

Is the Statute of Limitation Tolled when I Am on Inactive Duty Training?

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

4.7—SCRA extension of statutes of limitations and redemption periods

Q: I am a Lieutenant Commander in the Coast Guard Reserve and a life member of ROA. In recent years, I have performed a great deal of active duty, performing special assignments for the Coast Guard.

I was on active duty for most of Fiscal Year 2010 (October 1, 2009 through September 30, 2010). On September 20, 2010, the Coast Guard ran out of money in the active duty account. The project was urgent, and the Coast Guard leadership asked me to continue working on the project in an “inactive duty training” (drills) status, between September 20 and September 30, 2010. On October 1, 2010 (the first day of Fiscal Year 2011), I received a new set of Coast Guard active duty orders. I remained on active duty until September 30, 2011 (the last day of Fiscal Year 2011), when I completed the project and left active duty.

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.

Some years ago, I had a dispute with a major international company, for which I was the local representative for one U.S. state. I retained a lawyer, and he filed suit on my behalf, against the big company, on November 15, 2011. The company sought to have my lawsuit thrown out as untimely, claiming that it was filed three days after the running of the two-year statute of limitations.

All parties agree that during the time that I was on *active duty* in the Coast Guard the statute of limitations was tolled (stopped running). The issue comes down to the treatment of the ten days between September 20, 2009 and September 30, 2009, when I was performing *inactive duty training* for the Coast Guard. If I am not considered to have been on active duty during that ten-day period, then my lawsuit was filed a few days late.

The judge has indicated that he is inclined to rule that inactive duty training is not active duty and that my lawsuit will be dismissed as untimely. What do you think?

A: Wow. If you are going to take these things right down to the wire, you had better know exactly where the wire is located.

Congress enacted the Servicemembers Civil Relief Act (SCRA) in 2003, as a long-overdue rewrite of the Soldiers' and Sailors' Civil Relief Act (SSCRA), which dates from 1917. The SCRA is codified in the Title 50 Appendix of the United States Code, at sections 501 through 597b (50 U.S.C. App. 501-597b).

Section 526(a) provides:

"The period of a servicemember's *military service* may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns."

50 U.S.C. App. 526(a) (emphasis supplied).

Section 511 of the SCRA defines nine terms used in this law. When a statute defines terms, the statutory definitions control for purposes of that specific statute.

Section 511(2) defines the term "military service" as follows:

"The term 'military service' means—(A) in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or *Coast Guard*—(i) *active duty*, as defined in section 101(d)(1) of title 10, United States Code."

50 U.S.C. App. 511(2)(A)(i) (emphasis supplied).

Section 101(d)(1) defines the term “active duty” as follows:

(1) The term "active duty" means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

10 U.S.C. 101(d)(1).

A separate subsection of section 101(d) defines the term “inactive duty training” as follows:

(7) The term "inactive-duty training" means--

(A) duty prescribed for Reserves by the Secretary concerned under section 206 of title 37 or any other provision of law; and

(B) special additional duties authorized for Reserves by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned. Such term includes those duties when performed by Reserves in their status as members of the National Guard.

10 U.S.C. 101(d)(7).

Reading these sections together, I think that it is fair to conclude that you were not performing “military service” between September 20, 2009 and September 30, 2009, when you were performing inactive duty training. Thus, the statute of limitations was not tolled during that ten-day period, and your lawsuit was filed a few days late and is time-barred.

If you have questions about the SCRA, the Uniformed Services Employment and Reemployment Rights Act (USERRA), or other laws that are especially pertinent to those who serve our country in uniform, I am here at ROA answering calls and e-mails during regular business hours Monday-Friday and also between 8 pm and 10 pm Eastern on Mondays and Thursdays. I am available toll-free at 800-809-9448, extension 730, or by e-mail about SWright@roa.org.

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

³Update by Second Lieutenant Lauren Walker, USMC.

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.

The relevant sections cited throughout the article can be found at:

50 U.S.C. App. § 511 discussing the definitions used in the SCRA can be found at 50 U.S.C. § 3911.

50 U.S.C. App. § 526 discussing the statute of limitations can be found at 50 U.S.C. § 3936.

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

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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 eight⁶ 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 Component, the

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).

⁶Congress recently established the United States Space Force as the 8th uniformed service.

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.

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