

LAW REVIEW 944

4.2—Right To Terminate a Lease or Contract Upon Mobilization

Get Out of Lease upon Mobilization

By Colonel John S. Odom, Jr., USAF (Ret.)¹
and Captain Samuel F. Wright, JAGC, USN (Ret.)

Q: I am a Lieutenant Commander in the Navy Reserve Medical Corps and a physician in private practice.² I have volunteered to go on active duty and to deploy to Afghanistan for a year and maybe longer. I am closing down my medical practice. I read with great interest your Law Review 147 (Nov. 2004), entitled “Professional Malpractice Liability for Recalled Reservists in Health Care and Legal Services Professions.” [You can find more than 600 Law Review articles at www.roa.org/law_review.] I notified my medical malpractice insurance carrier, and I have made arrangements to suspend my malpractice insurance for the duration of my active duty.

I also read your Law Review 110 (Jan. 2004), and I have terminated the lease on my medical office and also my automobile lease. I read Law Review 0641 Update, and I have terminated my cell phone contract.

My problem relates to a very expensive medical device that I have leased for my practice. In September 2008, I signed a five-year lease on the device, and the lease requires me to pay \$3700 per month. I have made 12 monthly payments totaling \$44400, and I have remaining 48 payments totaling \$177600. I notified the lessor in writing and demanded to be released from my obligations under the lease, in accordance with the Servicemembers Civil Relief Act (SCRA). The lessor responding in writing, contending that the SCRA does not give me the right to terminate this lease and that I will be required to continue paying \$3700 per month even when I am on active duty in Afghanistan. Is the lessor correct?

A: Unfortunately, yes. No provision in the SCRA entitles you to terminate a lease of this nature.

Under the Soldiers’ and Sailors’ Civil Relief Act (SSCRA), which dates back to 1917, a person entering active duty voluntarily or involuntarily was entitled to terminate a lease on premises (apartment, house, office, farm, etc.). In 2003, Congress enacted the SCRA as a long-overdue rewrite of the SSCRA. Section 535 of the SCRA (50 U.S.C. App. 535) continues the right to terminate a lease on premises and expands the provision to include also the right to terminate a vehicle lease. In October 2008, Congress added a new section (535A), giving the servicemember the right to terminate a cell phone contract under certain circumstances. Thus, you have the right to terminate your vehicle lease, your office lease, and your cell phone contract. No SCRA provision gives you the right to terminate a lease on professional equipment.

Before Congress enacted the new provision permitting servicemembers to terminate cell phone contracts, Congress considered a much broader provision that would have enabled the servicemember or person entering active duty to terminate many more kinds of contracts and leases. Unfortunately, Congress did not enact that broader provision.

Under section 591 of the SCRA (50 U.S.C. App. 591), you can apply to a court for relief from your pre-service obligations under the equipment lease. You will need to show that your ability to meet your obligations under the lease has been materially (i.e., adversely) affected by your entry on active duty—that your salary on active duty is less than what you had been earning as a physician in private practice. Please see Colonel Odom’s Law Review 92 (Oct. 2003), titled “Going on the Offensive Using Section 590 of the SSCRA.” Section 591 of the SCRA is essentially the same as section 590 of the SSCRA. You will almost certainly need a lawyer to represent you in this sort of proceeding.

1) Colonel Odom practices law in Shreveport, Louisiana, in the firm of Jones Odom Davis & Politz. His e-mail is John.Odom@jodplaw.com.

2) This situation is an amalgam of several medical reservists that we have heard from, not the facts pertaining to one

particular reservist. 1 Colonel Odom practices law in Shreveport, Louisiana, in the firm of Jones Odom Davis & Politz. His e-mail is John.Odom@jodplaw.com. 2 This situation is an amalgam of several medical reservists that we have heard from, not the facts pertaining to one particular reservist.

Update: December 2015

As explained in Law Review 15115, the editors of the United States Code (U.S.C.) recently eliminated the “Appendix” of title 50 of the Code, and the Servicemembers Civil Relief Act (SCRA) can now be found in title 50 at sections 3901 and following.