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Why Does the Service Members Law Center Provide Information to Persons Who Are Not ROA Members?

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

9.0--Miscellaneous

Q: I am a life member of ROA. I think that it is good that ROA supports the Service Members Law Center (SMLC), but I have heard that the SMLC provides information to service members and others who are not ROA members. Is that correct?

I think that the Law Center should only provide information to individuals who are already members of ROA. My late father used to say, “Why buy the cow when you can get the milk for free?”

A: Yes, it is true that the SMLC provides information to service members and others, without regard to whether the person is a member of or eligible to join ROA. As the SMLC Director, I received and responded to 9,193³ inquiries (766 per month on average) during 2013, from service members, military family members, employers, attorneys, labor union officials, Employer Support of the Guard and Reserve (ESGR) volunteers, Department of Labor (DOL) investigators, congressional staffers, reporters, and others. Of those 9,193 contacts, 3,732 (40.6%) were from persons who were already members of ROA, and I signed up 94 new members in 2013.⁴

Of the 5,367 contacts from persons who were not already ROA members and did not immediately join, most were from persons who were not eligible to join ROA. Please recall that enlisted service members⁵ were not eligible to join ROA until August 2013, when we amended our constitution to make noncommissioned officers eligible for full ROA membership.

¹ We invite the reader's attention to www.servicemembers-lawcenter.org. You will find almost 1,300 “Law Review” articles about laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997, and we add new articles each week.

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³ This 9,193 figure is a count of inquiries, not a count of individuals. There are a lot of “frequent fliers” among those persons who contact the SMLC.

⁴ The 94 is a count of those that I signed up *directly*. I believe that our efforts resulted in many more new members. Serving Reserve Component members learn of the existence of ROA through the efforts of the SMLC.

⁵ Enlisted service members make up more than 85% of the Reserve Component and the Active Component.

Please understand that the expenses of operating the SMLC (mostly my meager salary)⁶ are borne by the ROA STARS⁷ Foundation, not by ROA itself. The ROA STARS Foundation is a charitable organization established under section 501(c)(3) of the Internal Revenue Code (IRC), and recognized as such by the Internal Revenue Service (IRS). Contributions to the ROA STARS Foundation are both tax-exempt (to the ROA STARS Foundation) and tax-deductible (to the donor, whether or not the donor is a member of or eligible to join ROA).

The work of the SMLC is clearly appropriate and lawful for a charitable organization. We are providing information and assistance to service members and veterans, to assist them in understanding, exercising, and enforcing their rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA) and other laws. It would not be lawful for us to use tax-deductible charitable contributions to provide a service *only for* ROA members.

When I hear from an individual by e-mail or telephone, I always check the ROA member database to see if the person is a member. I do *not* make ROA membership a condition precedent to my providing information and assistance, but if the person is eligible for ROA membership and not already a member, I always ask the person to join, and they usually do. Those who decline to join usually plead poverty. "I have been unemployed for two years since my employer unlawfully denied me reemployment after I returned from Afghanistan. My credit cards are all maxed out, and I cannot afford \$70 to join ROA." I hear that occasionally.

I am here at my post at ROA headquarters answering calls and e-mails during regular business hours Monday-Friday and until 10 pm Eastern Time on Mondays and Thursdays. The point of the evening availability is to make it possible for Reserve and National Guard personnel to call me or e-mail me from the privacy of their own homes, not from their civilian jobs. As you can imagine, you have no reasonable expectation of privacy when you use the employer's telephone, computer, or time to complain about the employer and to seek advice and assistance in dealing with the employer. Moreover, if the employer is annoyed with you because you have been called to the colors five times since the terrorist attacks of September 2001 and expect to be called up again, and if the employer is looking for an excuse to fire you, the last thing that you should do is to give the employer the excuse that he or she is seeking.

ROA and the ROA STARS Foundation are unique in providing this availability outside regular business hours. Neither ESGR, nor DOL, nor any other government agency or military association provides service members the opportunity to speak to a live human after 5 pm local time.

⁶ I know many young lawyers here in DC who receive twice what I receive from the ROA STARS Foundation, and they are only one or two years out of law school. I graduated from law school and passed the Texas bar exam in 1976 and have practiced law for 38 years, in military, federal civil service, and private practice. Five years ago (June 2009), I retired from private practice when we established the SMLC.

⁷ ROA established the ROA STARS Foundation in 2012, and STARS is an acronym for Standing Together for America's Reservists.

Let me share part of an e-mail I recently received: "I have just submitted my ROA Life Membership application and truly appreciate all your efforts in protecting our Service members. No other organization provides the coverage of USERRA that you do." I receive testimonials like this on a daily basis.

I have been dealing with USERRA and the predecessor reemployment statute for 32 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for DOL as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the interagency task force work product that President George H.W. Bush presented to Congress, as his proposal, in early 1991. The version of USERRA that President Bill Clinton signed into law on October 13, 1994 (Public Law 103-353) was about 85% the same as the Webman-Wright draft.

Congress enacted USERRA as a long-overdue rewrite of the Veterans' Reemployment Rights Act (VRRRA), which was originally enacted in 1940, as part of the Selective Training and Service Act (STSA). The STSA is the law that led to the drafting of millions of young men, including my late father, for World War II.

I have also dealt with the VRRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for ESGR, as an attorney for the United States Office of Special Counsel (OSC), and as an attorney in private practice. Five years ago (June 2009), I retired from private practice and became the full-time Director of the SMLC.

I have made protecting the legal rights of service members and veterans the focus of my adult life and legal career, and I am continuing this focus as the SMLC Director. I think that we are having an impact, not just from the folks that I communicate with by e-mail and telephone, but by our "Law Review" articles that are available via the Internet and are read all over the world, including by U.S. military personnel in Afghanistan and elsewhere. We need your support to maintain and expand the Service Members Law Center—to provide this much-needed service.

Most readers are well aware that the ROA membership is aging and has been declining for decades. If ROA is to survive and thrive into the next generation and beyond, we need to make ourselves relevant and attractive to serving officers and noncommissioned officers of the Reserve Components, including the Army National Guard and Air National Guard. The way that we do that is through the Service Members Law Center, along with ROA's legislative advocacy work.