

YES. You DO Need to Know About SCRA (Servicemembers' Civil Relief Act)

Before you skip this article under the impression that you don't need to know anything about the Servicemembers' Civil Relief Act (SCRA) (the Act) because you don't practice "military law," STOP. Regardless of what area of law your practice involves, SCRA could affect you. SCRA does not regulate one substantive area or particular set of circumstances. The Act focuses on the person – the servicemember – and conveys a wide bundle of rights. As a result, the Act's reach extends to almost every legal situation the servicemember may encounter in his or her life during deployment.

In early 2009, 3,500 servicemembers of the Oregon National Guard's 41st Brigade Combat Team will be activated. This will be the largest deployment of military personnel from Oregon since World War II. What does that mean for you? It means that in every case you take, you must consider the implications of SCRA. Any case involving a servicemember on deployment status may be stayed until the servicemember returns to Oregon.

Why? SCRA, previously known as the Soldiers' and Sailors' Civil Relief Act (SSCRA), contains numerous protections for servicemembers in civil actions and limited criminal actions. Found at 50 U.S.C. Appendix Sections 501 to 596, the most frequently triggered provisions of the Act are:

- Interest rate reduction on debt upon activation;
- In general, legal proceedings stayed on servicemember's request or court's own motion; and
- In particular, family law matters stayed on

servicemember's request or court's own motion, including child custody and divorce cases.

Although these are the most frequently triggered provisions, many practitioners might be surprised to learn that SCRA affects almost every area of law, including:

- Adoption;
- Criminal law probation violations involving restitution and fines;
- Landlord/tenant actions;
- Life, health, and professional liability insurance;
- Property issues, including personal and business property matters;
- Public lands rights;
- Small claims actions;
- Vehicle purchase contracts; and
- Will contests.

Federal Preemption

In several state SCRA cases, judges decided the case based on Oregon law while either overlooking or trying to explain away the preemptive nature of SCRA. Both of these rationales, however, are erroneous. SCRA, on its face, preempts state law. If a direct conflict exists between SCRA and state law or another federal statute, SCRA protections control.

SCRA protections occur most frequently in child custody cases. More than one Oregon judge has decided that "the best interests of the child" override SCRA protections. However, the Act applies to all state and federal judicial and

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administrative proceedings. Presumptively, probation violations in criminal law are also covered. Noteworthy is that Congress amended the Act in 2008 and specifically identified child custody proceedings as subject to SCRA protections. Similarly, dissolution proceedings are governed by the Act.

Requirement to Notify the Court

The requirement to notify the court of the military status of a party is on the moving party in the case. However, the court should ask, in every case, whether a servicemember is involved. If the answer is “I don’t know,” the case should be continued until that information can be provided. This notice requirement also applies to pending cases that were filed before the servicemember was activated. Although the moving party has ultimate responsibility to inform the court of the military status of the parties, any attorney representing a servicemember should notify the court at the earliest possible opportunity.

Proceeding with the case when an active-duty servicemember is involved will, at the least, result in any judgment being voidable. At most, it may result in a civil or criminal action permitted by SCRA. It may also result in a disciplinary action against the attorney and/or the judge who failed to comply with the Act. Attorneys can use the following Web site to determine the military status of any party to a legal proceeding: www.dmdc.osd.mil/scra/owa/home. (See “Determining a Party’s Military Status,” *In Brief*, August 2007, p. 3.)

Appointment of Attorneys

If a party appears to be in active military service and has not yet made an appearance, SCRA requires the court to appoint an attorney to represent the party before it can enter a judgment for the plaintiff. A court must also appoint an attorney to represent an active-duty servicemember if it denies the servicemember’s stay request beyond the initial mandatory 90 days. SCRA, however, does not address where or how a court will locate an attorney to appoint or how the attorney will be paid; SCRA also does not allow the court to appoint an attorney if the servicemember objects.

While the Military Assistance Panel (MAP) of the Oregon State Bar is established to assist servicemembers in legal matters, it will get involved only at the servicemember’s request. As many know, MAP is comprised of more than 150 attorneys located throughout the state who have volunteered their time and services at either low cost or no cost to assist servicemembers and their dependents with legal matters that arise during or around deployment. If MAP receives a request to fill a court appointment, it will attempt to contact the servicemember involved to determine

whether he or she wishes to be represented in the pending matter. MAP may be contacted through Kay Pulju, Director of Communications and Public Services, at the Oregon State Bar, at 503-620-0222, ext. 402.

Proposed Legislation

The Military Assistance Panel is proposing two pieces of legislation to the Oregon Legislature for the 2009 session. The first proposal adds teeth to SCRA under Oregon law by putting damage provisions and attorney fees in place when an attorney has to file suit to reverse violations of SCRA. The second proposal creates tax credits for attorneys who represent servicemembers pro bono utilizing MAP guidelines.

SCRA CLE

On March 6, 2009, the Military Assistance Panel, the Professional Liability Fund, and the Oregon State Bar are co-sponsoring a half-day CLE to provide in-depth information about SCRA. This CLE will be held just before the activation of the 41st Brigade to educate all members of the Oregon legal community about how SCRA provisions are likely to affect their law practices. In addition to an overview of the Act, the CLE will explain the implications of SCRA for practitioners of family law, employment law (Uniformed Services Employment and Reemployment Rights Act or USERRA), consumer law, commercial law, property law, tax law, and administrative law, as well as general civil litigation. See the box below for information on how to register.

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Free CLE on SCRA

On March 6, 2009, the OSB Military Assistance Panel (MAP), the Professional Liability Fund, and the Oregon State Bar will present “The One For All: What Every Practitioner Must Know About the Servicemembers’ Civil Relief Act” at the Oregon State Bar Center in Tigard. This free half-day CLE will provide an overview of SCRA, a panel of practitioners will discuss how the rules apply to various areas of the law, and a panel of judges will provide tips on how to avoid pitfalls. To download a registration form, go to www.osbplf.org and click on Upcoming Seminars under Loss Prevention.