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To Get a Continuance under the SCRA, You Must Meet the SCRA Requirements.

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

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“This is a very simple game. You throw the ball, you catch the ball, you hit the ball.”
—“Bull Durham”

The Banner

COVID-19 has limited travel for many people, especially when court hearings are involved, and “travel restrictions” may limit the ability of a litigant to appear in person. Should a servicemember from another state be denied a stay of proceedings under the Servicemembers Civil Relief Act when he cannot leave his base to travel to another state for a court hearing? Can the court deny a stay request when it is made orally on the day of trial? The answers are in a recent Nebraska Supreme Court case, *Hawkins v. Delgado*, 308 Neb.301, 2021 Neb. LEXIS 15 (Neb. 2021).

The Backstory

Keeley Hawkins and Erick Delgado dated for over two years. Both were lieutenants in the Air Force. Keely eventually broke off the relationship, and that’s when Erick started going downhill. He threatened suicide and placed a video call to her while she was on deployment, showing himself in a closet with a noose around his neck. Using a “burner phone,” he messaged her that he loved her and had sent flowers. He said that if she blocked the number, he’d just “get another burner. Lol.” His next text messages stated, “Time has come. Karma.” and “It will not stop till it all burns. That I promise.” And his final message was “There is a storm coming. Afterwards there shall be the calm. Keeley you will be free from yourself and your past.”

Even after Keeley got a military “no-contact order” from the Air Force, the harassment did not stop. So she sought a protection order from the local district court in Nebraska, where she was stationed. The order was immediately issued, and Erick opposed the extension of the order. Both parties retained counsel, and Keely sought and obtained a stay of proceedings (pursuant

to the Servicemembers Civil Relief Act) from the first date to a new date two months later, since she was scheduled to deploy.

On the day of trial, Keeley was there. Her lawyer was there, and so was Erick's lawyer. But Erick was MIA – "missing in action." He was not present in court; apparently, he could not depart from his base due to travel restrictions. His lawyer stated that Erick was on base in Arizona, he could not appear in person, and the court should grant a stay of proceedings pursuant to the Servicemembers Civil Relief Act, or SCRA.

Following the hearing, the judge entered an order which found that the ex parte order should continue in effect. In regard to the motion for stay, the court found that the attorney's oral motion for a stay of proceedings was not a proper stay request under the SCRA, and the motion was denied. Erick appealed.

Bullet Points: The Decision

The Supreme Court noted that the SCRA provides for a stay of proceedings when a party is in military service and has received notice of the action or proceeding. 50 U.S.C. § 3932. And the Court also noted that, for the court to grant a stay of proceedings, the request must include:

- A letter or other communication stating-
 - a. facts as to how the party's military duties materially affect his or her ability to appear, and
 - b. when he or she will be available to appear, as well as –
- A letter or other communication from the party's commanding officer stating that-
 - a. The servicemember's current military duty prevents appearance in court, and
 - b. Leave is not authorized for the servicemember.

The attorney for Erick did none of these things. All he did was to make an oral request which was limited to a reference to the SCRA. There were no specific allegations about Erick's nonavailability, other than to note that he was not present and could not travel.

The Supreme Court found that "These verbal representations do not comply with the requirements of the SCRA." It concluded that, "while the provisions of the SCRA might be entitled to a liberal construction, such liberal construction is not a license to fail to comply with the primary requirements of the SCRA." The Court affirmed the trial court's decision.

