

University of Kentucky

FAMILY LAW AND...

The Servicemembers Civil Relief Act



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?

What is the "SCRA"??


?

?





The call of an angry turkey buzzard...

SCRA!




South Carolina Roadkill Association




Roadkill
Cheaper than steak... just as dead.

Servicemembers Civil Relief Act



50 U.S.C. Appx. 501 *et seq.*

What is the "SCRA"??



- "The envelope please..."

SCRA -The Soldier's Shield

50 U.S.C. App. §501 *et seq.* (formerly the Soldiers' & Sailors' Civil Relief Act –SSCRA)



Why do we need to know this?



Overview of the SCRA

- Why was it passed?
- What kinds of obligations does it cover?



Resources,
Resources,
Resources

A Judge's Guide to the Servicemembers Civil Relief Act

www.abanet.org/family/military

"Who ya gonna call?"



PURPOSE

"Protect those who have been obliged to drop their own affairs to take up the burdens of the nation"

Boone v. Lightner 319 U.S. 561, 575 (1943)



LIBERAL CONSTRUCTION

The Act should be read "with an eye friendly to those who dropped their affairs to answer their country's call."

Le Maistre v. Leffers, 333 U.S. 1, 6 (1948).

The New Statute - SCRA

- The SCRA became law on 12/19/03 - a complete revision of the SSCRA.
- It was written to:
 - clarify the language of the SSCRA
 - to incorporate many years of judicial interpretation of the SSCRA
 - to update the SSCRA to reflect developments in American life since 1940.



“Who’s covered by the SCRA?”

- Active duty servicemember [SM]
- Mobilized Guard/Reserve
- Nat. Guard [Title 32, federal emergency & funds]
- Dependents (sometimes)

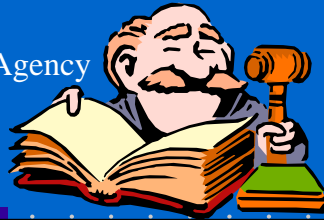


DEFINITIONS §101

“Court”=

*Court, OR

*Administrative Agency



Default judgments – the BIG picture

- What is a default?
 - No answer, counterclaim
 - No motions except:
 - “special appearance” to contest jurisdiction
 - motion for extension of time for answer



PROTECTION AGAINST DEFAULT JUDGMENTS – 50 USC App. §521

- Plaintiff’s Affidavit, Certificate, etc.
 - Defendant not in military, and
 - Factual basis; or
 - Unable to determine status - court may require plaintiff to post bond
- Court-Appointed Attorney before entering default
 - Duties? Payment?

PROTECTION AGAINST DEFAULT JUDGMENTS -- 50 USC App. §521

- Court ***SHALL*** Stay Proceedings
 - Minimum 90 Days
 - Application of counsel or court’s own motion
- When Court Determines
 - May be a defense that cannot be presented w/o presence of Defendant, OR
 - After due diligence counsel has been unable to contact Defendant or otherwise determine if a meritorious defense exists

PROTECTION AGAINST DEFAULT JUDGMENTS 50 USC App. §521

- Court shall reopen when...
 - SM applies on Active Duty
 - or within 90 days after, and shows
 - Material effect, plus
 - Meritorious defense



What is “Material Effect”???

- No single definition
- Impairment of ability to participate in civil suit due to military duties -OR-
- Impairment of ability to pay financial obligations



Stay of Proceedings - 50 USC App 522

- Temporary delay in lawsuit till SM can appear -
 - During period of service + 90 days
 - SM has rec'd notice of proceeding
 - Applies at any stage of proceedings



Motion for Initial STAY

How to apply? What must you show??

Statement re -
– Military duty materially affects ability of SM to appear +

– Date when SM can appear AND...



Motion for Initial STAY

- How to apply? What must you show?? [cont'd]

CO statement:

- duty prevents SM's appearance
- no leave allowed



*Resources,
Resources,
Resources*

Sample Motion & Letter for Stay of Proceedings



“Who ya gonna call?”

-- HOT TIP! --

–How to resist motion for STAY


- “We don’t need you”
- Demand LES – shows leave available, used
- Use of technology



CLIP YOUR WINGS!

