

Working with the  
military  
CPT Peter Williams

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Judge Advocate Services

- Legal representation to the command
- Trial defense for soldiers in military matters
- No civilian representation

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Military pay and benefits

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## Military pay

- Base pay
    - Rank/time in service
  - Basic Allowance for Housing
    - Rank/location/family status
    - Paternity documentation required
  - Basic Allowance for Subsistence
  - Clothing Allowance
  - Family Separation Allowance
    - \$250
    - Over 30 days active
- \*\* Option for allotments




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### DRILL PAY—EFFECTIVE JANUARY 1, 2015

Cumulative Years of Service										
Rate	1st Mo	2nd	3rd	4th	5th	6th	7th	8th	9th	10th
1st Lt						4,095.00	4,095.00	4,105.40	4,120.20	4,140.00
2nd Lt						3,684.00	3,684.00	3,700.00	3,720.00	3,740.00
3rd Lt						3,273.00	3,273.00	3,290.00	3,310.00	3,330.00
4th Lt						2,862.00	2,862.00	2,880.00	2,900.00	2,920.00
5th Lt						2,451.00	2,451.00	2,470.00	2,490.00	2,510.00
6th Lt						2,040.00	2,040.00	2,060.00	2,080.00	2,100.00
7th Lt						1,629.00	1,629.00	1,650.00	1,670.00	1,690.00
8th Lt						1,218.00	1,218.00	1,240.00	1,260.00	1,280.00
9th Lt						807.00	807.00	830.00	850.00	870.00
1st Sgt						4,095.00	4,095.00	4,105.40	4,120.20	4,140.00
2nd Sgt						3,684.00	3,684.00	3,700.00	3,720.00	3,740.00
3rd Sgt						3,273.00	3,273.00	3,290.00	3,310.00	3,330.00
4th Sgt						2,862.00	2,862.00	2,880.00	2,900.00	2,920.00
5th Sgt						2,451.00	2,451.00	2,470.00	2,490.00	2,510.00
6th Sgt						2,040.00	2,040.00	2,060.00	2,080.00	2,100.00
7th Sgt						1,629.00	1,629.00	1,650.00	1,670.00	1,690.00
8th Sgt						1,218.00	1,218.00	1,240.00	1,260.00	1,280.00
9th Sgt						807.00	807.00	830.00	850.00	870.00
1st Sp4						4,095.00	4,095.00	4,105.40	4,120.20	4,140.00
2nd Sp4						3,684.00	3,684.00	3,700.00	3,720.00	3,740.00
3rd Sp4						3,273.00	3,273.00	3,290.00	3,310.00	3,330.00
4th Sp4						2,862.00	2,862.00	2,880.00	2,900.00	2,920.00
5th Sp4						2,451.00	2,451.00	2,470.00	2,490.00	2,510.00
6th Sp4						2,040.00	2,040.00	2,060.00	2,080.00	2,100.00
7th Sp4						1,629.00	1,629.00	1,650.00	1,670.00	1,690.00
8th Sp4						1,218.00	1,218.00	1,240.00	1,260.00	1,280.00
9th Sp4						807.00	807.00	830.00	850.00	870.00
1st Sp5						4,095.00	4,095.00	4,105.40	4,120.20	4,140.00
2nd Sp5						3,684.00	3,684.00	3,700.00	3,720.00	3,740.00
3rd Sp5						3,273.00	3,273.00	3,290.00	3,310.00	3,330.00
4th Sp5						2,862.00	2,862.00	2,880.00	2,900.00	2,920.00
5th Sp5						2,451.00	2,451.00	2,470.00	2,490.00	2,510.00
6th Sp5						2,040.00	2,040.00	2,060.00	2,080.00	2,100.00
