

Module 4

The Servicemembers Civil Relief Act

TRAINING NOTES

This module presents information that is highly relevant, although highly legalistic in its nature. Therefore, the trainer has alternatives depending upon the audience.

If the audience is predominantly caseworkers, it may be most appropriate to present the information through a review of the abbreviated overview of this module and the question and answer format found in Handout 4-1 of the Appendix. This Handout contains a generic overview of the Servicemembers Civil Relief Act (SCRA).

If the audience is predominantly attorneys and senior staff, it may be most appropriate to present the more detailed version of this module.

What you need to say/do – Abbreviated overview

1. Display **PowerPoint Slide 4-1: The Servicemembers Civil Relief Act (SCRA) [title slide]**.
2. Ask participants if there are any lingering questions from earlier modules. When there are no further questions, proceed to Module 4.
3. Ask the participants about their familiarity with the SCRA. Explain that the SCRA is not meant to shield service members from their child support obligations.
4. Explain to the participants the learning goals and objectives of this module.
5. Tell the participants that this is a shortened version of the complete module. Participants seeking more detail can review the more expansive version.

What you need to know

1. It takes approximately 30 minutes to complete the abbreviated overview.
2. Listed below are the equipment, handouts, and PowerPoint slides needed for the module.

Equipment/Supplies

- Personal computer with PowerPoint program
- LCD projector and screen
- Trainer Guide
- Participant Guides (including Appendix with Handouts)

PowerPoint Slides

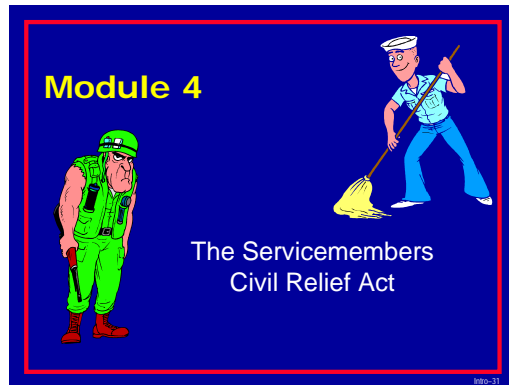
- 4-1: The Servicemembers Civil Relief Act
- 4-2: Scope of the SCRA
- 4-11: Exercises/Questions
- 4-12: Summary

Handouts:

- 4-1: A Guide to the SCRA
- 4-2: Review Exercises

MODULE 4: THE SERVICEMEMBERS CIVIL RELIEF ACT

Time: 30 minutes (abbreviated overview)



4.1 THE SERVICEMEMBERS CIVIL RELIEF ACT

4.1.1 Learning Goal

- Each participant will understand the Servicemembers Civil Relief Act (SCRA) and its effect on the establishment and enforcement of child support orders involving military personnel.

4.1.2 Learning Objectives

- Given a participative lecture and small group exercise, participants will identify when, and to whom, the SCRA applies.
- Given a lecture and discussion, participants will identify when the statutes of limitation for various child support actions are tolled under the SCRA and for how long.
- Given a lecture and discussion, participants will correctly identify how the SCRA provisions regarding the maximum rate of interest apply to child support.
- Given a lecture and discussion, participants will identify the circumstances that permit military personnel to invoke or waive the protections and provisions of the SCRA for a stay of civil proceedings, and, if invoked, identify the length of time that proceedings may be stayed.

TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 4-2: The Scope of the SCRA.**

What you need to know

1. The law updating the *Soldiers' and Sailors' Civil Relief Act* (SSCRA) is the *Servicemembers Civil Relief Act* (SCRA), Public Law 108-189, which President George W. Bush signed into law on December 19, 2003.

4.2 OVERVIEW OF THE SCRA

The Soldiers' and Sailors' Civil Relief Act (SSCRA) was originally enacted in 1918, reenacted in 1940 and updated in 2003 with the enactment of the Servicemembers Civil Relief Act (SCRA). The primary purpose of the SCRA is to protect members of the military during the period of their military service. The SCRA is not intended to be an answer to all legal problems encountered by a military member.



The SCRA applies to military personnel, including reservists, who are on active duty military service. A limited exception to this general rule is that members of the National Guard are also covered by the SCRA when a State Governor calls them to active service authorized by the President or the Secretary for a period of more than 30 consecutive days under Title 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. The SCRA does not apply to DoD civilians, contract employees, and military retirees, and most of its provisions do not apply to military dependents directly. As originally enacted, the SSCRA only applied to judicial child support enforcement proceedings. Under the SCRA, these protections now also cover administrative procedures, such as the administrative enforcement remedies mandated under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

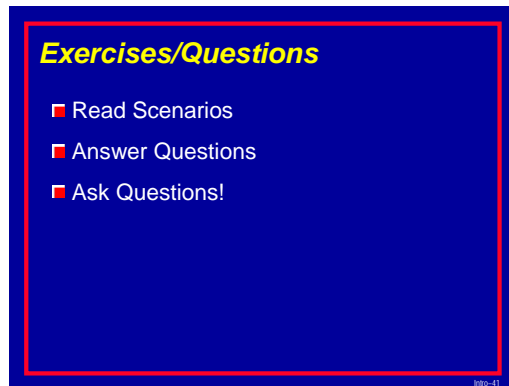
TRAINING NOTES

What you need to say/do

1. Discuss **Handout 4-1** with participants.
 2. Display PowerPoint Slide 4-11: Review Exercises.
 3. Pass out the two exercise scenarios and questions to the participants. Divide the participants into groups of 4 or 5. Allow the groups 15 minutes to read the scenarios and answer the questions posed at the end of the scenarios.
 4. Facilitate a group discussion of the scenarios and participants' responses to the questions.
 5. Encourage questions about the material in the module.
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What you need to know

Handout 4-1: A Guide to the SCRA, located in the Appendix, summarizes the provisions of the SCRA.



