



How to Request a Stay of Proceedings in Military Cases

Today there are over 100,000 members of the Reserve and National Guard who have been mobilized under Department of Defense orders. When a trial or motion hearing is pending, sometimes the client is unavailable because he is a member of the Guard or Reserve who is mobilized, or is on active duty with the armed forces and is deployed elsewhere. So long as no objection to the court's jurisdiction is planned, the servicemember's attorney should file a motion for a stay of proceedings under the SSCRA (Soldiers' and Sailors' Civil Relief Act) in order to delay the court action until the client becomes available.

Sample Motion for Stay of Proceedings Under Soldiers' & Sailors' Civil Relief Act

[HEADING OF CASE]

The defendant, pursuant to 50 U.S. Code Appendix Section 521 (Soldiers' and Sailors' Civil Relief Act), hereby moves this court for a stay of proceedings, showing to the court that his ability to defend herein is materially affected by his military duties, as follows:

[Here set out facts in detail, not merely conclusions, as to how client's ability to prepare and present case, including appearances at depositions and trial, are adversely affected by military service. It is a wise idea to set out how much leave the client has accrued, whether he or she 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. You need to show that your client is exercising good faith and due diligence in his application for a stay. You should also explain why the client's personal presence is necessary. Example:

- 1. On November 11, 2003, the defendant was recalled to active duty with the U.S. Army. He is a staff sergeant (SSG) with the Army Reserve, with his drill assignment at the 122d MP Brigade in Salisbury, North Carolina. He reported for duty at Ft. Benning, Georgia, on November 20 and spent the next ten days there in-processing. He was then sent to Camp Bondsteel in Kosovo for "Force Protection Duties" as an MP (military policeman) for 180 days.*
- 2. When he found out about the December 1, 2003 hearing date for plaintiff's motion to increase child support, he immediately contacted his commander, Captain Jane Green, to request leave for that week. He was turned down and told that he cannot have leave until May of 2004.*
- 3. The defendant needs to be personally present in court to testify as to his compensation, both civilian (before the Reserve call-up) and military (a substantial reduction from his civilian pay), his reasonable living expenses (before and after the call-up) and certain bills of the plaintiff that he has taken over since the last child support order herein that would constitute grounds for a variance from the Child Support Guidelines.]*

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

[signature of attorney, address, date, and verification by client or separate affidavit of facts to support the above motion; also certificate of service]