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North Carolina Judge Reprimanded for Flouting SCRA

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[About Sam Wright](#)

4.3—SCRA right to continuance and protection against default judgment

In re: Inquiry Concerning a Judge (Brenda G. Branch), No. 220A14 (North Carolina Supreme Court January 23, 2015).

Brenda G. Branch is the Judge of the General Court of Justice, District Court Division 6A, of the State of North Carolina. The North Carolina Supreme Court affirmed the findings of fact and conclusions of law of the North Carolina Judicial Standards Commission and publicly reprimanded Judge Branch for her conduct while presiding over the divorce case styled *Foster v. Foster*.

Sergeant First Class (SFC) Jason Foster, an active duty Army soldier, was the defendant in that divorce case. In the case, Mrs. Foster (as plaintiff) sought child custody, child support, alimony,

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.

equitable distribution, post-separation support, and attorney fees, as well as a divorce. When he became aware that he had been sued in North Carolina, SFC Foster was assigned to duty in South Korea.

By letter dated July 16, 2012 (received by Judge Branch on July 26), SFC Foster requested a stay of the proceedings in the divorce case because his military duties precluded him from participating in the judicial proceedings until at least April 30, 2013. In his letter, SFC Foster also stated that “legal counsel informs me that federal law requires a stay of proceedings for a minimum of 90 days for service members on active duty” and cited the Servicemembers Civil Relief Act (SCRA). SFC Foster was referring to advice that he had received from an Army judge advocate serving in Daegu, South Korea.³

In a separate letter (also dated July 16 and received July 26), SFC Foster’s commanding officer (CO) also wrote to the court and verified that SFC Foster’s military service would preclude his participation in judicial proceedings in North Carolina until April 30, 2013. In his letter, the CO assured the court that he would personally ensure that SFC Foster would participate in judicial proceedings after that date. In his letter, the CO wrote: “Until this date [April 30, 2013], SFC Jason Foster is needed by this unit because he is essential to the mission. ... In this instance, SFC Foster’s critical role in the national security mission of this command precludes his participation in court proceedings until April 30, 2013. He will be unable to present any defense at all due to his duties.”

Despite having been put on notice that the Defendant (SFC Foster) was on active duty in the Army and serving thousands of miles away, Judge Branch ignored her clear duties under sections 201 and 202 of the SCRA, 50 U.S.C. App. 521, 522.⁴ She refused to grant a continuance of at least 90 days. She refused to appoint counsel for SFC Foster, and she entered a default judgment against him for having failed to appear and defend. She relied on misleading information from Mrs. Foster’s attorney, to the effect that the SCRA did not apply in this case. She failed to make her own judicial inquiry concerning her legal obligations in presiding over a case involving an active duty service member as a party in a civil case.

Congress enacted the SCRA in 2003, as a long-overdue rewrite of the Soldiers’ and Sailors’ Civil Relief Act (SSCRA), which was originally enacted in 1917, shortly after the United States entered World War I. For almost a century, federal law has protected active duty service members from harm to their interests in judicial proceedings⁵ flowing from their military service. It is

³Judge branch apparently believed that SFC Foster’s mention of “legal counsel” relieved her of the obligation to appoint counsel for Foster and to grant a continuance of at least 90 days. But the SCRA explicitly provides: “An application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction.” 50 U.S.C. App. 522(c).

⁴The SCRA is codified in the Appendix of Title 50 of the United States Code, at sections 501 through 597b (50 U.S.C. App. 501—597b).

⁵When Congress enacted the SCRA in 2003, it amended the law to extend these protections to federal state, and local administrative proceedings as well as judicial proceedings.

unconscionable that Judge Branch was unaware of or sought to flout clear requirements of federal law.

As a federal statute, the SCRA overrides conflicting state laws and is binding on state court judges, as well as federal judges. The Supremacy Clause of the United States Constitution provides: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; *and the Judges in every State shall be bound thereby*, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”⁶

The North Carolina Supreme Court concluded its adjudication of this case as follows:

After careful review, this Court concludes that the Commission’s findings of fact are supported by clear, cogent, and convincing evidence in the record. In addition, we conclude that the Commission’s findings of fact support its conclusions of law. We therefore accept the Commission’s findings and adopt them as our own. Based upon those findings and conclusions and the recommendation of the Commission, we conclude and adjudge that respondent be publicly reprimanded. Therefore, pursuant to N.C.G.S. §§ 7A-376(b) and -377(a5), it is ordered that respondent Brenda G. Branch be PUBLICLY REPRIMANDED for conduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of N.C.G.S. § 7A-376(b) and which violates Canons 1, 2A, 3A(1), and 3A(4) of the Code of Judicial Conduct.

By order of the Court in Conference, this the 22nd day of January, 2015.

Let this public reprimand of Judge Brenda G. Branch serve as a lesson to state and federal judges all over the country. The procedural requirements of the SCRA are binding and must be complied with scrupulously. Those who serve our country in uniform must not be put at a disadvantage in civil proceedings because of their service to our country. Judges: Please go to www.nclamp.gov and read carefully “A Judge’s Guide to the Servicemembers Civil Relief Act” by Colonel Mark E. Sullivan, USA (Ret.), a North Carolina attorney and the nation’s foremost expert on military family law.

Update – March 2022⁷

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 SCRA by the Office of the Law Revision Counsel to the United States House of Representatives that became effective on December 1, 2015.⁸ 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.

⁶U.S. CONST. art. VI, cl. 2 (emphasis supplied). Yes, it is capitalized just that way, in the style of the late 18th Century.

⁷Update by Second Lieutenant Lauren Walker, USMC.

⁸*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).

Therefore, the application of the SCRA throughout this article applies the same today as it did when it was written.

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

50 U.S.C. App. § 521 discussing protection of servicemembers against default judgments can be found at 50 U.S.C. § 3931.

50 U.S.C. App. § 522 discussing stay of proceedings when servicemember has notice can be found at 50 U.S.C. § 3932.

For a complete conversion chart for the SCRA please see *The Servicemembers Civil Relief Act Has Moved*.⁹

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⁹Samuel F. Wright, *The Servicemembers Civil Relief Act Has Moved*, Law Review 15115 (Dec. 2015).

¹⁰Congress recently established the United States Space Force as the 8th uniformed service.

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