



## TORII LEGAL ASSISTANCE

OFFICE OF THE STAFF JUDGE ADVOCATE



# BEING SUED BUT CAN'T GET TO COURT?

*Visit legal assistance soon! If you need a private attorney to represent you they may refer you.*

Did you receive a certified letter commanding you appear in a courtroom 7,000 miles away five days ago? Have you recently phoned home from overseas to learn that you received some "official looking papers" from a magistrate or justice of the peace? Have you been denied credit because of an "outstanding judgment" against you from a court you never heard of? If you've answered yes to any of these questions you should be interested in the protections afforded to service members by the Servicemembers Civil Relief Act (SCRA).

The SCRA is a federal law that may protect soldiers on active duty. One part of the law protects military members from default judgments in state courts. Congress enacted it understanding that military duty may prohibit military members from defending themselves in court. Because of mobilizations, field exercises, and frequent moves and address changes, some soldiers may not even be aware they are being sued.

The law requires plaintiffs and courts to determine whether a defendant is on active duty in military service before any court issues a default judgment. A soldier on active duty may request that the court appoint an attorney to represent her before any judgment. If the soldier's duty materially interferes with her ability to respond to the law suit, the soldier or the court appointed attorney may request that proceedings be stopped. This "stay" of proceedings, however, is not permanent and will be lifted as soon as the soldier's duty no longer interferes. This usually means until the soldier is back from the field or until the soldier can take leave to travel to the States. The law does not make soldiers immune from suit and usually overseas duty is not, by itself, sufficient justification to delay a court proceeding.

A soldier who has already suffered a default judgment may be able to open that judgment by showing that the military duty materially affected the ability to make a defense and that he actually has a meritorious defense. Also, the judgment must have been entered while the soldier was on active duty or within 60 days of their release from active duty service, and the soldier must request the relief while on active duty or within 90 days of release.

The SCRA provides substantial protection to soldiers. However, these rights must be asserted before they will help. The most important part of protecting your interests is taking the initiative and using the resources available to you - consult the Torii Legal Assistance Office for advice.