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REPLY TO
ATTENTION OF

NGJA-OR-TDS

3 August 2010

MEMORANDUM FOR Soldiers in Civil Lawsuits

SUBJECT: Servicemembers Civil Relief Act

1. References.

a. Servicemembers Civil Relief Act (SCRA), Public Law 108-189, 50 U.S.C. App. §§501–596¹

¹ The Public law (PL) sections are as follows, though under the US Code, the sections are 501-596, and set off to the side:

“Sec. 1. Short title; table of contents.	
“Sec. 2. Purpose.	
“TITLE I—GENERAL PROVISIONS	
“Sec. 101. Definitions.	50 USC §511
“Sec. 102. Jurisdiction and applicability of Act.	50 USC §512
“Sec. 103. Protection of persons secondarily liable.	50 USC §513
“Sec. 104. Extension of protections to citizens serving with allied forces.	50 USC §514
“Sec. 105. Notification of benefits.	50 USC §515
“Sec. 106. Extension of rights and protections to Reserves ordered to report for military service and to persons ordered to report for induction.	50 USC §516
“Sec. 107. Waiver of rights pursuant to written agreement.	50 USC §517
“Sec. 108. Exercise of rights under Act not to affect certain future financial transactions.	50 USC §518
“Sec. 109. Legal representatives.	50 USC §519
“TITLE II—GENERAL RELIEF	
“Sec. 201. Protection of servicemembers against default judgments.	50 USC §521
“Sec. 202. Stay of proceedings when servicemember has notice.	50 USC §522
“Sec. 203. Fines and penalties under contracts.	50 USC §523
“Sec. 204. Stay or vacation of execution of judgments, attachments, and garnishments.	50 USC §524
“Sec. 205. Duration and term of stays; codefendants not in service.	50 USC §525
“Sec. 206. Statute of limitations.	50 USC §526
“Sec. 207. Maximum rate of interest on debts incurred before military service.	50 USC §527
“TITLE III—RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENT, LEASES	
“Sec. 301. Evictions and distress.	50 USC §531
“Sec. 302. Protection under installment contracts for purchase or lease.	50 USC §532
“Sec. 303. Mortgages and trust deeds.	50 USC §533
“Sec. 304. Settlement of stayed cases relating to personal property.	50 USC §534
“Sec. 305. Termination of residential or motor vehicle leases.	50 USC §535
“Sec. 306. Protection of life insurance policy.	50 USC §536
“Sec. 307. Enforcement of storage liens.	50 USC §537

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b. Legal Assistance website:

<http://legalassistance.law.af.mil/content/content.php?qrylvl=3&lvl1id=1&lvl1folder=yes&lvl2id=11&lvl2folder=yes>

2. SCRA. The Servicemembers Civil Relief Act (SCRA) generally implicates the Legal Assistance functions of the JAG under AR 27-3 and other applicable regulations in supporting Servicemembers (SM). The SCRA is CIVIL and not Criminal and so DOES NOT apply to criminal matters. If a Soldier has a criminal issue back home that arises during deployment the Soldier should coordinate with a private attorney in the County where the charges exist, and or JAG legal assistance or TDS Attorney as soon as possible.

“Sec. 308. Extension of protections to dependents. 50 USC §538

H. R. 100—2

“TITLE IV—LIFE INSURANCE

- “Sec. 401. Definitions. 50 USC §541
- “Sec. 402. Insurance rights and protections. 50 USC §542
- “Sec. 403. Application for insurance protection. 50 USC §543
- “Sec. 404. Policies entitled to protection and lapse of policies. 50 USC §544
- “Sec. 405. Policy restrictions. 50 USC §545
- “Sec. 406. Deduction of unpaid premiums. 50 USC §546
- “Sec. 407. Premiums and interest guaranteed by United States. 50 USC §547
- “Sec. 408. Regulations. 50 USC §548
- “Sec. 409. Review of findings of fact and conclusions of law. 50 USC §549

“TITLE V—TAXES AND PUBLIC LANDS

- “Sec. 501. Taxes respecting personal property, money, credits, and real property. 50 USC §561
- “Sec. 502. Rights in public lands. 50 USC §562
- “Sec. 503. Desert-land entries. 50 USC §563
- “Sec. 504. Mining claims. 50 USC §564
- “Sec. 505. Mineral permits and leases. 50 USC §565
- “Sec. 506. Perfection or defense of rights. 50 USC §566
- “Sec. 507. Distribution of information concerning benefits of title. 50 USC §567
- “Sec. 508. Land rights of servicemembers. 50 USC §568
- “Sec. 509. Regulations. 50 USC §569
- “Sec. 510. Income taxes. 50 USC §570
- “Sec. 511. Residence for tax purposes. 50 USC §571

“TITLE VI—ADMINISTRATIVE REMEDIES

- “Sec. 601. Inappropriate use of Act. 50 USC §581
 - “Sec. 602. Certificates of service; persons reported missing. 50 USC §582
 - “Sec. 603. Interlocutory orders. 50 USC §583
- “TITLE VII—FURTHER RELIEF
- “Sec. 701. Anticipatory relief. 50 USC §591
 - “Sec. 702. Power of attorney. 50 USC §592
 - “Sec. 703. Professional liability protection. 50 USC §593
 - “Sec. 704. Health insurance reinstatement. 50 USC §594
 - “Sec. 705. Guarantee of residency for military personnel. 50 USC §595
 - “Sec. 706. Business or trade obligations. 50 USC §596

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3. State Laws and Intent of this Memorandum. To the extent that ARNGTDS may provide legal assistance under state agreement with their OSJA, the following is provided for general information. There are many sections to the SCRA and this outline and attachments can only touch on some of the aspects of the SCRA. Additionally, some states have enacted their own state SCRA counterparts affecting Title 32 status, or allowing for enforcement of the SCRA in State Court. The SCRA being Federal, it does not matter what state a SM declares as their home of record (domicile, etc), whereas State SCRA statutes maybe specific to a National Guard but even then you will find members in a State National Guard not a resident of that state. If you are a SM in need of assistance, contact your servicing Judge Advocate Legal Assistance Office as soon as possible or a private attorney. This memorandum is intended to:

- a. Provide a general outline of the SCRA;
- b. Address in relative depth ‘Stays’ from Judicial and Administrative proceedings.
- c. Include as an enclosure guidance from COL Mark Sullivan for Judges.²
- d. Include as an enclosure a listing of known SCRA related cases.
- e. Include as an enclosure guidance from COL Mark Sullivan for appointed attorneys.³

4. Summary. The Servicemembers (SM) Civil Relief Act of 2003 (SCRA) formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA) is a federal law that gives all military members some important rights as they enter active duty. It covers such issues as rental agreements, security deposits, prepaid rent, eviction, installment contracts, credit card interest rates, mortgage interest rates, mortgage foreclosure, civil judicial proceedings, and income tax payments. It also provides many important protections to military members while on active duty.

