

LAW REVIEW 1231

March 2012

USERRA Plaintiff Does Not Have to Pay Filing Fee

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

1.4—USERRA Enforcement

1.8—Relationship between USERRA and other Laws/Policies

Q: As an attorney, I recently filed a civil action under the Uniformed Services Employment and Reemployment Rights Act (USERRA), on behalf of a reservist who was called to active duty and deployed to Afghanistan, and who was denied reemployment in her civilian job after she was released from active duty. When I filed at the Office of the Clerk of the United States District Court, I pointed out that section 4323(h)(1) of USERRA provides: "No fees or court costs may be charged or taxed against any person claiming rights under this chapter." 38 U.S.C. 4323(h)(1). I brought to the Clerk's office a copy of the relevant page of title 38 of the United States Code, with this subsection circled. I pointed out that this section means that my client is exempted from the usual requirement to pay the \$350 filing fee when filing a lawsuit.

The individual at the desk said that he did not know what I was talking about and that he would ask his supervisor. The Deputy Clerk came out, with a large book in her hands. She said that she could not find the section I had cited in her compilation of federal laws, but then I saw that the book in her hands was the *Federal Rules of Civil Procedure*. I explained to her that I was citing a section of the United States Code, in title 38, and not a section of the *Federal Rules of Civil Procedure*.

The Deputy Clerk also asked me to explain to her the group that I represented—she said that she could not find an organization named "USERRA" on the list of organizations exempt from having to pay the filing fee when filing a lawsuit. I patiently explained to her that USERRA is the name of the statute, not the name of an organization, and that it is an acronym for Uniformed Services Employment and Reemployment Rights Act (USERRA). This only seemed to get her more flustered.

In order to avoid spending the whole day in the Clerk's office, I paid the \$350 filing fee, and I then filed a motion to have the fee refunded. What do you think of this?

A: I have heard this story many times, and I had the same experience myself when I was in private practice. We (the Service Members Law Center) will send a letter to the Chief Clerk of each of the 93 United States District Courts, to bring this important statutory provision to their attention. [1]

Section 4323(h)(1) has important implications, far beyond the exemption from having to pay the \$350 filing fee. It means, for example, that the USERRA plaintiff is exempted from the application of Rule 68 of the *Federal Rules of Civil Procedure*, if the plaintiff has rejected

an offer of judgment proffered by the defendant. Please see [Law Review 1082](#), by Thomas G. Jarrard, Jr., Esq.^[2]

Getting exempted from the \$350 filing fee, or paying the fee and getting it refunded, is a powerful way to make the point, right from the outset of the litigation, that *USERRA is different*. This is not a run-of-the-mill civil lawsuit that you are filing. Your client is one of the brave young men and women who have laid aside their civilian pursuits to serve our country in its hour of need, and your lawsuit is to vindicate his or her rights, arising out of that service. Congress has made a provision for USERRA plaintiffs that it has not made for plaintiffs under any other statute.

As we get further away from 1973, when Congress abolished the draft, the more we find that those who are in charge of things are woefully ignorant of military matters, and your experience with the Deputy Clerk serves to prove this point. A constant education campaign is necessary to inform those who are in charge of things of the special needs and special laws for those who serve.

^[1] Update April 9, 2012: We promised to bring this matter to the personal attention of the Chief Clerk of each of the 93 United States District Courts. [Here is the letter that we sent](#) to the Clerk of the United States District Court for the Northern District of Alabama. The other 92 letters are identical.

^[2] You can find 731 articles at www.servicemembers-lawcenter.org, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics.