

SCRA Applies to Bankruptcy Proceedings

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In 1917, after the United States entered World War I, a group of preeminent legal scholars drafted, and Congress quickly enacted, the Soldiers' and Sailors' Civil Relief Act, to protect the legal rights of the doughboys who were called to the colors. The original SSCRA expired, by its terms, shortly after Armistice Day (November 11, 1918), but it was reenacted (almost unchanged) in 1940 after World War II had broken out and our country had reinstated the draft. The 1940 law did not expire after victory was achieved.

The SSCRA served our nation well, but over time some of the law's provisions became outdated. For example, the SSCRA protected servicemembers from default judgments in judicial proceedings (in federal and state courts), but not to *administrative* proceedings that can also affect important legal rights. Administrative proceedings were unknown in 1917 and unusual in 1940, but today they are routine.

Finally, in 2003, Congress comprehensively updated and recodified the SSCRA—the new law is called the Servicemembers' Civil Relief Act (SCRA). The SCRA includes all the protections contained in the SSCRA, plus some important new protections, including default judgment protection in administrative proceedings.

I recently stumbled upon an interesting court decision about the application of the SCRA during the Global War on Terrorism. The case is *In re David Templehof, Debtor*, 2005 Bankr. LEXIS 2808 (S.D.N.Y. August 2, 2005). Mr. Templehof filed for Chapter 7 bankruptcy relief, and in his petition he represented that he was a member of the Alaska National Guard, mobilized and deployed to Iraq.

Richard J. Miller, an attorney representing General Motors Acceptance Corporation (GMAC), filed a motion for relief from stay, seeking the bankruptcy court's permission to obtain possession of and sell Mr. Templehof's pickup truck. Although Mr. Templehof's filing with the court indicated he was on active duty, Mr. Miller attached an affidavit stating that the debtor was "not an infant, incompetent, or in the military."

Mr. Miller did not read the court file before drafting his affidavit, but he did inquire of the Department of Defense (DoD) data center as to whether Mr. Templehof was on active duty. The court, on its own motion, issued an order to show cause to Mr. Miller, demanding that he explain the discrepancy. After a hearing, the court declined to sanction the attorney.

"In response to the order to show cause, Mr. Miller submitted an Affidavit of Due Diligence ... in which he indicated that his office performed a search of the Department

of Defense Manpower Data Center (the ‘Data Center’) which did not show the Debtor as being on active duty.... Mr. Miller demonstrated to the Court at the hearing that an account with the Data Center connected to Debtor’s name was opened on June 9, 2005, which corroborates Mr. Miller’s argument that his office performed a Data Center search on that date. Mr. Miller also provided the court with two subsequent Data Center searches, performed on June 29 and 30, which both state that Debtor is not on active duty. It was unclear to the Court whether Debtor’s name would appear in the Data Center as he is deployed with the National Guard...Debtor’s counsel stated that Debtor was not deployed until the end of May, 2005, which may be an explanation for the fact that Debtor’s name does not yet appear in the Data Center.”

It is of great concern to me that there seems to be a significant lag time between when a mobilized National Guard or Reserve member enters active duty and when he or she shows up in the DoD Data Center. Attorneys all over the country rely on the Data Center to determine whether a party to a civil action is on active duty, and whether a default judgment can be issued.

The court did not impose sanctions on the attorney because the court was convinced (after the hearing) that the attorney did not intend to deceive the court about Mr. Templehof’s military status. But the court did include eloquent language that should be repeated to attorneys and courts across the country: “Since September 11, 2001, many of this nation’s military personnel have been engaged in active combat overseas. These servicemembers include many national reservists, including Debtor. To provide these men and women with broader protections against civil liability, and at times, in all likelihood unaware of the action pending against them, Congress has amended the Soldiers’ and Sailors’ Civil Relief Act ... This Court takes its responsibility to protect the rights of these men and women pursuant to the SSCRA seriously. Our country’s servicemembers must have peace of mind that they will not be subject to civil actions which they cannot appear and defend.”