

## If DOL-VETS Is Doing Well, you Should Stick with them

By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>

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**Q: I am a Sergeant Major<sup>3</sup> (E-9) in the Army National Guard of a Southern state and a member of the Reserve Organization of America.<sup>4</sup> On the civilian side, I am a deputy sheriff. I have read with**

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<sup>1</sup> I invite the reader's attention to [www.roa.org/lawcenter](http://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 specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. I am the author of more than 1800 of the articles.

<sup>2</sup> BA 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 44 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 (VRRRA—the 1940 version of the federal reemployment statute) for 38 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 VRRRA 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 VRRRA 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](mailto:SWright@roa.org).

<sup>3</sup> The factual set-up for this article is partly factual and partly hypothetical. The facts are a combination of two Reserve Component service members who have contacted me.

<sup>4</sup> At its September 2018 annual convention, the Reserve Officers Association amended its Constitution to make all service members (E-1 through O-10) eligible for membership and adopted a new "doing business as" (DBA) name:

great interest several of your “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA).

I was born in 1972 and graduated from high school in 1990, just before Saddam Hussein’s Iraq invaded and occupied Kuwait. I enlisted in the Army during my senior year of high school, and I entered active duty and reported to basic training just days after my graduation ceremony. I served on active duty for five years, until June 1995, and I participated in the liberation of Kuwait in 1991.

After I left active duty, I joined our local Sheriff’s Department as a deputy. I worked my way up the ranks, and in 2013 I was made the chief jailer. In 2014, I was involuntarily called to active duty along with my Army National Guard unit. I was on active duty involuntarily from 10/1/2014 until 9/30/2015. When my year of involuntary duty was up and other unit members returned home, I voluntarily remained on active duty until 12/31/2019, when I returned home and promptly applied to the Sheriff for reemployment.

Before I left my job in September 2014, I gave the Sheriff both oral and written notice. In September 2015, when I voluntarily agreed to remain on active duty beyond my involuntary mobilization, I sent a certified letter to the Sheriff, notifying him of my extension on active duty. When my orders were renewed in September 2017, I sent the Sheriff another certified letter. I have read and reread your Law Review 15116 (December 2015), about the five conditions for reemployment under USERRA.

On 1/2/2020, the first workday after I was released from active duty, I visited the Sheriff in his office and made a formal application for reemployment. He angrily said no, he would not reemploy me, because I had “played soldier too long” when there was much to do in his office. He claimed that I had “resigned” when I extended my active duty voluntarily in September 2015. He said that he had given me a military leave of absence for the year of involuntary active duty but not for anything after 9/30/2015. I asked him to reconsider some days later, but he refused. I have been unemployed since I left active duty. On 3/1/2020, I made a formal, written USERRA complaint against the Sheriff with the Veterans’ Employment and Training Service of the United States Department of Labor (DOL-VETS).

**Do you think that I am entitled to reemployment under USERRA?**

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Reserve Organization of America. The full name of the organization is now the Reserve Officers Association DBA the Reserve Organization of America. The point of the name change is to emphasize that our organization represents the interests of all Reserve Component members, from the most junior enlisted personnel to the most senior officers. Our nation has seven Reserve Components. In ascending order of size, they are the Coast Guard Reserve, the Marine Corps Reserve, the Navy Reserve, the Air Force Reserve, the Air National Guard, the Army Reserve, and the Army National Guard. The number of service members in these seven components is almost equal to the number of personnel in the Active Components of the armed forces, so Reserve Component personnel make up almost half of our nation’s pool of trained and available military personnel. Our nation is more dependent than ever before on the Reserve Components for national defense readiness. More than a million Reserve Component personnel have been called to the colors since the terrorist attacks of 9/11/2001.

**A:** Yes. It seems clear that you met the five USERRA conditions as of 1/2/2020, when you applied for reemployment. You left your job to perform uniformed service, and you gave prior oral and written notice. You served honorably, and you did not receive a disqualifying bad discharge from the Army, like a bad conduct discharge or an OTH (other than honorable) administrative discharge. You applied for reemployment well within the 90-day deadline.<sup>5</sup>

Your cumulative period of service relating to your employer relationship with the Sheriff's Department exceeds five years, but several of your periods were exempt from the computation of the limit.<sup>6</sup> Your involuntary activation in 2014-15 does not count toward exhausting your limit, and your earlier involuntary activations in 2001-02 and 2006-07 are also exempt.<sup>7</sup> Your drill weekends and annual training periods are also exempt.<sup>8</sup>

