

NOTICE

The Servicemembers Civil Relief Act requires that an affidavit on the defendant's military status be filed before a default judgment may be entered.

Attached is a page describing the form of the affidavit and the website to contact concerning a person's military service.

That Act applies to any civil proceeding.

There are criminal and civil penalties for violations of this Act.

You must prepare the affidavit and file it before a default judgment in your case can be granted.

4.1.2. Affidavit Requirement

Before any default judgment may be entered, the plaintiff must file an affidavit⁴⁵ stating:

- a) Whether or not the defendant is in military service (with supporting facts); *or*
- b) That the plaintiff is unable to determine whether the defendant is in military service.^{46,47}

4.1.2.1. Form of Affidavit

The affidavit requirement may be satisfied by a signed, written statement certified to be true under penalty of perjury.⁴⁸

4.1.3. Military Service Certificates

Because it is the court's duty to determine the status of a defendant's military service before entering a default judgment, the SCRA permits the court or the parties to apply for a certificate from the Department of Defense "DoD" concerning a party's military service.⁴⁹ The DoD office contact for such inquiries is the Defense Manpower Data Center which services an online database, available at <https://scra.dmdc.osd.mil/>

4.1.4. Attorney Appointment

Where it appears the defendant is in military service and has not entered an appearance, the court *may not* enter a judgment until after the court appoints an attorney to represent the defendant. If the appointed attorney cannot locate the servicemember, actions by the attorney in the case will not waive any defense or otherwise bind the servicemember.⁵⁰ The court may by rule, or on an individual basis, make a determination in each case as to the amount and source of compensation of any counsel appointed to represent the servicemember. Factors include but are not limited to: the merits of the

⁴⁵ See *Merrill v. Beard*, 2007 WL 461469 (N.D. Ohio 2007) (the court granted a servicemember relief from a default judgment after finding that the plaintiff had not filed an affidavit with the court certifying whether or not the defendant was a servicemember. The court held that the statute required strict adherence).

⁴⁶ 50 U.S.C. App. § 3931(b)(3).

⁴⁷ **Indiana Practitioners' Note:** The law generally does not allow non-military defendants to collaterally attack default judgments merely on the technical ground that an affidavit concerning military service was not filed. See, e.g., *Haller v. Walczak*, 347 Mich. 292, 296-299; 79 N.W. 2d 622 (1956) (holding that the SCRA was enacted to protect those in the military, not others, and affirming a default judgment because, *inter alia*, the non-servicemember defendants had not been prejudiced by the plaintiff's failure to file an affidavit concerning military service before the default judgment was entered).

⁴⁸ 50 U.S.C. App. § 3931(b)(4).

⁴⁹ *Id.* at § 4012.

⁵⁰ *Id.* at § 3931(b)(2).