

CHAPTER 12

# *STAYS OF PROCEEDINGS*

## **What is a Stay of Proceeding?**

Stays of proceedings are court orders to halt further legal actions due to unfair circumstances for one or more parties.

Section 202 of SCRA allows a servicemember to apply to the court for a stay of proceeding if the following conditions are met –

- The servicemember must be in military service or within 90 days after termination of or release from military service
- The servicemember has received notice of the action or proceeding

Applications for stays must also follow specific guidelines –

- A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.
- A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

Applications do not have to be in writing but I would take the extra effort to do so to avoid any future disputes regarding just what was communicated. The requirements call for you and your commanding officer to state that the military service is materially affecting your ability to appear plus a date of availability. If you communicate this verbally then there is a chance it will not be transferred properly.

Upon receipt of the properly filed application, the court may on its own motion, shall stay the proceedings for at least 90 days.

Another important point to cover is that an application for a stay does not constitute –

- An appearance for jurisdictional purposes
- A waiver of any substantive or procedural defense

This means that you are not considered as appearing to satisfy jurisdictional purposes or are waiving your defense.

Section 202 also allows for an additional stay to be applied for (either at the same time as the first or at a later time). The requirements are the same for application as the first. However, the court has the discretion to either grant the additional stay or refuse.

If the court refuses the application for the additional stay, then they must appoint council to represent the servicemember in the proceeding.

## **How Does it Apply To Me?**

Basically, you are protected from adverse actions against you while you are in military service.

If you are sued in a civil suit, and you are in military service that is materially affecting your ability to appear to defend yourself, then you may file the proper application and get an extension.

If that is not enough time, then you can file for a second stay.

If the court denies a second stay, you will be appointed an attorney to represent you.

## **Time Limits for Filing a Stay**

The time limits for Stays are very specific. The servicemember must be in military service or within 90 days after termination of or release from military service. On the 91<sup>st</sup> day you will not be able to get an automatic stay of proceedings.

## Sample of Stay of Proceedings

[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] or [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 Encl #1, a letter or other communication that:

- states how 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 Encl #2, a letter or other communication from the defendant's commanding officer stating that:

- the defendant's current military duty prevents his appearance, and
- that military leave is not authorized for him 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.

\_\_\_\_\_ Date:

Roger T Freeman, Attorney for Defendant  
186 Main St. Little Rock, AR 72211  
824-447-8989