- a. The SCRA protects active duty military members and reservists or members of the National Guard called to active duty (starting on the date active duty orders are received) and, in limited situations, dependents of military members (e.g., certain eviction actions).

1. **Reserve vs. Active Duty Status.** There are two types of military status, Title 10 which is Federal and Title 32 which is state status for the National Guard. All National Guard in the United States are generally Title 32, and so any SCRA protections would have to come from their State Code, not from the Federal SCRA. The SCRA protections come into play when the Title 32 National Guard Soldier or Title 10 Reservist, are mobilized to Active Duty (AD) under Title 10, not an activation under Title 32. So, depending on circumstances, an application for an SCRA benefit, for instances a ‘stay’ or hold on the proceedings, must be reviewed for Federal SCRA applicability, and if the Servicemember (SM) is Title 32, and thus in state status, the Federal SCRA probably does not apply. That said, effective 6 December 2002, the former Soldiers and Sailors Civil Relief Act (SSCRA) protections were extended to members of the National Guard called to active duty for 30 days or more pursuant to a contingency mission specified by the President or the Secretary of Defense, and this has been continued in the SCRA. Some pre-mobilization training for Reservists (Title 10 or Title 32) sometimes is in reserve status then converting to mobilized

² A JUDGE’S GUIDE TO THE SERVICEMEMBERS CIVIL RELIEF ACT by Mark E. Sullivan, COL, USAR (Ret).

³ “ARE WE THERE YET?” – A Roadmap for Appointed Counsel, Under the Servicemembers Civil Relief Act, by Mark E. Sullivan, COL, USAR (Ret.)

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status after the training period. During this training period, the Federal SCRA will not apply to National Guard Title 32 until their mobilization date of orders, and should not for the Title 10 reservist until they get their full AD mobilization orders.

b. In many situations, the SCRA protections are not automatic, but require some action to invoke the Act. For example, to obtain a reduction of your pre-active duty mortgage or credit card interest rates, you should send your lender/creditor a written request and a copy of your mobilization orders. Sitting on your hands while something is going on, hoping to rely on the SCRA to save your situation may not be all that successful. If you have interests that need protected then you should be seeking to assert your SCRA rights not wait and try to use them to defend after the fact.

c. If you think that you have rights under the SCRA that may have been violated, or that you are entitled to be shielded from a legal proceeding or financial obligation by the SCRA protections, you should discuss the matter with a legal assistance attorney or a civilian lawyer as soon as possible.

5. Summary statement on Stays of Judicial and Administrative Proceedings, Material Affect and Default Judgments. Generally speaking, once a SM is a party to an action by service of process and the proponent seeks a default judgment filing the necessary affidavit under PL section 202, if the SM is on AD, then ordinarily a court will apply a minimum 90 day stay on the proceedings and check status, or cannot proceed in processing the default without appointment of counsel for the SM under PL section 201 (a) B (2)⁴. At the end of the 90 days the court will be looking for whether the SM has perfected a request for a stay; whether the proponent has renewed a motion for default, supplemented it with further information; whether the SM is then reasonably available; whether the SM 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. Essentially, for any Judgment, default in absence of appearance or even a Judgment with a previous appearance by way of summary judgment or judgment on the pleadings *if the SM has requested a continued stay under PL section 202 and such is refused*, will require appointment of counsel for the SM, paid for by the moving party, and that counsel then defending the SM's rights under the limits of the ethics code, and under the procedures in the SCRA for issues pertaining to the Soldiers rights. After the 90 day stay, a SM may be reasonably available depending on the case for filing an appearance, or for making a telephonic appearance, or even appearing during leave status. Each case is factually specific on how it can turn out, but in the absence of a legitimate waiver of the SCRA⁵, no

⁴ See paragraph 5 f 8 herein for what the appointed counsel might do. See also ENCLOSURE 6.

⁵ Can the SM waive his/her rights?

§ 517. Waiver of rights pursuant to written agreement [Sec. 107] (a) In general a servicemember may waive any of the rights and protections provided by this Act [sections 501 to 596 of this Appendix]. In the case of a waiver that permits an action described in subsection (b), the waiver is effective only if made pursuant to a written agreement of the parties that is executed during or after the servicemember's period of military service. The written agreement shall specify the legal instrument to which the waiver applies and, if the servicemember is not a party to that instrument, the servicemember concerned. (b) Actions requiring waivers in writing The requirement in subsection (a) for a written waiver applies to the following:

- (1) The modification, termination, or cancellation of--
 - (A) a contract, lease, or bailment; or

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Judgment can be granted unless the SM is appointed an attorney (or has an attorney that can represent them in court⁶), whether the SM has filed an appearance earlier, or whether the moving party is simply seeking a default judgment after good effective service.⁷ Before granting a default the court may require the posting of a bond to protect the SM or potential SM's rights in the face of a wrongful default. For anything short of a Judgment in the case, such as an Order that might affect the SM's rights, there is no express requirement to appoint an attorney.⁸ Thus, interim orders affecting a SM may be available depending on the case, and then the question becomes whether the SM is reasonably available by some means to respond to the motion for the order, the court's own order, and whether the SM is prejudiced in the absence of the ability to respond to the motion or order.⁹

a. **Section 522 PL 202 Stay.** Under PL section 202, if defendant is in military, the court may stay the proceedings a minimum 90 Days on its own motion¹⁰.¹¹ If a Soldier makes a 'perfected'

(B) an obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage.

(2) The repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that--

(A) is security for any obligation; or

(B) was purchased or received under a contract, lease, or bailment.

⁶ Generally speaking a Judge Advocate (JAG) cannot represent a SM in court so if a JAG becomes involved in a SCRA case that JAG cannot make an appearance in court for the SM and so the representation is very limited, and the JAG should not be considered an attorney representing the SM for the purposes of avoiding appointing an attorney to represent the SM. See, AR 27-3.

⁷ See Enclosure 4, flowcharts in COL (R) Sullivan's Judge's Guide.

⁸ "[T]he court may not enter a judgment until after the court appoints an attorney to represent the defendant." PL sec 201 (a) (2).

