* duties (e.g., a training exercise, or deployment in a hostile zone)?

YES

NO

Demand that defendant’s request address this issue. This is required by the SCRA, and proof of inability to take leave should be required to protect the nonmilitary party.

Does the request demonstrate that defendant cannot take leave (e.g., no leave remaining or the request was turned down)?

YES

NO

Demand this. Military personnel accrue 30 days of leave annually.

Does this request show that defendant’s presence is necessary for defense in lawsuit?

YES

NO

Argue that the stay should be denied. The power to grant a stay is based on inability to appear in person, which implies the need either to testify or to conduct/oversee the defense.

Is the defendant’s presence in fact necessary in the lawsuit?

YES

NO

See above; argue that the stay should be denied. In a child support case, argue that the member’s LES* is all that is needed to determine the proper amount of support.

Does the SM’s statement establish a valid defense?

YES

NO

Argue that the stay request should be denied. If there is no valid defense, then granting the stay will only prolong and delay the proceeding needlessly.

Does the court want to proceed anyway?

YES

NO

In either case, the court must appoint an attorney to represent the servicemember and protect his or her interests.

*LES=Leave and Earnings Statement

APPENDIX D: Questions for the Servicemember

Some courts require more information whenever a stay application does not contain sufficient facts. One example is the set of questions used by the courts in Monterey County, California, to get information from the defendant's commander.⁸ The author has added several additional inquiries, and these are formatted as interrogatories to the defendant (as opposed to questions by the court):

1. What have you done to obtain ordinary and/or emergency leave to attend any necessary hearings and/or trial in this court?
2. What results did these efforts produce?
3. How much leave did you request?
4. When did you request this leave?
5. Give the name, rank, title, address and commercial telephone number (if available) of the individual who denied your leave request.
6. Have you taken any leave in the last three months?
7. If so, how much and for what purpose?
8. How much leave do you currently have as reflected on your latest Leave and Earnings Statement (LES)?
9. Provide a copy of your last three Leave and Earnings Statements with your responses to these questions.
10. What have you done to obtain a transfer to a military installation near this court on either a temporary or permanent basis?
11. What results did these efforts produce?
12. When were you assigned to the present duty station?
13. When are you due to be transferred on normal rotation or reassignment?
14. To what station will you probably be transferred?
15. (If the servicemember is an enlisted person) What is the date of your present enlistment contract?
16. When does the enlistment expire?
17. Do you intent to re-enlist?
18. Does your service record contain a bar to re-enlistment?
19. Is there any likelihood that you will obtain an early release from active duty and, if so, when is this expected to occur?
20. State any and all reasons why you cannot respond to written interrogatories in this case.
21. State any and all reasons why you cannot respond to written document requests in this case, so long as the documents request are readily available to you.
22. State any and all reasons why you cannot respond to written requests for admissions in this case.
23. Give the location (and distance) of the nearest legal assistance office (JAG office or staff judge advocate office) to you.
24. State your duty hours during the week.
25. State your duty hours on weekends.
26. 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).

¹⁹Hooper, "The Soldier's 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).

APPENDIX E: Sample forms and letters

WAIVER OF RIGHT TO REQUEST STAY OF PROCEEDINGS

I acknowledge that I have the right to request a stay of proceedings in this case under the Servicemembers Civil Relief Act. The stay of proceedings, or continuance, would postpone a hearing in this case if it were granted.

I hereby waive and give up the right to a stay of proceedings. I want to proceed with this case.

(signature)

Date: _____

Printed Name

[here print acknowledgment with notarization if required]

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 the manner in which 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 appearance, and
- military leave is not authorized for the defendant 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.

Janet A. Smith, Attorney for Defendant
123 Bartlett Street, Salisbury, NC26799
919-555-1234

Date:

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 in the above unit at Camp Bondsteel in Kosovo. My tour of duty is for 180 days, beginning May 1, 2011. 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 field every day of the week, and I am unavailable to appear at my hearing on child support. I have asked for one week's leave in order to fly back to North Carolina and attend the hearing. This was denied by my commander.

I need to be personally present in court on my hearing date of June 1, 2011, 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 July 1, 2012.

[signature of defendant]

.....

Major Regina Richards, Commander
Company C, 3d Battalion, 123d Underground Balloon Regiment
V Corps, U.S. Army
APO AE 91099

[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 June 1, 2011. 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]

APPENDIX F: Guide for Appointed Counsel

“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. 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 an 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:

Punch list 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 appointment order; be ready to fax it 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 SMs. 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 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.
- e. 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 SMs also retain a “civilian” e-mail account.

- f. 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 pros 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 that 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.

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. The author has added several additional inquiries, and these are formatted below as interrogatories to the servicemember (as opposed to questions by the court):