You met the five USERRA conditions on 1/2/2020, and the Sheriff was required to reemploy you promptly, within two weeks after your application (or by 1/16/2020).<sup>9</sup>

You were not required to ask for or get the Sheriff's permission to absent yourself from your job to perform uniformed service—you were only required to give notice. The pertinent section of the Department of Labor (DOL) USERRA Regulation is as follows:

**Is the employee required to get permission from his or her employer before leaving to perform service in the uniformed services?**

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No. The employee is not required to ask for or get his or her employer's permission to leave to perform service in the uniformed services. The employee is only required to give the employer notice of pending service.<sup>10</sup>

**Q: What kind of a job was I entitled to in January 2020? The Sheriff offered to rehire me as a rookie deputy, the status that I held in 1995, when I joined the department. Was that sufficient?**

**A:** No, that was not sufficient. You were and are entitled to be reemployed "in the position of employment in which the person [you] would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, or a position of like seniority, status, and pay, the duties of which the person is qualified to perform."<sup>11</sup>

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<sup>5</sup> See 38 U.S.C. 4312(e)(1)(D).

<sup>6</sup> Please see Law Review 16043 (May 2016) for a detailed discussion of what counts and what does not count in exhausting your five-year limit.

<sup>7</sup> 38 U.S.C. 4312(c)(4)(A).

<sup>8</sup> 38 U.S.C. 4312(c)(3).

<sup>9</sup> 20 C.F.R. 1002.181.

<sup>10</sup> 20 C.F.R. 1002.87 (bold question in original).

<sup>11</sup> 38 U.S.C. 4313(a)(2)(A).

I understand that Mike Smith, who worked under you in the jail department before you left your job in September 2014, was promoted to the chief jailer position when you left, and he is still in the position. These facts clearly show that you would still be the chief jailer if your Sheriff's department career had not been interrupted by uniformed service. You are entitled to be reemployed in that position or in another position, for which you are qualified, that is of like seniority, status, and pay.

There probably is no other position in the Sheriff's department that is of like status to the chief jailer position, and for which you are qualified. You are entitled to be reemployed in that position *even if that means that Smith must be displaced.*

You are entitled to reemployment in the position that you would have attained, or another position of like seniority, status, and pay, *even if that means that another employee must be displaced to make room for you.* The pertinent section in the Department of Labor (DOL) USERRA regulation is as follows:

Even if the employee is otherwise eligible for reemployment benefits, the employer is not required to reemploy him or her if the employer establishes that its circumstances have so changed as to make reemployment impossible or unreasonable. For example, an employer may be excused from reemploying the employee where there has been an intervening reduction in force that would have included that employee. *The employer may not, however, refuse to reemploy the employee on the basis that another employee was hired to fill the reemployment position during the employee's absence, even if reemployment might require the termination of that replacement employee.*<sup>12</sup>

If filling the vacancy defeated the right to reemployment of the returning veteran, USERRA would be of little value. Many old and recent cases show that the veteran's right to prompt reemployment upon returning from service is not contingent on the existence of a vacancy at that time. The United States Court of Appeals for the First Circuit<sup>13</sup> has held:

Finally, we note that USERRA affords broad remedies to a returning servicemember who is entitled to reemployment. For example, 20 C.F.R. 1002.139 unequivocally states that "the employer may not refuse to reemploy the employee on the basis that another employee was hired to fill the reemployment position during the employee's absence, even if reemployment might require the termination of that replacement employee."<sup>14</sup>

The United States Court of Appeals for the Federal Circuit<sup>15</sup> has held:

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<sup>12</sup> 20 C.F.R. 1002.139(a) (emphasis supplied).

<sup>13</sup> The 1<sup>st</sup> Circuit is the federal appellate court that sits in Boston and hears appeals from district courts in Maine, Massachusetts, New Hampshire, Puerto Rico, and Rhode Island.

<sup>14</sup> *Rivera-Melendez v. Pfizer Pharmaceuticals LLC*, 730 F.3d 49, 55-56 (1<sup>st</sup> Cir. 2013).

<sup>15</sup> The Federal Circuit is the specialized federal appellate court that sits in our nation's capital and has nationwide jurisdiction over certain kinds of cases, including appeals from the Merit Systems Protection Board.

