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The SCRA Right to Continuance for the Deployed Servicemember is Mandatory!
By Captain Samuel F. Wright, JAGC, USN (Ret.)[2]

4.3—SCRA right to a continuance and protection against default judgment.

In 1997, the Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated the "Law Review" column in *The Officer,* ROA's monthly magazine. In 2000, we added the "Law Review" articles to our website, www.roa.org. Starting in September 2001, when 19 terrorists killed almost 3,000 Americans in

[1] I invite the reader's attention to Law Center | ROA. You will find more than 2,000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouses' Protection Act (USFSPA), the title 38 chapters that provide for veterans' benefits administered by the Department of Veterans Affairs (VA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. I am the author of more than 80% of the articles, but we are always looking for "other than Sam" articles by other lawyers.

[2] BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. I have dealt with USERRA and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 44 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. §§ 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. As of 5/1/2026, I have come out of retirement and have affiliated with Maher Legal Services in an "of counsel" role. You can reach me by e-mail at samuel@maherlegalservices.com or by telephone at (708) 468-8155.

that terrible Tuesday morning, ROA started adding new articles each month. We now have more than 2,300 articles on our website, along with a detailed subject index, to facilitate finding articles about specific topics.[3]

In February 2015, we published Law Review 15019. Because this is an important topic, and because almost 12 years have passed since we published the article, we are republishing the article now.

LAW REVIEW 15019
February 2015
North Carolina Judge Reprimanded for Flouting SCRA.
By Captain Samuel F. Wright, JAGC, USN (Ret.)

4.3—SCRA right to continuance and protection against default judgment

***In re: Inquiry Concerning a Judge (Brenda G. Branch),* No. 220A14 (North Carolina Supreme Court January 23, 2015).**

Brenda G. Branch is the Judge of the General Court of Justice, District Court Division 6A, of the State of North Carolina. The North Carolina Supreme Court affirmed the findings of fact and conclusions of law of the North Carolina Judicial Standards Commission and publicly reprimanded Judge Branch for her conduct while presiding over the divorce case styled *Foster v. Foster*.

[3] I am the author of more than 80% of the published "Law Review" articles, but I am 75 and will not be around forever to author and update these articles. We are always looking for "other than Sam" articles by other lawyers.

Sergeant First Class (SFC) Jason Foster, an active duty Army soldier, was the defendant in that divorce case. In the case, Mrs. Foster (as plaintiff) sought child custody, child support, alimony, equitable distribution, post-separation support, and attorney fees, as well as a divorce. When he became aware that he had been sued in North Carolina, SFC Foster was assigned to duty in South Korea.

By letter dated July 16, 2012 (received by Judge Branch on July 26), SFC Foster requested a stay of the proceedings in the divorce case because his military duties precluded him from participating in judicial proceedings until at least April 30, 2013. In his letter, SFC Foster also stated that "legal counsel informs me that federal law requires a stay of proceedings for a minimum of 90 days for service members on active duty" and cited the Servicemembers Civil Relief Act (SCRA). SFC Foster was referring to advice that he had received from an Army judge advocate serving in Daegu, South Korea.

In a separate letter (also dated July 16 and received July 26), SFC Foster's commanding officer (CO) also wrote to the court and verified that SFC Foster's military service would preclude his participation in judicial proceedings in North Carolina until April 30, 2013. In his letter, the CO assured the court that he would personally ensure that SFC Foster would participate in judicial proceedings after that date. In his letter, the CO wrote: "Until this date [April 30, 2013], SFC Jason Foster is needed by this unit because he is essential to the mission. ... In this instance, SFC Foster's critical role in the national security mission of this command precludes his participation in court proceedings until April 30, 2013. He will be unable to present any defense at all due to his duties."

Despite having been put on notice that the defendant (SFC Foster) was on active duty in the Army and serving thousands of miles away, Judge Branch ignored her clear duties under sections 201 and 202 of the SCRA, 50 U.S.C. App. 521, 522. She refused to grant a continuance of at least 90 days. She refused to appoint counsel for SFC Foster, and she entered a default judgment against him for having failed to appear and defend.

She relied on misleading information provided by Mrs. Foster's attorney, to the effect that the SCRA did not apply in this case. She failed to make her own judicial inquiry concerning her legal obligations in presiding over a case involving an active duty servicemember as a party in a civil case.

