

THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

OUTLINE

The Shylock, to whom his pound of flesh is dearer than patriotism, is not the only man against whom the soldier must be given relief. Much more numerous are cases where, between the soldier and his creditor, there is an honest difference of opinion as to the proper division of the burden, which the war brings to all in a greater or lesser degree. The letters which have come to the committed...show that this is a real menace and can not be left to care for itself. The need for this protection is urgent. It is immediate..These men should know what is to be done for them. It needs no argument that freedom from harassing debts will make them better and more effective, more eager soldiers than if their loyalty and zeal is tempered with the knowledge that their country, which demands the supreme sacrifice from them, grudges a small measure of protection to their families and homes.

House Comm. On the Judiciary, Soldiers' and Sailors' Civil Relief Bill, H.R. Rep. 181, 65th Cong., 1st Sess. 3 (1917)

I. INTRODUCTION.

- A. History
- B. To whom does the SSCRA Apply?
- C. When do SSCRA protections apply and for how long?
- D. SSCRA Protections
- E. Who enforces the SSCRA?

II. ARTICLE I - GENERAL PROVISIONS OF THE SSCRA.

- A. Purpose: The Purpose of the Act is to postpone or suspend some of the civil obligations of military personnel to allow them to give full attention to their military duties. The Act 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).

- B. Constitutionality: The SSCRA is constitutional. Although it arguably interferes with the administration of justice within the states, courts have found that this interference is permissible as an exercise of Congress' power to raise and support the military forces under Article I, § 8 of the Constitution. *See, e.g., Radding v. Ninth Federal Savings & Loan Assoc.*, 55 F. Supp. 361 (D.C. N.Y. 1944).
- C. Protected Persons.
1. Active Duty.
 2. Reserves while in active federal service (Title 10).
 - a) Annual Training - applicable due to language of the Act - The term "person in the military service" includes "... federal service on active duty with any branch of service heretofore referred to... (§ 511) "... and any member of a reserve component of the Armed Forces who is ordered to report for military service shall be entitled to such relief and benefits...." (§ 516).
 - b) *In re Brazas*, 662 N.E.2d 559 (Ill. 1996). Appellate court holds that trial court abused its discretion by holding a hearing on divorce case issue when judge and opposing counsel were aware defendant on Reserve Active Duty for Training (ADT) status. See also *United States v. Stephan*, 490 F.Supp. 323, 325 (W.D. Mich. 1980).
 3. National Guard - Only if in active federal service.
 - a) DAJA-AL 1991/1884 21 June 1991 - State National Guard personnel on full-time state duty are not covered by SSCRA. The House Veterans' Committee has indicated that they will hold hearings on the SSCRA. Be alert for this development.

- b) Research Tip - Do not overlook state protections such as LA Rev. Stat 29: §§ 401-425, and PA. Code Vol. 51, PA-C.S.A. §§ 7309-7316 (1990) which provide similar relief to military persons in state service.
 - 4. Family Members - For Article III protections - protection available in their own right (other protections may be derivative).
 - 5. Others - sureties, guarantors, etc. - 50 U.S.C. App. § 513.
- D. Period of Coverage.
- 1. Commencement.
 - a) Active Duty - date of entry.
 - b) Inductees - date of receipt of orders.
 - c) Reserve Components - date of receipt of orders for Articles I-III, date of reporting for all other protections.
 - 2. Termination.
 - a) Ordinary - Date of discharge terminates some coverage. Some protections extend for a limited time beyond discharge, but are tied to discharge date.
 - b) Misconduct.
 - (1) Court-Martial - Soldier serving sentence for violent assault has divested himself or herself of protections of the Act. Mantz v. Mantz, 69 N.E. 2d 637 (Ohio C.P. 1946).

- (2) AWOL - Depends on reasons for AWOL.
 - (a) Soldier who "extended furlough" to attend birth of child still entitled to protection. *Shayne v. Burke*, 27 So.2d 751 (Fla. 1946).
 - (b) Soldier AWOL with whereabouts unknown not entitled to SSCRA protection. *Harriott v. Harriott*, 511 A.2d 1264 (N.J. 1986), and *U.S. v. Hampshire*, 95 F.3d 999 (10th Cir. 1996), *related case*, *Marriage of Hampshire*, 934 P.2d 58 (Kan. 1997).
 - (c) Self-inflicted injury. Marine who was hospitalized as a result of a self-inflicted gunshot wound not entitled to use SSCRA to stay judicial proceedings. *Burbach v. Burbach*, 651 N.E.2d 1158 (Ind.App., 1995).

c) Waiver.