⁹ For instance in a family law situation a SM may have received service of a petition for divorce, and an order to show cause based on a motion and affidavit in support, and unless a Judgment is going to be given rather than an order, the court would not be required to appoint an attorney. The SM still can apply for the stay, but this would represent the type of case where sitting on your hands gets you no where. In Oregon under ORS 107.135 for modifications, "Vacation or modification of judgment; policy regarding settlement; enforcement of settlement terms; remedies" "(1) The court may at any time after a judgment of annulment or dissolution of marriage or of separation is granted, upon the motion of either party and after service of notice on the other party in the manner provided by ORCP 7, and after notice to the Division of Child Support when required under subsection (9) of this section"; section 13 states "In a proceeding under this section to reconsider provisions in a judgment relating to custody, temporary placement of the child by the custodial parent pursuant to ORS 109.056 (3) with the noncustodial parent as a result of military deployment of the custodial parent is not, by itself, a change of circumstances. Any fact relating to the child and the parties occurring subsequent to the last custody judgment, other than the custodial parent's temporary placement of the child pursuant to ORS 109.056 (3) with the noncustodial parent, may be considered by the court when making a change of circumstances determination." A SM faced with such a modification should not wait, and needs to assert a request for a stay, and may wish to point out that the deployment does not constitute a change of circumstances and must be disregarded for any permanent order. A SM with joint custody in Oregon should have prior to deployment taken advantage of ORS 109.056, for assignment of parental rights to the step parent and that should be used in conjunction with any stay request. Therein that section states: "(d) When the servicemember-parent has joint custody of the minor child with the child's other parent or another individual, and the servicemember-parent is married to an individual other than the child's other parent, the servicemember-parent may delegate the powers designated in subsection (1) of this section to the spouse of the servicemember-parent for a period not exceeding the term of active duty service plus 30 days, unless a court finds that the delegation would not be in the best interests of the minor child."

¹⁰ Typically, if the court gets notice of a parties status as a deployed Soldier, the court will initiate the 90 day stay. This can be considered sorting out period for the Soldier to 'perfect' a stay by proper application for stay.

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application for a stay then the 90 day stay is the minimum automatic period for a stay. To 'perfect' the application, the Soldier's application (1) shall include the following:

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.¹²

b. Section 521 d PL 201 d Continuation of Stay. Under section 201 d, irrespective of the balance of the elements and procedures in Section 202 for application for a stay, the court shall grant a stay of proceedings for a minimum period of 90 days under this subsection upon application of counsel, or on the court's own motion, if the court determines that—

1. There may be a defense to the action and a defense cannot be presented without the presence of the defendant; or

2. After due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

c. No Waiver of Defenses. Of special note, the application for a stay is “not a waiver of defenses”.¹³

d. Continued Temporary Stay of Action. Under PL section 202¹⁴ a Soldier can at the initial request for stay ask for a stay period of until the Soldier can appear, or for the period of service plus 90 days Servicemember has received notice of proceeding. Otherwise the court will consider a continued stay at or before the end of the 90 day period, consider then material affect and the duration of any additional stay, whether there is prejudice for non-appearance and whether a

¹¹ 50 USC 522 (PL 202) is different in that it applies to all other actions unlike like under section 521 (PL 201) where the SM has not filed a legal answer and 'appeared' (whereas §202 d applies to cases where an appearance may have been made, or for which default is pending) and an application is being made to continue the stay based on continuing material affect of military duty on the servicemember's ability to appear.

¹² The format for these elements is not described and so almost any credible communication in writing can perfect the application. A sample motion, affidavit and order, and sample letters are attached as references. If a SM is deployed from home but inside the continental United States (CONUS) then it is more difficult to find basis for a continued stay past the minimum 90 day period. Most courts have websites and those websites have email contact addresses which the SM and Commander, and or attorney in fact can send an email to the court referencing the court case, copying the relevant parties (eg SM, Commander, Judge Advocate) and giving the court the necessary information for Stay and contact information. The SM will still have to perfect the Stay, but this will put most courts on alert as to the issue.

¹³ Under PL 202 c, “a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction).”

¹⁴ Section 521 PL 201 applies for cases where no answer has been filed by the SM.

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meritorious defense may exist¹⁵; or if an appearance has been made in the case (other than the request for stay), the terms of a stay such as allowing telephonic appearance, or staying until the Soldier returns on leave, and or ordering a Soldier to advise the court of leave dates for hearings to be set as a stay under section 521. A stay application should be for a reasonable period of time. See, Plesniak v. Wiegand, 31 Ill. App.3d 923, 335 N.E.2d 131 (1975).

1. A servicemember who is granted a stay of a civil action or proceeding under subsection (b) 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 under subsection (b) or when it appears that the servicemember is unavailable to prosecute or defend the action¹⁶. A SM who applies for protection under PL section 202 and is denied cannot take advantage of relief under PL section 201.¹⁷ There appears to be nothing however that might not allow the court to on its own motion to grant a stay the section, just that the SM cannot apply for relief under 201 if denied first under PL 202.

e. **Secondary Liability.** Under section 103, if court grants relief (stay, postponement, suspension of obligation) to servicemember (SM), the relief may also be granted to persons primarily or secondarily liable with the SM Surety, guarantor, endorser, accomodation maker, comaker (added by SCRA), or such other person who may be primarily or secondarily subject to the obligation or liability. Such does not apply to some codefendants. If the servicemember is a codefendant with others who are not in military service and who are not entitled to the relief and protections provided under the Act, the plaintiff may proceed against those other defendants with the approval of the court.

f. **Attorney and Attorneys in Fact.** Under section 109, the SCRA adds a provision recognizing a legal representative of the Servicemember: An attorney acting on the behalf of a Servicemember;

¹⁵ "A servicemember who is granted a stay of a civil action or proceeding under subsection (b) 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 under subsection (b) or when it appears that the servicemember is unavailable to prosecute or defend the action. The same information required under subsection (b)(2) shall be included in an application under this subsection.

"(2) APPOINTMENT OF COUNSEL WHEN ADDITIONAL STAY REFUSED.—If the court refuses to grant an additional stay of proceedings under paragraph (1), the court shall appoint counsel to represent the servicemember in the action or proceeding.

¹⁶ Regardless, if the SM is still on AD, even if the court is not going to grant the stay, cannot see material affect in the ability to respond, and cannot find sign of meritorious defense; the plaintiff still must seek to get an attorney appointed to represent the SM to pursue a default judgment while the defendant is on AD plus 90 days.