Congress enacted the SCRA in 2003, as a long-overdue rewrite of the Soldiers' and Sailors' Civil Relief Act (SSCRA), which was originally enacted in 1918, after the United States entered World War I. For almost a century, federal law has protected active duty service members from harm to their interests in judicial proceedings flowing from their military service.

Judge Branch apparently believed that SFC Foster's mention of "legal counsel" in his letter relieved her of the obligation to appoint counsel for Foster and to grant a continuance of at least 90 days. But the SCRA explicitly provides: "An application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction)." 50 U.SC. App. 522(c).

End of reprint of Law Review 15019.

After we published this article in 2015, Congress renumbered the sections of title 50 of the United States Code and eliminated the cumbersome "Appendix." There are two pertinent sections of the SCRA, relating to the right to continuance and to protection against the entry of a default judgment when an active-duty service member is the defendant or the plaintiff in a civil action. These are sections 3931 and 3932 of title 50. I have placed the complete text of those sections at the end of this article.

Q: Where can I find a lawyer or law firm that fully understands laws like the Servicemembers Civil Relief Act (SCRA), the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Uniform Code of Military Justice (UCMJ), and other laws that are especially pertinent to those who serve or have served our country in uniform?

A: As of 5/1/2026, I have come out of retirement and have joined Maher Legal Services in an "of counsel" role. This firm has a great team, headed by attorneys John Maher and Kevin Mikolashek, both of whom have served as Army judge advocates for many years. These attorneys and this firm have a great record, and I am proud to join their team.

Here is a link to the Maher Legal Services website:

https://www.lawyersdefendingwarriors.com/about.

Reserve Organization of America

Join the Organization That Fights for You

This article is one of more than 2,300 "Law Review" articles available at Law Center | ROA— a free legal resource that the Reserve Organization of America (ROA) has built and maintained since 1997, adding new articles every month.

ROA is the only national military organization dedicated exclusively to America's reserve components — all eight of them. From the 6,179 members of the Coast Guard Reserve to the 329,705 soldiers of the Army National Guard, ROA exists to serve the nearly 773,000 men and women who answer the call while maintaining civilian lives. No other organization does what we do for the people we serve.

Our roots run deep. On October 2, 1922, veterans of the Great War gathered at Washington's historic Willard Hotel — at the invitation of General of the Armies John J. Pershing — to build something lasting. One of the junior officers in that room was Captain Harry S. Truman, who, as President, signed ROA's congressional charter in 1950. That charter gives us a clear mission: advocate for policies that ensure adequate national security. For more than a century, we've made the case that America's Reserve Components and National Guard are among the most cost-effective pillars of our national defense.

Beyond this library of legal resources, ROA files amicus curiae ("friend of the court") briefs in the Supreme Court and other courts and actively educates service members, military spouses, attorneys, employers, legislators, and others about the legal rights of those who serve — and how to enforce them. We provide this information to all service

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If you are currently serving, or have ever served, in any of America's eight uniformed services, you are eligible to join ROA — and membership starts at just $20 for a full year, or $450 for life. Officers and enlisted personnel alike qualify, whether your service was in the Active Component, the National Guard, or the Reserve. Spouses, widows, widowers, ancestors (parents or grandparents), and lineal descendants of past or present servicemembers are also eligible to join, so families can stand with those who serve. Join online at Reserve Organization of America - ROA or call 800-809-9448.

If you are not eligible for membership but believe in this mission, your financial contribution directly funds this resource and the advocacy work that protects those who serve. Donations may be mailed to:

Reserve Organization of America
1 Constitution Ave. NE
Washington, DC 20002

Here is the entire text of section 3931 of Title 50 of the United States Code:

50 U.S. Code § 3931 - Protection of servicemembers against default judgments

(a) Applicability of section

This section applies to any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance.

(b)Affidavit requirement

(1)Plaintiff to file affidavit

In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit—

(A)

stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or

(B)

if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

(2)Appointment of attorney to represent defendant in military service.

If in an action covered by this section it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember.

(3)Defendant's military status not ascertained by affidavit.

If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this chapter.

(4)Satisfaction of requirement for affidavit

The requirement for an affidavit under paragraph (1) may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury.

(c)Penalty for making or using false affidavit.

A person who makes or uses an affidavit permitted under subsection (b) (or a statement, declaration, verification, or certificate as authorized under subsection (b)(4)) knowing it to be false, shall be fined as provided in title 18, or imprisoned for not more than one year, or both.