- (1) Written (50 U.S.C. App. Section 517).
- (2) Executed after effective date of coverage.
- (3) Specific - Waiver of one provision does not waive others. *See Harris v. Stem*, 30 So.2d 889 (LA Ct. App. 1947). Court held that waiver of rights against seizure of property did not affect tolling of statute of limitations.

3. Jurisdiction.

- a) Applies in all courts in United States.

- b) Collateral Review of State decisions in Federal Court? - NO - *Shatswell v. Shatswell*, 758 F. Supp 662 (D. Kan. 1991). *See also Scheidegg v. United States*, 715 F. Supp. 11 (D. N.H. 1989)(SSCRA is not a grant of subject matter jurisdiction to seek review of state court decisions in federal court).
- c) Private Cause of Action ? – Federal District courts are now recognizing a private cause of action that may be brought against SSCRA violators by injured military members.
- d) U.S. Department of Justice Memorandum to Department of Defense General Counsel on SSCRA Representation, 12 March 1991 (unpublished) (Appendix C).
- e) The Army Lawyer, July 1998, at 63.

III. ARTICLE II - GENERAL RELIEF (50 U.S.C. APP. §§ 520-527).

- A. Key Concept - Material affect requires a showing that the service member's military service has materially affected the service member's ability to fulfill the civil obligation.
- B. 6% Interest Cap (50 U.S.C. App. § 526).
 - 1. Limits interest to 6% for duration of military service. Limit applies to any personal obligation of the service member, even if it is also a corporate obligation. *See Cathey v. First Republic Bank*, 2001 U.S. Dist. LEXIS 13150 (2001).
 - 2. Criteria.
 - a) Applies only to obligations incurred before entry onto active duty.
 - b) Service member now on active duty, and,

- c) Military service materially affects ability to pay. Fed. Home Loan Mortgage Corp. v. Sincaban (unpublished) (U.S. Dist. Ct. W. D. WI. Order # 93-C-0090-C 13 Dec 93). Reserve doctor called to AD with reduced income. Creditor Bank discovered she had substantial investment income in millions - HELD - no material affect. Judge indicates that creditors may look at “totality of circumstances” to determine material affect, including spouse’s income, and accumulated assets.
 - f) Effective at entry on active duty/notice of activation.
3. Notice to lender. [Sample Letter to Lender at Appendix A.]
- a) With copy of orders. Lender is required to reduce interest rate to 6% unless lender makes application to court.
 - b) Burden. On lender to seek relief in court if lender asserts no material affect.
 - c) Most DOJ SSCRA support requests
- C. Issue of how to implement 6% reduction.
- 1. Various asserted methods.
 - a) Forgive all interest above 6% (DOD/DOJ position).
 - b) Reduce rate but not payment. [This ploy was discouraged by the Comptroller of the Currency. *See* Advisory Memo, 1991 OCC CB LEXIS 13 (1991).]
 - c) Add interest above 6% to loan balance.

2. DOD/DOJ position adopted during Desert Shield/Storm by national lending associations. [Joint Hearing before the House and Senate Veteran Affairs Committees on SSCRA, 101st Cong., 2d Sess. (12 Sep. 1990), *as reported in* The Army Lawyer, p. 50, Nov. 1990.]
3. SSCRA does not apply to federally guaranteed student loans (according to DOE interpretation).

Title 20, U.S. Code Section 1078(d). (Federally insured student loans are not subject to any interest rate limits.) Memorandum, Department of Education (DOE), to the Office of the Staff Judge Advocate, Camp Lejune, North Carolina (1 April 1993); U.S. Department of Education “Dear Colleague Letter”, GEN-01-13 (September 2001) Lenders are to liberally grant forbearances to students, but DOE interpretation that SSCRA does not apply to student Military deferments are no longer granted for student loans, but soldiers may have loan payments deferred for up to six months or more for economic hardship upon request to lender/DOE IAW 34 C.F.R. § 682.211.