¹⁷ The primary relief would be seeking a stay under 'd' which states "In an action covered by this section in which the defendant is in military service, the court shall grant a stay of proceedings for a minimum period of 90 days under this subsection upon application of counsel, or on the court's own motion, if the court determines that—

"(1) there may be a defense to the action and a defense cannot be presented without the presence of the defendant;

or

"(2) after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

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or an individual possessing a power of attorney. Legal representative can take the same actions as a Servicemember.¹⁸

g. Diamonds might be but a Stay is not forever. Contrary to the popular notion of many servicemembers and some civilian practitioners, a stay of proceedings is not meant to outlast the natural life of the lawsuit or, for that matter, the presiding judge. Military members accrue leave at the rate of 30 days per year, and courts can take judicial notice of this fact. The stay is, in fact, intended to last only as long as the material affect lasts. Once this affect is lifted, the opposing party should immediately request the lifting of the stay of proceedings. In the event of further resistance by the military member, the court should require submissions upon affidavit for deciding the issue.¹⁹ Again, however, appointment of counsel is required for a default judgment while the SM is on AD and the SM has not filed a legal response. If the SM has filed a legal response then the court must honor a perfected PL 202 application for stay.

h. Material Effect. To receive protection under some parts of the SCRA, the member must be prepared to show that military service has had a "material affect" on the legal or financial matter involved. Protection under the SCRA must be requested during the member's military duty or within 30 to 180 days after military service ends, depending on the protection being requested. *However, while it is not entirely clear as to how the burden of proof falls on material affect²⁰, arguably once the Soldier asserts material affect, it should be the other parties burden to show that one is NOT materially affected and so Soldiers should generally NOT respond to budget oriented inquiries from their lenders after requesting the reduction without first consulting with an attorney, or responding to legitimate discovery requests once an answer has been filed.* That said, the statement of a service member -- and any other proof offered to show "material effect"--will ordinarily be scrutinized by the court to determine whether the member has exercised due diligence to secure counsel or to attend the hearing. See, Palo v. Palo, 299 N.W.2d 577 (S.D.1980).

¹⁸ In theory then someone with a general power of attorney for the Soldier can assert a stay on behalf of the Soldier but the Soldier's commander will still need to submit their confirmation memorandum, email or other communication pursuant to the SCRA to 'perfect' a stay request. Once the 'Soldier's' stay request is in place, a court will ordinarily give the Soldier a reasonable period of time to perfect the stay, or just implement the 90 day stay pending a continuation request and 'perfecting' the stay. Ordinarily courts will not allow someone with a power of attorney to represent someone in court as they are NOT attorney's licensed to practice, but the SCRA recognizes the authority of an 'attorney in fact' (really an agent appointed by a power of attorney), to ask for the stay.

¹⁹ COL (R) Sullivan SCRA Outline. COL MARK E. SULLIVAN (USAR, RET.) Sullivan & Grace, P.A. Raleigh, North Carolina, prepared an outline titled Family Law and the Servicemembers Civil Relief Act, and some references and materials have been assimilated into this outline.

²⁰ There is no clear formulation of who has the burden of proof to show a "material affect." As stated by the U.S. Supreme Court in Boone v. Lightner: "The Act makes no express provision as to who must carry the burden of showing that a party will or will not be prejudiced, in pursuance no doubt of its policy of making the law flexible to meet the great variety of situations no legislator and no court is wise enough to foresee. We, too, refrain from declaring any rigid doctrine of burden of proof in this matter, believing that courts called upon to use discretion will usually have enough sense to know from what direction their information should be expected to come." Although it is logical to require the burden of proof to be on the movant (i.e., the service member who is requesting a stay of proceedings), some courts have stated that both parties may be required to produce evidence on the issues. COL (R) Sullivan outline.

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i. **Delay of Court and Administrative Proceedings.** A major change provided by the SCRA is that it permits active duty servicemembers, who are unable to appear in a court or administrative proceeding due to their military duties, to postpone the proceeding for a mandatory minimum of ninety days upon the servicemember's request.²¹ The request must be in writing and (1) explain why the current military duty materially effects the servicemembers ability to appear, (2) provide a date when the servicemember can appear, and (3) include a letter from the commander stating that the servicemember's duties preclude his or her appearance and that he is not authorized leave at the time of the hearing. This letter or request to the court will not constitute a legal appearance in court. Further delays may be granted at the discretion of the court, and if the court denies additional delays, an attorney must be appointed to represent the servicemember. (See Section 202, SCRA).²²

j. **Eviction for Nonpayment of Rent.** Although the SCRA does not excuse soldiers from paying rent, it does afford some relief if military service makes payment difficult. Military members and their dependents (in their own right) have some protection from eviction under the Servicemembers Civil Relief Act (SCRA), Section 301.

1. The landlord must obtain a court order to evict a military member or his/her dependents²³. For failure to pay rent, the court must find the member's failure to pay is not materially affected by his/her military service. Material effect is present where the service member does not earn sufficient income to pay the rent. Where the member is materially affected by military service, the court may stay the eviction (three months unless the court decides on a shorter or longer period in the interest of justice) when the military member or dependents request it.²⁴ There is no

²¹ The typical administrative proceeding would be an administrative child support action taken by a State's Attorney on behalf of a person, usually the mother of a child, for a child support order. If you have questions about child support, see a legal assistance attorney and or consult AR 608-99. Additionally, Administrative actions brought by the a state National Guard to collect against a Soldier who is deployed, such as Financial Liability Investigations for Property Loss (FLIPLS) are subject to the administrative stay provision of the SCRA.

²² So there are two points at which a court must appoint an attorney for a SM to proceed with the case, the first being a denial of Stay, and secondly prior to any judgment, presumably then were the SM has not made application for a stay.

²³ This is the rule in Oregon regardless as there is no 'self help' eviction under Oregon Law. Title 10, Oregon Revised Statutes (ORS).

²⁴ Essentially, if the Soldier is deployed, and typically then the family is in the tenancy, and the court determines the deployed status, the court will issue the 90 day stay pending the Soldier's perfection of the stay, though depending on circumstances there may be little to no material affect regarding the Soldier's ability to appear, particularly if you consider a spouse in the house who can appear and should file an answer, the Soldier not being able to add any substantive material to the case, and who can appear telephonically to testify if necessary. The spouse can obtain a stay too, but again material affect regarding the Soldier's 'inability' to 'appear' must be considered in continuing a stay. Once there is no material affect the court may consider whether there is a meritorious defense, or whether the SM is prejudiced in an inability to appear, for the purposes of considering whether to grant or continue an earlier stay. If the non-military spouse appears, and the SM does not, and does not seek a stay, then at the end of 90 days the court may have to appoint an attorney for any application of a restitution (eviction) order and judgment. If neither the non-military spouse nor the SM appears, and neither perfect and application for a stay, after the 90 days, the court having not denied a request for a stay does not need to appoint an attorney for the SM, under that provision but must to get the Judgment. In Oregon, for an eviction, the court can only grant a 'Judgment' of Restitution, and so no interim 'order' would be available to bypass the appointment of counsel. ORS 105.145. On the other hand, the prevailing party almost always is awarded attorney fees under Oregon Law (ORS 90.255), but under ORS 105.137 (3) attorney fees may not be awarded if the defendant does not contest the action. Thus, if a SM tenant does not contest the eviction

