

**Group Legal Services Association
Solo, Small Firm, and General Practice Section
2014 Annual Conference
May 1-3, 2014, Las Vegas, Nevada**

When Your Client is a Soldier

Thursday, May 1

2:50 pm - 3:50 pm

**Presenter: Alan Fowler, Alan Fowler Law
Captain Veronica Bath, United States Air Force**

Materials Created by: Lt. Michael O. Walker, Office of the Staff Judge Advocate



Lt. Michael Walker

Lt. Walker serves as staff attorney working for Staff Judge Advocate for Commander Ninth Coast Guard District, a 1-star Admiral. He is essentially an in-house counsel for Admiral and staff elements for the District. Practice encompasses military justice (courts-martial), advising investigations, conducting ethics reviews, advising on real property transactions, reviewing memoranda of agreement, real-time advice to tactical and law enforcement operations, international law, intelligence operations and oversight.



Alan Fowler

Alan is a trial lawyer, based in Key West, Florida. He also maintains a passion practice, as a culinary lawyer. He attended the University of Central Florida and Mercer University School of Law. He is a former Navy JAG Officer, where he represented service members in criminal and non-criminal matters and he represented Naval Air Station Key West as its counsel. He left the military in pursuit of Steve Jobs' message that "It's better to be a pirate than join the navy," by starting his own law firm, emphasizing on his professional passion, trial law, and his personal passion, culinary arts.



Captain Veronica Bath

Captain Veronica Bath is the Chief of Labor Law, USAF Warfare Center (USAFWC), Nellis AFB, NV. The USAFWC develops innovative cross-domain leaders and capabilities through responsive, realistic, and relevant Air Force and joint operational testing, tactics development, and advanced training in air, space, and cyberspace; integrated at the tactical and operational levels of war. The USAFWC is headquarters for four wings and one named unit in 22 states across 34 locations, commanding 11K Total Force Amn.

Captain Bath earned her commission through the Reserve Officer Training Corps Educational Delay Program in May 2008. She attended the University of Virginia and graduated with a Bachelor of Arts Degree in American Studies and English in May 2008. Subsequently, she attended the University of Virginia School of Law and graduated in May 2011. She is admitted to practice law in Virginia as well as before the United States Air Force Court of Criminal Appeals and the Court of Appeals for the Armed Forces.

**WHEN YOUR
CLIENT IS A
SOLDIER**

**GP SOLO / GLSA SPRING
MEETING**

OVERVIEW

- Military Legal Assistance Offices
- Veterans Legal Assistance Projects
- ABA Resources
- Other Sources of Information & Help
- Terminology
- Special Considerations
 - Servicemembers Group Life Insurance
 - Survivor Benefit Plan
 - Former Spouses Protection Act
- Servicemembers Civil Relief Act
- Uniformed Services Employment and Reemployment Rights Act

MILITARY LEGAL ASSISTANCE OFFICES

- Generally authorized by 10 U.S.C. § 1044
- Eligible: Active duty, retired, reservists, dependents, survivors, and civilian employees (if non-military legal assistance not reasonably available)
- Legal assistance offices usually located on military installations by active duty judge advocates or authorized civilian attorneys
- Generally handle will / estate, landlord-tenant, consumer, income tax assistance, and other personal legal issues. Generally do not handle business matters
- Good resource for info and they appreciate a network of volunteers.
- <http://legalassistance.law.af.mil/content/locator.php>

STATE / LOCAL VETERANS ASSISTANCE PROJECTS

- Many states have volunteer programs for volunteer lawyers. Example here is Ohio Military and Veterans Legal Assistance Project
- Volunteer Lawyers
 - Assisting eligible AGR personnel, their dependents and VETs
 - Low income
 - Gross of \$22,980 (F1) - \$55,140 (F5)
 - Resident of Ohio
 - Legal Issues
 - Landlord Tenant/Eviction
 - Consumer or Credit Card Debt
 - Uncontested Divorce or Dissolution
 - Employment
 - Location – Columbus, Akron ... Cleveland.... Still Growing

