

The Servicemembers Civil Relief Act: A Judge's Checklist

[NOTE: For more detailed information on any of these points, see "The Judges' Guide to the Servicemembers Civil Relief Act" at www.abanet.org/family/military. The SCRA can be found at 50 U.S.C. Appendix § 501 et seq.]

In using this checklist, keep in mind the purpose of the Act: to enable servicemembers (SMs) to devote their entire energy to the defense needs of the Nation, and to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of SMs during their military service. (50 U.S.C. App. § 502)

✓ **Who is covered?** (50 U.S.C. App. § 511) Those covered include:

- Members of the Army, Navy, Air Force, Marine Corps and Coast Guard on active duty under 10 U.S.C. 101(d)(1)
- National Guard members called to active duty by President or Secretary of Defense for over 30 days under 32 U.S.C. 502(f) (national emergency declared by the President and supported by federal funds)
- Commissioned members of the Public Health Service and the National Oceanographic and Atmospheric Administration

✓ **Default situation** – no appearance by SM (servicemember) (50 U.S.C. App. § 521). You must -

- 1. Require affidavit of military status by moving party
- 2. Inquire into whether missing party is in military service by requesting check of records by Dept. of Defense¹
- 3. Don't enter default decree against SM – appoint an attorney to represent him/her
- 4. If cannot determine whether missing party is in military, require movant to post bond to indemnify the non-movant
 - a. there may be a defense, and presence of SM is needed to make it, OR
 - b. with due diligence, appointed attorney can't contact client or otherwise determine whether defense exists

✓ **Use of bond?** (50 U.S.C. App. § 522(b)(3))

- As condition of entry of default judgment, require bond if you cannot determine whether defendant is in military service.
- Bond may be used to indemnify defendant against loss/damage from default judgment (if later set aside) should he/she later be found to be a SM.

✓ **Request for stay** – SM or attorney requests suspension of case (50 U.S.C. App. § 522)

- Grant stay of proceedings (discretionary on court's own motion, mandatory on SM's motion, for at least 90 days if motion includes-
 1. Statement as to how the SM's current military duties materially affect his ability to appear, and
 2. stating a date when the SM will be available to appear, and
 3. Statement from the SM's commanding officer stating that SM's current military duty prevents his appearance, and
 4. military leave is not authorized for the SM at the time of the statement

✓ **Grant additional stay (beyond initial 90 days)?**

- Yes if continuing effect of military duty on his ability to appear.
- Same info required as above.

✓ **Deny additional stay?**

- Only if you appoint attorney to represent the SM in the action or proceeding (50 U.S.C. App. § 522(d)(2)).
- Expect attorney to renew stay request since he/she cannot prepare, present case without assistance from the unavailable SM.

✓ **Unsure whether to grant or deny additional stay?**

¹ Upon application by either side or the court, the military service must issue a statement as to military service. 50 U.S.C. App. § 582. Contact: Defense Manpower Data Center, 1600 Wilson Blvd., Suite 400, Attn: Military Verification, Arlington, VA 22209-2593, [telephone 703-696-6762 or -5790/ fax 703-696-4156]

<A project of the Military Committee of the American Bar Association's Family Law Section, this Checklist was prepared by Mark E. Sullivan, a board-certified specialist in family law and a retired Army Reserve JAG colonel who practices with Sullivan & Grace, P.A. of 600 Wade Avenue, Raleigh, NC. Mr. Sullivan is a frequent writer and speaker on military divorce, custody, support and military pension division issues. He can be reached at 919-832-8507 or at law8507@aol.com.>

Ask for a copy of the SM's LES (Leave and Earnings Statement), issued twice a month, to see how much leave SM has accrued, used in the past few months.

Propound questions from the court to SM's commanding officer as to duty hours, days for the SM, his or her availability to attend court or to participate by telephone, Internet or videoteleconference

✓ **Execution of orders, judgments** (50 U.S.C. App. § 524)

Must stay execution of any judgment, order entered against SM if SM shows military duties materially affect his/her ability to comply with court decree

Also vacate or stay any attachment or garnishment of property, money or debts in possession of the SM or third party

✓ **Anticipatory relief** (50 U.S.C. App. § 591)

Grant relief from obligation or liability incurred by SM before his/her military service

Also for tax or assessment falling due before or during the SM's military service

✓ **Reopen judgment** (50 U.S.C. App. § 521(g))

Must reopen order, judgment against SM if –

1. SM was materially affected due to military service in asserting defense, and
2. He/she has meritorious defense

✓ **Are waivers allowed?** (50 U.S.C. App. § 517)

Only effective if made during period of military service.

Usually must be in writing.

✓ **Don't penalize SM in stay request.** (50 U.S.C. App. § 522(c))

Request for stay does not constitute appearance for jurisdictional purposes

Also doesn't constitute waiver of any defense, substantive or procedural

✓ **Statute of limitations** (50 U.S.C. App. § 526)

Period of military service may not be included in computing any limitation period for filing suit, either by or against SM.

✓ **Protect against mortgage foreclosure** (50 U.S.C. § 533)

Court may stay foreclosure proceedings until SM can answer, extend mortgage maturity date to allow reduced monthly payments, grant foreclosure subject to being reopened if challenged by SM, or extend the period of redemption by period equal to the SM's military service.

Conditions for above: if –

1. Relief is sought on security interest in real/personal property
2. Obligation originated before active duty
3. Property owned by SM or dependent before active duty
4. Property still owned by SM or dependent
5. Ability to meet financial obligation is materially affected by SM's military service
6. Action is filed during (or within 90 days after) SM's military service. (50 U.S.C. App. § 533)

✓ **Protect SM-tenant.**

If the rent paid in advance, require landlord to refund unearned portion. The member is required to pay rent only for those months before the lease is terminated. (50 U.S.C. § 535(f))

It is a misdemeanor for landlord to If a security deposit was required, it must be refunded to the member upon termination of the lease. (50 U.S.C. § 535(h)(1))

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