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requirement that the lease be entered into before entry on active duty, and the court could make any other "just" order under § 301 of the SCRA. The requirements of this section are:

- (1) The landlord is attempting eviction during a period in which the service member is in military service or after receipt of orders to report to duty;
- (2) The rented premises is used for housing by the spouse, children, or other dependents of the service member; and
- (3) The agreed rent does not exceed \$2,400 per month. Soldiers threatened with eviction for failure to pay rent should see a legal assistance attorney. (The amount is subject to change in future years and as of 2004 the ceiling is \$2465.00²⁵).

f. Default Judgments (PL Section 204), Stays, Appointment and Duties of Counsel

1. When a plaintiff/petitioner has successfully legally 'served' a party to a lawsuit, and if the other party does not file a response or answer, then in applying for a default judgment the plaintiff/petitioner must also submit to the court a 'non-military affidavit' showing that the party served against which the default judgment is not on Active Duty (AD). When the documents reflect that the person is on AD then the court must start considering the SCRA. As discussed the court may on its own motion stay the matter for a minimum of 90 days as a PL Section 202 stay. The SM may also apply for a stay by their own submission, the submission of their agent and attorney in fact, or by their attorney. A SM's application for a stay must be 'perfected' in the sense that the SM and the Commander both must submit the necessary information for the stay. An application that meets the requirements under PL Section 202 requires the minimum 90 day stay. For that the commander must submit a communication 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. That in conjunction with the SM's request creates a mandatory 90 day stay on the proceedings.

2. If the SM does NOT perfect the stay then presumably then the plaintiff will be applying or has applied for default judgment. Without a perfected stay at the request of the SM, then the court has discretion to grant the stay, and should consider:

- a. Evidence that reflects that the current military duty requirements of the SM materially affect the servicemember's ability to appear;
- b. Any information pertaining to when the servicemember will be available to appear;
- c. Any information pertaining to whether the servicemember's current military duty prevents appearance; and
- d. Any information that military leave is not authorized for the servicemember at the time.

3. That said, if the SM is on AD, then regardless of the circumstances, the court must either continue the case, stay it until the SM is reasonably available (up to off AD plus 90 days), or allow

(FED or Forcible Eviction and Detainer), and has only either sat on their hands, or been refused further stay, but has not filed an answer, then the plaintiff who has hired the attorney to represent the SM to obtain the Judgment cannot obtain attorney fees against the non-appearing SM.

²⁵ The Code of Federal Regulations maintains the current ceiling.

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the appointment of counsel for the SM in order for the plaintiff to pursue the default with such ‘analysis’.²⁶

4. If the judge in considering the default finds any of those matters then the court may issue a stay for a period of time until the SM is reasonably available. The initial 90 day period creates a period of time for sorting out the issues and presumably would allow the plaintiff to further look at those factors for possible default after the 90 days is up.

5. Additionally, if the court does not find basis for stay under Section 522 (PL 202), then the court must consider Section 521 (PL 201), and in their default motion and affidavit the plaintiff should consider any facts that address 521 issues. In that section, the court shall grant a stay of proceedings for a minimum period of 90 days under this subsection upon application of counsel, or on the court's own motion, if the court determines that—

a. There may be a defense to the action and a defense cannot be presented without the presence of the defendant; or

b. After due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

6. In either case, if a stay is refused in Section 522, or a default is sought under Section 521, and it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant.²⁷

7. Duties of the Court Appointed, Plaintiff paid for Attorney. If an attorney is appointed under section 521 (2) to represent a servicemember, and they cannot locate the servicemember,

²⁶ In inherent problem with the stay until the SM is reasonably available is that the SM could submit to the court a legal answer and respond, but need not, and the court is then faced with what is reasonable. Essentially, given that the SM may have leave coming then presumptively could file an answer during ‘leave’ but clearly could file an answer from overseas using on line resources, the usually available Legal Assistance Judge Advocate, etc. SM’s get 30 days leave for every year of duty. In the US a SM can obtain passes up to 4 days and otherwise use leave. Moreover, what good is ‘leave’ or pass when the SM has not filed a legal response to the matter in the first place. Ninety days after service a SM should be able to get something to the court to perfect the stay, or file a response, hire an attorney or take substantive action, even from a combat theatre. All it takes to perfect the stay and request a continued stay is an email from the SM and their commander. If a SM has done nothing after 90 days then if the SM is still deployed the appointment of counsel is still required under the SCRA to seek a default judgment. A warning should be well understood by SM’s who sit on their hands and otherwise do nothing in response to the case, using the SCRA as an obstacle, many cases allow attorney fees to be awarded in default of appearance, and there is nothing that prohibits a court from awarding the plaintiff attorney fees for both their attorney and the costs of the attorney to represent the SM, and or prevailing party fees and costs.

²⁷ This puts the court and plaintiff (other party) in the position of pushing the case out until the SM returns and is reasonably available to respond; or for the plaintiff to seek appointment of counsel for the SM, and go through the default issues with the court through the attorney they have obtained, and paid for. Essentially, this means that the plaintiff locates and retains an attorney for the SM, and submits a motion, and order for appointment of the attorney to represent the SM under the provisions of the SCRA.

SUBJECT: Servicemembers Civil Relief Act

then their action in the case shall not waive any defense of the servicemember or otherwise bind the servicemember.²⁸

a. An appointed attorney may seek to contact the client²⁹ and his commander to obtain a section 522 application for a stay (remember while the attorney can now request a stay, to perfect the stay the application needs something from the commander regarding the Soldiers ability to reasonably respond.

b. Additionally, under section 521, the appointed counsel should look for whether (1) there may be a defense to the action and a defense cannot be presented without the presence of the defendant. The development of 'facts' which support a defense would more clearly set forth a reason why a stay should be granted if the SM is not reasonably available to respond.

c. If the attorney, after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists, whether the SM appears to be prejudiced from an inability to appear, then that itself creates the basis for a stay under that provision independent of section 522.

6. Default Judgment Protection (PL 201). If a default judgment is entered against a servicemember during his or her active duty service, or within 60 days thereafter, the SCRA allows the service member to reopen that default judgment and set it aside. In order to set aside a default judgment, the service member must show that he or she was prejudiced by not being able to appear in person, and that he or she has good and legal defenses to the claims against him/her. The servicemember must apply to the court for relief within 90 days of the termination or release from military service. (See Section 201, SCRA).