(d)Stay of proceedings.

In an action covered by this section in which the defendant is in military service, the court shall grant a stay of proceedings for a minimum period of 90 days under this subsection upon application of counsel, or on the court's own motion, if the court determines that—

(1)
there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or

(2)
after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

(e)Inapplicability of section 3932 procedures.

A stay of proceedings under subsection (d) shall not be controlled by procedures or requirements under section 3932 of this title.

(f) Section 3932 protection.

If a servicemember who is a defendant in an action covered by this section receives actual notice of the action, the servicemember may request a stay of proceeding under section 3932 of this title.

(g)Vacation or setting aside of default judgments.

(1)Authority for court to vacate or set aside judgment.

If a default judgment is entered in an action covered by this section against a servicemember during the servicemember's period of military service (or within 60 days after termination of or release from such military service), the court entering the judgment shall, upon application by or on behalf of the servicemember reopen the judgment for the purpose of allowing the servicemember to defend the action if it appears that—

(A)

The servicemember was materially affected by reason of that military service in making a defense to the action; and

(B)

The servicemember has a meritorious or legal defense to the action or some part of it.

(2)Time for filing application.

An application under this subsection must be filed not later than 90 days after the date of the termination of or release from military service.

(h)Protection of bona fide purchaser.

If a court vacates, sets aside, or reverses a default judgment against a servicemember and the vacating, setting aside, or reversing is because of a provision of this chapter, that action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment.

Here is the entire text of section 3932 of Title 50 of the United States Code:

50 U.S. Code § 3932 - Stay of proceedings when servicemember has notice.

(a)Applicability of section.

This section applies to any civil action or proceeding, including any child custody proceeding, in which the plaintiff or defendant at the time of filing an application under this section—

(1)
is in military service or is within 90 days after termination of or release from military service; and

(2)
has received notice of the action or proceeding.

(b)Stay of proceedings.

(1)Authority for stay.

At any stage before final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met.

(2)Conditions for stay.

An application for a stay under paragraph (1) shall include the following:

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

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

(c)Application not a waiver of defenses.

An application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction).

(d)Additional stay.

(1)Application.

A servicemember who is granted a stay of a civil action or proceeding under subsection (b) may apply for an additional stay based on continuing material effect of military duty on the servicemember's

ability to appear. Such an application may be made by the servicemember at the time of the initial application under subsection (b) or when it appears that the servicemember is unavailable to prosecute or defend the action. The same information required under subsection (b)(2) shall be included in an application under this subsection.

(2)Appointment of counsel when additional stay refused.

If the court refuses to grant an additional stay of proceedings under paragraph (1), the court shall appoint counsel to represent the servicemember in the action or proceeding.

(e)Coordination with section 3931.

A servicemember who applies for a stay under this section and is unsuccessful may not seek the protections afforded by section 3931 of this title.

(f)Inapplicability to section 3951.

The protections of this section do not apply to proceedings under section 3951 of this title.

Federal and State Judges: Please understand that the procedures required by sections 3931 and 3932 are not just suggestions. These are requirements of federal law, and you ignore them at your own risk, as Judge Branch learned to her chagrin.

Judges: Please read carefully "A Judge's Guide to the Servicemembers Civil Relief Act." This scholarly and practical memorandum was written by Colonel Mark E. Sullivan, USA (Ret.), a North Carolina attorney, a retired judge advocate of the Army and Army Reserve, a life member of the Reserve Organization of America, and our country's foremost expert on military family law.

Go to: www.ncbar.gov For Lawyers View All Bar Programs LAMP Legal Research and Other Resources "A Judge's Guide to the Servicemembers Civil Relief Act."

Q: But what if our State law makes granting such continuances unlawful?

A: I invite your attention to the Supremacy Clause of the United States Constitution, which provides as follows:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding.[4]

Please note that the SCRA, including sections 3931 and 3932, applies not only to Federal and State courts but also to administrative agencies of the Federal Government and of State and local governments. The SCRA's definition of "court" is as follows:

[4] United States Constitution, Article VI, Clause 2. Yes, it is capitalized just that way, in the style of the late 18th Century. *See also Gibbons v. Ogden,* 22 U.S. 9 (1824).

> The term “court” means a court **or an administrative agency** of the United States or of any State (including a political subdivision of a State), whether or not a court or an administrative agency of record.[5]

[5] 50 U.S.C. § 3911(5) (emphasis supplied).