

The background of the page features a close-up of an American flag in the upper half, with its stars and stripes clearly visible. The lower half of the page shows military equipment, including two camouflage helmets and tactical vests. A small tag with the words "PRACTICE" and "TIPS" is attached to one of the vests.

PRACTICE TIPS FOR REPRESENTATION OF MILITARY CLIENTS:

**Louisiana Attorneys Should Be Familiar
with SCRA Protections**

By Col. Chad C. Carter

Military life is significantly different from civilian life. Servicemembers do not get to choose the locations where they work. They are deployed far away from their families and friends for months at a time. They are always on duty and do not receive overtime pay. They can face jail time for not going to work or for criticizing their bosses. Their job descriptions include laying down their life in defense of their country if necessary. Due to these peculiarities, legal protections developed over time in an attempt to balance the obligations of servicemembers with the realities of military life.

Servicemembers Civil Relief Act

Louisiana has a long history of civil legal protections for the military dating back to the War of 1812.¹ Since that time, both federal and state governments issued legislation which seeks to “protect those who have been obliged to drop their own affairs to take up the burdens of the nation.”² The most significant law relating to servicemember protections is the Servicemembers Civil Relief Act (SCRA).³ Louisiana attorneys who represent military clients and their families should have a working knowledge of its principal protections.

Basic SCRA protections were adopted in the World War II era and the law has been amended numerous times over the years. In 2003, it underwent a significant overhaul and its name was changed from the Soldiers’ and Sailors’ Civil Relief Act to its current moniker.⁴ In 2015, the SCRA was moved from an appendix of the United States Code to a location within the Code itself.⁵

The SCRA applies to all active duty U.S. military, members of the reserves while on active duty, and national guardsmen when activated under a federal call to active duty.⁶ It also offers protections for the dependents of military members. The SCRA does not apply to civilian employees of the military or contractors. Additionally, it does not apply to criminal proceedings.

The SCRA is assigned two explicit purposes. One is to “provide for, strengthen and expedite the National Defense” by providing legal protections to U.S. servicemembers, thus enabling them to “devote their entire energy to the defense needs of the Nation.”⁷ The SCRA also serves to “provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.”⁸ Nonetheless, the SCRA is not a sword wielded by servicemembers to nullify otherwise valid obligations.⁹ It does not forbid legal actions against servicemembers nor does it provide defenses against them.¹⁰ The intent is simply to level the playing field so as to minimize the adverse impact of one’s military service on one’s legal obligations.¹¹ Because of this, in many instances, the SCRA will not provide relief to a servicemember unless it can be demonstrated that the member’s military service has materially affected his or her ability to meet a certain legal obligation.¹² Examples of material affect would include a servicemember’s inability to appear in court due to participation in a military exercise, deployment or training.¹³

Default Judgments and Automatic Stays

An important procedural safeguard is the protection afforded against default judgments while on active military service.¹⁴ In a civil case in which a military defendant does not make an appearance, a plaintiff is required to file an affidavit with information indicating whether the defendant is in military service.¹⁵ Any default judgment obtained without the required affidavit is voidable.¹⁶ Additionally, a court may not enter a default judgment unless an attorney is first appointed to represent the interests of an absent military defendant.¹⁷ Further, if a default judgment is entered while a defendant is on active military service,¹⁸ the servicemember can have the judgment reopened upon a showing that military service materially affected

the servicemember’s ability to defend the action.¹⁹

The SCRA also provides that an individual on active military service²⁰ with notice of a civil or administrative proceeding is entitled to an automatic 90-day stay of that action.²¹ For a court to provide this automatic stay, the request must contain evidence as to how military service has materially affected the servicemember’s ability to appear in the action²² and should also include a letter from his or her commander that indicates military leave is not authorized for the servicemember’s participation in the action.²³ Following the initial 90-day stay, an additional stay may be requested upon a showing of continued material affect of military service on the servicemember’s ability to appear in the action.²⁴ Any additional stays are discretionary.²⁵

Prior to requesting a SCRA stay, it is important for attorneys who represent military clients to ask several relevant questions.²⁶ Was the servicemember served properly? Does the court have subject matter jurisdiction? Does the court have jurisdiction under the Uniform Child Custody Jurisdiction Act?²⁷ Does the court have personal jurisdiction over the servicemember? Does the court have jurisdiction to award or modify spousal or child support under the Uniform Interstate Family Support Act?²⁸ These questions should be addressed first because a lack of jurisdiction or proper service of process could preclude the need to resort to SCRA remedies.