4. *Moll v. Ford Consumer Finance Company, Inc.*, 1998 U.S. Dist. LEXIS 3638 (N.D. Ill. 1998) (unpub.). Military members may file private cause of action to enforce the 6% interest cap provision of 50 U.S.C. App. § 526. See also *Cathey v. First Republic Bank*, 201 U.S. Dist. LEXIS 13150 (2001).

D. Stay of Proceedings (50 U.S.C. App. § 521).

1. Who.

Both military plaintiff and defendant may request when their military duty materially affects their ability to prosecute or defend the action.

2. What Proceedings.

- a) Civil Court Hearings.

- b) Bankruptcy Debtor/ Creditor Meeting ?- Yes - In re Ladner, 156 B.R. 664 (Bankr. D. Colo., 1993).

Administrative Hearing? No. ISSUE: The new Welfare Reform Act of 1996, Pub. L. No. 104-193, §§ 325,363, 110 Stat. 2105 (1996), requires states to set up administrative proceedings to expedite handling of child support and paternity claims which are not subject to SSCRA stay protection. Drafters ignored DoD request to include SSCRA stay protections for such hearings.

- 3. When may you request a stay? Soldier may make the request at any stage of the proceedings. ISSUE: What is the impact of the Internet, video conferencing, video depositions on determinations of unavailability?
- 4. Duration of stay - Period of service plus 60 days. Key = Reasonableness!! Keefe v. Spangenberg, 533 F.Supp. 49, 50 (W.D. Okla. 1981). Court grants soldier stay request for a one month continuance, but denies soldier request for a stay until his expected date of discharge three years later.
- 5. Burden of Proof - Boone v. Lightner, 319 U.S. 561 (1943) - at discretion of trial court.
 - a) As a practical matter - assume the burden is on the service member to show service has materially affected the ability to appear in court.
 - b) Military member must show material affect.
 - (1) Unavailability to appear (no ability to take leave): ISSUE: The new Welfare Reform Act of 1996 requires that the military services must promulgate regulations to facilitate the granting of leave for service members to appear in court and administrative paternity and child support hearings. See Pub.L.No.104 – 193, § 363(b), 110 Stat. 2105 (1996); DOD Directive 1327.5, Leave and Liberty (IO 4, 10Sep.1997). See also Conrad, Note, “Child Support and Paternity Case Stay Actions Impacted

by the Welfare Reform Act of 1996", The Army Lawyer, June 1998, at 13.

- (2) Request for stay should include a date when the service member expects to be available.
- (3) Request for stay may be made by service member's commanding officer, with copy of orders. NOTE: A request for a stay by the service member or his attorney may constitute an appearance.

c) Court Discretion - if court finds material affect, the court must order a stay. If the stay request is denied, the court must make findings of fact about lack of material affect, or ensure that there is sufficient evidence in the record to warrant denial. Olsen v. Olsen, 621 NE2d 830 (Ohio 1993).

6. Default Judgments (50 U.S.C. App. § 520).

Affidavit.

- (1) Must be prepared and filed by plaintiff.
- (2) Must state sufficient facts to give court reasonable basis to determine whether the respondent is in the military. Mill Rock Plaza Associates v. Lively, 580 N.Y.S.2d 815, 153 Misc.2d 254 (N.Y. City Civ. Ct. 1990)
- (3) Failure to file an affidavit renders the judgment voidable if judgment is entered during the service member's term of service or within 30 days after termination of service.

- (4) Court-Appointed Attorney.
 - (a) Purpose. Ascertain whether the defendant is in the service and if so to request a stay on the defendant's behalf. *See State ex rel. Burden v. Smith*, 1994 WL 714505 (Ohio App 10 Dist., 22 Dec. 1994) (unpublished).
 - (b) Effect of failure to appoint – Judgment is voidable.

7. Reopening/Vacating Default Judgments, 50 U.S.C. App. § 520(4) .

- a) Military service prejudiced ability to defend and service member has a meritorious defense to all or part of the original action.
- b) Judgment must have been entered during term of service or within 30 days after termination of service.
- c) Application must be made to court during term of service or within 90 days of termination.
- d) The service member cannot have made any appearance.
 - (1) Filing an answer either pro se or through counsel is an appearance.
 - (2) Letter from Legal Assistance Attorney to court may be an appearance!
 - (3) There is hope - some things are not appearances!
 - (a) Letter from Commander to court. *Cromer v. Cromer*, 278 S.E.2d 518 (N.C. 1981) (Court does not explicitly rule on re-opening under the SSCRA, but does remand case "in the interests of justice").

