

LAW REVIEW¹ 15061

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The Servicemembers Civil Relief Act Only Protects Service Members

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[About Sam Wright](#)

4.0—SCRA Generally

4.3—SCRA right to a continuance and protection against default judgment

Q: I am an attorney, practicing family law in California. Doing an Internet search, I found and read with great interest your Law Review 15019 (February 2015), about the North Carolina Supreme Court reprimand of a family court judge who failed to comply with the Servicemembers Civil Relief Act (SCRA) in a divorce case involving a United States Army soldier serving in South Korea. I have a client who is currently serving in Afghanistan, and his wife chose this as the “perfect time” to sue him for divorce. In accordance with the SCRA, I requested a continuance for my client, until he returns home from Afghanistan at the end of this calendar year. The judge refused to grant any such continuance. I provided her a copy of

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.

your Law Review 15019, and she insisted that the SCRA does not apply to my client in his current circumstances.

My client graduated from the United States Military Academy (West Point) in 1980. He served on active duty for eight years and then affiliated with the Army Reserve, where he served part-time for another 22 years, until he retired in 2010. In the years following the terrorist attacks of September 11, 2001, my client was recalled to active duty three times for service in Iraq and Afghanistan. I believe that my client is a member of your association, the Reserve Officers Association (ROA).

This time, my client is employed in Afghanistan. He works for a major Department of Defense (DOD) contractor—Daddy Warbucks International (DWI). Both the DWI country manager and the U.S. Army Colonel whose command is supported by the DWI contract have written to the court, saying that my client cannot be spared from his current assignment until December 2015 and have implored the judge to grant him a continuance. Is my client entitled to a continuance under the SCRA?

A: No. Your client was entitled to protections under the SCRA when he was called to active duty previously. He is not entitled to those protections now. The SCRA simply does not apply to employees of DOD contractors, nor does this law apply to civilian employees of DOD, the Department of State, the Drug Enforcement Administration, the Central Intelligence Agency, or other federal agencies that send civilian employees to overseas assignments.

The SCRA provides important rights to “servicemembers” when they perform “military service.” Congress enacted the SCRA in 2003, as a long-overdue rewrite of the Soldiers’ and Sailors’ Civil Relief Act, which was originally enacted in 1917, shortly after the United States entered World War I. The 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).

Section 101 of the SCRA (50 U.S.C. App. 511) defines nine terms used in this law, including “servicemember” and “military service.” The term “servicemember” is defined as follows: “The term ‘servicemember’ means a member of the uniformed services, as that term is defined in section 101(a)(5) of title 10, United States Code.”³ Section 101(a)(5) recognizes our nation’s seven uniformed services, which are the five armed forces (Army, Navy, Marine Corps, Air Force, and Coast Guard) plus the commissioned corps of the Public Health Service and the commissioned corps of the National Oceanic & Atmospheric Administration.⁴

Section 101 of the SCRA defines “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,

³50 U.S.C. App. § 511(1)

⁴10 U.S.C. 101(a)(5).

Marine Corps, or Coast Guard—(i) active duty, as defined in section 101(d)(1) of title 10, United States Code.”⁵

Your client is not currently on active duty and is not currently performing “military service” as defined by the SCRA. The SCRA protections, including the right to a continuance and to protection against a default judgment, do not apply to your client at this time.

Update – March 2022⁶

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, 2015.⁷ 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. § 511 discussing definitions can be found at 50 U.S.C. § 3911.

For a complete conversion chart for the SCRA please see *The Servicemembers Civil Relief Act Has Moved*.⁸

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

⁵50 U.S.C. App. § 511(2)(A)(i).

⁶Update by Second Lieutenant Lauren Walker, USMC.

⁷*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).

⁸Samuel F. Wright, *The Servicemembers Civil Relief Act Has Moved*, Law Review 15115 (Dec. 2015).

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 eight⁹ 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 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

⁹Congress recently established the United States Space Force as the 8th uniformed service.