

FAMILY LAW AND...

The Servicemembers Civil Relief Act



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Resources, Resources, Resources

A Judge's Guide to the Servicemembers Civil Relief Act



www.abanet.org/family/military

“Who ya gonna call?”

“Who’s covered by the SCRA?”

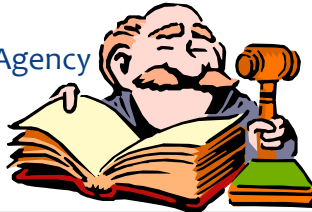
- Active duty servicemember [SM]
- Mobilized Guard/Reserve
- Nat. Guard [Title 32, federal emergency & funds]
- Dependents (sometimes)



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

Slow down!



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



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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).

*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!”

Left his job

Dad was mobilized

Foreclosure, eviction? [Use §531!]

Garnishment stopped!

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?*

Harrison v. Lyman, 2012 Alas. LEXIS 108

Dad in Alaska Nat. Guard, deployed mid-06 to 12/07

Harrison v. Lyman, 2012 Alas. LEXIS 108

Mom moves for increase in child support
Dad moves for STAY under SCRA

SLOW DOWN!!

Harrison v. Lyman, 2012 Alas. LEXIS 108

Judge pegs DATE OF MOM’S MOTION as start date for new child support

Harrison v. Lyman, 2012 Alas. LEXIS 108



Eventual return to court...
> \$1650/mo c/s (deployment)
> \$1400/mo current c/s
> \$30,000 owed in back payments!

Harrison v. Lyman, 2012 Alas. LEXIS 108



Harrison v. Lyman, 2012 Alas. LEXIS 108



Mom says NIX to time pmts.,
asks for JUDGMENT!

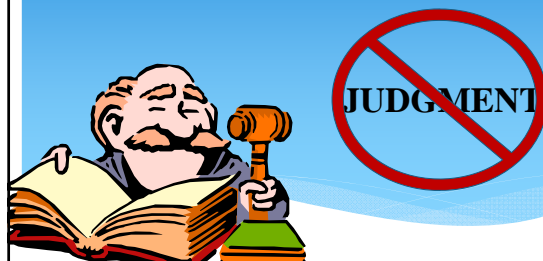
Harrison v. Lyman, 2012 Alas. LEXIS 108

Judge: Back supt accrued thru no fault of soldier



Harrison v. Lyman, 2012 Alas. LEXIS 108

Judge: utterly inequitable to grant ex-wife a
judgment



Harrison v. Lyman, 2012 Alas. LEXIS 108

Judge: She might be doing this to harm his
finances [DUH!!] and/or impair his rel'ship
with the kids



Harrison v. Lyman, 2012 Alas. LEXIS 108

Judge: entry of judgment would be punitive if issued at this time



Harrison v. Lyman, 2012 Alas. LEXIS 108



Alaska Supreme Court reversed...

Harrison v. Lyman, 2012 Alas. LEXIS 108



... and ruled that mom was entitled to judgment, no discretion allowed!

Harrison v. Lyman, 2012 Alas. LEXIS 108



Court cannot take into account:

- > motives
- > good/bad faith, or
- > circumstances of either party

Harrison v. Lyman, 2012 Alas. LEXIS 108

Motion = fair warning of possible increase, so dad could:

- *adjust his consumption pattern
- *put away money to cover possible increase
- *reassess what new amt. might be



Harrison v. Lyman, 2012 Alas. LEXIS 108



- > SCRA and the "day of reckoning"
- > Nothing in SCRA that says "no consequences"

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 (cont'd)

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!

Stay of Proceedings in Domestic Cases

- * For entire case?
- * What about excepting...
 - Production of LES?
 - Production of last year's income tax return?
 - Answering interrogatories about years of service, rank, current pay and allowances?
 - Other items?

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...]

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SILENT PARTNER on SCRA



“Who ya gonna call?”

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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?”

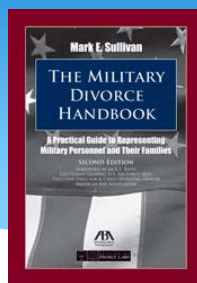


Help for the attorney, for the client

Have you seen
your local JAG
officer...?



“Who ya’ gonna call?”



“Whoooo ya’ gonna call???”



