

The Right to a Continuance under the SCRA Applies Even If The Service Member Is Doing Business in Corporate Form.

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

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

Q: I am a lawyer in private practice in a community that is close to a major Army base. Many of my clients are service members, Active Component or Reserve Component. I have read with great interest many of your “Law Review” articles about the Servicemembers Civil Relief Act (SCRA) and the Uniformed Services Employment and Reemployment Rights Act (USERRA), and I have found your articles to be most useful to me in advising and representing these clients.

¹ I invite the reader’s attention to www.roa.org/lawcenter. You will find more than 2,000 “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 Spouses’ 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 90% of the articles, but we are always looking for “other than Sam” articles by other lawyers.

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 General’s Corps officer and retired in 2007. I am a life member of ROA. For 46 years, I have collaborated 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 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 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 <mailto:swright@roa.org>.

I graduated from college in 1988 and was commissioned a Second Lieutenant via the Army's Reserve Officers Training Corps (ROTC). I served on active duty for exactly four years, from May 1988 until May 1992, and during that time I served as a junior officer in Saudi Arabia, Kuwait, and Iraq during Operation Desert Shield and Operation Desert Storm. I left active duty in 1992 and got out altogether in 1996.

After I left active duty, I went to law school and graduated in 1996. I am in private practice, and many of my clients are soldiers, Active Component and Reserve Component. I have been practicing law for more than a quarter of a century.

Am I eligible to join the Reserve Organization of America (ROA)? And can I be of assistance to you with these "Law Review" articles?

A: Yes, you are eligible to join ROA. Anyone who is serving or has served our country in any of the eight uniformed services is eligible for full membership, and this includes those who served in the Active Component, as well as those who served in the Reserve or National Guard. Enlisted personnel as well as officers are eligible.

We sure would like to have you as a member of ROA. You can join on-line at www.roa.org. The cost is only \$20 per year or \$450 for a life membership. And if you can spare a few shekels, we would greatly appreciate a contribution. You can donate to ROA on-line or mail us a contribution:

Reserve Organization of America
1 Constitution Ave. NE
Washington, DC 20002

Perhaps you would like to write one or more "Law Review" articles for ROA. 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. I am 71 and will not be around forever to write and update these articles.

If you want to expand your law practice to service members outside your own geographical area, perhaps you would like to purchase an advertisement on our website.

Q: I was particularly impressed with your Law Review 22031 (May 2022), and I have already put that article to good use. In that article, you wrote:

In a case involving the Obamacare employer mandate to provide health insurance for employees, including contraceptive services, two closely-held family corporations claimed that providing health insurance coverage for contraceptive services that at least arguably

amounted to abortion violated their sincere religious beliefs. They also claimed that the mandate, as applied to them, violated the Religious Freedom Restoration Act (RFRA). The Supreme Court agreed with this argument and further held that: “In holding that the HHS mandate is unlawful, we reject the argument that the owners of the companies forfeited all RFRA protections when they decided to organize their businesses as corporations rather than sole proprietorships or general partnerships.”³

The Supreme Court went on to hold:

The purpose of [the corporate personhood] fiction is to provide protection for human beings. A corporation is simply a form of organization used by human beings to achieve desired ends. ... When rights, whether constitutional or statutory, are extended to corporations, the purpose is to protect the rights of these people.⁴

The 2nd Circuit has cited and followed this Supreme Court precedent on this point.⁵ This Supreme Court precedent is directly on point. I suggest that you bring this precedent to the attention of the judge and ask her to reconsider her preliminary decision that your client is not entitled to a continuance under the SCRA.

I have already put your suggestion to good use, in a case involving a client who is a Major in the Army Reserve and the owner-operator of a small business that is organized as a Limited Liability Corporation (LLC). She was mobilized and deployed outside our country. She was sued, in a business dispute that arose shortly before she was called to active duty and deployed.

I got my client’s commanding officer to sign a statement to the effect that, because of military necessity, my client cannot be given leave to return to her hometown to defend herself in this lawsuit, and then I filed a motion for a continuance, under the SCRA. The plaintiff strenuously objected, claiming that the SCRA did not apply because the named defendant in the lawsuit was the LLC of which my client was the sole owner. I gave the judge a copy of your Law Review 22031, and she gave my client the requested continuance.

A: Thank you for bringing this situation to my attention. It is gratifying to know that our “Law Review” articles are being read and utilized not only by service members but also by lawyers like you.

Please join or support ROA

³ *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 688 (2014).

⁴ *Hobby Lobby Stores, Inc.*, 573 U.S. at 706-07.

⁵ See *New York v. Mt. Tobacco Co.*, 942 F.3d 536, 548 (2d Cir. 2019).

This article is one of 2,000-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 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 eight⁶ 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
Washington, DC 20002⁷

⁶ Congress recently established the United States Space Force as the 8th uniformed service.

⁷ You can also donate on-line at our website, www.roa.org.