

The Servicemembers Civil Relief Act Does Not bar all Lawsuits against Active Duty Service Members

By Gavriel Swerling³

4.0--SCRA Generally

4.3—SCRA Right to Continuance and Protection Against Default Judgment

4.9--SCRA Enforcement

5.2—Military Service and Child Matters

Q: I am on active duty, and have a pending court case against me. Does the Servicemembers Civil Relief Act (SCRA) automatically protect me against any adverse ruling while I am on active duty?

A: The short answer is no. The SCRA does not automatically protect service members from adverse rulings.⁴ What the SCRA does is ensure that servicemembers are not prevented from mounting their own defenses because of active-duty commitments.⁵ The SCRA guarantees a postponement for any civil or administrative proceeding for service members who are prevented from entering an appearance due to active-duty orders.⁶

For example, a Soldier stationed at Fort Hood and deployed to Afghanistan cannot reasonably be expected to enter an appearance in court for a civil suit against him in Killeen, Texas. Under the SCRA, the case would be postponed until the Soldier returned, so that he or she could attend the case and present a defense.⁷ The same Soldier, however, would not be afforded this same protection under the SCRA if he or she was at Fort Hood when the civil proceeding took place because in that circumstance the active duty orders to the Fort would not prevent the

¹I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2300 "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.

²Update by Second Lieutenant Lauren Walker, USMC.

³Gavriel is the ROA Service Members law Center Associate. He is in his third year at the University Of Maryland School of Law and is a First Lieutenant in the marine Corps Reserve, as a judge advocate, for at least four years. Thank you to RADM James j. Carey and the Washington Scholars for sending him our way.

*The views expressed in this article do not represent the Maryland Law School or the Marine Corps,

⁴See 50 U.S.C. § 3931.

⁵*Id.*

⁶*Id.*

⁷See *id.*

Soldier from entering an appearance at a court house in Killeen. If he or she was doing a training exercise preventing him or her from leaving the base, the SCRA would apply in that special circumstance.

In 1917, shortly after the United States entered World War I, Congress enacted the Soldiers' and Sailors' Civil Relief Act (SSCRA) to protect the civil rights and financial interests of those who were called to the colors, whether by draft, voluntary enlistment, or mobilization from the National Guard or Reserve.⁸ By the 1990s, some of the provisions of this law were outdated and needed rewriting. Judge advocates from the five-armed forces studied the SSCRA and drafted revisions. In 2003, Congress enacted their work product as the Servicemembers Civil Relief Act (SCRA).⁹ The SCRA is codified in).¹⁰ The SCRA is codified in 50 U.S.C. §§ 3901-4043.¹¹

Under the SCRA, the absent service member has the right to a continuance and to protection from default judgments in federal and state judicial and administrative proceedings.¹² Before a plaintiff can get a default judgment in any judicial or administrative proceeding, he or she must aver under oath that the defaulting defendant is or is not a member of the armed forces on active duty.¹³ If the defendant is on active duty, several steps must be taken to ensure that he or she is aware of the lawsuit and has had an opportunity to file an answer.¹⁴

Section 3931 protects service members from default judgments *only* when they are prevented from entering appearances because of active-duty orders. The section is not a shield against any judgment entered against an active-duty service member. This interpretation is supported by the Alaska Supreme Court Case, *Childs v. Childs* where the court ruled against an active-duty soldier in a child-support case.¹⁵

In *Childs* the child's mother moved against her husband (an active-duty Soldier) to raise his child-support payments, and the court ruled in her favor.¹⁶ The Soldier did not put forth the argument that he could not attend the proceeding because of his active-duty obligation or present any evidence of that being the case, and he actually participated in the hearing. He "therefore was not entitled to invoke a stay under § 522(b)(2) of the [SCRA]".¹⁷ (§ 522 is not

⁸Roy L. Kaufmann, *What is the History of the Servicemembers Civil Relief Act?*, SERVICEMEMBERS CIVIL RELIEF ACT CENTRALIZED VERIFICATION SERVICE, <https://www.servicememberscivilreliefact.com/blog/what-is-history-of-servicemembers-civil-relief-act/> (last visited Mar. 10, 2022).

⁹*The Servicemembers Civil Relief Act (SCRA)*, THE UNITED STATES DEPARTMENT OF JUSTICE, <https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-scra> (last visited Mar. 10, 2022).

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

¹¹*See Servicemembers' Civil Relief Act* for an in-depth discussion of the protections afforded to servicemembers under SCRA. Mark E. Sullivan, *Servicemembers' Civil Relief Act*, ROA Law Review No. 116 (Mar. 2004), <https://cdn.ymaws.com/www.roa.org/resource/resmgr/LawReviews/1-206/116-LR.pdf>.

¹²50 U.S.C. § 3931.

¹³*Id.* § 3931(b)(1).

¹⁴*Id.* § 3931(b)(2), (d).

¹⁵310 P.3d 955 (Alaska 2013).

¹⁶*Id.* 956-57.

¹⁷*Id.* 960.

codified under § 3931). The Soldier would have had to show that his active-duty responsibilities prevented him from entering an appearance and mustering a defense.¹⁸ It is clear from *Childs* that a mere statement on the part of a service member is not enough. Some sort of evidence must be presented. This can be as simple as TDY orders or “a communication from [your] commanding officer”.¹⁹

The bottom line is that the service member must show not only that he or she was on active duty, but also that he or she was prevented from entering an appearance because of the active duty. This can be easy to accomplish if the service member is serving a great distance away from the place where the civil proceeding is pending, but it must be done to invoke protection under SCRA. It is also important to note that the SCRA does not make the pending action go away. It just postpones it until the service member is no longer prevented from entering an appearance by active-duty commitments.

Please join or support ROA

This article is one of 2,300-plus “Law Review” articles available at www.roa.org/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 on 10/1/1922 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 almost a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Through these articles, and by other means, including amicus curiae (“friend of the court”) briefs that we file in the Supreme Court and other courts, we educate service members, military spouses, attorneys, judges, employers, DOL investigators, ESGR volunteers, congressional and state legislative staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, 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 eight²⁰ uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20 or \$450 for a life membership. 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

¹⁸*See id.*

¹⁹*Id.*

²⁰Congress recently established the United States Space Force as the 8th uniformed service.

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 Organization of America
1 Constitution Ave. NE
Washington, DC 20002