4.3 EXERCISES

Refer to **Handout 4-2: Review Exercises** in the Appendix. Identify the issues related to the SCRA and answer the questions posed at the end of each scenario. The trainer will facilitate a discussion of the two scenarios.

TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 4-12: Summary**. Review the topics discussed in Module 4.
 2. Preview topics that will be discussed in Module 5.
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What you need to know

4.4 SUMMARY OF MODULE 4

Summary

- Servicemembers Civil Relief Act
 - Req'ts re: availability and material effect
 - Stay of proceedings under SCRA
 - Default judgment
 - Stay of enforcement of judgment under SCRA
 - Role of appointed counsel
 - Tolling of statutes of limitations
 - Maximum interest rate under SCRA

In this module we discussed:

- when the SCRA applies,
- the length of time a civil proceeding can be stayed under the SCRA,
- the need for an affidavit regarding military service in any proceeding in which a default judgment can be entered,
- the impact of a default judgment entered without an affidavit regarding military service,
- the tolling of statutes of limitations when a party is in the military, and
- the maximum interest rate that applies when a person is in military service.

4.5 PREVIEW OF MODULE 5

In the next module, we will discuss the following topics:

- genetic testing of military personnel in paternity cases,
- obtaining financial and medical insurance information from military personnel, and
- methods for collecting information or evidence from service members located outside of the United States or its waters.

TRAINING NOTES

What you need to say/do – detailed overview

1. Display **PowerPoint Slide 4-1: The Servicemembers Civil Relief Act (SCRA) [title slide]**.
2. Ask participants if there are any lingering questions from earlier modules. When there are no further questions, proceed to Module 4.
3. Query the participants as to their familiarity with the SSCRA/SCRA. Explain that the SCRA is not a free-ride shield for members of the military. Ask the participants if they have ever had proceedings stayed under the SSCRA/SCRA or a default judgment reopened under the SSCRA/SCRA.
4. Review the learning goals and objectives of this module.

What you need to know

1. It takes approximately one hour to complete the expanded version of this module.
2. Listed below are the equipment, handouts, and PowerPoint slides needed for the module.

Equipment/Supplies

- Personal computer with PowerPoint program
- LCD projector and screen
- Trainer Guide
- Participant Guides (including Appendix with Handouts)

PowerPoint Slides

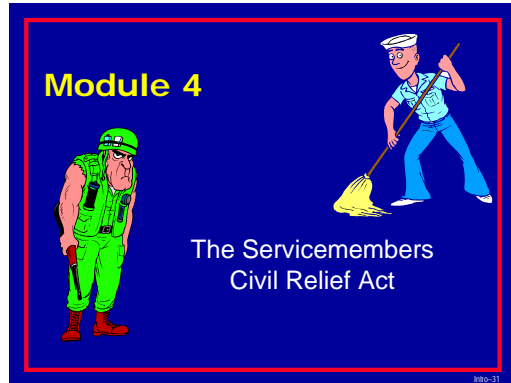
- 4-1: The Servicemembers Civil Relief Act
- 4-2: Scope of the SCRA
- 4-3: Stay of Civil Proceedings
- 4-4: Stay of Civil Proceedings (cont'd)
- 4-5: Default Judgment under SCRA
- 4-6: Reopening Default Judgment under the SCRA
- 4-7: Appointed Counsel
- 4-8: Stay or Vacation of Judgments and Attachments
- 4-9: Tolling the Statutes of Limitations
- 4-10: Interest under the SCRA
- 4-11: Exercises/Questions
- 4-12: Summary

Handouts:

- 4-1: A Guide to the SCRA
- 4-2: Review Exercises

MODULE 4: THE SERVICEMEMBERS CIVIL RELIEF ACT

Time: 1 hour (expanded overview)



4.1 THE SERVICEMEMBERS CIVIL RELIEF ACT

4.1.1 Learning Goal

- Each participant will understand the Servicemembers Civil Relief Act (SCRA) and its effect on the establishment and enforcement of child support orders involving military personnel.

