



ASA DIX LEGAL BRIEF

A PREVENTIVE LAW SERVICE OF THE JOINT READINESS CENTER LEGAL SECTION
UNITED STATES ARMY SUPPORT ACTIVITY DIX
KEEPING YOU INFORMED ON YOUR PERSONAL LEGAL NEEDS

SERVICEMEMBERS CIVIL RELIEF ACT JUDICIAL PROCEEDINGS

The Servicemembers Civil Relief Act protects Servicemembers from certain judicial proceedings until they return from military service, deployment or overseas tours of duty. These protections include:

- [Stay of Proceedings](http://www.military.com/benefits/legal-matters/scra/judicial-proceedings#1) - <http://www.military.com/benefits/legal-matters/scra/judicial-proceedings#1>
- [Stay of Execution](http://www.military.com/benefits/legal-matters/scra/judicial-proceedings#2) - <http://www.military.com/benefits/legal-matters/scra/judicial-proceedings#2>
- [Default Judgment](http://www.military.com/benefits/legal-matters/scra/judicial-proceedings#3) - <http://www.military.com/benefits/legal-matters/scra/judicial-proceedings#3>
- [Statute of Limitations](http://www.military.com/benefits/legal-matters/scra/judicial-proceedings#4) - <http://www.military.com/benefits/legal-matters/scra/judicial-proceedings#4>

Stay of Proceedings

If the person is in military service or is within 90 days after termination of or release from military service and has received notice of a civil action or proceeding. 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.

Stay of Execution

If the defendant is on active duty (or on active duty within the last 90 days), the court may stay the execution of judgments, court actions, attachments and garnishments. If the member requests a stay, it must be granted unless the court finds the member's ability to comply with the order or judgment is not materially affected by military status.

Default Judgment

Before a court can enter a default judgment (for failure to respond to a lawsuit or failure to appear at trial) against a military member, the person who is suing the Servicemember must provide the court with an affidavit stating the defendant is not in military service. If the plaintiff files no affidavit and the defendant is in the military, the court will appoint an attorney to represent the defendant's interests (usually by seeking a delay in the proceedings). The court may also require the plaintiff to secure bond to protect the defendant against harm. If a default judgment is entered against a military member, the judgment may be reopened if the member makes an application within 90 days after leaving active duty, shows he or she was prejudiced, and shows he or she has legal defense.

Statute of Limitations

Period of military service may not be included in computing any limitation period for filing suit, either by or against the Servicemember. However, this does not apply to any period of limitation prescribed by or under the Internal Revenue Service (IRS) laws of the United States.

FILLABLE COMMANDER'S LETTER

ASA DIX LEGAL BRIEF is one of a series of Information Papers from the ASA Dix Joint Readiness Legal Section containing general legal information on topics which Legal Assistance Attorneys frequently advise on. Information provided is general in nature and does not constitute formal, specific legal advice. Consult an Attorney for specific legal advice for your particular situation. You may schedule a legal assistance appointment by calling the Joint Base Legal Assistance Division at 609-754-2010. March 2010.

Created by Nancy Holman

April 12, 2010

Opposing Party Name
Opposing Party Street Address
Opposing Party City, State ZIP

Re: ***Service Member First Name Service Member Last Name***
Case Name/Number: ***Case Name/Number***

Dear ***Opposing Party Salutation Opposing Party Last Name***:

I am the Commanding Officer of ***SM Rank*** ***Service Member First Name*** ***Service Member Last Name*** the defendant in the action you filed on behalf of ***Opposing Party Name*** in ***Civil Court Name*** scheduled for trial on ***Appearance Date***.

Due to military commitments, ***SM Rank*** ***Service Member First Name*** ***Service Member Last Name*** is not able to appear and defend in this action for the following reasons: ***Reason Service Member Cannot Appear and Protect***. ***Gender*** will not be granted leave or liberty to attend the scheduled proceeding. ***Gender*** will be able to appear in court on or after ***AvailabilityDate***.

Pursuant to the Servicemembers Civil Relief Act of 1940 (50 U.S.C. App. § 522), I respectfully request that you inform the Court and secure a postponement in the proceedings until ***SM Rank*** ***Service Member First Name*** ***Service Member Last Name*** can appear in court.

Sincerely,

Commanding Officer Name
CMDRank, ***LA military Branch***
Commanding Officer

Copy Furnished:

SM Rank ***Service Member First Name*** ***Service Member Last Name***

Enclosure: Military Orders

FILLABLE SERVICEMEMBER'S LETTER

April 12, 2010

Opposing Party Name
Opposing Party Street Address
Opposing Party City, State ZIP

Re: ***Service Member First Name Service Member Last Name***
Case Name/Number: ***Case Name/Number***

Dear ***Opposing Party Salutation Opposing Party Last Name***:

I am ***SM Rank*** ***Service Member First Name*** ***Service Member Last Name***, the defendant in the action you filed on behalf of ***Opposing Party Name*** in ***Civil Court Name***.

I am presently on active duty in the Armed Forces of the United States and am assigned to ***Unit***. I am afforded certain rights under the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501-591. Section 522 of the Act requires the court to grant a stay of the proceedings when the defendant's military service materially affects my ability to conduct a defense. In this case, I will be unable to attend any proceedings of the court in this matter as a direct result of my military service.

I will be unable to appear and protect my interests in this case until ***AvailabilityDate***. Therefore, request you secure a stay of all proceedings until such time as my ability to present a defense is no longer materially affected by my military service. Because I cannot appear at this time, I request that you advise the court of my military status and request a stay until ***AvailabilityDate***.

This letter is neither a submission to jurisdiction without lawful service nor an appearance by or on my behalf. Nor is it to serve as any form of answer to any petition filed by the plaintiff.

My mailing address is ***Service Member Address Line 1*** I request that you advise me of any action you take concerning this case.

Sincerely,

IF Rank = "Mr." OR Rank = "Ms."