7. Termination of Leases (PL 305). Another significant change provided in the SCRA, is found in Section 305. The prior law only allowed the termination of pre-service "dwelling, professional, business, agricultural, or similar" leases. The new provision in the SCRA allows termination of leases by active duty servicemembers who subsequently receive orders for a permanent change of station (PCS) or a deployment for a period of 90 days or more. The SCRA also includes automobiles leased for personal or business use by servicemembers and their dependents. The pre-service automobile lease may be cancelled if the servicemember receives active duty orders for a period of one hundred and eighty (180) days or more. The automobile lease entered into while the servicemember is on active duty may be terminated if the servicemember receives PCS orders to a

²⁸ The attorney should, however, be able to contact the Soldier via military email and through the Soldier's unit rear detachment command. Even in the combat theatre, communication by email is commonly available, and telephonic communications can be arranged. In some instances, SM's may actually have their own personal international cell phones and be able to call out at any time.

²⁹ An issue does arise, that if upon contact the Soldier fires the attorney stating they don't wish representation, whether the Soldier is then pro-se, self represented, and whether such waives that provision of the SCRA. Best guess on this is that a knowing termination of the appointed attorney client relationship, that arguably such is waiver of the appointment of counsel requirement, which probably should be confirmed by the court in writing to the Soldier confirming their action, and documented in any motion for a default judgment.

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(1) location outside the continental United States or (2) deployment orders for a period of one hundred and eighty days or more. (See Section 305, SCRA).

8. The Six Percent Rule (PL Sec 207). One of the most widely known benefits under the SSCRA and now the SCRA is the ability to reduce pre-service consumer debt and mortgage interest rates to 6% under certain circumstances. This rule allows a reduction of PRE-mobilization debt in the Soldier's contracted name to be reduced to 6% during the deployment. While the rate reduction is intended for those 'materially affected' Soldiers are typically financially materially affected even if they might be making more money during a deployment because they are maintaining a household at home as well as spending money overseas on things necessary for a suitable existence.³⁰

9. Installment Contracts (PL Section 302).

- a. If servicemember makes a deposit or installment payment BEFORE entering qualifying military service, on a contract to purchase or lease real or personal property (including vehicles).
 - The creditor may NOT rescind, terminate or repossess for any breach occurring before or during the qualifying service without a court order.
- b. Service member must notify the creditor of the servicemember's entry on active duty status and the applicability of SCRA protections.

10. Mortgages and Trust Deeds (PL Section 303).

- a. Foreclosures cannot be accomplished during the qualifying military service (or even within 90 days afterward) unless approved by a court.

³⁰ The 6 % Interest Cap

- Applies ONLY to debt incurred PRIOR to military service or activation.
- MUST be "materially affected" by a reduction in income
- Should inform the finance company of soldier's situation in WRITING with a copy of the orders to active duty and date the service member received the orders. The letter should ask the creditor to reduce the annual interest rate (and request a new payment or amortization schedule) to not more than 6% starting on the date "called to military service". Service member should request immediate confirmation that they have lowered the interest rate to 6% under the SCRA. The finance company must adjust the interest down to 6% unless it goes to court
 1. If it goes to court, the finance company would have to prove that the soldier's ability to pay the loan has not been materially affected by his military service.
 2. The difference between previous interest rate and 6% is forgiven or excused, and the soldier does not need to pay that amount.
- Soldier must continue making payments of principal and interest (at 6%) to avoid his account being considered delinquent.
- Does NOT apply to:
 1. Judgments
 - a. Child Support payments
 1. If materially affected to make payments (income is lower), they should seek an administrative support change. The reduction would need to be around 40% or more of wages since the loss of taxation on wage will increase the wage value (including BAH etc). They should seek a lawyer to make sure the support change doesn't increase the payments.
 2. Federally Insured Student Loans
 3. Government secured loans
 4. Guaranteed loans

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b. Servicemembers and dependents may apply to the court for a “STAY” or for other relief.

11. Terminations of Residential or Motor Vehicle Leases (PL Section 305).

a. Applies to residential, professional, business, agricultural and similar types of leases.

1. Allows termination of leases by active duty service members who subsequently receive orders for a permanent change of station (PCS) or a deployment for a period of 90 days or more.

2. For leases providing for monthly payment of rent, termination is effective 30 days after the first date on which the rental payment is due, once notice is given. (if notice is given on 5th, and rent is due 15th of each month, then termination will be effective 40 days after notice)

3. Landlord must return advanced rents paid and account for unused portions of security deposit as required by Law.

b. Automobiles.

1. Leased for personal or business use by service members and service member’s dependents. The PRE-SERVICE automobile lease may be cancelled if the service member receives active duty orders for a period of one hundred and eighty (180) days or more. The Auto lease entered into while the service member is on active duty may be terminated if the service member receives PCS orders to

2. Location OUTSIDE the continental United States

3. Deployment orders for a period of one hundred and eighty days or more

4. To terminate the lease, the service member needs to give notice with a copy of the qualifying military orders and deliver physical possession of the vehicle back to the lessor within 15 days of the notice to terminate. The lessor may not impose any early termination charge, but may charge for any taxes, summonses, and title and registration fees and any other contractual obligation or liability of service member under the agreement, including charges for excess wear, use and mileage.

12. Life Insurance (PL Section 306, 401-409). The SCRA also permits the servicemember to request deferment of certain commercial life insurance premiums and other payments for the period of military service and two years thereafter. If the Department of Veteran Affairs approves the request, the United States will guarantee the payments, the policy shall continue in effect, and the servicemember will have two years after the period of military service to repay all premiums and interest. The SCRA increases the amount of insurance this program will cover to the greater of \$250,000.00 or the maximum limit of the Servicemembers Group Life Insurance. (See Section 401, SCRA).

a. Permits service member to request deferment of certain commercial life insurance premium and other payments for the period of military service and two years thereafter. If the Department of Veteran Affairs approves the request, the United States will guarantee the payments, the policy shall continue in effect, and the service member will have two years after the period of military service to repay all premiums and interest

b. Amount of insurance covered is the greater of \$250,000.00 or the maximum limit of the Service members Group Life Insurance.

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c. Allows termination of leases by active duty service members who subsequently receive orders for a permanent change of station (PCS) or a deployment for a period of 90 days or more.

13. Income Taxes (PL Section 510). If a servicemember's ability to pay such income tax is materially affected by military service, the collection of income tax on the income of a servicemember falling due before or during military service shall be DEFERRED for a period not more than 180 days after termination of or release from military service.³¹

14. State Tax Clarification (PL Section 511). The SCRA provides that a nonresident servicemember's military income and personal property are not subject to state taxation if the servicemember is present in the state only due to military orders., The state is also prohibited from using the military pay of these nonresident servicemembers to increase the state income tax of the spouse. Under prior law, some states did not tax the nonresident servicemember directly, but did include the nonresident servicemember's income in the spouse's income, resulting in higher taxes for the spouse. (See Section 511, SCRA).