4.1.2 Learning Objectives

- Given a participative lecture and exercise, participants will identify when, and to whom, the SCRA applies.
- Given a participative lecture and exercise, participants will know when military personnel may invoke or waive the SCRA's protections for a stay of civil proceedings, and, if invoked, identify how long the proceedings are stayed.
- Given a participative lecture and exercise, participants will know when the SCRA provides relief for default judgments in child support cases, when the appointment of counsel is required for military personnel in default judgments, and the role that an appointed counsel plays.
- Given a participative lecture, participants will understand the difference between a stay of proceedings and a stay of a judgment/garnishment action.
- Given a participative lecture, participants will know when the statutes of limitations for child support actions are tolled under the SCRA and for how long.
- Given a lecture and discussion, participants will correctly identify how the SCRA provisions regarding the maximum rate of interest apply to child support obligations.

TRAINING NOTES

What you need to say/do

1. Explain the history behind the SSCRA/SCRA and its original purpose. Inform the participants that the SCRA does not "exempt" military members from their moral and civil obligations with respect to court or administrative proceedings.

What you need to know

1. The Servicemembers Civil Relief Act is a Federal statute found at 50 U.S.C. App. 501 et seq. It is not found in state codes. The SCRA allows service members to request and obtain a "stay of proceedings" when their military duties make it difficult for them to respond and appear at hearings. The decision to grant or deny a stay request is within a decision maker's discretion. The key provisions of the SCRA that apply to cases involving family law are Sections 201, 202, 204, and 207.
2. Section 202 of the SCRA discusses a military member's request for a stay of proceedings. It provides that a court or administrative tribunal must grant the stay unless military service does not materially affect the member's ability to appear at the proceeding. Section 202 spells out the duration of any stay of proceedings. Section 201 provides that if it appears that an absent service member is involved, the court or administrative tribunal must appoint an attorney on his or her behalf to invoke these SCRA rights before entry of a default judgment (e.g., a judgment entered in the person's absence). Section 201(g) sets out criteria for when a service member can move to reopen a default judgment. Finally, Section 204 discusses conditions under which a court or administrative tribunal will stay or vacate a judgment or garnishment entered against a military member.
3. **Handout 4-2: A Guide to the SCRA**, located in the Appendix, summarizes the provisions of the SCRA.

4.2 THE SCOPE OF THE SERVICEMEMBERS CIVIL RELIEF ACT

The Soldiers' and Sailors' Civil Relief Act (SSCRA) was originally enacted in 1918 and reenacted in 1940. In 2003, the SSCRA was superseded by the Servicemembers Civil Relief Act (SCRA). The primary purpose of the SSCRA/SCRA is to protect members of the military during the period of their military service. The SCRA is not intended to be an answer to all legal problems encountered by a military member.

The SCRA provides this excellent purpose statement that serves as a guide to the courts and administrative tribunals in interpreting the intent of the Act:

The purposes of this Act are:

- (1) to provide for, strengthen, and expedite the national defense through protection extended by the Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and
- (2) 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.

In the past, a majority of the Federal and state courts have construed the SSCRA in this spirit. It is important to understand that the SCRA is not a shield that exempts military members from the judicial or administrative process. It is a provision for the suspension of certain civil proceedings during times that a military member's service affects his or her civil rights. It is noteworthy that the SCRA is also designed to afford protection to the rights of individuals who may have a cause of action against a military member.

TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 4-2: The Scope of the Servicemembers Civil Relief Act.**
2. Inform the participants that, although the SSCRA only applied to civil judicial proceedings, the SCRA's stay applies to both judicial and administrative civil proceedings.

What you need to know

1. The SCRA applies to military personnel, including reservists, who are on active duty military service. A limited exception to this general rule is that members of the National Guard are also covered by the SCRA when a State Governor calls them to active service that has been authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under Title 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. The SCRA does not apply to DoD civilians, contract employees, and military retirees, and most of its provisions do not apply to military dependents directly. The SCRA applies equally in times of war and in peace, despite the origins of the Act's predecessor (SSCRA) during the first and second World Wars.



The SCRA applies to military personnel, including reservists, who are on active duty military service. A limited exception to this general rule is that members of the National Guard are also covered by the SCRA when a State Governor calls them to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under Title 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. The SCRA does not apply to DoD civilians, contract employees, and military retirees, and most of its provisions do not apply to military dependents directly.

Although the SSCRA only applied to judicial proceedings, the SCRA applies to both judicial and administrative proceedings, including both types of child support enforcement proceedings.

TRAINING NOTES

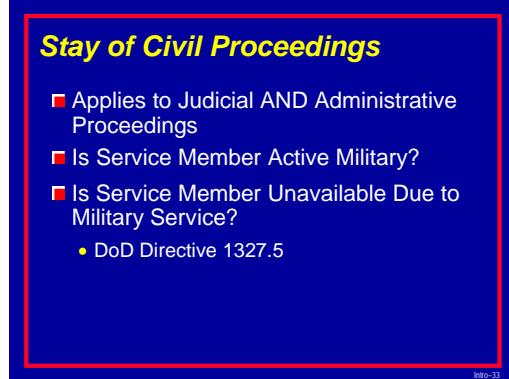
What you need to say/do

1. Display **PowerPoint Slide 4-3: Stay of Civil Proceedings**.
2. Explain that the key to a military member's obtaining a stay of proceedings under the SCRA is the "material effect" that military service has on the military member in defending him or herself.

