

AN AGENCY GUIDE TO THE SERVICEMEMBERS CIVIL RELIEF ACT

by Mark E. Sullivan

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INTRODUCTION

Congress amended the Soldiers' and Sailors' Civil Relief Act (SSCRA) in December 2003 to apply to all local, state or federal agency proceedings; previously civil courts had been the sole concern of the Act since its passage in 1940. The new statute is called the Servicemembers Civil Relief Act (SCRA). With this new focus and coverage, it is obvious that a quick training session is essential for administrative law judges, hearing officers and the attorneys who guide and advise agencies, boards, commissions and other administrative entities.

The Act is found at 50 U.S.C. App. § 501 *et seq.* Courts have generally construed the SSCRA liberally to protect those in uniform, and the same should be true with the SCRA. The U.S. Supreme Court has said that the statute should be read "with an eye friendly to those who dropped their affairs to answer their country's call." *Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948). This Guide highlights some of the issues related to the impact of military service on administrative hearings, financial obligations and other matters.

QUESTION AND ANSWERS

1. Who is covered under the SCRA?

Pursuant to 50 U.S.C. App. § 511, covered servicemembers include -

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

The protections cover, in addition to civil courts, all administrative agencies of the United States, of a state or within a state. 50 U.S.C. App. § 511(5). Does this mean the Pottstown, Nevada City Council? The North Carolina Department of Economic and Community Development? The federal Environmental Protection Agency? The answer is YES to all the above!

2. Can an agency render a decision against a SM?

Under 50 U.S.C. App. § 521, when the SM has not entered an appearance before the agency, administrative law judge, referee, hearing officer, board, commission or other entity (hereafter "agency"), a default decision may not be entered against him without appointing an attorney for him. A default decision, called a "default judgment" in the Act, is any decision or ruling which is adverse to the SM's interest. This might be a ruling

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Jonathan P. Tomes

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