15. Anticipatory Relief (PL Section 701).

a. A servicemember may, during military service or within 180 days of termination of or release from military service, apply to a court for relief— (1) from any obligation or liability incurred by the servicemember before the servicemember's military service; or (2) from a tax or assessment falling due before or during the servicemember's military service.

b. These anticipatory relief provisions can be used to request relief from pre-service obligations, such as child support or alimony, when a prospective breach is likely. For example, when the SM is earning more in his civilian job before mobilization than he will be earning on active duty, and the civilian wage garnishment will terminate upon his call to active duty, the SM should use this section to request a reduction in child support or alimony and to request a new garnishment from DFAS (Defense Finance and Accounting Service) to pay the other party on a timely basis.

16. Power of Attorney for Missing Soldiers (PL Section 702).

a. A power of attorney (POA) of a servicemember shall be automatically extended for the period the servicemember is in a missing status.

b. A POA may not be extended under subsection (a) if the document by its terms clearly indicates that the power granted expires on the date specified even though the servicemember, after the date of execution of the document, enters a missing status.

17. Health Insurance Reinstatement (PL Section 704). The SCRA further provides for the reinstatement of any health insurance upon termination or release from service. The insurance must have been in effect before such service commenced and terminated during the period of military

³¹ The US Internal Revenue Service (IRS) and states with income taxes have a POA for the SM to sign authorizing the SM to file taxes for them. If the SM is going to get a refund, then deferring taxes is not beneficial as the Government will not be paying any interest on the deferred refund.

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service. The reinstatement of the health insurance is not subject to exclusions or a waiting period if the medical condition in question arose before or during the period of service, the exclusion or waiting period did not apply during coverage, and the medical condition has not been determined by the Secretary of the Veteran Affairs to be a disability incurred or aggravated by military service. The reinstatement of health insurance protection does not apply to a servicemember entitled to participate in employer-offered insurance (See rules regarding employer offered health insurance care in the Uniformed Services Employment and Re-employment Act). And finally, the servicemember must apply for the reinstatement of the health insurance within 120 days after termination or release from military service. As always submit such request to the insurance company in writing with a copy of the orders for active duty and release from active duty. (See Section 704, SCRA).

18. Residency for Voting (PL Section 705).

- a. Servicemembers are not residents of a particular State simply because of entry into active duty, or by being stationed in particular state.
- b. Keep State residency for tax and voting purposes unless soldier intentionally changes it.

19. Disclaimer. Nothing in this memorandum is legal advice and does not substitute for the advice of an attorney or Judge Advocate in your jurisdiction providing you direct advice on your factual situation. You should not rely solely on this memorandum without the advice of an attorney on this subject under your circumstances. Any opinions expressed herein in editorial discretion are not the opinion of the Oregon Military Department or the US Army. References as to his or her are used interchangeably.

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20. POC for this memorandum is the current Regional Senior Defense Counsel. The 4133 RDC, RSDC and TDC can be emailed at NGOR.JAG.4133.TDS@ng.army.mil. Website located at <http://www.oregon.gov/OMD/JAG>.

Original Signed

DANIEL J. HILL
COL, JA
Regional Defense Counsel

ENCL:

1. Sample motion for stay
2. Sample Application for Stay
3. Sample Commanders letter for Soldiers Application
4. A Judge's Guide to the Servicemembers Civil Relief Act³²
5. SCRA Case Review Outline 2009³³
6. Roadmap for Appointed Counsel.

³² A JUDGE'S GUIDE TO THE SERVICEMEMBERS CIVIL RELIEF ACT by Mark E. Sullivan
[Mr. Sullivan is a retired Army Reserve JAG colonel, a board-certified specialist in family law and a fellow of the American Academy of Matrimonial Lawyers who practices in Raleigh, NC. The chairman of the Military Committee of the ABA Family Law Section, Sullivan is the author of The Military Divorce Handbook (ABA 2006). Comments or questions should be sent to: mark.sullivan@ncfamilylaw.com.]

³³ Case Review Summary – Servicemembers Civil Relief Act Decided Cases, (Current to April 13, 2009), prepared by Thomas E. Digan, Naval Legal Service Office, North Central Detachment.

SUBJECT: Servicemembers Civil Relief Act

ENCLOSURE 1

IN THE _____ COURT OF THE STATE OF _____

FOR THE COUNTY OF _____

_____,
Plaintiff/Petitioner,

v./and

_____,
Defendant/Respondent

Case No. _____

**MOTION FOR STAY OF PROCEEDINGS
PURSUANT TO SERVICEMEMBERS CIVIL
RELIEF ACT, COMMANDERS
MEMORANDUM IN SUPPORT, AND ORDER**

COMES NOW RESPECTFULLY the below signed litigant (moving party), plaintiff
 petitioner respondent defendant, appearing 'pro se' as a self represented litigant in
this original proceeding this continuing proceeding, and hereby moves the court for its order to
stay the proceedings due to my Active Military status, and in ability to defend/prosecute the
proceedings herein pursuant to the Servicemembers Civil Relief Act (SCRA) 50 USC section 522.

This motion for stay does not constitute an appearance for jurisdictional purposes or a
waiver of any defense, substantive or procedural pursuant to 50 USC 522 (c).

A hearing has been scheduled in this matter for _____.

To my knowledge, no hearing has yet been set.

My orders start on _____.

My orders end on _____.

My military duties materially affect my ability to appear, and due to them I am unlikely to
be able to appear before OCONUS _____(ending date of orders

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plus 30-90 days). CONUS: _____ (provide date when adequate leave should accrue and leave is likely to be granted).

Pursuant to the SCRA, the moving party requests that the court grant:

An immediate initial 90 day stay of proceedings subject to review (which must be continued unless the court appoints an attorney to represent me under section 522(d)(2)), and without appointment then to the date stated above.

A further stay of proceedings to the date stated above a result of the initial stay already in place.

A stay of proceedings until 30-90 days after return from deployment as stated above.

As a result of my deployment for military duties outside of the continental United States (OCONUS) within the continental United States (CONUS), my ability to defend/prosecute this matter has been materially affected. I have a meritorious case and wish to appear and present it.

A copy of my orders is attached hereto. I will forward a copy of my orders when I receive them from my command, expected to be no later than _____.

OCONUS. I will accrue some leave during my period of duty. However, I do not have any significant ability to flex that leave, and travel to and from the Theatre of operations is subject to many difficulties, and leave is subject to my command's authorization as well as mission requirements.

CONUS. I will accrue some leave during my period of duty. However, I do not have any significant ability to flex that leave, and leave is subject to my command's authorization as well as mission requirements.

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I request that a copy of the signed order be emailed mailed to me at the address below.