What you need to know

1. Section 202(b) of the SCRA states:
 - (1) At any stage before final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met.
 - (2) An application for a stay under paragraph (1) shall include the following:
 - (A) 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.
 - (B) 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.
2. A tribunal shall grant the stay if the military member requests one unless there is no material effect; a tribunal may grant the stay if it is on the tribunal's own motion.

4.3 STAY OF CIVIL PROCEEDINGS UNDER THE SCRA



A “stay” means that proceedings are put on hold for a certain time period. The stay provisions of the SCRA apply to both court and administrative hearings or proceedings. A request for a stay of proceedings may be made at any point of the proceeding, provided it is made during the service member’s service or within 90 days thereafter.

In determining whether a service member is entitled to a stay under the SCRA, the court or administrative tribunal must ask several questions. First, is the service member in active military service? To be eligible for a stay under the SCRA, a service member must be in military service, as defined in the previous section, and involved in judicial or administrative proceedings as a defendant. The second question is whether military duty requirements materially affect the service member’s ability to appear at the proceeding. A court or administrative tribunal must grant the stay under section 202 of the SCRA if the service member is unavailable for the proceeding and the member’s military duty requirements materially affect the service member’s ability to appear. Any stay under section 202 applies to proceedings related to obligations that arose both before the member joined the service and during the member’s service. For example, it would apply to a contempt action for a support order issued prior to military service, as well as to a paternity proceeding that was initiated during the member’s service.

TRAINING NOTES

What you need to say/do

1. Continue to display **PowerPoint Slide 4-3: Stay of Civil Proceedings**.
2. Explain the procedural requirements for obtaining a stay of proceeding.
3. Explain DoD Directive 1327.5, section 6.25, and its impact on a commander's determination of unavailability when a military member requests a stay of proceedings.
4. Explain the circumstances that permit denial of a leave request, as determined by a military member's commander, who is the approving authority for military leave.

What you need to know

1. DoD Directive 1327.5, section 6.25 states:

When a Service member requests leave on the basis of need to attend hearings to determine paternity or to determine an obligation to provide child support, leave shall be granted, unless (a) member is serving in or with a unit deployed in a contingency operation or (b) exigencies of military service require a denial of such request. The leave taken shall be charged as ordinary leave.

The date of the instruction is September 24, 1985. Section 6.25 was added 10 Sept. 1997 as a result of PRWORA.

4.3.1. Procedural Requirements

The SCRA requires that the service member provide a letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the service member's ability to appear and stating a date when the service member will be available to appear. The service member must also provide a letter or other communication from the service member's commanding officer stating that the service member's current military duty prevents appearance and that military leave is not authorized for the service member at the time of the letter.

4.3.2 DoD Directive 1327.5

As a result of PRWORA, it is more difficult for a member to establish unavailability. PRWORA required the military services to promulgate regulations to facilitate military members taking leave to appear in court for child support and paternity actions. The Department of Defense (DoD) revised its existing regulations on leave and supplemented DoD Directive 1327.5, by adding section 6.25, which states:

When a Service member requests leave on the basis of need to attend hearings to determine paternity or to determine an obligation to provide child support, leave shall be granted, unless (a) member is serving in or with a unit deployed in a contingency operation or (b) exigencies of military service require a denial of such request. The leave taken shall be charged as ordinary leave.

TRAINING NOTES

What you need to say/do

1. Continue to display **PowerPoint Slide 4-4: Stay of Civil Proceedings (cont'd)**.
 2. Discuss the implications of a tribunal denying a service member's request for an additional stay.
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What you need to know

4.3.3 Duration of Stay

The court may on its own motion and **shall**, upon application by the servicemember, which includes the required letters or communications to the tribunal demonstrating material effect, stay the action for a period of not less than 90 days. A service member who is granted a stay of a civil action or proceeding may apply for an additional stay based on continuing material effect of military duty on the service member's ability to appear at the time of the initial application or any other time where the service member is unavailable to defend the action.

Stay of Civil Proceedings (cont'd)

- Does Member's Absence have a Material Effect on the Proceeding?
 - Is member represented by counsel?
 - Do parties agree to facts?
 - Is action only for temporary modification of support?
- If Answer is Yes to any = may deny stay
- If Answer is No & Motion for Stay by Member = must grant stay

Info-34

4.3.4 Denial of Additional Stay Request

Some of the situations in which a tribunal may refuse to grant an additional discretionary stay, despite the absence of the military member, include the following:

- The military member is represented by counsel;
- No facts are contested;
- The action is for a temporary modification of child support (some states).

If a tribunal denies an additional stay, it must appoint counsel to represent the service member in the action or proceeding. The member may appeal the denial, but review is limited to determining whether the trial tribunal abused its discretion and arbitrarily denied the stay; the reviewing tribunal cannot simply substitute its own judgment.

TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 4-5: Default Judgment under SCRA**.
2. Explain that an affidavit regarding military service is required before entry of a default judgment against a defendant.
3. Inform the participants of the effects of a failure to provide the affidavit of military service.