The department [United States Department of Veterans Affairs, the employer and defendant] first argues that, in this case, Nichols' [Nichols was the returning veteran and plaintiff] former position was "unavailable" because it was occupied by another and thus it was within the department's discretion to place Nichols in an equivalent position. This is incorrect. Nichols' former position is not unavailable because it still exists, even if it is occupied by another. A returning veteran will not be denied his rightful position because the employer will be forced to displace another employee. ... Although occupied by Walsh, Nichols' former position is not unavailable and it is irrelevant that the department would be forced to displace Walsh to restore him.<sup>16</sup>

**Q: The Sheriff and the County Attorney assert that displacing Mike Smith to reinstate me violated state law and the collective bargaining agreement (CBA) between the Sheriff and the union representing Sheriff's Department employees. What do you say about that?**

**A:** Under section 4302 of USERRA, this federal law is a floor and not a ceiling on the rights of service members and veterans. State laws and union agreements can give the service member or veteran *greater or additional rights*, but they cannot limit the rights that Congress conferred when it enacted USERRA. Section 4302 provides:

**(a)** Nothing in this chapter shall supersede, nullify or diminish any Federal or State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that establishes a right or benefit that is more beneficial to, or is in addition to, a right or benefit provided for such person in this chapter.

**(b)** This chapter *supersedes any State law* (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.<sup>17</sup>

The Supremacy Clause of the United States Constitution provides:

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<sup>16</sup> *Nichols v. Department of Veterans Affairs*, 11 F.3d 160, 163 (Fed. Cir. 1993). For other cases holding that the lack of a current vacancy does not excuse the employer's failure to reemploy the returning veteran in the appropriate position, I invite the reader's attention to *Cole v. Swint*, 961 F.2d 58 (5<sup>th</sup> Cir. 1992); *Goggin v. Lincoln-St. Louis*, 702 F.2d 698, 704 (8<sup>th</sup> Cir. 1983); *Davis v. Crothall Services Group*, 961 F. Supp. 2d 716, 730-31 (W.D. Pa. 2013); *Serricchio v. Wachovia Securities LLC*, 556 F. Supp. 2d 99, 107 (D. Conn. 2008); *Murphree v. Communication Technologies, Inc.*, 460 F. Supp. 2d 702, 710 (E.D. La. 2006); *Fitz v. Board of Education of the Port Huron Area Schools*, 662 F. Supp. 10 (E.D. Mich. 1985); *Green v. Oktibbeha County Hospital*, 526 F. Supp. 49 (N.D. Miss. 1981); *Hembree v. Georgia Power Co.*, 104 L.R.R.M. (BNA) 2535 (N.D. Ga. 1979), affirmed in part, reversed in part on other grounds, 637 F.2d 423 (5<sup>th</sup> Cir. 1981); *Jennings v. Illinois Office of Education*, 97 L.R.R.M. (BNA) 3027 (S.D. Ill. 1978, judgment affirmed, 589 F.2d 935 (7<sup>th</sup> Cir. 1979); and *Muscianese v. U.S. Steel Corp.*, 354 F. Supp. 1394, 1402 (E.D. Pa. 1973).

<sup>17</sup> 38 U.S.C. 4302 (emphasis supplied).

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.<sup>18</sup>

The Supreme Court has held that a federal statute overrides a conflicting state statute.<sup>19</sup> State and local government officials in your part of the country sometimes need to be reminded that General Ulysses S. Grant did not surrender to General Robert E. Lee at Appomattox Courthouse.

**Q: I began my career with the Sheriff's Department in November 1995, a few months after I left my first active duty period. A deputy sheriff needs 20 years of law enforcement employment to retire, and I met that threshold in November 2015, while I was on active duty. In that month, I sent a certified letter to the Sheriff, asking to retire and to start drawing my pension, as of 12/1/2015. In an angry telephone call, the Sheriff told me to "pound sand." He never responded to my letter.**

**Was I entitled to retire from the Sheriff's Department in November 2015?**

**A:** You were not entitled to retire in November 2015 because you did not have 20 years of law enforcement service as of September 2014, when you left your job to go on active duty. Under section 4318 of USERRA, you are entitled to civilian pension credit for your uniformed service time *upon reemployment under USERRA*. Section 4318 provides:

(a)

(1)

(A) Except as provided in subparagraph (B), in the case of a right provided pursuant to an employee pension benefit plan (including those described in sections 3(2) and 3(33) of the Employee Retirement Income Security Act of 1974) *or a right provided under any Federal or State law governing pension benefits for governmental employees*, the right to pension benefits of a person reemployed under this chapter shall be determined under this section.

(B) In the case of benefits under the Thrift Savings Plan, the rights of a person reemployed under this chapter shall be those rights provided in section 8432b of title 5. The first sentence of this subparagraph shall not be construed to affect any other right or benefit under this chapter.