Interrogatories to the SM

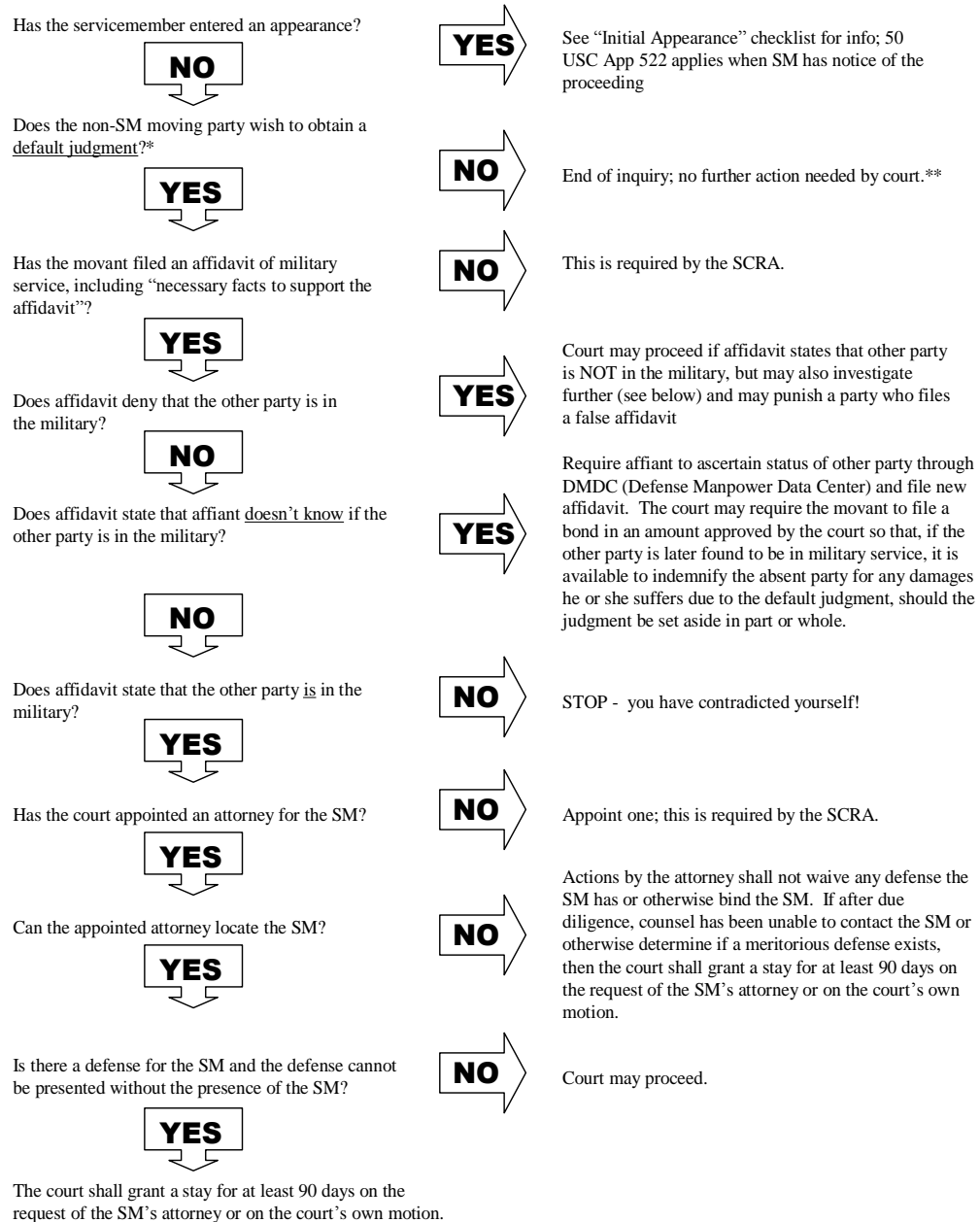
1. What have you done to obtain ordinary and/or emergency leave to attend any necessary hearings and/or trial in this court?
2. What results did these efforts produce?
3. How much leave did you request?
4. When did you request this leave?
5. Give the name, rank, title, address, and commercial telephone number (if available) of the individual who denied your leave request.
6. Have you taken any leave in the last three months?
7. If so, how much and for what purpose?
8. How much leave do you currently have as reflected on your latest Leave and Earnings Statement (LES)?
9. Provide a copy of your last three Leave and Earnings Statements with your responses to these questions.
10. What have you done to obtain a transfer to a military installation near this court on either a temporary or permanent basis?
11. What results did these efforts produce?
12. When were you assigned to the present duty station?

13. When are you due to be transferred on normal rotation or reassignment?
 14. To what station will you probably be transferred?
 15. (If the SM is an enlisted person) What is the date of your present enlistment contract?
 16. When does the enlistment expire?
 17. Do you intent to re-enlist?
 18. Does your service record contain a bar to re-enlistment?
 19. Is there any likelihood that you will obtain an early release from active duty and, if so, when is this expected to occur?
 20. State any and all reasons why you cannot respond to written interrogatories in this case.
 21. 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.
 22. State any and all reasons why you cannot respond to written requests for admissions in this case.
 23. Give the location (and distance) of the nearest legal assistance office (JAG office or staff judge advocate office) to you.
 24. State your duty hours during the week.
 25. State your duty hours on weekends.
 26. 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).
18. 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 military necessity may limit when the leave may be taken).
19. 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

20. 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 1 - SCRA Flow Chart (no appearance by servicemember)



*The non-SM claimant may be either the plaintiff/petitioner or the defendant/respondent. A default judgment means any decree or order granting relief when the other side has not entered an appearance. Whether appearance means a specific appearance in the current proceeding before the court, or the lawsuit itself (irrespective of the stage of proceedings) depends on state law.

** "Court" also means administrative agency.

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 e-mail 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 that 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.]

.....
 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 in the above unit at Camp Bondsteel in Kosovo. My tour of duty is for 180 days, beginning May 1, 2011. 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 field every day of the week, and I am unavailable to appear at my hearing on child support. I have asked for one week's leave in order to fly back to North Carolina and attend the hearing. This was denied by my commander.

I need to be personally present in court on my hearing date of June 1, 2011, 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 July 1, 2012.

[signature of defendant]

.....

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

FAMILY COURT DIVISION
Case #08-CI-501580

AMANDA G. WILSON,
Plaintiff

v.
JACOB Q. WILSON,
Defendant

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 NCOs (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 that is being shipped into Afghanistan 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.

Bonnie M. Tan, Attorney at Law

Date:

260 Metzger Street
Green City, Kentucky 40202
(502) 589-9601

[certificate of service—serve on plaintiff’s attorney and servicemember]
.....

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 the 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.

Judge Presiding

Date:

* * *