RESPECTFULLY SO MOVED:

Signature: _____

Printed Name: _____

Rank: _____

Unit: _____

Mailing Address: _____

Email: _____

Telephone: _____

Permanent Address after deployment:

Telephone: _____

Email: _____

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MEMORANDUM OF COMMANDER

The above Soldier is a member of my command. I have reviewed the motion above and believe that the representations are accurate. The Soldier's military status performing duty as a _____ makes his current service a military necessity, and military leave is not currently authorized for him/her. The Soldier will not be eligible for leave before _____ and not after _____, and will not otherwise return from deployment before _____. Any request for leave by him to meet a court/hearing date will be subject to command approval, and subject to mission requirements, as well as transportation available. OCONUS. Due to transportation and scheduling issues, a Soldier may find their leave moving forward or back, by days if not weeks, or even cancelled.

Signature: _____

Printed Name: _____

Rank: _____

Unit: _____

Mailing Address: _____

Email: _____

Telephone: _____

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ORDER

THIS MATTER having come before the court for review, it appearing that the motion for stay has merit, no objection having been filed objection filed and considered;

THEREFORE, it is ordered that a stay be in place, and no further action taken on the case for:

90 day stay of proceedings subject to review (which must be continued unless the court appoints an attorney to represent the moving party under section 522(d)(2)), and without which an automatic stay shall be in place until 30 60 90 days after the lapse of the moving parties deployment orders, as stated by the moving party.

A further stay of proceedings for _____ days as a result of the initial stay already in place.

A stay of proceedings until 30 60 90 days after he lapse of the moving parties deployment orders, as stated by the moving party.

The moving party shall inform the court of early termination of orders (release from active duty), return to CONUS, and changes of address, or of any other event that makes the moving party 'available' to appear for a scheduled proceeding.

SO ORDERED: _____

Judge

=====

CERTIFICATE OF MAILING

On _____ I deposited in the US Mail, postage prepaid, a true copy of this motion and order, addressed to _____, the party or attorney representing the party involved in this matter.

I have sought to determine a valid mailing address for the other party or attorney representing the other party, and have not been successful, and therefore request the court to advise the other party of this motion.

Signature: _____ Date: _____

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SUBJECT: Servicemembers Civil Relief Act

ENCLOSURE 2

UNIT SYMBOL _____

DATE: _____

Honorable Judge of the Circuit / Municipal / Justice Court

County of/City of _____

NAME _____

ADDRESS _____

REGULAR MAIL

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

PRIORITY, CERTIFIED MAIL, RETURN RECEIPT REQUESTED

EMAIL TO: _____

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

_____ v. /and _____ No. _____

Dear Judge:

I am a soldier in _____ Company, _____ Battalion, Oregon Army National Guard, which has been activated to federal active duty military service, under U.S. Code Title 10, and am deployed/deploying. A copy of my orders is attached hereto.

Pursuant to the SCRA, section 202, I request a Stay of the above action for the duration of the deployment. Pursuant to the law, as an active duty servicemember, who is unable to appear in a civil (not criminal) court or administrative proceeding due to their military duties, I am allowed to postpone the proceeding for a mandatory minimum of ninety days upon my request as the servicemember. I understand that the request must be in writing and (1) explain why the current military duty materially affects the servicemember's ability to appear, (2) provide a date when the servicemember can appear, and (3) include a letter from the commander stating that the servicemember's duties preclude his or her appearance and that s/he is not authorized leave at the time of the hearing. Additionally by law, this letter or request to the court will not constitute a legal appearance in court. Further delays may be granted at the discretion of the court, and if the court denies additional delays, an attorney must be appointed to represent the servicemember.

My current military duty assignment has me in [training without any allowed time for release on pass or leave adequate for the matter] [followed on by] [assignment to a combat zone in] [Iraq] [Afghanistan] where there will be no allowed time for release on pass or leave adequate for the matter. I do not anticipate my commander releasing me to attend to 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 service.

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I request that the matter be stayed for a period of _____ months. Upon my return from Active Duty, my intent is to contact the court to advise the court of my current address and to attend to the civil court matter pending.

A copy of my commander's letter is enclosed setting forth further why my duties preclude my appearance and that I am not authorized leave during the period of the requested stay.

Thank you very much for your time. Please reply to my address noted below, and please copy the response to my home of record address shown below. You may also email me as that may be the best way to contact me.

Sincerely,

RANK: _____, USA

MILITARY ADDRESS (IF KNOWN):

HOME OF RECORD ADDRESS:

EMAIL: _____

ENCLOSURES:

COPY OF ORDERS
LETTER FROM COMMANDER

COPY FURNISHED:

SEND COPY TO ANY ATTORNEY FOR THE OTHER PARTY, OR THE OTHER PARTY.
RETAIN A COPY FOR YOURSELF

NAMES/ADDRESS: _____

NAMES/ADDRESS: _____

NGJA-OR-TDS

SUBJECT: Servicemembers Civil Relief Act

ENCLOSURE 3

UNIT SYMBOL: _____

DATE: _____

Honorable Judge of the Circuit / Municipal / Justice Court

County of/City of _____

NAME _____

ADDRESS _____

SUBJECT: COMMANDER'S MEMORANDUM IN SUPPORT OF SOLDIERS APPLICATION 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, Oregon 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 Iraq or Afghanistan] [in training for Operation Enduring Freedom/Operation Iraqi Freedom, with follow-on to Afghanistan/Iraq] 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.

Thank you very much for your time. The POC is _____,

address: _____; email: _____.

Sincerely,

_____, _____
COMMANDING

NGJA-OR-TDS

SUBJECT: Servicemembers Civil Relief Act

ENCLOSURE 4

A JUDGE'S GUIDE TO THE SERVICEMEMBERS CIVIL RELIEF ACT by Mark E. Sullivan
[Mr. Sullivan is a retired Army Reserve JAG colonel, a board-certified specialist in family law and a fellow of the American Academy of Matrimonial Lawyers who practices in Raleigh, NC. The chairman of the Military Committee of the ABA Family Law Section, Sullivan is the author of The Military Divorce Handbook (ABA 2006). Comments or questions should be sent to: mark.sullivan@ncfamilylaw.com.]

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SUBJECT: Servicemembers Civil Relief Act

ENCLOSURE 5
CASES REPORTED

Servicemembers Civil Relief Act

Decided Cases
(Current to April 13, 2009)

Thomas E. Digan
Naval Legal Service Office
North Central Detachment

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SUBJECT: Servicemembers Civil Relief Act

ENCLOSURE 6

**“ARE WE THERE YET?” – A Roadmap for Appointed Counsel
Under the Servicemembers Civil Relief Act**

by Mark E. Sullivan

COL, USAR (Ret.)