(2)

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<sup>18</sup> United States Constitution, Article VI, Clause 2. Yes, it is capitalized just that way, in the style of the late 18<sup>th</sup> Century.

<sup>19</sup> *Gibbons v. Ogden*, 22 U.S. 1 (1824).

**(A)** A person *reemployed under this chapter* shall be treated as not having incurred a break in service with the employer or employers maintaining the plan by reason of such person's period or periods of service in the uniformed services.

**(B)** Each period served by a person in the uniformed services shall, *upon reemployment under this chapter*, be deemed to constitute service with the employer or employers maintaining the plan for the purpose of determining the nonforfeitability of the person's accrued benefits and for the purpose of determining the accrual of benefits under the plan.

**(b)**

**(1)** An employer reemploying a person under this chapter shall, with respect to a period of service described in subsection (a)(2)(B), be liable to an employee pension benefit plan for funding any obligation of the plan to provide the benefits described in subsection (a)(2) and shall allocate the amount of any employer contribution for the person in the same manner and to the same extent the allocation occurs for other employees during the period of service. For purposes of determining the amount of such liability and any obligation of the plan, earnings and forfeitures shall not be included. For purposes of determining the amount of such liability and for purposes of section 515 of the Employee Retirement Income Security Act of 1974 or any similar Federal or State law governing pension benefits for governmental employees, service in the uniformed services that is deemed under subsection (a) to be service with the employer shall be deemed to be service with the employer under the terms of the plan or any applicable collective bargaining agreement. In the case of a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974, any liability of the plan described in this paragraph shall be allocated—

**(A)** by the plan in such manner as the sponsor maintaining the plan shall provide; or

**(B)** if the sponsor does not provide—

**(i)** to the last employer employing the person before the period served by the person in the uniformed services, or

**(ii)** if such last employer is no longer functional, to the plan.

**(2)** A person reemployed under this chapter shall be entitled to accrued benefits pursuant to subsection (a) that are contingent on the making of, or derived from, employee contributions or elective deferrals (as defined in section 402(g)(3) of the Internal Revenue Code of 1986) only to the extent the person makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the person would have been permitted or required to contribute had the person remained continuously employed by the employer throughout the period of service described in subsection (a)(2)(B). Any payment to the plan described in this paragraph shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the person's service in the uniformed services, such payment period not to exceed five years.



**(3)** For purposes of computing an employer's liability under paragraph (1) or the employee's contributions under paragraph (2), the employee's compensation during the period of service described in subsection (a)(2)(B) shall be computed—

**(A)** at the rate the employee would have received but for the period of service described in subsection (a)(2)(B), or

**(B)** in the case that the determination of such rate is not reasonably certain, on the basis of the employee's average rate of compensation during the 12-month period immediately preceding such period (or, if shorter, the period of employment immediately preceding such period).

**(c)** Any employer who reemploys a person under this chapter and who is an employer contributing to a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974, under which benefits are or may be payable to such person by reason of the obligations set forth in this chapter, shall, within 30 days after the date of such reemployment, provide information, in writing, of such reemployment to the administrator of such plan.<sup>20</sup>

As I have made clear by italicizing the pertinent words above, you are entitled to civilian pension credit for your military time *only upon reemployment under USERRA*. That means that you must meet the five USERRA conditions. You did not meet the five conditions until 1/2/2020, when you applied for reemployment after leaving active duty on 12/31/2019.

I wish that you had contacted me in September 2015. I would have advised you to leave active duty at the end of your involuntary mobilization period. Then, you could have applied for reemployment in October 2015 and returned to work for a few weeks, and then you could have retired from the Sheriff's Department on the 20<sup>th</sup> anniversary of your Sheriff's Department hire date.

**Q: This is not fair. I think that the Sheriff and the County Attorney should have explained to me, in the fall of 2015, that I could leave active duty, apply for reemployment, return to work for a few weeks, and then retire from the Sheriff's Department. What do you say about that?**

**A:** The Sheriff and the County Attorney obviously do not understand USERRA, but even if they did understand this law, they had no obligation to share their understanding with you. Under USERRA, the employer's only obligation to notify employees of their USERRA rights is to post a simple notice. Section 4334 provides:

**(a) Requirement to provide notice.** Each employer shall provide to persons entitled to rights and benefits under this chapter a notice of the rights, benefits, and obligations of such persons and such employers under this chapter. *The requirement for the provision of notice*

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<sup>20</sup> 38 U.S.C. 4318 (emphasis supplied).