- (b) Letter to opposing counsel. *Sacotte v. Ideal-Werk Krug*, 359 NW2d 393 (Wis. 1984).
(Letter to opposing counsel asserting SSCRA does not constitute an appearance.)
Opposing counsel has a duty of candor towards a tribunal.

IV. SUSPENSION OF STATUTES OF LIMITATION (50 U.S.C. APP. § 525).

A. Tolls running of state and federal statutes.

1. During the service person's period of service.
2. With respect to civil and administrative proceedings.
3. Involving the service member as either plaintiff or defendant.
4. Except for the internal revenue laws! 50 U.S.C. App. § 527.

B. Issues.

1. Career Military - *Conroy v. Aniskoff*, 507 U.S. 511, 113 S. Ct. 1562, 123 L.Ed.2d 229 (1993).
 - a) The tolling applies regardless of whether the service member is inducted, volunteers, is a one-termer or a career military member.
 - b) In addition, court held no requirement to show material affect.
2. Does "all proceedings" mean all?

- a) Board for Correction of Military Records - tolled. Detweiler v. Pena, 38 F. 3d 591 (D.C. Cir. 1994) ("any" means "any"). Detweiler overrules other case law that indicated the BCMR statute was not tolled. (Allen v. Card, 799 F. Supp. 158 (D.C. 1992) (pre Conroy), Miller v. United States, 29 Fed. Cl. 107 (1993)(post Conroy)).
 - b) Merit Systems Protection Board - tolled, Davis v. Dep't of the Air Force, 51 M.S.P.R. 246 (1991).
 - c) Bankruptcy - tolled, In re A.H. Robins v. Dalkon, 996 F.2d 716 (4th Cir. 1993). "The statute contains no exceptions and is drafted in extraordinarily broad terms...The broad, unqualified and mandatory language of section 535 leaves little room for judicial interpretation...." Id. at 718.
3. Laches. The SSCRA provision does not prevent assertion of the equitable principle of laches. See Detweiler v. Pena, 38 F. 3d 591, 595 (D.C. Cir. 1994). Laches = inexcusable delay by petitioner plus prejudice to respondent's ability to defend.

V. ARTICLE III - RENT, LEASES, INSTALLMENT CONTRACTS, MORTGAGES, LIENS AND ASSIGNMENTS (50 U.S.C. APP. §§ 530-536)

- A. Protected Persons - Active Duty personnel and dependent family members in their own right.
- B. Protection from Eviction from Leased Housing (50 U.S.C. App. § 530).
 - 1. Premises occupied - must be a dwelling place of the service member or dependents.
 - 2. Rent may not exceed \$1200 per month. - changed from \$150 by Desert Shield/Storm amendments.
 - 3. Judicial Relief Available. Court shall, upon application of service member or eligible dependent, and may, on its own motion grant the following:

- a) Stay of eviction proceedings for up to 3 months, or,
- b) Make any other "just" order.
- c) Unless the court finds no material affect.
- d) Criminal Sanctions for Landlord “self-help” eviction.

C. Termination of Pre-Service Leases (50 U.S.C. App. § 534).

- 1. Purpose: to permit lawful termination of a pre-service lease of premises by a service member entering active duty [or by his or her dependent family member in their own right (see § 536)].
- 2. Criteria for relief.
 - a) The service member need NOT show material affect.
 - b) The service member need only show:
 - (1) The lease was entered into prior to entry into military service,
 - (2) The lease was executed by or on behalf of the service member,
 - (3) The leased premises were occupied for dwelling, professional, business, agricultural, or similar purposes by the service member or the service member and his or her dependents, and
 - (4) The service member is currently in military service.

- c) Landlord may seek “equitable offset” for unreasonable costs/expenses incurred as the result of early military tenant termination, e.g., realty fees, cost of special fixtures installed at tenant request, etc. Such landlord equitable offset may be greater than the amount of tenant rent and security deposit remaining under the lease term. *Omega Industries, Inc., v. Raffaele*, 894 F.Supp. 1425 (D. Nev. 1995). *See also* Conrad, Note, *Pre-Service Lease Terminations May Be Subject to Landlord "Equitable Offsets"*, *The Army Lawyer*, April 1997, at 153.

