

SCRA CIVIL CASE STAY REQUEST
4133d REGIONAL TRIAL DEFENSE TEAM
ARMY NATIONAL GUARD TRIAL DEFENSE SERVICE
OREGON ARMY NATIONAL GUARD

General Instructions and warnings/disclaimers: The material in this handout represents general legal principle, and no legal advice is provided herewith. The use of this template does not replace the sound advice of an attorney. If at all possible, make arrangements to see your servicing legal assistance attorney or other private civil attorney as soon as possible. The law is continually changing and although the information is current as of the date it was drafted, some provisions may have changed. The stay request template (your request and the commanders letter) is not intended to be in ready to use compliance with applicable military branch correspondence regulations, or particular State civil code pleading standards. You should examine your service branch correspondence regulations such to draft the commander's letter to applicable standards. You should examine your State civil code pleading rules in completing the template for submission to the court, and you may be expected by those rules to submit an order to the court for action though the request and commanders letter is all that is Federally required. The use is limited to civil not criminal cases as the Servicemembers Civil Relief Act (SCRA) does not apply to criminal cases (which generally includes any case where the state wants you to pay a fine or receive some other sanction such as traffic cases). If you have a court date, email, fax, call, or attend the court with the Stay request. If you fax or email it to the court, send the original immediately thereafter. It is always best to consult an attorney about your legal rights and responsibilities regarding your particular case. Due to the nature of deployments you may wish to find the court's email address to the Chief Administrative Officer (eg Trial Court Administrator) or other family law clerk email address and scan and email the documents to the address and follow up with the originals by mail. If you have an imminent hearing scheduled, at least initially call or email the court and ask for the family law clerk, or judges assistant, and tell them that you are in the military and are deployed and are requesting a stay of proceedings. Ask them for the best fax or email address that you can use to initially send your request in writing. Most courts have websites and the main office of a State Court system may have links to County/District Courts within its jurisdiction. When you mail the letter and attachments there is no requirement for you to use certified mail but a copy by certified mail is a good idea. You must DRAFT this letter to your particular needs. You should not imply that you are consenting to jurisdiction or waiving any rights. You must include a memorandum from your commander with the stay request. This is your immediate Officer Commander and not a subordinate of the commander. Coordinate with your supervisor to reach the commander. You must also send a copy of the letter to the other party or if they have an attorney then their attorney. You must reflect you have done so in the pleading. Retain a copy of the material you have sent and follow up with the court when sufficient time has passed for the court to receive the letter. Our TDS website has information on it for the Servicemembers Civil Relief Act, and you should review the current memorandum pertaining to the SCRA contained thereon. The 4133 Regional Trial Defense Team website is located at: www.oregon.gov/omd/jag. The Army National Guard Trial Defense Service (ARNGTDS) primarily provides military justice defense services for the particular state National Guard. Collaterally, legal assistance information is provided pursuant to AR 27-3. Legal Assistance Services, however, are ordinarily accessed through the Active Army Legal Assistance Office, USAR Legal Services Organization (for USAR Soldiers), or the State JAG Office for National Guard members and persons qualified for legal assistance under AR 27-3, subject to available resources. Almost universally, legal assistance units and offices have very limited or non-existent ability to assist with civil litigation IN COURT. You are strongly advised to work on hiring a private attorney in the local area of the court with jurisdiction as soon as possible. Reference: AR 27-3; Servicemembers Civil Relief Act (SCRA), Public Law 108-189, 50 U.S.C. App. §§501-596.

SAMPLE LETTER TO COURT

Honorable Judge's Name
Or Trial Court Administrator/Family Law Clerk
*** Court of the ** County/State of ****
Address
City, State 00000
Email:

VIA REGULAR MAIL **AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED
& EMAIL OR FAX???

Date

RE: Motion/Request for Stay of Proceedings Pursuant to the Servicemembers Civil Relief Act
Docket/Case #: **XXXXXXXXXX** (eg Case number and parties, petitioner and respondent)

Dear Honorable Judge's Name/ or Dear Judge:

Please accept this letter as my formal written request for a stay of proceedings, in the case above, as provided in the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C. App. Section 522. I am an active duty servicemember currently stationed overseas at **Name of Installation**.

I understand that under the SCRA a stay requires:

1. A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear; AND
2. A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

This letter and attachments is intended to comply with that requirement.

I am not reasonably available due to deployment, am materially affected by the deployment, have meritorious defenses and claims for the case, and would be substantially prejudiced if a default were taken against me.

I am unable to attend ** the *** any** scheduled proceeding because **[briefly explain the situation]**. I will return to the states around **date** and will be prepared to proceed shortly thereafter. ***I may have some ability for telephonic hearings if the court wishes to discuss any preliminary matters, however, without my presence I feel I would be substantially prejudiced as to any substantive issues, and cannot properly obtain civilian counsel in my absence.

