

Forced to Quit Reserve to Obtain Loan to Buy Dental Practice

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

4.10—Protection against discrimination based on exercise of SCRA protections

Q: I am a dentist, and until last year I was a Dental Corps officer in the Navy Reserve. I have always wanted to have my own dental practice, and last year (2012) an opportunity arose for me to purchase the dental practice of a local dentist who wanted to retire. To purchase the practice, I needed a substantial bank loan, to be paid back over 20 years. The bank refused to give me the loan so long as I was a member of the Navy Reserve. To obtain the loan, I agreed to resign my commission and disaffiliate from the Navy Reserve. I carried through on my commitment. I resigned and disaffiliated, but now I regret having done so. I want to reaffiliate.

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.

I heard that you are the expert on the Uniformed Services Employment and Reemployment Rights Act (USERRA). Did the bank violate USERRA when it forced me to quit the Navy Reserve to get this loan? What about other laws?

A: USERRA applies to your relationship with an employer or prospective employer. The bank was not your employer, and you were not seeking employment with the bank. USERRA has no application to this situation.

I also checked out the Servicemembers Civil Relief Act (SCRA), which Congress enacted in 2003, as a long-overdue rewrite of the Soldiers' and Sailors' Civil Relief Act (SSCRA), which can be traced back to 1917. The SCRA is codified in the Appendix of title 50 of the United States Code, at sections 501-597b (50 U.S.C. App. 501-597b).

The SCRA contains many great provisions for those who serve and those who are called to the colors, but no SCRA provision applies to your situation. The closest section I can find is section 108, 50 U.S.C. App. 518. That section makes it unlawful for a creditor, credit reporting service, insurance company, etc. to take certain unfavorable actions (refusal of credit, denial or revocation of credit, change in the terms of an existing credit relationship) *on the basis of* a service member's application for or receipt of a stay, postponement, or suspension pursuant to the SCRA.

You have not applied for or received any such stay, postponement, or suspension. Nothing in the SCRA or any other federal law makes it unlawful for a bank to force an individual to quit a Reserve Component as a condition of obtaining a loan.

Q: It's not fair, and how are the Reserve Components supposed to be able to recruit and retain personnel if banks can force them to quit? There ought to be a law!

A: There "ought to be a law" is not the same thing as "there is a law." A court cannot enjoin a course of conduct just because the judge thinks that it is unfair or abusive. A statutory amendment would be required to outlaw what the bank did to you. I will discuss this issue with Captain Marshall Hanson, our Legislative Director here at ROA.

Q: I obtained the loan in March 2012, and I have made the payments on time each month, but it will be another 19 years before the loan is paid off, at the rate that the loan document requires me to make payments. How about if I just rejoin the Navy Reserve and not tell the bank? How is the bank going to find out? And what can they do about it if they do find out?

A: You need to consult an attorney licensed in your state, but I suggest that you be extraordinarily careful about the course you have laid out. Depending upon how the loan document was drafted, the obligation to stay out of Reserve Components of the armed forces is probably a *continuing obligation*. If you breach any of the obligations of the loan contract, whether in Year 1 or Year 19, you may find that you are in default and that you owe back the entire loan principal *now*.

You are probably stuck with the contract that you signed. It is not illegal or unenforceable just because we don't like it. Thank you for having served in the Navy Reserve.

Update – March 2022³

The location of the SCRA within the United States code changed in late 2015. Previously codified at 50 U.S.C App. §§ 501-597(b), there was an editorial reclassification of the SCR by the Office of the Law Revision Counsel to the United States House of Representatives that became effective on December 1, 2015.⁴ The SCRA is now codified at 50 U.S.C. §§ 3901-4043. The changes in codification have not changed the substance or application of the sections. Therefore, the application of the SCRA throughout this article applies the same today as it did when it was written.

The relevant section cited throughout the article can be found as followed:

50 U.S.C. App. § 518 discussing the exercise of rights under the Act are not affected by certain future financial transactions can be found at 50 U.S.C. § 3919.

For a complete conversion chart for the SCRA please see *The Servicemembers Civil Relief Act Has Moved*.⁵

³Update by Second Lieutenant Lauren Walker, USMC.

⁴*The Servicemembers Civil Relief Act (SCRA)*, THE UNITED STATES DEPARTMENT OF JUSTICE, <https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-skra> (last visited Mar. 10, 2022).

⁵Samuel F. Wright, *The Servicemembers Civil Relief Act Has Moved*, Law Review 15115 (Dec. 2015).