

Don't Sacrifice Military Personnel to "Paperwork Problems"

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[About Sam Wright](#)

4.3—Right to Continuance and Protection against Default Judgment

You have no doubt read many media reports on our nation's foreclosure crisis. Many of these reports have minimized the significance of the "paperwork problems" that threaten to bring the foreclosure process to a grinding halt. We should not minimize the significance of law firms short-circuiting required due process procedures through the use of affidavits "robo signed" by persons having no knowledge of the facts to which they have averred under oath.

The Due Process Clause of the Constitution's 14th Amendment and a federal statute called the Servicemembers Civil Relief Act (SCRA) protect the interests of active duty members of our armed forces. Their legitimate interests must not be sacrificed because their service to our country has taken them thousands of miles away from their homes, their families, and civil lawsuits that may be filed against them. Congress enacted the SCRA in 2003, as a long-overdue

¹I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2000 "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 Spouse Protection Act (USFSPA), 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 very specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²BA 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. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 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. You can reach me by e-mail at SWright@roa.org.

recodification of the Soldiers' and Sailors' Civil Relief Act (SSCRA), which dates back to 1917, when our country entered World War I.

The SSCRA and SCRA require, before a default judgment can be awarded against any defendant in a civil lawsuit (state or federal), the plaintiff to aver under oath that the defendant is not a member of the armed forces on active duty. If the defendant is on active duty, federal law requires that certain steps be taken to ensure that the defendant has an opportunity to present his or her side of the case. The defendant who is serving on active duty in a place like Afghanistan may not even be aware that the lawsuit has been filed.

Please see <https://scra-w.dmdc.osd.mil/scra/#/home>. This is a free service provided by the Servicemembers Civil Relief Act Website. Anyone can determine in just a few minutes, and for no charge, whether a specific named person is or is not on active duty. Before affixing your "robo signature" to an affidavit attesting that a named person is not on active duty, you should at least utilize this free service to find out.

I invite the readers' attention to *Hurley v. Deutsche Bank Trust Company Americas*.³ James B. Hurley is a Sergeant in the Michigan Army National Guard. He was on active duty in Iraq when Deutsche Bank initiated a foreclosure action against him. In order to facilitate a sheriff's sale of Hurley's home, a paralegal at a "foreclosure mill" law firm signed an affidavit stating: "The undersigned, being first duly sworn, states that upon investigation he is informed and believes that none of the persons named in the notice attached to the sheriff's deed of mortgage foreclosure, nor any person on whom they or any of them were dependent, were in the military service of the United States at the time of the sale or for six months prior thereto." Even after the process server returned a note to the effect that James B. Hurley was reported to be in the Army in Iraq, the paralegal executed a second affidavit to the effect that Hurley was not in military service. When deposed during Hurley's federal court lawsuit against the bank and its law firm, the paralegal acknowledged that he had not done any investigation to determine Hurley's military status but had simply signed his name to documents as instructed by a law firm attorney.

The Department of Defense reports that as of Oct. 26 788,949 National Guard and Reserve personnel have been called to the colors since the terrorist attacks of September 11, 2001. Some of the "paperwork problems" in the foreclosure mess have to do with false affidavits stating that the homeowner is not in the military when in fact he or she is, as in the case of Sergeant Hurley. There are good reasons for the steps that must be taken before a homeowner loses his or her home. We should not countenance law firms that short-circuit these steps through "robo signatures" on affidavits.

³610 F.3d 334 (6th Cir. 2010).