The Bottom Line

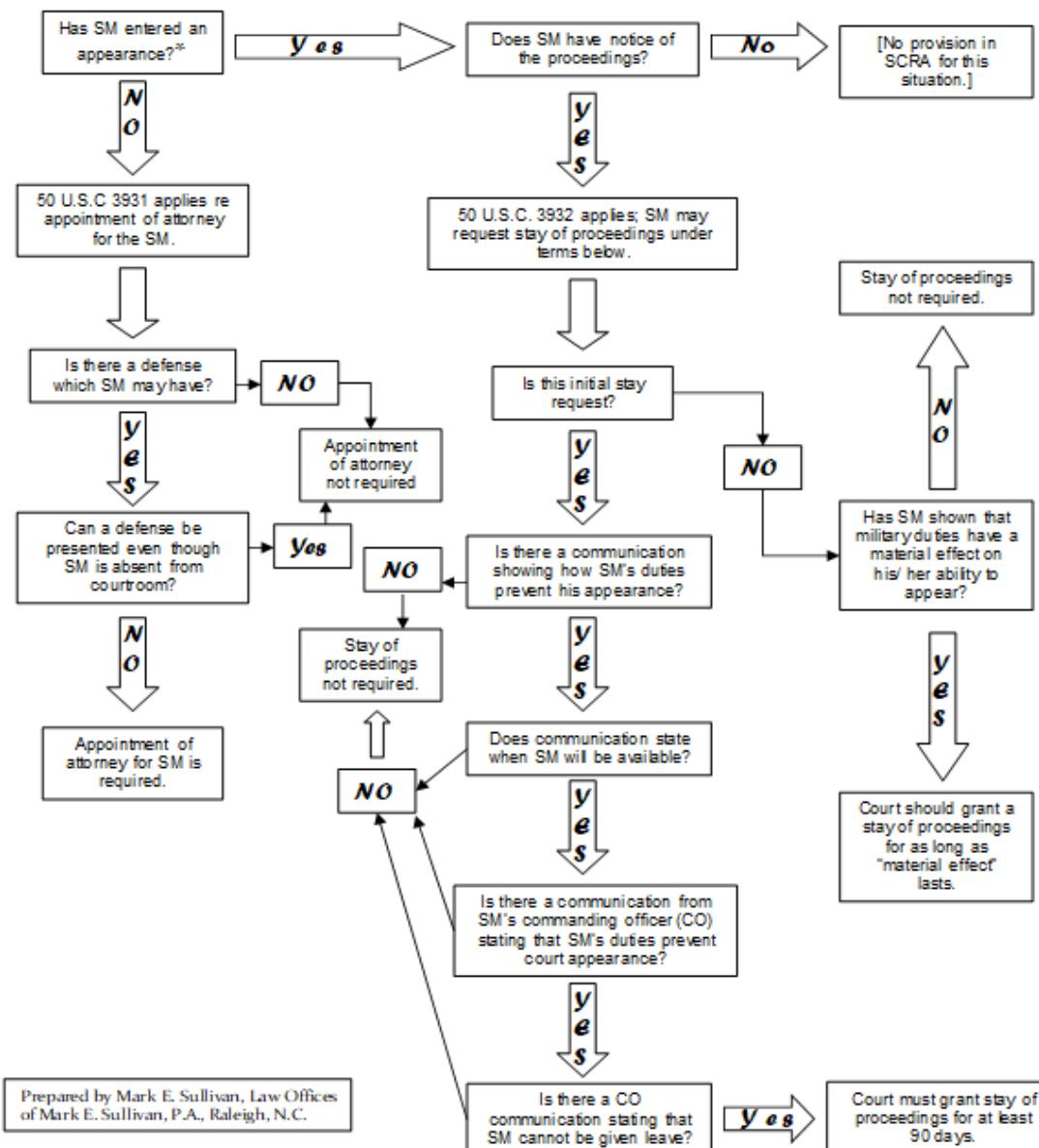
This Nebraska Supreme Court decision is a good reminder for practitioners that, to get a stay of proceedings under the Servicemembers Civil Relief Act, you actually have to "open the books" and read the law's requirements. If you do not read 50 U.S.C. § 3932, you will never know that a stay may not be based on standing up in open court on the day of trial and - without the benefit

of the required documents and statements - trying to convince the judge that the court needs to stay the proceeding under the SCRA. Snooze and you lose!

A final note: There are no "travel restrictions" when it comes to finding out what the elements of a stay request are. They are all set out in "A Judge's Guide to the Servicemembers Civil Relief Act," found at the website for the North Carolina State Bar's military committee, located at www.nclamp.gov > For Lawyers > Additional Resources.

The following flowchart explains the steps in obtaining a stay of proceedings in visual format.

Servicemembers Civil Relief Act (SCRA) – Appointment of Attorney, Stay of Proceedings (50 U.S.C. §§3931-32)



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*: "Appearance" in most states means any pleading, motion or action by a party which recognizes the power of the court to hear the case.

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