

The SCRA and Juvenile Proceedings

**Note this post has been amended to reflect the December 2015 recodification of the [SCRA](#)*

Earlier posts address the SCRA in [family law actions](#) and [non-judicial foreclosures](#). It's my turn to address the SCRA's application to abuse, neglect, dependency (A/N/D), and termination of parental rights (TPR) actions.

When and Why Does the SCRA Apply?

The SCRA applies to any judicial or administrative proceeding, except for criminal proceedings. 50 U.S.C. § 3912(b). There is no exception for A/N/D or TPR actions, which are “**child custody**” proceedings. [G.S. 50A-102\(4\)](#). Child custody proceedings are specifically referenced in the SCRA. 50 U.S.C. § 3931(a) and -3932(a).

The purpose of the SCRA is twofold:

- provide for and strengthen national defense by enabling servicemembers to focus on defending the nation
- by providing “for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.”

50 U.S.C. § 3902.

The SCRA “must be read with an eye friendly to those who dropped their affairs to answer their country's call. (citations omitted).” [Gordon v. Pete's Auto Serv. of Denbigh, Inc.](#), 637 F.3d 454, 458 (4th Cir. 2011).

NC is the state with the fourth largest military population, so the SCRA is particularly important here. The SCRA will apply when a servicemember has not made an “appearance” in a juvenile proceeding and/or when a servicemember has asserted rights under the SCRA by alleging that his or her military service affects his or her ability to participate in the action.

The Affidavit

When a respondent party has not made an appearance in the case, the **first inquiry** must be to determine whether that respondent is a servicemember. DSS may obtain information about a respondent's military status in a variety of ways:

- Ask the respondent or someone who knows him or her,
- When identifying and notifying the child's adult relatives of the child's removal [\[G.S.](#)

[7B-506\(h\)](#), [-800.1\(4\)](#), [42 U.S.C. 671\(a\)\(29\)](#)], ask those relatives about their knowledge of the respondent's military status,

- Ask the county's IV-D child support agency if it has information about the respondent's military status and/or civilian employment, and/or
- Conduct a free search on the Department of Defense website: <https://www.dmdc.osd.mil/appj/scra/welcome.xhtml>.

An affidavit for each respondent who has not "appeared" in the action must be filed before "a judgment" is entered. A "judgment" includes any order, final or temporary. 50 U.S.C. § 3911(9). Therefore, the affidavit must be filed before a **nonsecure custody order** can be entered. This may be as soon as the filing of the A/N/D petition if a nonsecure custody order is sought at that time. The affidavit must assert:

- respondent is/is not in military, or petitioner is unable to determine the respondent's military status, and
- the necessary facts that support the affidavit.

50 U.S.C. § 3931(b)(1).

Importantly, the information required in the affidavit may be contained in the **verified A/N/D petition** as opposed to a separate document. 50 U.S.C. § 3931(b)(4).

If a TPR proceeding is commenced by someone other than DSS who has standing pursuant to [G.S. 7B-1103](#), and the respondent parent has not "appeared" in the action, that petitioner must file the affidavit before the court may enter an order. An unpublished opinion from West Virginia held a TPR was improper when it was based upon service by publication for a father who was believed but not known to be in the military and a thorough and diligent search regarding his military status was not conducted as required by the SCRA. *In re C.K.*, 12-1279, 2013 WL 5788570 (W. Va. Oct. 28, 2013).

Can a Nonsecure Custody Order Be Entered?

If the affidavit or verified petition shows the **respondent is not in the military**, the court may issue the nonsecure custody order and proceed with the case as usual.

If the affidavit or verified petition shows the **respondent is in the military**, and that respondent has not "appeared" in the action, the SCRA requires that the **court appoint an attorney** for that servicemember. 50 U.S.C. § 3931(b)(2). In A/N/D and TPR actions, attorneys are provisionally appointed to all respondent parents, [G.S. 7B-602; -1101.1](#), so the court can enter the nonsecure custody order at any time after provisional counsel is appointed. The court should specify in the order appointing counsel that the responsibilities of the appointment include performing the duties required by the SCRA:

- locate the servicemember,
- determine if there is a meritorious defense, and
- consider whether to request a stay of the action.

If a respondent is a guardian, custodian, or caretaker, there is no appointed counsel pursuant to [G.S. 7B-602](#) and [-1101.1](#). The SCRA requires the court appoint an attorney for that respondent if he or she has not “appeared” in the case before an order is entered.

If the affidavit shows that DSS is **unable to determine** whether respondent is in the military, the court may enter the nonsecure custody order.

The Stay Provisions

A stay may occur when a servicemember:

- has not made an appearance (50 U.S.C. § 3931(a)), and/or
- has actual notice of the case and has made a request for a stay in compliance with the requirements of 50 U.S.C. § 3932.

NC has not addressed how a stay under the SCRA impacts specific **statutory timeframes governing A/N/D and TPR** actions. However, adjudicatory hearings for A/N/D and TPR cases may be continued “in extraordinary circumstances when necessary for the proper administration of justice.” [G.S. 7B-803, -1109\(d\)](#). And, a California case holds the mandatory stay provision of the SCRA overrides the time limits for child welfare proceedings given the express intent of Congress to apply the stay provisions to state child custody proceedings. [In re A.R.](#), 170 Cal. App. 4th 733 (2009).

“Stay” is not defined in the SCRA. Black’s Law Dictionary (10th ed. 2014) defines “stay” as:

1. The postponement or halting of a proceeding, judgment, or the like.
2. An order to suspend all or part of a judicial proceeding or a judgment resulting from that proceeding.”

Where can a court look to guidance when determining what the stay means for juvenile proceedings when the court has responsibility as *parens patriae* to provide for the general welfare of any child within its jurisdiction? *Lynch v. Lynch*, 302 N.C. 189 (1981) *on reh'g*, 303 N.C. 367 (1981). The following may provide guidance:

- The purpose of the SCRA to protect servicemembers balanced with the purpose the Juvenile Code ([G.S. 7B-100](#)) to keep children safe while protecting the rights of parents and juveniles.
- [G.S. 7B-1003](#) addressing the court’s authority to enter temporary orders affecting the

custody or placement of the juvenile as the court finds to be in the best interests of the juvenile but inability to proceed with a TPR when an appeal has been made.

- An Arkansas opinion, [Lenser v. McGowan](#), 358 Ark. 423 (2004), which involves a divorce initiated by the service member that allowed for a temporary order to be issued granting custody to the child's mother over the servicemember's mother (the child's grandmother) before it issued the stay under the SCRA.

It appears that a temporary custody order may be entered, but the SCRA stay requires holding any part of the proceeding that may result in an order that has a more permanent effect to be held in abeyance. That likely means the adjudication, permanency planning, guardianship, or termination of parental rights.

Are Time Limits Tolled?

Yes; 50 U.S.C. § 3936 states "the period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court... against the servicemember...." Therefore, the time periods designated in [G.S. 7B-1111](#) that list the grounds for a TPR cannot be applied during the time a servicemember is engaged in military service. [Beaver v. Fountain](#), 208 N.C. App. 174 (2010); [In re Adoption of J.D.P.](#), 198 P.3d 905, 907 (Okla. Civ. App. 2008).

There's more to say, but I'm already over my word limit. What are your thoughts?