ABA RESOURCES

- ABA Home Front – Resources for Military Families
http://www.americanbar.org/portals/public_resources/aba_home_front.html
- ABA Home Front State-by-State Directory (find Military Legal Assistance Offices, Legal Aid / Pro Bono, and Lawyer Referral Programs)
http://www.americanbar.org/portals/public_resources/aba_home_front/directory_programs.html
- ABA Military Pro Bono Project
<http://www.militaryprobono.org>
- ABA Standing Committee on Legal Assistance for Military Personnel (LAMP)
http://www.americanbar.org/groups/legal_assistance_military_personnel.html

OTHER SOURCES OF INFO AND HELP

- Stateside Legal – LSC Funded Initiative
<http://www.statesidelegal.org>
- Consumer Financial Protection Bureau
<http://www.consumerfinance.gov>
<http://www.consumerfinance.gov/servicemembers>
- NC LAMP Committee – Great Guides
<http://www.nclamp.gov/>
- Military Benefits – Including Legal
www.militaryonesource.mil

SOURCES OF INFO AND HELP - VETERANS

- Department of Veteran Affairs (VA)
 - VA Social Workers, VA Inspector General, Others
 - Special Teams for PTSD, Suicide, Homeless, Others
- Ohio Department of Veterans Services
 - <http://dvs.ohio.gov/>
- Veterans Service Organization
 - E.g., AMVETS, VFW, American Legion
 - Chartered vs. Non-chartered
 - Sample List <http://www1.va.gov/vso/index.cfm>

SOURCES OF INFO AND HELP - VETERANS

- Veterans Benefits - Federal Benefits for Veterans, Dependents and Survivors
 - Primer on benefits available to veterans
 - www1.va.gov/OPA/publications/benefits_book.asp
- Statesidelegal.org
 - Agent Orange, Sexual trauma, PTSD, Traumatic Brain Injury
 - Education
 - <http://statesidelegal.org/veterans-benefits>

TERMINOLOGY - MILITARY STATUS

- Military can mean:
 - Active Duty - Army, AF, Navy, Marines, Coast Guard
 - Reserve
 - Active (Title 10)
 - Training
 - Inactive
 - National Guard
 - Active or in “Federal Status” (Title 10)
 - Mobilized for emergency (Title 32)
 - Training
 - Veteran – Someone who served in the military
 - Retiree – Someone who is now drawing or entitled at some later date to draw military retired pay (e.g., retirees from active duty draw retired pay immediately upon retirement while reservists must wait until a certain age (currently 60) to draw their \$\$)
 - Dependents of same

MILITARY OR VETERAN STATUS - DETERMINATION

- How to determine status for Military Personnel (ARG) and Family Members
 - Ask to see “ID Card”
 - Ask to see a copy of member’s “orders”
- ID Cards Issued to
 - Active, Reserve, National Guard Personnel & Dependents
 - Military Retirees & Dependents
- Veterans
 - Ask to See DD-214 – Certificate of Release or Discharge from Active Duty

SPECIAL CONSIDERATIONS - MILITARY

- Servicemembers Group Life Insurance
 - \$400K for active duty member
 - Dependents also insurable
 - www.insurance.va.gov/
- Survivors Benefit Plan
 - Surviving Spouse - % of military retirement pension
 - Need to elect – Note 1 year rule
 - www.defenselink.mil/militarypay/survivor/sbp/
- Medical – Tricare
 - “Free” medical care for AGR and dependents
 - Retirees – Different AD & Reserve Rules
 - www.tricare.mil

SPECIAL CONSIDERATIONS - MILITARY

- Child & Family Support
 - Minimum support guidelines for each service
 - BAH WITH – Basic Allowance for Housing with Dependents Rate – See -
<http://perdiem.hqda.pentagon.mil/perdiem/>
 - Military Guidelines – See *Army Family Support, Child Custody, and Paternity, AR 608-99*
 - Often enforceable through chain of command
 - LA Attorneys – Can help push for enforcement

