

LAW REVIEW¹ 21065

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What Is the Deadline for Filing an SCRA Lawsuit?

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1.6—USERRA statute of limitations

4.7—SCRA provision extending statutes of limitation and redemption periods

4.9—SCRA enforcement

Q: I am a retired Regular Army Lieutenant Colonel and the father of a daughter who recently enlisted in the Army.³ 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 until I retired on January 15, 2018, 22 years later. 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

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.

State law and that there was nothing I could do about it.⁴ 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?

A: The SCRA does not contain a statute of limitations, but the United States Code contains a default four-year statute of limitations that applies here. That provision reads: "Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of enactment of this section [12/1/1990] may not be commenced later than 4 years after the cause of action accrues."⁵

The SCRA includes a provision that statutes of limitation are tolled (stop running) during the active-duty service of a service member. That provision is as follows:

Tolling of statutes of limitation during military service. The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns.⁶

The four-year statute of limitations was not running between 2011, when your cause of action accrued, and January 2018, when you left active duty by retirement. If you are to file suit about this cause of action, you must do so before 1/15/2022, the fourth anniversary of the date you left active duty.

Q: A lawyer I consulted just recently brought up that section, but he said that the section only applies to persons who serve on active duty for a single enlistment of four or five years and to reservists and National Guard members who are involuntarily called to active duty for emergencies. What do you say about that?

A: The lawyer is wrong. The State of Maine made exactly that argument, and Maine's high court agreed with the State's assertion, but the United States Supreme Court granted certiorari

⁴ As Lieutenant Walker explained in Law Review 21063, 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.

⁵ 28 U.S.C. 1658(a).

⁶ 50 U.S.C. 3936(a).

(discretionary review) and reversed the judgment of Maine's high court.⁷ The SCRA rule about tolling statutes of limitations and redemption periods applies to career active-duty service members like you and to persons who serve on active duty for shorter periods.

Q: In Law Review 19076 (August 2019), you wrote that there is no time limit on the filing of a lawsuit under the Uniformed Services Employment and Reemployment Rights Act (USERRA). Is what you wrote in 2019 inconsistent with what you are writing now?

A: No, what I am writing now is not inconsistent with what I wrote in Law Review 19076. The USERRA provision that I wrote about only applies to USERRA cases, not to cases under the SCRA or other statutes. The USERRA provision reads as follows:

If any person seeks to file a complaint or claim with the Secretary [of Labor], the Merit Systems Protection Board, or a Federal or State court *under this chapter alleging a violation of this chapter*, there shall be no limit on the period for filing the complaint or claim.⁸

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, 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.

⁷ *Conroy v. Aniskoff*, 507 U.S. 511 (1993). I discuss that case in detail in Law Review 09008 (February 2009).

⁸ 38 U.S.C. 4327(b) (emphasis supplied). This provision was enacted in 2008, as an amendment to USERRA.

If you are now serving or have ever served in any one of our nation's eight⁹ 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 <http://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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⁹ Congress recently established the United States Space Force as the eighth uniformed service.