-- HOT TIP! --

- How to resist motion for STAY
 - Good faith is implicit; read Judkins, 441 SE2d 139
 - Stay is not “forever,” only so long as material effect lasts
 - See flow chart




STAY PROVISIONS OF SCRA

- Stay request does not constitute –
 - appearance for jurisdictional purposes
 - waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction).

STAY PROVISIONS OF SCRA
50 USC App §522

- May apply for additional stay if duties materially affect at initial application, or later if SM is unavailable to *prosecute or defend the action*.
- If court denies stay request, it must appoint counsel to represent SM

?? Attorney’s duties, who pays fee??



STAY OR VACATION OF JUDGMENTS

If military service materially affects compliance with judgment or order --

- Court **SHALL** on application of SM
 - Stay execution; **and**
 - Vacate or stay attachment or garnishment
- Court may also act on its own motion

Target Practice!



Setting Your Sights on the **SCRA**...

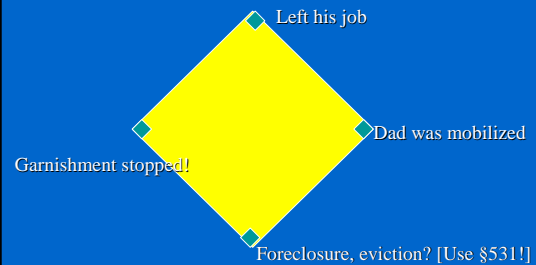
When one parent is mobilized...

- Will garnishment continue?
- What about rent (eviction?) or mortgage payments (foreclosure?)
- Let's see how this works...



HELP! What happened to my child support?

"That's the old ball game!"



Deployment Child Support Issues

- Problems, questions...
 - Restarting the garnishment
 - Same amount?
 - Where send the notice & motion?
 - Locating, AND
 - Serving the other side!



Deployment Child Support Issues

- Problems, questions... for the SM:
 - *Should I move for a STAY?*
 - *I want to request child support reduction --*
 - How can I participate?*



Deployment Custody Issues

- Mom has custody of Johnny
- Gets orders to Kuwait [unaccompanied!]
- Options ????
 - Request discharge?
 - Give Johnny to neighbors? Grandparents?
 - What about to D-A-D??
 - What if dad files for custody? Use SCRA?



Typical Scenario

- Jane Doe prepares her FCP
- Does not refer to the dad
- She receives orders
 - Deployment
 - Mobilization for Guard/Reserve
 - TDY
 - Unaccompanied tour
- She departs
- Johnny left with her new husband
- Johnny's dad, John Doe, finds out!

Typical Scenario

WHAT HAPPENS NEXT?

- Dad gets a lawyer
- Dad files in court for return of Johnny to him [or “civil habeas” or self-help]
- Locating mom?
- Service on mom?
- Mom files for a stay of proceedings...

Typical Scenario (cont'd)

- When Johnny's with dad – what next?
- Child support –
 - Locating mom
 - Serving mom
 - SCRA

Typical Scenario (cont'd)

- Mom files for SCRA relief, asks for a stay
- What's the judge to do? Grant the stay???
 - renders the whole case moot
 - by the time the stay is lifted mom will be back home and the need for dad's motion is gone...
- Deny the stay, which violates federal law
- SWORD AND SHIELD issue
- Bradley case – importance of doing SCRA motion right!

OTHER SCRA Provisions

- No change of domicile due solely to military service for:
 - Tax purposes (state income tax, personal property tax)
 - Voting purposes
- [i.e., SM retains his original legal residence]
- [Consider for divorce cases...]

Resources,
Resources,
Resources

SILENT PARTNER on SCRA



“Who ya gonna call?”

Resources,

Resources,
Resources

- www.jagcnet.army.mil
 - >TJAG Legal Center & School
 - “TJAGLCS Publications” > [SCRA Guide](#)
- “Judge’s Guide” at www.nclamp.gov
 - >Resources
- ABA Family Law Section:
www.abanet.org/family/military
“Who ya gonna call?”

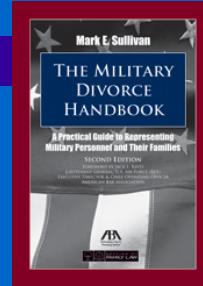


Help for the attorney, for the client

Have you seen
your local JAG
officer...?



“Who ya’ gonna call?”



THE END