

Stateside Legal™

Self-Help Sample Forms Packet

Motion for Stay of Proceedings (Protections under the Servicemembers Civil Relief Act)

This self-help resource was created by the Stateside Legal Project. Stateside Legal provides these sample forms and information free of charge to individuals with military connections (IMC). These forms are not based upon any specific state law or jurisdiction. They are intended as samples of how to use the protections of the Servicemembers Civil Relief Act (SCRA) to assist active duty members of the military.

READ ALL INSTRUCTIONS AT THE END OF THIS PACKET VERY CAREFULLY.

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DISCLAIMER: The Stateside Legal Information Series is produced by the Pine Tree Legal Assistance of Maine®, Arkansas Legal Services Partnership®, and the Legal Services Corporation®. These organizations promote or provide free legal services to eligible low-income people. Additional information can be found at www.lsc.gov. This sample form packet is given to you as a guide to help you generally understand the way legal matters are handled. Local courts interpret things differently. The information and statements of law contained in this fact sheet are not intended to be used as legal advice. Before you take any action, talk to an attorney and follow his or her advice. Always do what the court tells you to do.

IN THE _____ COURT OF _____ COUNTY, (INSERT STATE)
_____ DIVISION

PLAINTIFF

vs.

Case No. _____

DEFENDANT

MOTION FOR STAY OF PROCEEDINGS

Pursuant to the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. § 522, the defendant, **(SERVICE MEMBER'S FULL NAME)** moves this court for **(select either an initial 90-day stay of proceedings or a further stay of proceedings)**. **(His/her)** ability to defend is materially affected by **(his/her)** military duties. In support of this motion and in compliance with the SCRA, the defendant has included:

WHEREFORE the defendant prays that this court grant **(him/her)** a stay of proceedings until **(AVAILABLE DATE)** and such other relief as is just and proper.

Respectfully Submitted,

Service Member Rank, Full Name
Service Member Address

Date: _____

IMPORTANT NOTICE: This is a **Sample Motion Form**. It is based on a federal law that applies throughout the U.S. However, each state has its own rules of court. These rules include standards about the contents and formatting of court pleadings. Consult with your local court about local rules before relying on this **Sample Form and the attached Information**.

SAMPLE LETTER SAMPLE #1 (FROM SERVICE MEMBER)
EXHIBIT: _____

DATE

SERVICE MEMBER RANK, FULL NAME
SERVICE MEMBER ADDRESS

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 (STATE YOUR STATUS AND WHY YOU CANNOT ATTEND THE HEARING). My tour of duty is for (TOUR OF DUTY LENGTH) days, beginning (TOUR OF DUTY START DATE). I requested leave in order to attend the hearing. This was denied by my commander.

I need to be personally present in court for my hearing that is currently scheduled for (HEARING DATE). I will be available to appear on or after (AVAILABLE DATE).

Service Member Rank, Full Name

LETTER SAMPLE # 2 (FROM SERVICE MEMBER'S COMMANDING OFFICER)
EXHIBIT: _____

DATE

COMMANDING OFFICER
COMMANDING OFFICER SERVICE BRANCH
COMMANDING OFFICER ADDRESS

Re: *SERVICE MEMBER RANK, FULL NAME – Denial of Leave for Court Appearance*

To Whom It May Concern:

I am the commanding officer of (SERVICE MEMBER RANK, FULL NAME) », SSN ____ - __ -
_____.

(His/her) current military duty prevents his appearance in court on (HEARING DATE). He/she has requested leave for this court appearance. I denied this request, and military leave is not authorized for (SERVICE MEMBER RANK, FULL NAME) at this time.

Commanding Officer

Law You Should Know: The purpose of the Servicemembers Civil Relief Act (SCRA) is to provide help to service members that have difficulty meeting financial and legal obligations because of military service. If you are sued, then the SCRA may provide an automatic 90-day stay of the lawsuit. But you need to apply or request this stay. This applies to all judicial and administrative hearings.

Any member of the uniformed services on active duty is covered under the SCRA. This includes:

- Reserve component personnel called to active duty
- Coast Guard personnel
- Public Health Service
- National Oceanic and Atmospheric Administration.

About this Form: Carefully read over these forms and letters. Make sure the information you have given is correct and complete. The forms and letters in this packet are not based upon any specific state law or jurisdiction. The sample *Motion for a Stay of Proceedings* will likely need to be modified before you use it in your jurisdiction. This is a sample form for requesting either the original 90-day stay or for requesting another extension after the original 90-day stay.

You will need this motion and the following three (3) statements. They should either be included in the motion or provided with the motion as exhibits:

- A statement of how your current military services stops you from going to court;
- A statement of when you can go to court (likely date); and
- A statement from your CO about how your current military service prevents you from going to court and that you are not allowed military leave at this time

Filing Your Motion

Different jurisdictions will have different requirements for filing documents with the court. You may be able to locate your jurisdiction's Rules of Civil Procedure online and review the requirements by going to your state's judiciary (court) website. Or you can ask the court clerk for information about filing and serving motions.

Generally, to file a pleading involving a lawsuit, you can mail the pleading and attachments to the court clerk where the lawsuit has been filed. You also have to notify the other party. So make one copy for yourself and one copy to the other side's lawyer. It **may** be enough just to mail their lawyer a copy of what you filed with the court. Again, your state or local rules will specify how you must notify the other party. You must always follow the local rules of procedure.

Also send a self addressed/stamped envelope with your pleading so the court clerk can send you back two copies of the file marked pleading. One of the copies should be sent to the opposing party and the other is for your records.

More Information: For information about the Servicemembers Civil Relief Act or many more topics about individuals with military connections, visit www.statesidelegal.org or contact your local Judge Advocate General's Corps office.

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