What you need to know

1. Section 201(b) of the SCRA states, in part:
 - In any action or proceeding commenced under this section, the tribunal, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit
 - (A) stating whether the defendant is in military service and showing necessary facts to support the affidavit; or
 - (B) if the plaintiff is unable to determine whether the defendant is in military service, the plaintiff must assert that fact.
2. Module 2 discusses locate resources that are available to child support workers. These resources are useful in determining whether the NCP or alleged father is a military member.

What you need to know

4.4 DEFAULT JUDGMENTS UNDER THE SCRA

A default judgment is a judgment entered when a defendant fails to make an appearance at a proceeding, after service of process. Section 201(b) of the SCRA provides that, prior to the entry of a default

judgment in a case where the defendant does not make an appearance, the plaintiff must file an affidavit with the tribunal setting forth facts showing either that the defendant is not in military service or that the plaintiff is unable to determine whether the defendant is in military service. If the affidavit states that the defendant is not in military service, it must cite facts that support this allegation. Child support workers may contact the military Worldwide Locator Service or the expanded Federal Parent Locator Service to show that there is no record of the NCP currently being in the military. Additionally, the Defense Manpower Data Center (DMDC) maintains a website (www.dmdc.osd.mil) that allows registered users to verify if an individual is in the military service. To become a registered user, an individual completes a brief on-line application at the DMDC website. If the status of the defendant's military service is unknown, then the affidavit should so state. The affidavit may take any form so long as it is signed and certified, or declared to be true under penalty of perjury.

If the agency files an affidavit showing that the defendant is not in the service, the tribunal can enter a default judgment. If the child support agency fails to file the required affidavit, the tribunal should not enter a default judgment. Despite this prohibition, entry of a default judgment sometimes occurs. If a default judgment is improperly entered, the judgment is voidable and can be reopened by the defendant at a later time if certain conditions are met. It is important to know that this section of the SCRA applies to all judicial and administrative civil proceedings. Unfortunately, in areas without a military population, child support agencies frequently do not include the required affidavit and voidable default judgments are routinely entered.

Default Judgment Under SCRA

- Agency files Affidavit - Not in Service
 - Court can enter a default judgment
- Agency fails to file Affidavit
 - Any default judgment is voidable
- Agency files Affidavit - Is in Service
 - Court must appoint attorney to represent member

HR00-35

TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 4-6: Reopening Default Judgment under the SCRA** and stress the penalties for filing a false affidavit (or for failing to file an affidavit) when it is known that the defendant is in the military.
2. Explain the reopening of a default judgment by a military member under Section 201 of the SCRA. These five criteria must be met: 1) A default judgment is entered during military service or 60 days thereafter, 2) No appearance was made by the defendant, 3) Defendant makes an application to reopen, 4) The service member was materially affected by reason of his/her military service, and 5) The service member has a meritorious or legal defense to the action, or to some part of it.

What you need to know

1. Understanding the five threshold criteria for reopening a default judgment is important. The first and third criteria are straightforward. The last two require specific supporting facts. A default judgment entered during the service member's military service will not be reopened if the service member cannot show that his/her service materially affected his/her ability to defend the action or that he/she has a meritorious defense to the action. The second criterion has been the subject of much litigation. Historically, courts have differed in how they interpret "appearance" in a legal proceeding. If a person physically appears and participates in the proceeding, the person is considered to have "appeared" in the action. An appearance can also be made through an act that implies the person accepts the power of the court to try the matter before it and, therefore, submits to the court's jurisdiction. A person can make a general appearance through acts of his or her attorney (e.g., when a lawyer files a response on his or her client's behalf, that filing is considered a general appearance that binds the client). An appearance may also be made by a military legal assistance attorney by virtue of a letter written on behalf of a military member to the court. A military member who makes an appearance for part of a proceeding will be unable to reopen a default judgment under the SCRA if he or she subsequently fails to appear at any proceedings. In order to be able to reopen a default judgment, there must not have been an appearance by the military member. However, in Section 202(c) of the SCRA, an application for a stay 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).
2. Here are examples, under the old SSCRA, where courts claimed a service member made an appearance: an affidavit filed by a service member's counsel seeking to quash a complaint in *Blankenship v. Blankenship*, 263 Ala. 297, 82 So. 2d (1978); a service member's counsel filing a motion to dismiss in *Reynolds v. Reynolds*, 21 Cal. 2d 580, 134 P.2d 251 (243).
3. Attorneys seeking a legal discussion and case law regarding appearance by a military member or the member's appointed counsel may review material developed by the JAG schools for each Military Department. Another resource is "Chapter 9, Enforcement Related to Particular Groups," in *Enforcing Child & Spousal Support* (Clark Boardman Callaghan 1995 & Supps.).

When an affidavit indicates that the defendant is in military service, a tribunal must appoint an attorney to represent the member. If the appointed attorney is unable to locate the defendant, actions by this attorney are not binding upon the service member and do not waive any of the service member's defenses.

Regardless of whether an affidavit is filed, the default judgment is valid and binding once it is entered. A military member is entitled to reopen the default judgment, but, until such time, the judgment is enforceable and entitled to full faith and credit.