7th Sp5						1,629.00	1,629.00	1,650.00	1,670.00	1,690.00
8th Sp5						1,218.00	1,218.00	1,240.00	1,260.00	1,280.00
9th Sp5						807.00	807.00	830.00	850.00	870.00
1st Sp6						4,095.00	4,095.00	4,105.40	4,120.20	4,140.00
2nd Sp6						3,684.00	3,684.00	3,700.00	3,720.00	3,740.00
3rd Sp6						3,273.00	3,273.00	3,290.00	3,310.00	3,330.00
4th Sp6						2,862.00	2,862.00	2,880.00	2,900.00	2,920.00
5th Sp6						2,451.00	2,451.00	2,470.00	2,490.00	2,510.00
6th Sp6						2,040.00	2,040.00	2,060.00	2,080.00	2,100.00
7th Sp6						1,629.00	1,629.00	1,650.00	1,670.00	1,690.00
8th Sp6						1,218.00	1,218.00	1,240.00	1,260.00	1,280.00
9th Sp6						807.00	807.00	830.00	850.00	870.00
1st Sp7						4,095.00	4,095.00	4,105.40	4,120.20	4,140.00
2nd Sp7						3,684.00	3,684.00	3,700.00	3,720.00	3,740.00
3rd Sp7						3,273.00	3,273.00	3,290.00	3,310.00	3,330.00
4th Sp7						2,862.00	2,862.00	2,880.00	2,900.00	2,920.00
5th Sp7						2,451.00	2,451.00	2,470.00	2,490.00	2,510.00
6th Sp7						2,040.00	2,040.00	2,060.00	2,080.00	2,100.00
7th Sp7						1,629.00	1,629.00	1,650.00	1,670.00	1,690.00
8th Sp7						1,218.00	1,218.00	1,240.00	1,260.00	1,280.00
9th Sp7						807.00	807.00	830.00	850.00	870.00
1st Sp8						4,095.00	4,095.00	4,105.40	4,120.20	4,140.00
2nd Sp8						3,684.00	3,684.00	3,700.00	3,720.00	3,740.00
3rd Sp8						3,273.00	3,273.00	3,290.00	3,310.00	3,330.00
4th Sp8						2,862.00	2,862.00	2,880.00	2,900.00	2,920.00
5th Sp8						2,451.00	2,451.00	2,470.00	2,490.00	2,510.00
6th Sp8						2,040.00	2,040.00	2,060.00	2,080.00	2,100.00
7th Sp8						1,629.00	1,629.00	1,650.00	1,670.00	1,690.00
8th Sp8						1,218.00	1,218.00	1,240.00	1,260.00	1,280.00
9th Sp8						807.00	807.00	830.00	850.00	870.00
1st Sp9						4,095.00	4,095.00	4,105.40	4,120.20	4,140.00
2nd Sp9						3,684.00	3,684.00	3,700.00	3,720.00	3,740.00
3rd Sp9						3,273.00	3,273.00	3,290.00	3,310.00	3,330.00
4th Sp9						2,862.00	2,862.00	2,880.00	2,900.00	2,920.00
5th Sp9						2,451.00	2,451.00	2,470.00	2,490.00	2,510.00
6th Sp9						2,040.00	2,040.00	2,060.00	2,080.00	2,100.00
7th Sp9						1,629.00	1,629.00	1,650.00	1,670.00	1,690.00
8th Sp9						1,218.00	1,218.00	1,240.00	1,260.00	1,280.00
9th Sp9						807.00	807.00	830.00	850.00	870.00
1st Sp10						4,095.00	4,095.00	4,105.40	4,120.20	4,140.00
2nd Sp10						3,684.00	3,684.00	3,700.00	3,720.00	3,740.00
3rd Sp10						3,273.00	3,273.00	3,290.00	3,310.00	3,330.00
4th Sp10						2,862.00	2,862.00	2,880.00	2,900.00	2,920.00
5th Sp10						2,451.00	2,451.00	2,470.00	2,490.00	2,510.00
6th Sp10						2,040.00	2,040.00	2,060.00	2,080.00	2,100.00
7th Sp10						1,629.00	1,629.00	1,650.00	1,670.00	1,690.00
8th Sp10						1,218.00	1,218.00	1,240.00	1,260.00	1,280.00
9th Sp10						807.00	807.00	830.00	850.00	870.00