SPECIAL CONSIDERATIONS – MILITARY

- Many SMs Receive Significant non-taxed allowances
 - E.g., housing, rations, uniform, special duty, hazardous duty, sea duty, language
 - Normally included in eligibility calculus for legal aid
 - Normally factored into child/spousal support equation

SPECIAL CONSIDERATIONS - MILITARY

- Divorce - Issues
 - Uniformed Services Former Spouses Protection Act (USFSPA, 10 U.S.C. §1408)
 - Allows for division of military retired pay
 - Decree/Agreement must comply with DFAS Guidance re division order - See www.dfas.mil – search “USFSPA”
 - Standard QDRO Language Often Does Not Suffice
 - Retired Pay May Be Reduced By Disability Pay
 - Beware order dividing “Disposable Retired Pay”
 - Try instead “Gross retired pay” and include indemnification clause

SPECIAL CONSIDERATION - VETERANS BENEFITS OR VETERANS CLAIMS

- Attorneys must be accredited by VA
 - Training requirements
 - VA Form 21a
 - <http://www.va.gov/ogc/accreditation.asp>
- No fee may be charged for preparing
 - Application for VA Benefits
 - Presenting Claim to VA
- Fees may be charged for assistance
 - AFTER VA has issued a decision on a claim, and
 - Notice of Disagreement has been filed - initiating an appeal
 - VA-approved POA and Fee Agreements Are in Place

SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

- Federal Law
 - State supplements
- 50 U.S.C. App. §§ 501-597
 - Default Judgments
 - Stays
 - Early lease terminations
 - Interest rate caps
 - Private cause of action
 - Foreclosure protection
- Please note the “App.” in citation

SCRA – COVERAGE

- Active Duty (Title 10 of USC)
 - Army, Air Force, Navy, Marines and Coast Guard
 - No requirement to be deployed or in combat zone
- Reserve Component
 - Activated (on orders issued under Title 10)
- National Guard
 - Activated
 - National emergency (Title 32)
- Family members and Dependents
 - For some protections – not all

SCRA – CRIMINAL PENALTIES

- Violations of the Following Sections May Be Prosecuted as Criminal Misdemeanors (Class A)
 - §521 – Default Judgments – False Affidavit
 - § 527 - Max Rate of Interest on Pre-Service Debts
 - § 531 - Evictions and Distress
 - § 532 - Installment Contracts for Purchase or lease
 - § 533 - Mortgages and trust deeds
 - § 535 - Termination of residential and motor vehicle leases
 - § 536 - Protection of life insurance policy
 - § 537 - Enforcement of storage liens

SCRA – PURPOSE & APPLICATION

- Enable Servicemembers (SMs) to Devote Their Entire Energy to Defense Needs of the Nation
- Temporary Suspension of Judicial and Administrative Proceedings and Transactions
- *LeMaistre v. Leffers*, 333 U.S. 1, 5 (1948) (“[T]he Act must be read with an eye friendly to those who dropped their affairs to answer their country’s call.”)
- *Boone v. Lightner*, 319 U.S. 561, 575 (1943) (“The Soldiers’ and Sailors’ Civil Relief Act is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation.”).

SCRA – DEFAULT JUDGMENTS

- Default Judgments – 50 U.S.C. App. §521
- No Appearance by Servicemember (SM)
 - Require Affidavit of Military Status by Moving Party
 - If Non-Moving Party a SM, Court Should Appoint an Attorney
 - If Status Cannot Be Determined
 - Bond, or;
 - Orders or Judgments to Protect SM
- Grant Stay of At Least 90 Days
 - If Defense May Exist and SMs Presence Needed
 - Appointed Attorney Cannot Contact