Reopening a Default Judgment Under the SCRA

- Court Entered Judgment During Member's Military Service or within 60 Days
- Military Member/Attorney files Application to Reopen within 90 Days of Service Termination OR During Service
- No Appearance in Proceeding

The filing of a false affidavit is a crime under section 201(c) of the SCRA. Also, the failure to file an affidavit can subject an attorney to disciplinary action if it can be shown that the attorney had knowledge of the military member's military status. Evidence of knowledge includes previous letters to the military member's commander or other correspondence that clearly shows the attorney knew the status of the military member. Remember, a default judgment obtained in violation of the SCRA is voidable; that means it remains valid and binding until the military member takes affirmative steps to reopen the judgment. Section 201(g) of the SCRA permits a defendant to ask the tribunal to reopen its default judgment. Five conditions must exist in order for a military member to reopen a default judgment:

- The tribunal must have entered the default judgment during the member's military service or within 60 days thereafter;
- The military member made no appearance;
- The military member or his/her legal representative filed an application to reopen the judgment within 90 days after the termination of military service or during military service;
- The service member was materially affected by reason of his/her military service in defending the action; and
- The military member has a meritorious or legal defense to the action, or some part of it.

TRAINING NOTES

What you need to say/do

1. Remind the participants that an application to reopen a default judgment does not necessarily mean that the judgment will be overturned. The judgment remains valid until decided otherwise by a tribunal.
2. Explain to participants that, unlike the old SSCRA, the SCRA (at section 202(c)) expressly provides that a request for a stay does not constitute an appearance for jurisdiction purposes, or a waiver of any defense.

What you need to know

Traditionally, courts have differed in their interpretations of what constitutes an “appearance.” Often a military member who is served with a summons for, or receives notification of, a child support or paternity action will write a letter to the tribunal seeking the protections of the SCRA. Most tribunals do not construe a letter by the military member as an appearance for the purpose of reopening a default judgment. However, where the member has filed a response, moved the tribunal for genetic testing, and/or filed a financial affidavit with the tribunal, the tribunal will likely rule that the member has made an appearance, and will not consider his or her later failure to appear at the hearing a “default” under the SCRA. The member’s participation in a telephone hearing related to the matter may also be considered an appearance.

Tribunals will also look at actions by an attorney appointed by the tribunal under section 201(b)(2) in deciding whether the military member has made an appearance [tribunal-appointed attorneys are discussed in section 4.4.1 of this module]. Actions by an appointed counsel will not bind the member, unless they are authorized by the member. For example, tribunals may construe letters to the tribunal from a military attorney on behalf of the member as constituting an appearance. Unlike the old SSCRA, under section 109 of the SCRA, actions by a spouse or other individual pursuant to a power of attorney (POA), either general or specific, will constitute an appearance if similar action taken by an attorney would constitute an appearance. State law will determine whether the use of a general power of attorney will be accepted in a child support action. A special or specific power of attorney that addresses a particular child support matter will more likely be accepted as an appearance. It is important to remember that the right to reopen a default judgment does not mean that the judgment will ultimately be reversed. Only upon a showing of all five threshold criteria will the tribunal reopen a default judgment and consider whether to set it aside.

TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 4-7: Appointed Counsel**.
2. Explain a tribunal's obligation to appoint an attorney for a military member who is absent and has not made any appearance in the proceeding.
3. Explain that no Federal financial participation (FFP) funds are available to pay for appointed counsel.
4. Inform participants of the role of the appointed attorney:
 - can request a stay of proceedings, if appropriate
 - can protect the service member's rights
 - cannot perform acts that bind the service member
 - cannot waive a service member's rights

What you need to know

1. Section 201(b)(2) of the SCRA states:

In an action covered by this section, if 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. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, action by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember.

4.4.1 Appointed Counsel

Before a tribunal can enter a judgment in a case involving a service member who has not made an appearance, it must appoint an attorney to represent the defendant. Section 201(b)(2) states that if it appears that the defendant is in military service, the court must appoint an attorney for the defendant before entering a default judgment.

Appointed Counsel

- Defendant Not in Service - Must Appoint Prior to Default Judgment
- Defendant Is in Service but No Appearance - May Appoint
- Appointed Attorney:
 - Protects Service Member's Rights
 - Determines Status and Seeks Stay
- Can't Waive Rights or Bind Service Member

Info-37

The SCRA provides little guidance with respect to the actual responsibilities of the court-appointed attorney. Under the SSCRA, some courts charged the attorney with determining the status of the military member and whether military service had materially affected the ability of the military member to defend himself or herself. Under the SCRA, if the defendant is a military member, the appointed attorney is primarily responsible for obtaining a stay of the proceedings until the military member can be present. It is important to note that the acts of an appointed attorney are not binding on the military member and that the attorney cannot waive any of the member's legal rights. A military member will be bound only to the acts of an appointed attorney that the military member has authorized. If the military member authorizes the appointed attorney to perform some act before the tribunal, the tribunal may construe those actions as an appearance by the member.

TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 4-8: Stay or Vacation of Judgments and Attachments.**
2. Discuss the similarities between a stay/vacation of judgment and the stay of legal proceedings that was previously discussed. Explain the difficulty of obtaining a stay of judgment since the tribunal has already considered his or her military service in the proceeding that established the judgment.
3. Identify two circumstances in which a member may be most successful in seeking a stay of judgment:
 - a reservist who has been called to active duty
 - a reduction in income due to entry into military service.

