

## **Obtaining a Stay under the Servicemembers Civil Relief Act when Military Duties Preclude you from Participating in a Civil Lawsuit or Administrative Procedure.**

By Colonel Mark E. Sullivan, USA Ret.)\*

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

\*Mr. Sullivan served in the Army and Army Reserve as a judge advocate and retired as a colonel. He is a life member of the Reserve Organization of America. He practices family law in Raleigh, North Carolina, and is the author of THE MILITARY DIVORCE HANDBOOK (Am. Bar Assn., 3<sup>rd</sup> Ed. 2019) and many internet resources on military family law issues. A Fellow of the American Academy of Matrimonial Lawyers, Mr. Sullivan has been a board-certified specialist in family law for over 30 years. He works with attorneys nationwide as a consultant on military divorce issues in drafting military pension division orders. He can be reached at 919-832-8507 and at [mark.sullivan@ncfamilylaw.com](mailto:mark.sullivan@ncfamilylaw.com).

The Pentagon has deployed thousands of servicemembers in response to the Russian invasion of Ukraine. Naval warships, surveillance aircraft, artillery units, and brigade combat teams are all heading out as part of the first-ever NATO Response Force.

Undoubtedly some of the servicemembers (SMs) will be involved in civil cases, administrative legal proceedings, and family law litigation. It is essential to know how to ask the court to *freeze the case* during a deployment (or any period in which the SM is unavailable due to assigned duties), so the *status quo* will remain while the SM is not available.

The "stay" is how litigation may be suspended. The Servicemembers Civil Relief Act (SCRA), Chapter 50 of Title 50, U.S. Code, tells how to request and obtain a stay of proceedings. The court may order an automatic, mandatory stay if the four essential elements are shown. The statute requires a letter or other communication:

1. with facts showing how military duties materially affect the SM's ability to appear, and

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2. stating a date when he will be available.

The Act also requires a letter or other communication from the SM's commanding officer stating that:

3. the SM's current military duty prevents his appearance, and
4. military leave is not presently authorized for the SM.

50 U.S. C. § 3931(b)(2). The court may issue the stay on its own motion, and the court *shall issue the stay* upon application of the SM if the above four elements are shown.

No specific document is prescribed for requesting a stay. A motion or application will certainly suffice, but the request could also be in the form of a letter to the court or an affidavit.

Preparing a stay request is not 'rocket science.' But there are two issues worth keeping in mind:

- A. Follow the statute. In a Kansas case, the SM was denied a stay of proceedings because he failed to provide a statement as to how his current military duties materially affected his ability to appear and when he would be available to appear. In addition, he didn't provide a statement from his commanding officer stating that his current military duty prevented his appearance and military leave was not authorized. *In re Marriage of Bradley*, 137 P.3d 1030 (Kan. 2006).
- B. Provide persuasive details. Don't just recite the bare elements of the statute. Be sure to fill in specifics as to duties and inability to appear or participate in the proceedings. This is also true for the commander's communication.

The court can grant an initial 90-day stay, and it may allow an additional stay as well. 50 U.S.C. § 3931(b)(1) and (d). More information will be found in "A Judge's Guide to the Servicemembers Civil Relief Act," at [www.nclamp.gov](http://www.nclamp.gov) > Publications > additional Resources.

Can a stay request be denied? Does the court have the power to refuse the application of a SM for a stay of proceedings while he or she is deployed and unavailable for participation in the litigation?

The answer is YES. There are two primary routes to blocking a stay request.

The first of these is to show that the application doesn't fit the requirements of the statute. If the stay request has omitted one or more elements of 50 U.S.C. § 3931(b)(2), the court may deny the request. In an Alaska case the court denied a request for a stay because evidence was lacking about military duties precluding the SM from participation in the case, and there was no communication from his commanding officer. *Childs v. Childs*, 310 P.3d 955 (Alaska 2013).

The second issue involves misconduct by the SM. SMs who fail to comply with the rules and orders of the court may find that their stay requests are denied. In a North Carolina case, a

soldier received several continuances because of military duty during the Persian Gulf War, had an attorney, failed to comply with court discovery orders, and continued to request additional stays or continuances; the court denied his stay requests. *Judkins v. Judkins*, 113 N.C. App. 734 (1994).

Withholding important information from the other party or the court can also lead to denial of the stay request. When a party applying for a stay has acted inequitably, most courts will refuse to consider the stay request based on the doctrine of “the sword and the shield,” ruling that the SCRA is intended to be used as a *shield* to protect the rights of the servicemember, not as a *sword* to defeat the rights of others. “Fair play” is the key to successful use of the SCRA in slowing down civil proceedings.<sup>2</sup>

More information on the stay request and its essential elements may be found in “A Judge’s Guide to the Servicemembers Civil Relief Act,” at [www.nclamp.gov](http://www.nclamp.gov) > Publications > additional Resources.

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<sup>2</sup> See Law Review 22022 (April 2022), the immediately preceding article in this “Law Review” series.

<sup>3</sup> Congress recently established the United States Space Force as the 8<sup>th</sup> uniformed service.

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