

# Servicemembers Civil Relief Act

Qualifying military service,  
material effect, and stays

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N.C. Gen. Stat. §§ 127B-25–36  
Federal SCRA, 50 U.S.C. §§ 3901–4043

Bench-focused overview by Judge April Wood, North Carolina Court of Appeals



## WHEN THE DEFENDANT HAS NOT APPEARED

### In re: Branch — the court's first checkpoint

In re: Branch, 367 N.C. 733 (2015), the North Carolina Supreme Court examined the requirements of the SCRA that apply when a defendant has not made an appearance in a civil proceeding. The opinion is a reminder that the SCRA applies to all civil cases, including family law cases, and that we have servicemembers throughout our state, not just in areas with military facilities.



#### WHAT DOES THE SCRA REQUIRE?

##### 01 VERIFY

Before entering judgment, require the plaintiff's affidavit stating whether the defendant is in military service — or that the plaintiff cannot determine that status.

##### 02 CHECK THE RECORD

The affidavit must show the facts supporting the military-status determination.

##### 03 THEN PROCEED

If the affidavit does not establish military service, the court may proceed, while retaining authority to protect the defendant's rights under the Act.

**Judicial takeaway: NO AFFIDAVIT → NO JUDGMENT**

# What are the provisions for reopening a default decision?

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The SCRA protects servicemembers from default judgments and gives them an opportunity to defend the action.

## Requirements under 50 U.S.C. § 3931(g)

- Apply to the court or agency that entered the original decision.
- Judgment entered during military service or within 60 days after termination or release.
- Apply during service or no later than 90 days after termination or release.
- Show military service materially affected the ability to defend the action.
- Show a meritorious or legal defense to the action or some part of it.

## A meritorious defense matters

Reopening requires a defense with merit. Military service alone does not satisfy the statutory test.

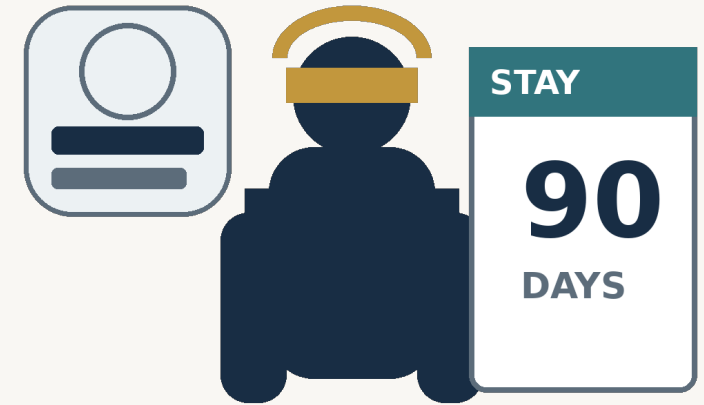
The motion should clearly identify the defense and supporting facts so the court has a sufficient basis to rule.

**When all requirements are met, the court SHALL reopen the judgment to allow a defense.**

## WHEN THE SERVICEMEMBER HAS APPEARED

### Roybal v. Rauli — the stay inquiry

In a recent opinion, the North Carolina Court of Appeals examined the requirements of the SCRA when a servicemember has made an appearance in a civil case and has requested a stay or a continuance of the proceedings due to a need to participate in military service. In *Roybal v. Rauli*, 927 S.E.2d 413 (N.C. App., Feb. 4, 2026), the Court of Appeals held that the trial court violated the SCRA when it denied a request by a member of the U.S. Army Reserves for a continuance of a hearing to address a request to modify a custody order.



**FEDERAL § 3932**

**If the statutory requirements are met, the court SHALL stay the proceeding for not less than 90 days.**

**90 DAYS**

#### THE TWO WRITTEN SHOWINGS

##### 1 SERVICEMEMBER

Military duty materially affects the ability to appear + a date when the servicemember will be available.

##### 2 COMMANDING OFFICER

Military duty prevents appearance + leave is not authorized at the time of the communication.

Additional stay may be requested; if denied, appointment of counsel may be required.

# The threshold inquiry has three separate parts

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01

## Covered person

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Does the party satisfy the definition of servicemember under G.S. 127B-27(4)? Residence matters for federally defined servicemembers; an NC Guard member is separately included.

02

## Qualifying service

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Does the service fit federal SCRA service, NC Guard active duty more than 30 consecutive days, or comparable other-state duty more than 30 days?

03

## Material effect

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Does military service materially impair the ability to litigate or comply with the obligation at issue? This is a fact-specific finding.