VI. INSTALLMENT CONTRACTS AND AUTO LEASES (50 U.S.C. APP. § 531).

1. Applies only to **pre-service obligations** by either service member or spouse who can show material affect as to ability to pay on installment contracts such as appliances, furniture, and motor vehicles.
2. Prohibits self-help repossession of items purchased on installment contract.
 - a) Leased automobiles or other items arguably included if Option to Purchase Clause in lease agreement.
 - b) SSCRA does not terminate automobile leases!
3. Criminal penalties for violating repossession provisions of this section.
4. Upon service member’s showing of material affect to a court, a stay may be granted. The creditor may only seek repossession of the item purchased on installment contract by obtaining a court order after obtaining a judgment on the debt.
5. Practice Pointer in Auto Lease Cases: While you may not threaten criminal action to settle a civil matter, you may point out any potential violations of this section to a creditor or their counsel (self-help repossession), and suggest a possible settlement of the matter, by allowing the soldier to voluntarily surrender the vehicle in return for the creditor waiving all early lease termination penalties.

VII. ENFORCEMENT OF STORAGE LIENS (50 U.S.C. APP. § 535).

- A. General: Persons with storage liens on property of service members may not exercise any right to foreclose or enforce any lien during the service member's period of military service and for three months thereafter, except upon court order.

- B. Judicial Relief.
 - 1. Court shall (upon application by service member) and may upon its own motion,
 - a) Stay proceedings, or
 - b) Grant other equitable relief to conserve interests of all parties.
 - c) Unless there is no "material affect" (if the service member's ability to pay the storage charge is not materially affected by service).

- C. Criminal Sanctions. Any person who knowingly takes any action contrary to this section, or attempts to do so, shall be fined as provided in 18 U.S.C., or imprisoned for not to exceed one year, or both. 50 U.S.C. App. § 535(3). *See, United States v. Bomar, 8 F.3d 226 (5th Cir. 1993).* [Note that the United States prosecuted criminally this case on behalf of the soldier].

VIII. MORTGAGES, TRUST DEEDS, ETC. (50 U.S.C. APP. § 532).

- A. In court actions to enforce mortgage obligations, court shall (upon application by service member) and may (upon its own motion) grant relief to service member (or dependent family member pursuant to § 536) unless military service does not materially affect ability to comply with obligation.

- B. Criteria for relief.

1. Obligation is secured by a mortgage, trust deed, or other security in the nature of a mortgage upon real or personal property,
2. Obligation entered before entry into military service,
3. Property owned by service member (or dependent) before entry into military service.
4. Property is still owned by service member or dependent at time relief is sought, and
5. Military service materially affects ability to comply with terms of obligation, such breach occurring prior to or during period of such military service.

C. Judicial relief:

1. Court shall (upon application by service member) and may upon its own motion,
 - a) Stay proceedings, and/or
 - b) Grant other equitable relief to conserve interests of all parties (i.e., reduce or suspend installment payments)
 - c) unless there is no "material affect."
2. No sale, foreclosure, or seizure of property shall be valid if made during the period of military service or within 3 months thereafter, except pursuant to an agreement (§ 517), unless upon an order previously granted by the court and a return thereto made and approved by the court.

IX. ARTICLE VII - FURTHER RELIEF (50 U.S.C. APP. § 590).

- A. Stay of Enforcement of Obligations, Liabilities, Taxes (50 U.S.C. App. § 590).

1. Person may, at any time during military service or within 6 months thereafter, apply to court for relief of any obligation or liability incurred by such person prior to active service, or in respect to any tax or assessment whether falling due prior to or during active military service.
2. Court may grant stays of enforcement during which no fine or penalty shall accrue, if service materially affected ability to comply with obligation or pay tax or assessment.
 - a) There need be no default or legal action pending to receive protection, but applicant must prove "material affect." Application of Marks, 46 N.Y.2d 755 (1944).
 - b) Dependents receive protection. Morris Plan Indus. Bank of N.Y. v. Petluck, 60 N.Y.2d 162 (1946).

B. Additional SSCRA Protections.

1. Reinstatement of health insurance coverage upon release from active duty. 50 U.S.C. App. §593.
2. Suspension of Health Services and Legal Professional Liability Insurance while on active duty, refund of premiums attributable to active duty time, and guarantees of reinstatement of insurance upon termination of active duty. 50 U.S.C. App. § 592; Secretary of Defense Memorandum, March, 1999 (unpublished).
3. Durable powers of attorney (POA) for MIAs. All POAs for military are deemed durable for the entire period of imprisonment of POWs and service members in a missing status.
4. Future financial arrangements. The fact that a person has availed himself of protection under the Act, may not be reported as adverse information against him and used to deny him credit in future financial arrangements. 50 U.S.C. App. § 518.