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## Tricare

- Sponsor enrolls
- Paternity matters for unmarried parents
- DEERS station

Conflicts Contact:  
 Michael Klemowski 1-888-276-9472  
[Usarmy.knox.hrc.mbx.tagd-deers@mail.mil](mailto:Usarmy.knox.hrc.mbx.tagd-deers@mail.mil)

DEERS Policy Issues: 502-613-8468  
 DEERS Case Analysis: 502-613-9029

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### Military Duty Status

- Active Duty
- M-Day (Drilling soldier)
- Active Guard Reserve (AGR)
- Technician (Federal Technician)

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### SCRA and UDPCVA

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### UDPCVA

- Enacted to protect service members and their relationship with their children during deployment.
- Provides specific guidance for parents and courts when dealing with deployments and custody/support issues.
- Minnesota enacted in spring of 2015.

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### Deployment and the UDPCVA

- Deploying parent must notify other parent in a record within 7 days of receiving notice of deployment.
  - Unless reasonably prevented from doing so by circumstances of military service.
- Each parent shall provide the other in a record, a plan for fulfilling the parent’s share of custodial responsibilities during deployment.

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### Parents agreement

- Parents may enter into a written agreement at any time as long as:
  - It is in writing; and
  - Signed by both parents and nonparent to whom custodial responsibility is granted.
- The agreement must also:
  - Meet requirements of Minn. Stat. 518E.201(c)

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### Modification of Agreement

- Before deployment:
  - In writing signed by both parents and any nonparent who will exercise custodial control.
- After deployment:
  - Must be agreed to in a record by both parents and any nonparent who will exercise custodial control.

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**When parties cannot agree:**

- Before deployment:
  - If motion is filed court shall conduct an expedited evidentiary hearing within 30 days of filing.
  - Best interests of child
  - Court shall issue an order no later than 30 days.
- After deployment:
  - Party not reasonably available may present evidence by electronic means.

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**Termination of agreement**

- Any agreement terminates when deploying parent returns home.
- Termination can also be made by modification or court order
- No agreement under Minn. 518E creates an independent, continuing right to caretaking authority.

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**Effect of prior order or agreement**

- Prior order designating custodial responsibility in the event of a deployment is binding.
  - Unless circumstances meet requirements of law for modification.
- Court shall enforce a prior written agreement between the parents for designating custodial responsibility.
  - Unless court finds the agreement is contrary to best interests of the child.

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### Nonparent caretaking

- Upon motion by deploying parent court may grant caretaking authority to nonparent:
  - Must be in best interests of the child;
  - Must be an adult family member of the child or to another child; and
  - Must have a close and substantial relationship with child.

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### Nonparent decision-making

- Court may grant part of a deploying parents decision-making authority to nonparent:
  - Must be an adult family member;
  - Must be in best interests of the child;
  - Deploying parent must be unable to exercise decision making authority; and
  - Must have close and substantial relationship with child.

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### Return from Deployment

- When court order has been issued, the deploying parent or appropriate commanding officer must provide notice in a record.
  - Must be given no later than seven days after receipt of service orders.
- When agreement between parents was in place, it terminates upon return.
- Parents can terminate an order at anytime after return from deployment.
- If no agreement, order terminates 60 days after return from deployment.

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# SCRA

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- ## SCRA Background Information
- 1918: Original Soldier's & Sailor's Civil Relief Act
  - 1940-2003: Soldier's & Sailor's Civil Relief Act (SSCRA)
  - 2003: Servicemembers Civil Relief Act (SCRA)
  - 2004 and 2008: SCRA Amendments

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- ## SCRA Background Information
- In general, the SCRA provides various legal and financial protections to qualified Servicemembers during their military service
  - The SCRA enables persons to devote their entire energies to the defense needs of the Nation

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### SCRA DEFINED

- 50 U.S.C. App. §§ 501, *et seq.* (Amended 2004)
  - “Protect those who have been obligated to drop their own affairs to take up the burdens of the nation.” *Boone v. Lightner* 319 U.S. 561, 575 (1943)
  - “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)

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### TO WHOM DOES THE SCRA APPLY?

- Active Duty and dependants (Army, Navy, Air Force, Marines, Coast Guard)
  - Also includes trainees (§516)
- Guard and Reserve and dependants if on military orders for 30 days or more (§511)
- Others:
  - Public Health Service Officers
  - National Oceanic and Atmospheric Officers

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### TO WHOM DOES THE SCRA APPLY?

- §519 recognizes a SM’s legal representative:
  - An attorney acting on the SM’s behalf or
  - An individual possessing a power of attorney
- Legal representative can take the same actions as SM

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**SCRA JURISDICTION**

- § 512 Subd. (a), the SCRA applies to:
  - the United States;
  - each of the States, including the political subdivisions thereof; and
  - all territory subject to the jurisdiction of the U.S.
- The SCRA applies to “. . . any judicial or administrative proceeding commenced in any court or agency in any jurisdiction subject to this Act.” §511, Subd.(b).
- SCRA does not apply to criminal proceedings.

