



deployed in Iraq. Wherefore, defendant requests this action be stayed until his return pursuant to the Soldiers & Sailors Civil Relief Act. Counsel also asks the Court to note that no service of summons and complaint has been made as of this date.

The Court finds that Defendant's representations are insufficient to stay the proceedings.

## **II. DISCUSSION**

The Service Members Civil Relief Act, 50 U.S.C. app. §§ 501 to 596, known until 2003 as the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. app. § 501, provides for the suspension of legal proceedings involving persons in military service when necessary to avoid prejudice to their civil rights. 50 U.S.C. app. § 510. Specifically, the Act allows for a stay of any civil action in which a service member is a party if certain conditions are met. To satisfy the conditions under which a stay may be granted, an application for stay must include the following:

(A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.

(B) A letter or other communication from the servicemember's commanding officer stating that the servicemembers' current military

duty prevents appearance and that military leave is not authorized for the service member at the time of the letter.

50 U.S.C. app. § 522(b)(2).

It is clear that courts have not just the right, but an obligation to protect the civil rights of those service members whose rights might otherwise be prejudiced as a result of their military service. It is equally clear, however, that the service member has an obligation to demonstrate for the court the manner in which his military duty affects his ability to appear in a civil proceeding, and for how long, and to otherwise satisfy the court that his rights will be prejudiced in the absence of a stay. In the Court's view, Defendant Beck has failed to make the showing necessary to warrant a stay under the Service Members Relief Act.

In support of the Motion to Stay, counsel for Defendant Beck submitted only the above Motion. The Motion only provides counsel's representation, from a purported "reliable" source, that Defendant Beck is on active duty and presently deployed in Iraq. Even should the Court deem that the Motion sufficiently sets forth facts stating the manner in which his military duty affects his ability to appear, it does not state when the Defendant will be available to appear. Additionally, counsel has made no effort to put on the record confirmation from the appropriate military official that Defendant Beck is, in fact, deployed overseas, and that military leave is not currently authorized.

### **III. CONCLUSION**

In the absence of the showing required by the Service Members Relief Act, the Court denies the Motion to Stay, with leave to file the same with the appropriate evidentiary showing.

**SO ORDERED**, this the 6<sup>th</sup> day of July, 2009.

***s/ Hugh Lawson*** \_\_\_\_\_  
**HUGH LAWSON, Judge**

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