**Do not use “active soldier” as a substitute for the statutory definitions.**

# G.S. 127B-27(3) recognizes three routes to qualify as “military service”

| ROUTE                             | STATUTORY HOOK                               | BENCH CHECK                                                                          |
|-----------------------------------|----------------------------------------------|--------------------------------------------------------------------------------------|
| <b>Federal SCRA service</b>       | Service within 50 U.S.C. § 3911(2)           | Apply the federal definition; do not assume all Guard or Reserve activity qualifies. |
| <b>NC Guard—State active duty</b> | Governor’s order under Chapter 127A          | Must exceed 30 consecutive days.                                                     |
| <b>Other-state Guard duty</b>     | Comparable order by another state’s governor | Must exceed 30 consecutive days; covered servicemember status still must be shown.   |

Exactly 30 days is not “more than 30 consecutive days.”

# Federal SCRA coverage is narrower than “currently in the military”

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## GENERALLY INCLUDED

- Active duty under 10 U.S.C. § 101(d)(1)
- Certain Guard duty under 32 U.S.C. § 502(f)
- Commissioned NOAA and Public Health Service service
- Certain lawful absences from covered duty

## DO NOT PRESUME

- Weekend drill alone
- Inactive-duty training alone
- Reserve or Guard membership without qualifying orders
- A label such as “active soldier” without the orders

**For § 502(f) Guard duty, confirm federal authorization, national-emergency response, and more than 30 consecutive days.**

# Orders establish status; the record establishes material effect

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## Status evidence

- Military orders or official verification
- Authority: federal, NC Governor, or other governor
- Start date, anticipated end date, and duration
- Duty location and operational restrictions

## Material-effect evidence

- Specific inability to appear or prepare
- Communication, leave, travel, or mission constraints
- Availability of counsel and remote participation
- Concrete dates—not generalized hardship

**A military order proves duty status; it does not necessarily prove that litigation ability is materially affected.**

# An application changes the court's obligation under G.S. 127B-31

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At any stage of any civil action or proceeding in which a servicemember engaged in military service is a party, the court:

## COURT'S OWN MOTION

### **MAY stay**

The court may make this decision at any stage of a civil action or proceeding involving a servicemember engaged in military service.

**The court retains discretion.**

## APPLICATION BY OR FOR SERVICEMEMBER

### **SHALL stay**

The stay is mandatory UNLESS the court finds that military service does not materially affect the servicemember's ability to litigate.

**The exception requires a finding.**

**Timing: during military service and for 60 days after termination of service.**

# The federal SCRA supplies a separate stay procedure

| ISSUE               | FEDERAL • 50 U.S.C. § 3932                                                                                                   | NORTH CAROLINA • G.S. 127B-31                                                          |
|---------------------|------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| Trigger             | Notice of the action<br>Application during military service or within 90 days after termination                              | Notice of the action<br>Application during service or within 60 days after termination |
| Initial relief      | Mandatory stay of at least 90 days when statutory application requirements are met                                           | Stay required unless court finds no material effect on ability to litigate             |
| Application content | Facts showing material effect and availability; commanding officer communication (some writing- usually in form of a letter) | State section does not list the same documentary requirements                          |
| Additional stay     | Available on further application; denial may require appointment of counsel                                                  | Not separately detailed in G.S. 127B-31                                                |

Best practice: identify the source of authority in the ruling and avoid importing one statute’s procedure into the other without analysis.

# A proper ruling should answer five questions:

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- 1 — Who is the covered servicemember?
- 2 — What orders and authority govern?
- 3 — Does the duration satisfy the statutory route?
- 4 — How is litigation ability materially affected?
- 5 — What relief, duration, and review date are appropriate?

## RECORD

Orders

Duration

Material effect

Requested relief

If relief is denied, state the finding on material effect and the evidence supporting it.

# The label is not the proof

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“Active military” begins the inquiry.

The orders identify the service.

The record shows whether there is material effect.

Ask for proof before deciding relief.



# Three hypotheticals expose the common classification errors

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01

## 14-day State Guard activation

Does not satisfy the state route's "more than 30 consecutive days requirement." Check independently for any federal route.

02

## 60-day NC Guard activation

Qualifying state military service if ordered by the Governor under Chapter 127A. Still decide if covered person and material effect.

03

## Reservist on federal active duty

Likely within the federal definition if the orders place the member on qualifying active duty. Confirm residence for NC statutory coverage and assess material effect.

**Classification is only the beginning; relief turns on the specific statute and the record.**

# Bench checklist:

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- ✓ **Identify the asserted statute: federal SCRA, North Carolina Act, or both.**
- ✓ Make findings on covered-person status and the precise military-service route.
- ✓ Verify the orders, issuing authority, dates, and duration.
- ✓ Address material effect with case-specific facts.
- ✓ **State whether the stay is discretionary or mandatory under the invoked provision.**
- ✓ Define the stay's scope, end point, status-report obligations, and review date.