

What Is the Deadline for Filing an SCRA Lawsuit? Part 2

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

4.7—SCRA provision extending statutes of limitation and redemption periods

4.9—SCRA enforcement

Q: I am a retired Army Reserve Lieutenant Colonel and the father of a daughter who recently enlisted in the Army.³ I am also a life member of the Reserve Organization of America (ROA).⁴ I have read with great interest several of your “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), and other laws that are especially pertinent to those who serve our country in uniform. I am particularly interested in Law Review 21063 (October 2021), by Second Lieutenant Lauren Walker, USMCR, because something very much like the case she discussed happened to me ten years ago, in 2011.

In 1995, I enlisted in the Army. I reported to active duty in January 1996, to attend Officers Candidate School. I remained on active duty continuously for five years. I left active duty in January 2001 and affiliated with the Army Reserve. I returned to active duty several times,

¹ I invite the reader’s attention to www.roa.org/lawcenter. You will find more than 2,200 “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), 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 90% of the articles published so far, but we are always looking for “other than Sam” articles by other lawyers who are ROA members or willing to join ROA.

² 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 and retired as a Captain (O-6) in 2007. I am a life member of ROA and have served on the national staff as the Director of the Service Members Law Center (SMLC). Please see Law Review 15052 (June 2015) for a summary of the accomplishments of the SMLC during its six years in operation as a funded ROA program. I have continued some of the work of the SMLC as a volunteer and ROA member since I left the national staff in 2015.

³ The factual set-up for this article is hypothetical but realistic.

⁴ At its 2018 annual convention, the Reserve Officers Association amended its Constitution to make all military personnel, from E-1 through O-10, eligible for full membership. The organization also adopted a new “doing business as” name—the Reserve Organization of America. The point of the name change is to emphasize that the organization now represents and admits to membership all military personnel, from the most junior enlisted personnel to the most senior officers.

sometimes voluntarily and sometimes involuntarily. My last active-duty period was in 2011-12, in Afghanistan.

After that last active-duty period, I returned to the status of a part-time Army Reservist, performing inactive duty training (weekend drills) and annual training periods for two to three weeks per year. In January 2019, 23 years after I enlisted, I became a “gray area” retiree and stopped my active participation in the Army Reserve.

In 2011, while I was deployed to Afghanistan, a towing company towed my automobile from the apartment complex parking lot where I had lawfully parked it during my deployment. The towing company sold my automobile at auction to “satisfy” the charges for towing and storage. I did not learn of this until months later, when I returned from deployment. I contacted a civilian lawyer, but he told me that the process was authorized by State law and that there was nothing I could do about it.⁵ I had no idea that my SCRA rights may have been violated until I read Lieutenant Walker’s Law Review 21063 very recently.

The towing company is still in business, and it is still towing and selling off vehicles owned by deployed service members. Does the SCRA have a statute of limitations? Is it too late for me to sue the towing company about what happened to me in 2011?

In Law Review 21065, you (Captain Wright) wrote that the four-year statute of limitations is tolled (stops running) during a person’s military service. The way I figure it, the statute of limitations was tolled for the entire time between 2011 (when the towing company unlawfully towed and foreclosed upon my vehicle) and January 2019, when I retired from the Army Reserve. Thus, I have until January 2023 (four years after my retirement) file suit against the towing company.

Does my theory make sense?

Answer: No, your theory does not make sense. Under the SCRA, the statute of limitations, for or against the service member, is tolled during the member’s “military service.”⁶ The SCRA defines the term “military service” as follows: “In the case of a servicemember who is a member of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard,--*active duty*, as defined by section 101(d)(1) of the United States Code.”⁷

⁵ As Lieutenant Walker explained in Law Review 21064, the non-judicial foreclosure on the vehicle violated Federal law, the SCRA, so compliance with State law was irrelevant. Under Article VI, Clause 2 of the United States Constitution, commonly called the Supremacy Clause, a Federal statute like the SCRA trumps a conflicting State statute or State constitution.

⁶ 50 U.S.C. 3936(a).

⁷ 50 U.S.C. 3911(2)(A)(i) (emphasis supplied).

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

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 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.⁸

The four-year statute of limitations⁹ started running in 2012, when you left active duty. The statute of limitations was tolled (stopped running) during the annual training periods that you performed between 2012 and 2019, but those tolled periods are insufficient to make your lawsuit filed today timely.

The term “inactive duty training” (drills) is defined in section 101(d)(7).¹⁰ These periods do not qualify as “active duty” or as “military service” for SCRA purposes, so the four-year statute of limitations was not tolled during those periods.¹¹

The four-year statute of limitations expired sometime during 2016. If you were to file suit today, your suit would be summarily dismissed, without consideration of the merits.

Q: It is not fair! Nobody told me that my SCRA rights were violated in 2011, when the towing company illegally towed and foreclosed on my vehicle. Nobody told me that there was a deadline in 2016 to assert my rights.

A: I hear this complaint frequently, and it frustrates me. I have devoted the last 45 years, since I passed the Texas bar exam in 1976, to educating service members about their legal rights and about what they need to do to exercise and enforce those rights. I have done this through one-on-one advice to military personnel (Active Component and Reserve Component), through speeches to Reserve and National Guard units and other military audiences, and through more than 2,000 published articles.

We need to get the word out to service members about the precious resource that we have created—the Law Review Library. And we need to get them to support the continuation, maintenance, and expansion of this resource, by joining ROA.

⁸ 10 U.S.C. 101(d)(1).

⁹ 28 U.S.C. 1658(a);

¹⁰ 10 U.S.C. 101(d)(7).

¹¹ See Law Review 14038. Moreover, even if the statute of limitations was tolled during your drill weekends, that would not be enough to make your lawsuit timely.

Military personnel need this information now, not ten years from now. I do not have the power to turn back the hands of time.

Please join or support ROA.

This article is one of 2,200-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 in October 1922 by a group of veterans of “The Great War” as World War I was then known. Captain Harry S. Truman was one of those veterans. 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 defense. 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 military organization that exclusively supports America’s Reserve and National Guard.

Through these articles, and by other means, including amicus curiae (“friend of the court”) briefs in the Supreme Court and other courts, ROA educates service members, military spouses, attorneys, judges, employers, and others about the legal rights of service members and 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 cost 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 eight¹² uniformed services, you are eligible for full ROA membership, including the right to vote and run for office in the organization. Eligibility includes those who are serving or have served in the Active Component, the Reserve, or the National Guard, and enlisted members as well as officers are eligible.

If you are eligible, please join on-line at www.roa.org or call ROA at 800-809-9448. The cost is only \$20 per year or \$450 for a life membership. If you are not eligible, please support us financially to help us continue this work. You can mail us a check as follows:

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¹² Congress recently established the United States Space Force as the eighth uniformed service.