

Servicemembers' Civil Relief Act
(replacing the prior versions of the Soldiers' and Sailors' Civil Relief Act)

Title 50 of the United States Code provides federal protection to service members so that they are not unfairly prejudiced by lack of opportunity to participate when faced with a lawsuit, divorce, or other civil (not criminal) legal proceeding while deployed. Here are some examples of how this federal protection is applied in state court proceedings in Arizona.

Broadly Used Provisions. The SCRA provides protections that, if properly and timely invoked, may include in broad and general descriptive terms for today's article purpose. Please read the full SCRA for detail about these categories and others. Examples of categories include:

90 day and additional stays of court and administrative proceedings;
forgiving interest over 6% for pre-military service debt;
landlord-tenant eviction protections;
permitting real estate leases to be terminated in cases of permanent change of station or orders for ninety plus days of deployment;
similarly in automobile lease situations (for the dependent as well) if detail applies when over 180 days; and
addressing state tax brackets to prevent undue burden based upon place of service.

For detailed reading, go to:

http://www.justice.gov/crt/spec_topics/military/scra.php

Avoiding Defaults. A default judgment is a judgment that results from application by a plaintiff in a lawsuit applying for a judicial order based upon the defendant failing to appear or file a response to the Complaint. The federal statute is designed to be sure that the service member is not “defaulted” without his/her knowledge or without meaningful opportunity to appear and defend.

An appearance or a waiver of an appearance indicates that the service member was advised and participating or provided opportunity to participate.

Requests for “Stays” and Motions to Continue. If you know about the action but feel unable meaningfully to participate, you might file some sort of a pleading if the federal law or the applicable rules of court permit. For instance, a request seeking a temporary suspension of proceedings (a “stay”) and other times, depending upon court rule, a continuance. Appellate court case law tells us that a motion to continue based upon the prior SSCRA will contain information both to establish the service member's unavailability and that his/her “*rights would be adversely affected because of his absence from the trial.*” [from *Norris v. Superior Court of Mohave County*, 14 Ariz.App. 183, 481 P.2d 553 (Ariz. App., 1971)]

Laws and how those are interpreted, however, are very specific to the forum and facts. No service member should assume that his/her request for a stay or any motion to continue will be granted just because it is properly filed. A judge will rule on any requests of the court and usually, will

permit time for the other side to respond first. It will be important to be watching all case activity and to provide the court a good and current address for receipt of any resulting judicial order (such as setting for hearing, or just a ruling) and then to act timely and appropriately.

Arizona divorces: In order for an Arizona judge to enter a marital dissolution decree, s/he should include a finding [typically based upon the party's or parties' representation(s)] regarding domicile. Specifically: "*That one of the parties, at the time the action was commenced, was domiciled in this state, or was stationed in this state while a member of the armed services, and that in either case the domicile or military presence has been maintained for ninety days prior to filing the petition for dissolution of marriage.*" (A.R.S. 25-312.1)

Seek Counsel When Indicated

The above provisions are available protections that may be invoked by you in some of the circumstances as described in the bullet point list, if you are on active duty.

For those instances involving a desire to stay or postpone an administrative law or court case, the judge does not just know that you are on active duty. For the reason that these provisions are not automatically known to the Court, please consider if you need local counsel by an attorney. A person is only an attorney in Arizona if admitted to the State Bar. (Check out "find a lawyer" at www.azbar.org) Some attorneys offer limited scope of representation sessions, commonly known as "advice and counsel" or "work" sessions which may assist you to know how to raise these statutory protections even if you proceed *in propria persona* otherwise.

**The entire and current content of the SCRA is reproduced at
http://www.justice.gov/crt/spec_topics/military/scratext.pdf**

including with an index list.