What you need to know

1. Section 204 of the SCRA states:
 - (a) If a servicemember, in the opinion of the tribunal, is materially affected by reason of military service in complying with a judgment or order, the tribunal may on its own motion and shall on application by the servicemember
 - (1) stay the execution of any judgment or order entered against the servicemember; and
 - (2) vacate or stay an attachment or garnishment of property, money, or debts in the possession of the servicemember or a third party, whether before or after judgment.
 - (b) This section applies to an action or proceeding commenced in a tribunal against a servicemember before or during the period of the servicemember's military service or within 90 days after such service terminates.

4.5 STAY OR VACATION OF EXECUTION OF JUDGMENTS AND ATTACHMENTS UNDER THE SCRA

Section 204 of the SCRA authorizes a tribunal to stay the execution (the carrying out) of a judgment, attachment, or garnishment order entered against a military member. Additionally, the section authorizes a tribunal to vacate (set aside) an attachment or garnishment against a

military member's property. The stay provisions of this section are similar to those for a stay of proceedings under sections 201 and 202.

Stay or Vacation of Judgments and Attachments

- Material Effect
- Action Must Have Arisen:
 - Prior to;
 - During; or
 - Within 90 days after service
- Reservists and Downward Modification

For a stay or vacation under section 204: 1) military service must materially affect the ability of the military member to comply with the judgment against him; and 2) the action giving rise to the judgment must have arisen prior to, during, or within 90 days after military service.

A tribunal may grant the stay on its own motion if it finds material effect. However, the tribunal must grant the stay on the motion of the military member unless it finds that military service has no material effect on his or her compliance with the judgment. If the member's military service existed, and was considered, at the time the tribunal initially entered the judgment, it is unlikely that a stay of judgment enforcement will be granted, assuming compliance with all the requirements of the SCRA. The stay provisions of section 204 can be used by a military member to stop an enforcement action or to seek a downward modification of his or her child support obligation, where military service has caused a reduction in income. An example is a reservist who is called to active duty and experiences a reduction in income. In such a circumstance, a stay of enforcement of the original child support order may be appropriate. It is important to note, however, that section 204 does NOT permit retroactive modification of a support obligation.

TRAINING NOTES

What you need to say/do

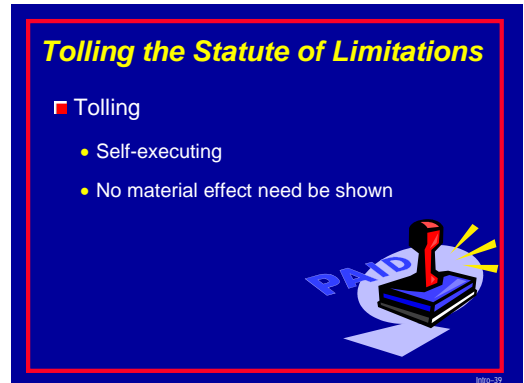
1. Display **PowerPoint Slide 4-9: Tolling the Statute of Limitations.**
2. Explain that tolling means to suspend or hold in abeyance. Explain the circumstances in which the statute of limitations may be tolled.
3. Ask participants to provide examples of child support matters where the statute of limitations could be tolled under the SCRA.

What you need to know

1. Section 206 of the SCRA states:
 - (a) The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns.
 - (b) A period of military service may not be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.
 - (c) This section does not apply to any period of limitation prescribed by or under the internal revenue laws of the United States.

4.6 TOLLING THE STATUTE OF LIMITATIONS

The legally required time limit in which an action or lawsuit must be filed is called a statute of limitations. Statutes of limitations differ depending on the type of legal claim. In some instances, states have different statutes of limitations for the same legal claim. As an example, states have varying statute of limitations requirements for enforcement of child support arrears. Statutes of limitations apply to actions filed in all tribunals, including Federal court. Tolling means to suspend or hold in abeyance.



Section 206 of the SCRA provides for the tolling of statutes of limitations during the time that a person is in military service. The tolling applies regardless of whether the military member is a defendant or a plaintiff in the proceeding. The cause of action may have accrued either prior to, or during, military service. The one exception is that Section 206 does not apply to Federal internal revenue laws.

The tolling provisions of section 206 are automatic once military service is shown. They are self-executing, which means no action is required by the military member. Unlike the stay provisions, there is no requirement for a military member to show that military service materially affected his or her ability to participate in the proceedings.

The tolling of the statute of limitations is double-edged. It applies to military members automatically, whether they are the plaintiffs or defendants. Therefore, any issues concerning the statutes of limitations in a paternity or child support action will fall under the tolling provisions of section 206.

TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 4-10: Interest under the SCRA.**
2. Discuss material effect. Ask participants for examples of interest that may be subject to the six percent ceiling. Remind participants that the six-percent ceiling is only for pre-service obligations and does not affect obligations, debts, etc. that the member incurred after entry into military service. Ask participants to give an example of when the six-percent ceiling would be applicable.