SCRA – DEFAULT JUDGMENTS

- Default Judgments – Reopening
- Court Must Reopen IF:
 - SM Materially Affected Due to Military Service in Asserting Defense
 - SM has a Meritorious Defense
- Only Applies if SM Did NOT Make an Appearance

SCRA – STAY OF PROCEEDINGS

- STAY OF PROCEEDINGS - 50 U.S.C. App. §522
 - Request NOT an Appearance
- Motion of SM, Mandatory Minimum 90 Day Stay
 - Statement of Unavailability Due to Military Duties and When Will Be Available
 - Statement from SM's Commander – Leave Not Authorized
- Beyond 90 Days – Discretionary
 - Should Grant if Conditions Remain & SM's Presence Needed
 - Denied – Court Must Appoint Attorney
- Motion of Court – Discretionary
 - Denied? Court Must Appoint Attorney

SCRA – STAY OR VACATION OF JUDGMENT, ATTACHMENT & GARNISHMENTS

- STAY OR VACATION OF JUDGMENT, ATTACHMENT & GARNISHMENTS - 50 U.S.C. App. §524
- Motion of SM
 - MUST Stay or Vacate if SM Materially Affected by Military Duties
 - Material Affect? Court's Opinion
- Motion of Court
 - MAY Stay or Vacate
- Duration of Stay – 50 U.S.C. App. §525
 - Up to Period of Service Plus 90 Days
 - Terms and Amounts of Installment Payments – Court Find Reasonable

SCRA – STATUTE OF LIMITATIONS

- STATUTE OF LIMITATIONS - 50 U.S.C. App. §526
- Tolling of Statute of Limitations During Military Service
 - Military Service Cannot Be Included in Computing Any Period Limited BY Law, Regulation or Order
 - Applies to Court Action, Board, Bureau, Commission, Department, or Agency of State or Subdivision
- REDEMPTION OF REAL PROPERTY
 - Period of Military Service Not Included In Computing Redemption Period for Real Property Sold or Forfeited to Enforce Obligation, Tax or Assessment
- SM Does Not Need to Show “Military Affect”

SCRA – MAXIMUM RATE OF INTEREST

- MAXIMUM RATE OF INTEREST - 50 U.S.C. App. §527
- Pre-Service Loans
 - Material Impact
 - Asserted by SM; Creditors May Challenge in Court
 - Six Percent (6%)
 - Retroactive to Date of Entry on Active Duty
 - Excess Forgive
- Ohio Version – ORC §1343.031
 - NOT LIMITED TO PRE-SERVICE LOANS
 - Extends to Spouses

SCRA – EVICTIONS AND DISTRESS

- EVICTIONS and DISTRESS - 50 U.S.C. App. §531
- Rental Property – Primary Residence
 - Military Member or Dependents
- Eviction and Distress Require Court Order
 - Rent Must Not Exceed DoD Set Amount – Adjusted Annually
 - For 2012 – Rent Set at \$3047.45
- Stay of Execution of Eviction or Distress Order
- Adjust Obligation Under the Lease
- Criminal Penalties

SCRA – INSTALLMENT CONTRACTS

- PROTECTION UNDER INSTALLMENT CONTRACTS FOR PURCHASE OR LEASE - 50 U.S.C. App. §532
- Court Order Required
 - Rescind or Terminate an Installment Contract for Purchase, Lease or Bailment of Real or Personal Property (including a motor vehicle), or
 - Repossession of Such Property
- Only Applies to Installment Contracts That Originated Before Period of Military Service
- Damages for Violation, and Criminal Penalties

SCRA – MORTGAGES AND FORECLOSURE

- MORTGAGES and TRUST DEEDS - 50 U.S.C. App. §533
- Court Order Required
 - Sale, Foreclosure or Seizure of Property for Breach of Mortgage
- Only Applies to Mortgages That Originated Before Period of Military Service
- Court May Stay Foreclosure Proceedings, Extend Mortgage Maturity Date, Adjust the Obligation “to preserve the interests of all parties”
- DoJ Settlement
 - April 2013 - \$39M paid to SMs illegally foreclosed on

