

**SERVICEMEMBERS CIVIL RELIEF ACT:**  
**GIVING SECOND LIFE TO CASES OTHERWISE BARRED BY STATUTES OF LIMITATIONS**

**Monday, January 14, 2013 by Harlan J. Zaback**

It happens all the time, you get a phone call from a potential client. The facts sound great, clear liability and causation. Extensive damages. Deep pocket defendant. You're getting ready to draft the contingency fee agreement and to set up an appointment to meet with your new client. Then you ask the most important question, "when did the incident occur?" That is when you're completely overcome by disappointment; you find out that the potential client waited too long to contact you and the statute of limitations has long past. There is nothing you can do. No lawsuit will be filed and you must explain this harsh reality to the potential client. While this is a disappointing scenario to an attorney from a business standpoint, the saddest part about this scenario is that the potential client now has no recourse to obtain compensation for his/her injuries. Unfortunately, this is the harsh reality we live and practice in.

For the most part, statutes of limitations, especially in California, are strict, statutory creatures of nature. There are few exceptions to these statutes, and the exceptions that do exist, are rarely much help to the litigator or to the client. However, an unlikely source of relief from the strict nature of statutes of limitations is the Servicemembers Civil Relief Act (SCRA).

The purposes of SCRA are:

- (1) to provide for, strengthen, and expedite the national defense through protection extended by [SCRA] to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the nation; and
- (2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service. *Title 50 of the United States Code App. §502.*

With respect to the second purpose of SCRA, to provide servicemembers of the United States Military with protections from various federal and state civil procedure deadlines, the relevant provision states that:

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, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns. *Title 50 of the United States Code App. §526(a).*

Unlike other sections of SCRA, a servicemember need not demonstrate his or her military service resulted in hardship in order to be excused from timely filing a legal action. *Conroy v. Aniskoff* (1993) 507 U.S. 511, 514.<sup>1</sup> The tolling provision is absolute and applies even to career military personnel who serve in times of peace. See, *Id.* (“[t]he statutory command...is unambiguous, unequivocal, and unlimited”).

Thus, the time for computing the statute of limitation is tolled for the *entirety* of a servicemember’s military service. This is great because it gives second life to cases that would otherwise be barred by the statute of limitations. Keep the SCRA in mind the next time you think you have a statute of limitations issue.

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<sup>1</sup> The SCRA was passed in 2003. Before the Supreme Court of the United States in *Conroy v. Aniskoff*, *supra*, 507 U.S. was former *Title 50 of the United States Code App. §525*, which was part of SCRA’s predecessor, the Soldiers’ and Sailors’ Civil Relief Act of 1940 (SSCRA). With regard to tolling a statute of limitation, the language and intent of SCRA and SSCRA are near identical. Compare former *Title 50 of the United States Code App. §525* with *Title 50 of the United States Code App. §526(a)*. Accordingly, the holding in *Conroy*, *supra*, still applies to SCRA.