Statutes of Limitations/ Prescriptive Periods

The SCRA also grants relief to servicemembers regarding statutes of limitations/prescriptive periods, which are tolled/suspended to exclude the period of military service.²⁹ The tolling period applies regardless of whether the action is brought by or against a servicemember.³⁰ The tolling provision does not apply to tax proceedings.³¹ Other procedural protections afforded by the SCRA are provisions which authorize a court

to stay execution of judgments against servicemembers³² and provisions which provide protection of persons who are secondarily liable on servicemember obligations.³³

Of the substantive protections afforded by the SCRA, one key provision is that a landlord may not evict a military tenant or military dependents without first obtaining a court order.³⁴ If an eviction order is sought, the servicemember may request a stay of execution of up to 90 days.³⁵ If a landlord fails to comply with the court order requirement, the landlord can be held criminally liable.³⁶ In one particularly egregious case, this provision was successfully used against a landlord who, without a court order, evicted a pregnant military dependent mother of two while the husband servicemember was absent due to military duty.³⁷ In that case, the landlord was sentenced to six months in prison, one year of supervised release, a \$1,000 fine and restitution of more than \$15,000.00.³⁸

Liens, Leases and Contracts

A similar SCRA provision applies in the area of storage liens. A lienholder of personal property or effects of a servicemember must obtain a court order prior to foreclosure or enforcement.³⁹ A court may issue a stay of the foreclosure or enforcement proceeding on its own motion,⁴⁰ but a stay *must* be issued if a servicemember demonstrates that military service has materially affected his or her ability to comply with the obligation.⁴¹ Additionally, a storage lienholder can be held criminally liable for failing to obtain the required court order prior to enforcement of the lien.⁴² This court order requirement also exists for repossession actions on installment contracts and foreclosure actions on mortgages entered into by a servicemember *prior* to entry onto active military service.⁴³

Under the SCRA, servicemembers have a right to terminate residential and professional leases when certain conditions are present. A servicemember may terminate such a lease upon initial entry onto active military service.⁴⁴

A servicemember may also terminate a lease upon the receipt of permanent change of station orders (*i.e.*, orders for assignment to another military post or base) or upon receipt of orders to deploy for a period of more than 90 days.⁴⁵ A lease termination pursuant to the SCRA serves to terminate the lease obligation as to the servicemember as well as any military dependents on the lease.⁴⁶ It is not necessary that a “military clause” be present in the lease in order for this protection to be exercised.⁴⁷ Additionally, the SCRA permits servicemembers to terminate motor vehicle leases and cellular telephone service contracts under conditions similar to those permitting the termination of immovable property leases.⁴⁸

SCRA’s Enforcement Options

In 2010, Congress amended the SCRA to clarify its enforcement options.⁴⁹ This amendment authorizes the U.S. Attorney General to bring actions in federal court against those who engage in a pattern of violating the SCRA or those whose violation of the SCRA raises an issue of significant public importance.⁵⁰ Aside from Department of Justice enforcement, the SCRA now provides for an explicit private right of action as well.⁵¹ An individual aggrieved by a SCRA violation can bring a civil action to recover costs and attorney’s fees.⁵² Due to this, servicemembers may now “retain experienced counsel who might otherwise be unable or unwilling to take on such representation due to the substantial costs of long and drawn out litigation battles.”⁵³

Louisiana’s Protections

Louisiana adopted its own set of protections which supplement the SCRA, known as Servicemembers Civil Relief and Consumer Rights.⁵⁴ The Louisiana protections expand upon the SCRA’s provisions in the areas of interest rates, landlord/tenant leases, and termination of motor vehicle leases and cellular phone contracts.⁵⁵ Added protections ex-

ist in the areas of natural gas and electric power consumer agreements.⁵⁶ Further, Louisiana law provides for compensatory visitation rights for servicemembers who are unable to visit their minor children due to military obligations.⁵⁷