SCRA – RESIDENTIAL OR VEHICLE LEASES

- EARLY TERMINATION OF RESIDENTIAL OR VEHICLE LEASES - 50 U.S.C. App. §535
- Entry on Active Duty, Permanent Change of Station Orders, or Deployment Orders
- Early Termination of Residential and Vehicle Leases
 - Proper Notice
 - Return of Security Deposit
- Criminal Penalties

SCRA – TELEPHONE SERVICE CONTRACTS

- TERMINATION OF TELEPHONE SERVICE CONTRACTS - 50 U.S.C. App. §535a
- Orders to Relocate
 - Location Does Not Support
 - Received After Phone Service Contract Signed
- Ohio Version - ORC §1349.03
 - Allows SMs and Spouses to Terminate Cell Phone Contracts
 - Must Be “Deployed on Active Duty”

SCRA – STORAGE LIENS

- ENFORCEMENT OF STORAGE LIENS - 50 U.S.C. App. §537
- Enforcement or Foreclosure of Lien Requires Court Order
- Stay of Proceedings – SM or Court
- Criminal Penalties

SCRA – EXTENSION TO DEPENDENTS

- EXTENSION OF PROTECTION TO DEPENDENTS
 - 50 U.S.C. App. §538
- Upon Application to Court
- Dependent is Entitled to Protection, IF
 - Materially Affected by SM's Military Service
- Protection for Eviction, Distress, Lease Termination, Mortgage and Foreclosure, Installment Contracts, Storage Liens

SCRA – LEGAL REPRESENTATIVES

- LEGAL REPRESENTATIVES - 50 U.S.C. App. §519
- Attorney Acting on Behalf of SM or Individual Possessing Power of Attorney Granted by SM
- Legal Representative May Assert Protections of SM Under SCRA
- Includes Appearances in Courts and Administrative Hearings – If POA So Allows

SCRA – PRIVATE ACTION & DOJ

- PRIVATE RIGHT OF ACTION- 50 U.S.C. App. §597a
 - SM or Any Part Aggrieved by Violation of SCRA
 - May Pursue Civil Action to Obtain Appropriate Relief
 - Court Costs
 - Damages
 - Attorney Fees
- Department of Justice
 - Main Justice – Civil Rights Division
 - Both SCRA and USERRA
 - Liz Singer – (202)514-6164
 - Local U.S. Attorney – “SCRA AUSA”
 - http://www.justice.gov/crt/spec_topics/military/index.php

EMPLOYMENT RIGHTS

- Uniformed Services Employment and Reemployment Rights Act (USERRA)
 - Primary source of federal protection (more to follow)
- But some states address this issue:
 - E.g., Ohio includes “Military Status” as a prohibited basis for job discrimination
 - Protection encompasses hiring, tenure, condition and privileges of employment
 - See ORC Ann. §4112.02(E)(4)

UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)

- Gives SMs right to go back to civilian job held before federal military service – under certain conditions
- Applies to:
 - All private employers, the states, and all branches of the federal government.
 - Union hiring halls and similar entities that have employment-related responsibilities.
- 38 USCA §§4301-4335

USERRA COMPLAINTS

- Private right of action
 - Federal court or MSPB for Federal Employees
- Employer Support to the Guard & Reserves (ESGR) Education/Mediation Services
 - <http://www.esgr.mil/OH.aspx>
 - **Christine Kloss**, Employment Support Specialist, 2825 W. Dublin Granville, Columbus, OH 43235; 614-336-7378, Christine.J.Kloss.ctr@mail.mil

USERRA - COMPLAINTS

- DoL - File a complaint with the local office of the DOL Veterans' Employment and Training Service (VETS)
 - VETS – Enforcement Authority
 - May Lead to DoJ Prosecution
- OHIO DoL VETS Office (VETS)
 - U.S. Department of Labor
 - 4020 East 5th Avenue, Room M-153
 - PO Box 1618, Columbus, Ohio 43219
 - PH: (614) 466-2768
- Watch Out – Representation May or May Not Preclude DoL VETS intervention - Depends

