

ATCH-2

**Sample Motion for Stay of Proceedings Under
Servicemembers Civil Relief Act (SCRA)**

[HEADING OF CASE]

MOTION FOR STAY OF PROCEEDINGS

Pursuant to the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. § 522, the defendant moves this court for [an initial 90-day stay of proceedings][a further stay of proceedings], showing that his ability to defend herein is materially affected by his military duties. In support of this motion and in compliance with the SCRA, the defendant has included --

As ATCH 1, a letter or other communication that:
states the manner in which current military duty requirements materially affect the defendant's ability to appear, and
gives a date when the defendant will be available to appear; and

As ATCH 2, a letter or other communication from the defendant's commanding officer stating that:
the defendant's current military duty prevents appearance, and
that military leave is not authorized for the defendant at the time of the letter.

WHEREFORE the defendant prays that this court grant him a stay of proceedings until [date] and such other relief as is just and proper.

Janet A. Smith, Attorney for Defendant
123 Bartlett Street, Salisbury, NC 26799
919-555-1234

Date:

.....
Encl #1

[While this example is written by the defendant, the letter, affidavit, e-mail or other communication may be written by the defendant's military legal assistance attorney (JAG officer), the supervisor or commander of the servicemember, or someone else in a position to know and relate the facts required. It may be addressed to the court, the clerk, the presiding judge, the defendant's attorney, opposing counsel or even, as below, "To Whom It May Concern." While the example here gives limited information,

a good letter should set out the facts in detail -- not merely conclusions - as to how the defendant's military duties adversely affect his ability to prepare and present the case, including appearances at depositions, responses to interrogatories and document requests, and appearance at trial. Although not required by the SCRA, it is a wise idea to set out how much leave the defendant has accrued, whether he has asked for leave, and whether the request has been approved or denied, including who approved or denied it, the date of such action, the limitations, if any, on an approved leave, etc. The purpose of this is to show that the defendant is exercising good faith and due diligence in his application for a stay.]

Sergeant Leopold Legume, SSN 123-45-6789
Company C, 3d Battalion
123d Underground Balloon Regiment
V Corps, U.S. Army
APO AE 91099

[date]

TO WHOM IT MAY CONCERN:

My current military duty requirements materially affect my ability to appear in the following manner:

I am currently serving as a truck driver in the above unit at Camp Bondsteel in Kosovo. My tour of duty is for 180 days, beginning February 1, 2004. I was recalled to active duty in the U.S. Army from my assignment in the Army Reserve, which is the 122d Transportation Battalion, Salisbury, North Carolina.

I am in the field every day of the week, and I am unavailable to appear at my hearing on child support. I have asked for one week's leave in order to fly back to North Carolina and attend the hearing. This was denied by my commander.

I need to be personally present in court on my hearing date of May 1, 2004, to testify as to my compensation, both civilian (before the Reserve call-up) and military (a substantial reduction from my civilian pay), my reasonable living expenses (before and after the call-up) and certain bills of the plaintiff that I have taken over at her request since the last child support order herein that would constitute grounds for a variance from the Child Support Guidelines.

I will be available to appear on or after September 10, 2004

[signature of defendant]

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Encl #2

Major Regina Richards, Commander
Company C, 3d Battalion
123d Underground Balloon Regiment
V Corps, U.S. Army
APO AE 91099

[date]

TO WHOM IT MAY CONCERN:

1. I am the commanding officer of SGT Leopold Legume, SSN 123-45-6789.
2. His current military duty prevents his appearance in court on May 1, 2004.
3. He has requested one week's leave for this court appearance. I denied his request, and military leave is not authorized for him at this time.

[signature of commanding officer]