What you need to know

1. Section 207 of the SCRA states:
 - (a)(1) An obligation or liability bearing interest at a rate in excess of 6 percent per year incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent per year during the period of military service.
 - (2) Interest at a rate in excess of 6 percent per year that would otherwise be incurred but for the prohibition in paragraph (1) is forgiven.
 - (3) The amount of any periodic payment due from a servicemember under the terms of the instrument that created an obligation or liability covered by this section shall be reduced by the amount of the interest forgiven under paragraph (2) that is allocable to the period for which such payment is made.
 - (b)(1) In order for an obligation or liability of a servicemember to be subject to the interest rate limitation in subsection (a), the servicemember shall provide to the creditor written notice and a copy of the military orders calling the servicemember to military service and any orders further extending military service, not later than 180 days after the date of the servicemember's termination or release from military service.
 - (2) Upon receipt of written notice and a copy of orders calling a servicemember to military service, the creditor shall treat the debt in accordance with subsection (a), effective as of the date on which the servicemember is called to military service.
 - (c) A court may grant a creditor relief from the limitations of this section if, in the opinion of the court, the ability of the servicemember to pay interest in excess of 6 percent per year is not materially affected by reason of the service member's military service.
 - (d) As used in this section, the term "interest" includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.
2. If the support obligation was entered prior to a recall to active duty, e.g., in the case of a reservist, the 6% ceiling on interest will apply IF the member provides written notice of military service. A tribunal may grant a creditor relief from the 6% ceiling if the tribunal finds that the member's ability to pay interest above the 6% ceiling is not materially affected by his/her military service.

4.7 MAXIMUM RATE OF INTEREST UNDER THE SCRA

Section 207 of the SCRA limits a service member's obligations or liabilities incurred prior to entry into military service to an interest rate that is not to exceed six percent per year. The six-percent interest cap is applicable during the time the military member is in military service. The six-percent interest ceiling is available only if:



- The debt or obligation was incurred prior to entry into military service;
- The service member provides the creditor with written notice of military service and a copy of the military orders calling the service member to military service; and
- The military member's military service materially affects the ability to pay the obligation.

The interest rate ceiling is not available for debts and obligations incurred while in military service. Material effect is determined on a case-by-case basis. As a general rule, material effect is present if there is a reduction in income due to military service. This is more applicable to reservists in higher paying civilian jobs. A reservist called to active duty may suffer a drop in income that could materially affect the military member's ability to meet an obligation. The possible scenarios for determining material effect are limitless. If a military member seeks to invoke the interest rate cap, careful consideration must be given to the true effect that military service has on the member's ability to pay. Child support workers need to be aware of Section 207 because it can impact interest that has been ordered on an obligation for unpaid child support, if the obligation was incurred prior to the member's entry into military service. However, Section 207 does not require a child support agency to initiate anything. It is the military member's responsibility to contact the agency or tribunal and affirmatively invoke its provisions.

TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 4-11: Review Exercises**.
2. Refer participants to **Handout 4-2: Review Exercises**. Divide the participants into groups of 4 or 5. Allow the groups 15 minutes to read the scenarios and answer the questions posed at the end of the scenarios.
3. Facilitate a group discussion of the scenarios and participants' responses to the questions.
4. Encourage questions about the material in the module.
5. Display **PowerPoint Slide 4-12: Summary**.
6. Refer participants to **Handout 4-1: A Guide to the SCRA** for a summary of the Act.

4.8 EXERCISES

Refer to **Handout 4-2: Review Exercises** in the Appendix. Identify the issues related to the SCRA and answer the questions posed at the end of each scenario. The trainer will facilitate a discussion of the two scenarios.

Exercises/Questions

- Read Scenarios
- Answer Questions
- Ask Questions!

4.9 SUMMARY OF MODULE 4

In this module we discussed:

- the SCRA's requirements regarding availability and material effect,
- the length of time a civil proceeding can be stayed under the SCRA,
- the need for an affidavit regarding military service in any proceeding in which a default judgment can be entered,
- the impact of a default judgment entered without an affidavit regarding military service,
- the difference between the SCRA requirements for a stay of a proceeding and of an enforcement of a judgment,
- the role of appointed counsel under the SCRA,
- the tolling of the statutes of limitations when a party is in the military, and
- the maximum interest rate that applies to pre-service debt when a person is in military service.

Summary

- Servicemembers Civil Relief Act
 - Req'ts re: availability and material effect
 - Stay of proceedings under SCRA
 - Default judgment
 - Stay of enforcement of judgment under SCRA
 - Role of appointed counsel
 - Tolling of statute of limitations
 - Maximum interest rate under SCRA

Handout 4-1: A Guide to the SCRA, located in the appendix, contains a summary of key elements of the SCRA.

TRAINING NOTES

What you need to say/do

1. Preview topics that will be discussed in Module 5.

4.10 PREVIEW OF MODULE 5

In the next module, we will discuss the following topics:

- genetic testing of military personnel in paternity cases
- obtaining financial and medical insurance information from military personnel
- methods for collecting information or evidence from service members located outside of the United States or its waters.