USERRA - COMPLAINTS

- Other Resources
 - Local, State and Federal Elected Officials
 - Many have a “veterans” rep on their staff
 - E.g., Laura Pechaitis, Senator Brown’s Cleveland Office - 1301 East Ninth St., Suite 1710
Cleveland, OH 44114
888-896-6446; Laura_Pechaitis@brown.senate.gov

USERRA 5-PART CHECKLIST

1. Civilian job before period of active duty
2. Notice before leaving for active duty
Prior notice not required if precluded by military necessity or if “impossible or unreasonable”
3. Under five (5)—year cumulative total
4. Must have Honorable or General Discharge
No protection if active duty ends with an OTH or Bad Conduct Discharge, or a drop from the rolls
5. Prompt return to work – Specific Time-lines apply
Convalescence leave extension possible

USERRA - “PROMPT RETURN TO WORK”

- Military Service of 30 days or less —
 - Report back to first shift beginning after safe travel time from military duty site plus eight hours rest
- Military Service of 31-180 days —
 - Must apply in writing for reemployment within 14 days after completing military service
- Military Service of 181 days or more —
 - Must apply in writing for reemployment within 90 days after completing military service

PROTECTIONS DURING SERVICE

- Health Insurance Coverage
 - Upon request, members can maintain health coverage for up to 30 days of service for member and family members
- Non—Seniority Benefits
 - Employer must treat service member like any other employee of similar seniority and status who is on furlough or leave of absence (for holiday bonuses, life insurance, loans, profit sharing plans, etc.)

USERRA – PROTECTIONS UPON RETURN

1. Prompt Reinstatement upon Return
2. Accrual of Seniority
 - a. 90 days or less — entitled to same exact job
 - b. 91 days or more — employer must return you to a position of like seniority, status and pay.
 - c. Also same treatment as peers with regard to raises, promotions, pay cuts, or job eliminations
3. Status

Entitled to previous title & same status as peers (day/night shift or department rotations)

USERRA - PROTECTIONS UPON RETURN

4. (Re)training and Other Accommodations

a. Employer must take “reasonable efforts” to train a member on new equipment or techniques, or to refresh skills not used during service.

b. Employer must accommodate service-connected disability, or offer alternate employment

5. Immediate Reinstatement of Health Benefits

No waiting periods or exclusions for pre-existing conditions, whether or not health insurance coverage during service requested

USERRA - PROTECTIONS UPON RETURN

6. Special protection against discharge during protected period, except for cause:
 - a. One–Year protected period for 181 days or more
 - b. 180–day protected period if gone 31 to 180 days
7. Antidiscrimination Provision
 - a. USERRA prohibits discrimination based on military service or military service obligation
 - b. USERRA prohibits retaliatory action against those who seek to enforce USERRA, to include civilian witnesses

USERRA - PROTECTIONS UPON RETURN

8. Pension Benefits

- a. Employers must count any period of federal military service protected under USERRA as if it were service with the employer
- b. Applies to benefit eligibility (vesting) and to calculation of benefit computations
- c. If the pension plan uses employee contributions or deferrals, the returning member gets up to three times the period of absence, up to five years, to make up contributions

USERRA – OTHER CONSIDERATIONS

- Exceptions
 - Employers can petition for waiver – if compliance places an unreasonable burden on business (small)
 - DoD and some other federal employers exclude certain civilian positions being filled by reserve personnel
 - Limited number – need high-level approval
- Great resource – CAPT Sam Wright, USNR (ret)
 - Director, Service Members Law Center
(800) 809-9448, ext. 730
Email: swright@roa.org
 - http://www.servicemembers-lawcenter.org/Home_Page.html

CONCLUSION

- Thank You – Feedback welcome