C. SSCRA Enforcement.

1. DOJ Asst AG Letter, 11 Mar 1991, to U.S. Attorney
2. DOJ Asst AG Letter, 12 Mar 1991, to DoD Gen Counsel
3. 28 U.S.C. § 517 when in the interests of the U.S.
4. Local U.S. Attorney v. DOJ Main-Office of The Judge Advocate General (OTJAG) Legal Assistance Division
5. POC for U.S. Army OTJAG LAO – Mr. John Meixell, 703-588-6718

X. CONCLUSIONS.

- A. Preventive law is the best form of legal practice.**
- B. Armed with this information and dedicated support from DOJ and U.S. Attorneys, we can ensure our servicemembers and their families are well cared for.**

LTC Greg Huckabee, DSJA First Army, CML 404-469-3096/DSN 797-3096

SIGNIFICANT SSCRA PROVISIONS

<u>SSCRA Provision:*</u>	<u>Pre-Service Obligation</u>	<u>Service Obligation</u>	<u>Post-Service</u>
6% Interest Cap [Section 526]	Yes.	No.	No.
Civil Court Stay [Section 521]	No.(Only applies Active Duty)	Yes.	Yes. Up to 60 days
Reopen Judgment [Section 520(4)]	No.	Yes.	Yes. Judgments up to 30 days from discharge. Reopen up to 90 days from discharge.
Toll Statute of Limitation [Section 525]	No.	Yes. Civil & Admin Actions.	No.
Eviction Protection [Section 530]	No.	Yes. Rent<1200/mo	No.
Termination of Lease [Section 534]	Yes. Residential, Commercial/Prof.	No.	No.
Mortgage Foreclosure [Section 532]	Yes. Obligation was pre-service .	No.	No.
Storage Liens Protection	Yes.	Yes.	Yes. Up to 3 [Section 535(2)] months from discharge.
Installment Contract/ Auto Leases [Section 531]	Yes. (Pre-service only)	No.	No.
Anticipatory Relief [Section 590]	Yes. (Pre-service obligation, liability,penalty or tax)	Yes. (Service obligation Liability, penalty or tax)	No. May apply during service or up to 6 months after to court.

*Section Numbers keyed to SSCRA as codified at 50 App. U.S. Code.

APPENDIX A

SAMPLE SSCRA LETTERS

Sample Letter to Creditor
Reduction of Interest Rate

[LETTERHEAD]

[Date]

Legal Assistance Office

[CREDITOR ADDRESS]

Dear **[Sir or Madam]**:

I am a legal assistance attorney writing on behalf of **[CLIENT]**. **[CLIENT]** informs me that **[he/she]** is currently obligated to your company for a loan bearing an interest rate of **[%]**. I further understand that this obligation was entered into on **[DATE]**.

Since incurring this obligation, **[CLIENT]** has entered the active military service of the nation in the U.S. **[SERVICE]** on **[DATE]**. This entry into active military service has materially affected **[CLIENT's]** ability to meet this obligation. Under these circumstances, federal law prescribes the maximum interest rate which **[CLIENT]** may be charged.

The Soldiers and Sailors Civil Relief Act (50 U.S.C. App. §§ 526) prescribes a ceiling of 6% annual interest on any obligation under the circumstances described above. This interest rate must be maintained for the entire period that **[CLIENT]** is on active duty. The percentage cap includes all service charges, renewal charges, and fees. The rate is applied to the outstanding balance of the obligation as of the date of entry onto active duty mentioned above. Any interest charge above this statutory ceiling must be forgiven, not accrued.

Please ensure that your records reflect this statutory ceiling and that any charges in excess of a 6% annual rate are withdrawn. You should also be aware that federal law (50 U.S.C. App. §531) circumscribes the manner in which you may enforce certain rights under the contract, including any right to repossession of property.

I thank you in advance for your attention to this matter. Should there be any questions, please feel free to contact me at the address above.

