



# CHILD SUPPORT SERVICES DIVISION

## GENERAL CASE MANAGEMENT

### Servicemembers Civil Relief Act

CS 200.9

## SUPERSEDES

[New Section]

## REFERENCES

50 U.S.C. §§ 3901 through 3920, 3931 through 3938(a), ARM 37.62.303 and 913

## Introduction

The Servicemembers Civil Relief Act (SCRA) provides several protections to active-duty service members. This section provides policy and procedure on provisions that directly affect the CSSD.

The primary purpose of the SCRA is to allow for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of members during their time of service. That is, it protects service members from having default judgments entered against them.

## Definitions and Terminology

**Contested case:** A contested case includes a right to hearing and appeal of the hearing decision.

**Contested case notice:** A notice that initiates a contested case. Until a contested case notice is served on a party, there is no contested case and no corresponding right to an administrative hearing.

**Default:** A failure to consent to or request a hearing on a contested case notice.

**Default Judgment:** An order that is entered which resolves a contested case notice after the parties default.

**Military service:** For the purposes of the SCRA, military service is any service member on active duty, or full-time duty. Active duty includes full-time training duty, annual training duty, and attending a service school, such as West Point. This includes reserves that have been called up, but not reserves that are not full time, and National Guard members that have been called to active service. It is important to note that the SCRA only applies to the National Guard when the member has been called to active service by the President for a period in excess of 30 days.

**Party:** Any person served with a CSSD contested case notice.

**Period of military service:** The term "period of military service" means the period beginning on the date on which a service member enters military service and ending on the date on which the service member is released from military service or dies while in military service.

**Service Member:** A member of the uniformed services, which is the Army, Navy, Air Force, Marine Corps, and Coast Guard, or is commissioned in the National Oceanic and Atmospheric Administration or the Public Health Service.



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## **POLICY**

### **CSSD Administrative Actions and the SCRA**

The provisions of the SCRA apply to any contested case notice issued after December 19, 2003. The SCRA permits stays of administrative or court proceedings when military service prevents a service member from participating in the proceedings. A stay is not automatic but should be granted upon request by a service member who is on active duty.

### **Military Waiver**

It is CSSD policy to include the CS 200.9W Military Waiver when serving a contested case notice on a service member. The signed military waiver forfeits the right to a stay of proceedings.



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## **PROCEDURES**

### **Prior to a Contested Case Action**

#### **Caseworker**

#### **Reviews case for active-duty service member**

- If no active-duty service member is found works case as per policy and procedure.
- If an active-duty service member is found, proceeds to a through b below.
  - Flags case in system for active-duty service member, unless already flagged.
  - Sends CS 209.1W Military Waiver when issuing a contested case notice. A separate waiver must accompany **all** contested case notices sent to the service member, no matter the case status: paternity, establishment, modification, or enforcement.

### **Military Waiver, Affidavit and Default Action**

#### **Caseworker**

Monitors for return of military waiver, proceeds as necessary in 1 through 3 below:

1. Military Waiver returned signed:
  - Enters case note of signed returned military waiver.
  - Keeps signed waiver as part of case file.

No stay of proceedings will be necessary on the contested case notice. The case may be worked as per policy and procedure for the type of notice.

2. Military Waiver not returned:

A military affidavit is required for a default judgment.

3. Military affidavit and default judgment:

- a. Prepares CS 209.1A Military Affidavit concurrently with default judgment.
- b. Sends military affidavit with the contested case notice and any documents needed to enter a default judgment to Administrative Orders Unit (AOU). When a Domestic Violence Indicator (DVI) is set per CS 101.5, location and contact information must be redacted, on the military affidavit sent to the parties.
- c. Keeps military affidavit in case record, enters case note.



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**Exception:**

No military affidavit is required for the following notices CS 510.1A Notice of Withholding (NOW) and CS 520.7A Notice of Intent to Enroll (NIE). These processes do not have default documents.

**Note:**

**Penalty for False Military Affidavit.** Any person who makes or uses a military affidavit, and knowing it to be false, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

The Office of Legal Affairs (OLA) can be consulted when there are questions relating to default judgment, support order modification, lien foreclosure, or enforcing a warrant for distraint for service members.