

Garnishment of Military Pay

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

4.3—Right to Continuance and Protection against Default Judgment

5.1—Division of Military Benefits Upon Divorce

5.2—Military Service and Child Matters

Q: A member of the armed forces (Joe Smith) owes me money. I sued him in state court, and he did not answer. I obtained a default judgment. I have demanded that he pay me, and he has avoided me. I want to try to collect on the judgment by garnishing his military pay. A retired Navy judge advocate told me that military pay can only be garnished to enforce child support and alimony orders. Is that correct?

A: That statement was correct at one time, but more than 15 years ago Congress enacted section 5520a of title 5 of the United States Code (5 U.S.C. 5520a). This section makes federal agencies (Executive Branch, Legislative Branch, or Judicial Branch) subject to garnishment orders, as private employers are subject. This applies to federal pay, military or civilian. Prior to

¹I invite the reader's attention to <https://www.roa.org/page/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 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 (VRRRA—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 VRRRA 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 VRRRA 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.

the enactment of section 5520a, federal pay could be garnished only for child support or alimony obligations, under 42 U.S.C. 659.

To garnish this service member's pay, you must comply with your state law about garnishment, and then you serve the garnishment order on the Defense Finance & Accounting Service (DFAS). You must also demonstrate that the civil proceeding was conducted in accordance with the Servicemembers Civil Relief Act (SCRA) and that due consideration was given to the member's absence because of the exigencies of military service. 5 U.S.C. 5520a(k). The SCRA is codified in title 50 Appendix, sections 501 through 597b (50 U.S.C. App. 501-597b).

Before you obtained the default judgment, you were required (by the SCRA) to file with the court an affidavit stating whether or not Smith was in military service at the time. 50 U.S.C. App. 521(b)(1)(A). If you stated under oath that Smith was not on active duty, when in fact he was, you are guilty of a federal misdemeanor, punishable by up to a year in jail and a substantial fine. 50 U.S.C. App. 521(c).

If Smith was on active duty at the time, an attorney should have been appointed to represent his interests. 50 U.S.C. App. 521(b)(2). Smith was also entitled to a stay of the proceedings, if his military service precluded him from filing a timely answer to your lawsuit or appearing for the trial. 50 U.S.C. App. 522.

The purpose of these SCRA procedures is to ensure that the service member is not prejudiced by his or her service to our country. If Smith was serving in a place like Afghanistan at the time you sued him, he may have been unaware that you had filed the suit. If the SCRA provisions were not complied with during your lawsuit, you cannot enforce the judgment through garnishment through DFAS.

Q: Joe Smith has been on active duty for many years, and he may be approaching retirement. If he retires before the judgment is satisfied, can I enforce the judgment through garnishing his military retired pay?

A: No. Federal retired pay (military or civilian) can be garnished only for child support and alimony obligations, under 42 U.S.C. 659.

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This article is one of 1800-plus "Law Review" articles available at www.roa.org/page/lawcenter. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established in 1922 by a group of veterans of "The Great War," as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For

many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs.

Indeed, ROA is the *only* national military organization that exclusively supports America's Reserve and National Guard.

Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA or eligible to join, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation's seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve.

If you are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

Reserve Officers Association
1 Constitution Ave. NE
Washington, DC 20002