Sincerely,

[ATTORNEY NAME]
[RANK], U.S. Army

Sample Letter to Opposing Counsel
Requesting a Stay of Proceedings

[LETTERHEAD]

[Date]

Legal Assistance Office

[COUNSEL'S ADDRESS]

Dear **[Sir or Madam]**:

I am a military legal assistance attorney writing on behalf of **[CLIENT]**. **[CLIENT]** is the defendant in an action you filed on behalf of **[OPPOSING PARTY]** in **[COURT]**. The mission of our office is to provide initial counseling to soldiers to help them make more informed decisions about their legal obligations. We are not allowed to represent soldiers in any fashion in these types of civil actions. [ELAP jurisdictions delete the prior sentence.] I am not **[CLIENT's]** attorney for the underlying matter and this letter should not be construed as an appearance or submission to jurisdiction. Rather, I am simply assisting **[CLIENT]** in protecting his interests until such time as he can obtain proper legal counsel.

[CLIENT] is currently in the active military service of the nation in the U.S. **[SERVICE]**. Federal law affords such service people certain rights prescribed by the Soldiers and Sailors Civil Relief Act. Among these rights is the stay of all legal proceedings during the period of active service when the service member's ability to conduct a defense is materially affected. 50 U.S.C. App. § 521. In this case, **[CLIENT]** informs me that he will not be able to attend any proceedings and protect his interests until **[DATE]**. This inability to appear is caused by **[REASONS]**, direct results of his military service. **[CLIENT's]** inability to attend is supported by the attached memorandum from his commanding officer.

Because **[CLIENT's]** military service prevents his appearance, I request that you advise the court of **[CLIENT's]** status and request a stay until **[DATE]**. I further request that you advise **[CLIENT]** of any action you take at **[ADDRESS]**.

Thank you in advance for your help in affording **[CLIENT]** an opportunity to participate in the legal process while meeting his obligations to the defense of our nation.

Sincerely,

[ATTORNEY NAME]
[RANK], U.S. Army

Sample Letter to the Clerk of Court
Requesting a Stay of Proceedings

(NOTE: This letter should be prepared for the signature of the client's commanding officer. At least one court has construed a letter directly from a legal assistance attorney to be an appearance causing the client to lose valuable rights!)

[LETTERHEAD]

[Date]

Commander

[CLERK OF COURT ADDRESS]

Dear **[Sir or Madam]**:

I am an officer in the U.S. **[SERVICE]** writing on behalf of **[CLIENT]**, who is the defendant in an action now pending before your court, **[CASE ID NUMBER]**. **[CLIENT]** is currently serving in the active military service of the nation at **[INSTALLATION]**. He is assigned to my command.

[CLIENT] will be unable to attend any hearings, present any type of defense, or effectively protect his interests in the matter in question until **[DATE]** because of his military duties. Until this date, **[CLIENT]** is needed by this unit to/because **[REASONS]**¹. **I am advised by legal counsel that federal law allows a stay of proceedings for service members on active duty when their ability to defend themselves is materially affected by their military service (50 U.S.C. App. § 521). In this instance, [CLIENT's] critical role in the national security mission of this command precludes his participation in court proceedings until [DATE]. He will be unable to present any defense at all due to his duties.**

Reasons should clearly outline the duties to which the soldier must attend and why he cannot take leave. Examples would be to participate in a unit deployment to the National Training Center, to deploy to Bosnia as part of the UN Implementation Force, or to prepare forces for deployment to Haiti. Whatever reason is given, the reasons why the soldier is critical to this mission must be explained.

Request that you grant a stay in the proceedings until **[DATE]** to allow **[CLIENT]** to properly attend to both of his obligations. I will personally ensure that he is placed on leave immediately following the completion of the duties described above, so that he may appear at the next scheduled court date after **[DATE]**. I should note that I am not an attorney and am not making this request based on any attorney-client relationship between myself and **[CLIENT]**. I am not representing **[CLIENT]** with regard to the proceedings pending in your court. This letter should not be considered an appearance by **[CLIENT]**. Rather, it is a request in my capacity as a commander, charged with a mission supporting the national security of this nation, that you delay the proceedings to allow this soldier to perform his critical part in that mission.

Thank you in advance for your assistance in this matter. I request that you inform myself or **[CLIENT]**, at the above address, of any action taken regarding this request.

Sincerely,

[COMMANDER NAME]
[RANK], U. S. Army
Commanding Officer