Conclusion

The protections afforded military members under the SCRA and Louisiana law effectively strike a balance between the need to meet servicemember obligations and the need to keep soldiers, sailors, marines and airmen focused on the mission. These pieces of legislation offer no more and no less than what is appropriate given the frequently uncertain circumstances of military service. Louisiana attorneys need to be familiar with these provisions to ensure that their military clients are effectively represented.

FOOTNOTES

1. H.R. Rep. No. 108-81, at 32 (2003) (“The earliest recognition of the need to provide civil protections for servicemembers in the United States dates back to the ‘stay laws’ promulgated by Louisiana during the War of 1812. Louisiana suspended all proceedings in civil cases for four months as the British were advancing on New Orleans.”).

2. *Boone v. Lightner*, 319 U.S. 561, 569 (1943).

3. 50 U.S.C. §§ 3901-4043.

4. *See*, Servicemembers Civil Relief Act, Pub. L. No. 108-189, 117 Stat. 2835 (2003).

5. *See*, Servicemembers Civil Relief Act Centralized Verification Service, <https://www.servicememberscivilreliefact.com/blog/change-u-s-code-section-numbers/> (last visited Jan. 4, 2017). The website provides a table which cross-references each provision of the former SCRA classifications to the new classifications. “On December 1, 2015, the Appendix to Title 50 of the U.S. Code was eliminated. . . . This renumbering did not change any of the wording of the Servicemembers Civil Relief Act — it only changed how the Act is cited.” (emphasis omitted) *Id.*

6. *See*, 50 U.S.C. § 3911 and 50 U.S.C. § 3912 for an explanation as to what constitutes “military service” for the purpose of SCRA protections. Where this article refers to “active military service,” the intent is to cover the periods of applicable service addressed in 50 U.S.C. § 3911 and 50 U.S.C. § 3912.

7. 50 U.S.C. § 3902.

8. *Id.*

9. *See generally*, State ex. rel. Swanson v. Heaton, 22 N.E. 2d 815, 816 (Iowa 1946); *see also*, Capt. Thomas A. Gabriele, “Protecting Their

Life at Home: The Servicemembers Civil Relief Act.” 42 AZ Attorney 38, 45 (Oct. 2005) (“The SCRA does not provide military members a mechanism to shirk their responsibilities, but rather a necessary tool to protect them from civil actions and obligations that they are unable to address or fulfill due to military necessity.”).

10. *See generally*, Register v. Bourquin, 14 So.2d 673, 674 (La. 1943).

11. *See generally*, Tolmas v. Streifer, 21 So.2d 387, 388 (La. App. Orleans 1945).

12. *See*, Boone v. Lightner, 319 U.S. 561, 569 (1943) (“This mere fact of being in military service is not enough; military service must be the reason for the defendant not meeting his obligations.”).

13. Material affect is particularly applicable to servicemembers stationed outside the continental United States.

14. 50 U.S.C. § 3931.

15. 50 U.S.C. § 3931(b).

16. *See*, Merrill v. Beard, 2007 U.S. Dist. LEXIS 9210, at 9 (N.D. Ohio 2007).

17. 50 U.S.C. § 3931(b).

18. Or within 60 days of release from active military service. 50 U.S.C. § 3931(g).

19. The servicemember has 90 days following release from active military service to file an application to reopen the default judgment. *Id.*

20. Or within 90 days following release of active military service. 50 U.S.C. § 3932(a).

21. 50 U.S.C. § 3932(b).

22. 50 U.S.C. § 3932(b)(2)(A). The servicemember also must provide to the court a date upon which he or she will be available to appear in the action. *Id.*

23. 50 U.S.C. § 3932(b)(2)(B). The commander also must indicate that military duty prevents the servicemember’s appearance in the action. *Id.*

24. 50 U.S.C. § 3932(d).