Under the SCRA I understand that an automatic 90 day should be placed on the case, and that thereafter the court will consider extending the stay. It is my understanding that a servicemember who is

granted a stay of a civil action or proceeding under may apply for an additional stay based on continuing material affect of military duty on the servicemember's ability to appear. Such an application may be made by the servicemember at the time of the initial application or when it appears that the servicemember is unavailable to prosecute or defend the action. As I foresee no change in my status, my inability to defend my case after the lapse of 90 days, please accept this letter as my further request for a stay past the 90 day automatic stay.

Please find the attached letter from my unit commander.

If you have any questions or require any additional information, you may contact me at the email and mail address listed below.

Sincerely,

John D. Doe
Rank, Branch (US Army, US Navy, US Marines, US Air
Force, etc)

Submitted by:

John D. Doe
Rank
Unit
Address
APO/
City, State 00000
Email:
Telephone:
Fax:

Attachment:
Commander's Letter

Cf: Opposing Party/Attorney, Address (with attachments)

SAMPLE MEMORANDUM FOR COMMANDER

UNIT CODE: _____

DATE: _____

Honorable Judge of the Circuit/Superior/etc Court

County of _____

State of _____

NAME _____

ADDRESS _____

SUBJECT: REQUEST FOR STAY UNDER THE SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

_____ v. /and _____ No. _____

SOLDIER: _____

Dear Judge:

I am the commander of the above soldier in _____ Company, _____ Battalion, ** Army National Guard, which has been activated to federal active duty military service, under U.S. Code Title 10, and is deployed/deploying.

Pursuant to the SCRA, section 202, the soldier has requested a Stay of the above action for the duration of the deployment.

The soldier's current military duty assignment, [in eg..Iraq or Afghanistan] [in training for deployment] precludes him/her from being released, either on leave or pass, to adequately address the above-mentioned matter. Specifically, I do not anticipate releasing the soldier to address this matter before the unit returns from duty station, a period of at least an expected ___ **18 months from the date of activation, which was _____ and not longer than ***24 months, depending on the needs of the military. The soldier's duties preclude his/her appearance and it is unlikely that he/she will be authorized leave during the period of the requested stay/ **or leave will be authorized but due to the nature of military leave cannot be fixed to a particular time frame with great accuracy.

The Soldier will/**will not have reasonable access to email / telephone during the period of deployment.

Thank you very much for your time. If you have concerns please contact me at:
address: _____; email: _____.

Sincerely,

_____, _____

COMMANDING

SAMPLE ORDER

IN THE _____ COURT OF THE STATE OF _____
FOR THE COUNTY OF _____

INSTRUCTIONS, YOU MAY NEED TO
ADD LINE NUMBERS TO THIS
PLEADING; INSERT CAPTION HEADING
JUST LIKE THE PAPERWORK YOU HAVE
RECEIVED, AND IF YOU DON'T HAVE
IT, TALK TO COURT CLERK FOR COURT
INVOLVED AND HAVE THEM READ
YOU THE CASE CAPTION HEADING, EG:

JANE DOE, PETITIONER

AND

JOHN DOE, RESPONDENT

Case No. _____

COURT'S ORDER IN REGARDS TO
MOTION/REQUEST FOR STAY OF
PROCEEDINGS UNDER SERVICEMEMBERS
CIVIL RELIEF ACT

THIS MATTER coming to the court on the below date for consideration of the
Defendant/petitioner NAME motion and request for a Stay of Proceedings under the
Servicemembers Civil Relief Act; the court taking judicial notice of the file and records of the
case; it appearing to the court that a stay is appropriate, therefore, the court orders:

[] An immediate 90 day stay of the proceedings, to be followed by the court considering in chambers by judicial review of the file and record of the case, the status of the stay request, and any further pleadings or actions taken by the moving party and any by the opposing party. The court will then consider the following non-exclusive list of issue at the end of the 90 days automatic stay: Whether the moving party servicemember has perfected a request for a stay; whether the case proponent has renewed a motion for default, supplemented it with further information; whether the servicemember is then reasonably available; whether the servicemember appears to have a meritorious defense; and whether the SM would be prejudiced by proceeding to a default judgment in the absence of a stay; and whether to appoint counsel for the servicemember for any proceeding in default or in the absence of the servicemember; and whether to continue the stay until the servicemember is reasonable available, or 90 days after release from active duty, whichever is earlier.

[] A stay of the proceedings until the servicemember is reasonable available, or 90 days after release from active duty, whichever is earlier. Servicemember is ordered to contact the court to advise the court of any leave to be taken in the United States prior to initiating leave from outside the United States, and within 30 days after release from active duty. The clerk shall set the matter for _____ hearing _____ months/days from this date.

SO ORDERED on _____, 20_____:

_____ Court Judge