*under this section may be met by the posting of the notice where employers customarily place notices for employees.*

**(b) Content of notice.** The Secretary [of Labor] shall provide to employers the text of the notice to be provided under this section.<sup>21</sup>

In the employee break room at the Sheriff's Department, or in some other place where employee notices are customarily posted, you will likely find a short USERRA notice on a large plastic sheet, along with many other notices required by various federal laws. Few employees ever read these notices. If you had read the USERRA notice it would not have helped you much, because the notice is necessarily terse and general. Beyond posting this notice, the employer has no obligation to explain USERRA to you. That is why ROA established the "Law Review" column in 1997.

**Q: What are my USERRA pension rights now?**

**A:** The Sheriff is required to reemploy you and to give you pension credit for all the time that you were away from work for service and also for the many months when the Sheriff has unlawfully denied you reemployment. You can return to work briefly and then retire. Alternatively, you can keep working if that is what you want to do. It would be unlawful to deny you retention in employment or any benefit of employment because of your uniformed service or because you asserted your reemployment rights.<sup>22</sup>

**Q: I made a formal, written USERRA complaint against the Sheriff, and the assigned DOL-VETS investigator has acted expeditiously in investigating my complaint. The investigator told me that he has found my complaint to have merit, and that he is writing up his report. What happens next?**

**A:** DOL-VETS will soon send you a report of the results of its investigation of your complaint and of your right to request (in effect, to insist upon) the referral of your case file to the United States Department of Justice (DOJ).<sup>23</sup> Instead of requesting referral to DOJ, you can retain private counsel and file suit in your own name in federal court.<sup>24</sup> In your situation, you are better off requesting referral to DOJ, especially since DOL-VETS seems to be doing a fine job.

If you request referral, DOL-VETS is required to refer your case to DOJ within 60 days after receiving your request.<sup>25</sup> If DOJ is reasonably satisfied that you are entitled to the USERRA benefits

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<sup>21</sup> 38 U.S.C. 4334 (emphasis supplied).

<sup>22</sup> 38 U.S.C. 4311.

<sup>23</sup> 38 U.S.C. 4322(e).

<sup>24</sup> 38 U.S.C. 4323(a)(3)(B). If the Sheriff is considered a *state* official, suing in your own name with your own lawyer may be impossible, because of the 11<sup>th</sup> Amendment of the United States Constitution and the concept of state sovereign immunity. Please see Law Review 16124 (December 2016). Your civilian pension is likely administered by a state government agency, not a county agency, and you will likely need to get relief from that agency as well. You are better off to ask DOL-VETS to refer your case to DOJ.

<sup>25</sup> 38 U.S.C. 4323(a)(1).

that you seek, it can file suit on your behalf and represent you in the litigation.<sup>26</sup> Within 60 days after receiving the referral from DOL-VETS, DOJ must decide whether to represent you and notify you in writing of the decision.<sup>27</sup>

**Q: If DOJ declines my request for representation, can I then file suit in federal court in my own name and with my own lawyer?**

**A:** Yes.<sup>28</sup>

**Q: If DOJ files suit on my behalf, who is the named plaintiff?**

**A:** If the named defendant is a state, DOJ files the suit in the name of the United States, as plaintiff.<sup>29</sup> In all other USERRA cases, including cases against political subdivisions of states,<sup>30</sup> the named plaintiff is the individual service member or veteran, even if DOJ is providing free legal representation.

In your case, there is an ambiguity as to whether the Sheriff is an official of the state or of the county (a political subdivision). There is also the issue of getting relief from the state agency that administers county pensions. I suggest that DOJ file suit both in your name and in the name of the United States, to cover both possibilities.

### **Please join or support ROA**

This article is one of 2000-plus “Law Review” articles available at [www.roa.org/lawcenter](http://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 in 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 many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs. Indeed, ROA is the *only* national military organization that exclusively supports America’s Reserve and National Guard.

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<sup>26</sup> 38 U.S.C. 4323(a)(1).

<sup>27</sup> 38 U.S.C. 4323(a)(2).

<sup>28</sup> 38 U.S.C. 4323(a)(3)(C).

<sup>29</sup> 38 U.S.C. 4323(a)(1) (final sentence).

<sup>30</sup> The final subsection of section 4323 provides: “In this section, the term ‘private employer’ includes a political subdivision of a State.” 38 U.S.C. 4323(i).

Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights 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 seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. 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](http://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:

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