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**When Do Protections Begin?**

- Entry on Active Duty
  
- Reserve Components - receipt of active duty orders

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**WAIVER OF SCRA PROTECTION**

- SM has option
- Can waive protections for only portion of a proceeding
- Must be in writing
- Must be in a separate writing from that of the obligation- not less than 12 point type
- Must be waived during or after period of qualifying service

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### When Do Protections End?

- Normally, on date of release from Active Duty
- Exceptions:
  - Stays: File application within 90 days after release from active duty
  - Default Judgments: File application to set aside the judgment no later than 90 days after release from active duty

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### When Do Protections End?

- Extended protections for Mortgages: Honoring America’s Veterans and Caring for Camp Lejeune Families Act of 2012
  - The SCRA will continue to provide servicemembers with foreclosure protection during the period of active duty and for nine months thereafter past the end of the current calendar year into 2013;
  - 180 days from the date of enactment (i.e., February 2, 2013), protections staying an action filed will extend to **one full year** after the period of active duty; and
  - Sale, foreclosure or seizure of property is not valid for **one full year** after the period of active duty (without court order)
  - On January 1, 2015, the SCRA’s expanded foreclosure protection will sunset, and the protection period will revert to its 2008 level: the period of active duty service plus ninety days.

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### “Material Effect” Provisions

- “Material Effect” is a recurring concept throughout much of the SCRA
- The person’s military service must materially affect the person’s ability to meet the obligation
  - Stated otherwise, the person’s military service must **prejudice** the person’s ability to meet the obligation
- Material Effect is a CENTRAL issue to the SCRA stay provision analysis

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### Default Judgments

- Applies only if the Servicemember has not appeared in the proceeding
- Basic Rule: Before a judgment is entered against any person not making an appearance, the plaintiff is required to submit an affidavit stating:
  - Whether or not defendant is in military; or
  - That plaintiff is unable to determine whether or not defendant is in military – court may require the plaintiff to file a bond
  - Affidavit needs to contain the "necessary facts to support affidavit. See Toyota Motor Credit Corp. v. Montano (In re Montano), 192 B.R. 843,846 (D. Md. 1996)

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### Affidavit Requirement

- If defendant is in military service court may not enter a judgment until court appoints an attorney to represent the defendant
  - If court appointed attorney cannot contact the defendant the no defenses are waived and attorney cannot otherwise bind servicemember
- Consequences of failing due diligence
  - Criminal charges
  - Attorney's fees

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### Reopening Default Judgements

- SCRA protects SM against default judgments if:
  - there was an error and judgment entered against SM during the period of military service or within 60 days after the end of service.
  - The SCRA allows a SM who has not received notice of the proceeding to seek the reopening of the default.
  - The non receipt of notice is the critical triggering factor for the protection provision to be triggered.

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### Reopening Default Judgments

- Upon application by Servicemember, the court SHALL:
  - Reopen any default judgment rendered while the Servicemember was on active duty or w/in 60 days from release from active duty
- Servicemember’s application must:
  - Be made while applicant is still on active military duty or not later than 90 days thereafter
  - Show material effect
  - Assert a meritorious defense to all or part of the action

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### Stay of Proceedings-Servicemember without Notice

- If Defendant is in military service, court will stay proceedings
  - Upon request of legal counsel or court’s own motion
  - Minimum 90-day stay
- Court first must determine:
  - That Defendant has not had notice of the proceedings and a stay under § 522 is not applicable
  - A defense may exist that cannot be presented without defendant’s presence; or
  - After due diligence, legal counsel has been unable to contact defendant or otherwise determine if a meritorious defense exists

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### Stay Requests – Servicemember with Notice

- After the 90 day initial stay, an additional stay can be granted by the Court.
  - Any additional stay is within the Court’s discretion.
  - To get the additional stay you would make a motion requesting the additional stay by submitting the same information required for the initial stay.

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### Statutes of Limitation

- SCRA tolls (stops) the running of the statutes
- Civil and administrative proceedings
- Applies whether the Servicemember is plaintiff or defendant
- Except for internal revenue laws!
- Does not apply to Criminal proceedings

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### Questions?

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Judge Advocate  
651-282-4683 (O)  
651-587-8027 (BB)  
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