25. *See generally*, Lebo v. Lebo, 886 So.2d 491, 493 (La. App. 1 Cir. 2004); George P. v. Super. Ct., 127 Cal. App. 4th 216, 219 (Cal. 2005).

26. *See generally*, Jurado v. Brashear, 782 So.2d 575 (La. 2001). “In every civil case in Louisiana, the court must have not only subject matter jurisdiction, but also either (1) personal jurisdiction under La. Code Civ. Proc. art. 6, (2) property jurisdiction under La. Code Civ. Proc.

art. 8 or 9, or (3) status jurisdiction under La. Code Civ. Proc. art. 10.” (Emphasis in original.) *Id.* at 577.

27. *See*, La. R.S. 13:1801-1842.

28. *See*, Jurado, 782 So.2d at 577. In order for a court to increase a permanent obligation to pay child support, the court must first have personal jurisdiction under La. C.C.P. art. 6 and La. Ch.C. arts. 1301.1-1308.2. *Id.*

29. 50 U.S.C. § 3936(a).

30. *Id.*

31. 50 U.S.C. § 3936(c).

32. 50 U.S.C. § 3934. There must be a demonstration that military service materially affected the servicemember’s ability to comply with the judgment or order. 50 U.S.C. § 3934(a). A servicemember may only be availed of this protection during the period of active military service or within 90 days of its termination. 50 U.S.C. § 3934(b).

33. 50 U.S.C. § 3913. If a SCRA stay is granted in favor of a servicemember, a court has authority to also grant a stay on behalf of any other person who may be primarily or secondarily liable on the obligation, such as a surety, guarantor or endorser. 50 U.S.C. § 3913(a).

34. 50 U.S.C. § 3951(a). This provision only applies to premises with a monthly rent that does not exceed the statutory limit that is tied to the annual inflation rate. *Id.*

35. 50 U.S.C. § 3951(b).

36. 50 U.S.C. § 3951(c).

37. *See*, U.S. v. McLeod, 2008 U.S. Dist. LEXIS 1500 (W.D. Mich. Jan. 9, 2008).

38. *Id.*

39. 50 U.S.C. § 3958(a). This provision is applicable to liens for storage, cleaning or repair of personal property. *Id.*

40. 50 U.S.C. § 3958(b).

41. *Id.*

42. 50 U.S.C. § 3958(c).

43. 50 U.S.C. § 3952, 50 U.S.C. § 3953. These two SCRA provisions do not apply to installment contracts or mortgages entered into after entry onto active military service.

44. 50 U.S.C. § 3955(a).

45. 50 U.S.C. § 3955(b); *see also*, La. R.S. 9:3261 for additional Louisiana-specific rights of servicemembers to terminate leases.

46. 50 U.S.C. § 3955(a)(2).

47. *See generally*, American Bar Association, *Legal Guide for Military Families*, 162 (1st ed. 2013) (“Rather than continue to burden servicemembers with the responsibility to negotiate into their lease a ‘military orders clause,’ Congress has effectively included such a clause into servicemembers’ leases by way of amendments to [the SCRA].”).

48. *See*, 50 U.S.C. § 3955(b)(2); 50 U.S.C. § 3956. Note that the SCRA protections addressed in this article are not an exhaustive list. The SCRA also provides servicemembers with other important benefits, including: a 6 percent cap on interest rates; protections as to professional liability, health and life insurance; voting rights guarantees; and more. *See generally*, 50 U.S.C. §§ 3901-4043.

49. *See*, Veterans’ Benefit Act of 2010, H.R. 3219, 111th Cong. (2nd Sess. 2010).

50. 50 U.S.C. § 4041.

51. 50 U.S.C. § 4042.

52. *Id.*

53. Grant A. Walsh, Kelly C. Ganzberger and Christianne L. Edlund, “When Duty Calls: The Impact of Military Service on Litigation,” 73 Tex. B. J. 840, 842 (November 2010).

54. La. R.S. 29:311-319.

55. *Id.*

56. *Id.*

57. La. R.S. 9:348.

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