Default judgments in eviction proceedings in Winnebago County:

The Servicemembers Civil Relief Act and the requirement for an affidavit of military service

by Attorney Mario J. Tarara

As some of our members may now be aware, it has been announced by Judge Doherty that if a landlord is seeking a default judgment in an eviction proceeding that landlord must, as of January 1, 2008, supply the court with an Affidavit of Military Service stating that, to the knowledge of that landlord, the tenant to be evicted is not currently in active military service. This affidavit is now being required by Judge Doherty in association with the requirements of the Servicemembers Civil Relief Act (SCRA) (50 U.S.C. App. §501, et. seq.), which was enacted to replace the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA). SCRA is a federal statute that provides protection to active members of the armed services relative to financial obligations and civil legal proceedings.

Essentially, the SCRA contains the same protections afforded by the prior SSCRA with regard to delaying litigation although its provisions extend the protections further to all members of the military serving in active duty, including members of the National Guard.

The SCRA states that in certain circumstances there is to be:

1. the delay of all civil court actions, including enforcement actions;

2. a reduced interest rate on mortgage payments, credit card debt, and other debt, except on federally guaranteed student loans; and

3. the protection of the service member's dependents from eviction if the monthly rent is $1,200 or less.

SCRA is the provision that limits the amount of interest that can be collected on a debt to six percent per year during the period of military service. This provision applies to any debt incurred prior to the commencement of active service, including credit debt, mortgages, car loans, and so on. The interest cap provision applies only to debts incurred prior to the commencement of active service. Debts incurred while the service member is engaged in active service do not qualify for relief. Additionally, when the interest cap provision does apply, it is not automatic. The service member must request a rate reduction. The creditor must then comply with the request or make application for relief with the appropriate court. If a creditor requests relief, it has the burden to establish that military service does not materially affect the service member's ability to repay the debt at the contractual rate.

The other significant protection afforded by the SCRA is the provision that allows for the delay of any civil legal proceedings against a service member. A service member can request a delay if he or she can show that active service will interfere with proper representation in court.

Turning back to the practical effects of the announcement by Judge Doherty, when the time comes to take a default judgment in an eviction action, the landlord will need to file an affidavit of military service prepared by the landlord directly or his or her attorney in the event he or she is represented by counsel.

Judge Doherty will be making available in his courtroom beginning January 10, 2007, a form Affidavit of Military Service which he will find acceptable for his purposes. That form also indicates upon it the telephone number and website which can be used to verify military service for a particular tenant. The following form should be sufficient to meet the requirements of the SCRA and Judge Doherty in the event that a copy of the form Judge Doherty provided is not available:

In the Circuit Court of the 17th Judicial Circuit
Winnebago County, Illinois

_____,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. _____ - LM - _____
	)	
_____,	)	
	)	
Defendant(s)	)	

AFFIDAVIT AS TO MILITARY SERVICE OF DEFENDANT

I, _____, under the penalties provided by law pursuant to §1-109 of the Code of Civil Procedure, certify that the statements set forth in this instrument are true and correct as follows:

1. My place of business is in _____, _____, and my occupation is (landlord) (attorney at law).

2. I am (the Plaintiff) (the attorney for the Plaintiff) in the above-entitled action and as such have full knowledge of the facts relating thereto.

3.
   a. I have personal knowledge of the Defendant(s), _____, who is/are presently (a resident) (residents) of _____County, Illinois, and is not in the military service of the United States; or [strike one]

   b. From my acquaintance with such facts and my investigations, I state that the Plaintiff is not able to determine whether the defendants or any of them are in the military service of the United States of America.

Date: _____ _____
(Plaintiff) (Attorney for Plaintiff)

When this affidavit with alternative Paragraph 3(b) is filed, the court may require the plaintiff to file a bond at the discretion of the course.

If it appears that a defendant is in the military service, the statute provides that the court "may not enter a judgment until after the court appoints an attorney to represent the defendant." The cases have indicated that the filing of an affidavit as to whether the defendants, or any of them, were in the military service is not a jurisdictional requirement. As I stated above, however, Judge Doherty is going to nevertheless require the filing of the Affidavit of Military Service in order to obtain default judgments beginning on January 1, 2008. So this is a requirement which we will now need to comply with. ■