

LAW REVIEW¹ 26005

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No, you Are Not Eligible for Military Legal Assistance.

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9.0--Miscellaneous

Q: I am a Seaman (E-3) in the Navy Reserve, and I am not presently on active duty. My command is processing me for administrative separation. I do not want to explain the details, but suffice it to say that I am being treated unfairly, and the decision to separate me is based on a complete misunderstanding of the relevant facts. I visited a Navy legal office and asked to make an appointment to see a Navy legal assistance attorney. I was told that I am not eligible for Navy legal assistance. What gives?

¹ I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2,300 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouses' Protection Act (USFSPA), the title 38 chapters that provide for veterans' benefits administered by the Department of Veterans Affairs (VA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. I am the author of more than 90% of the articles, but we are always looking for "other than Sam" articles by other lawyers.

² BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. I have dealt with USERRA and the Veterans' Reemployment Rights Act (VRRRA—the 1940 version of the federal reemployment statute) for 44 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. §§ 4301-35). I have also dealt with the VRRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

A: In the first place, you are not eligible for Navy legal assistance unless you are on active duty or have been on active duty recently. A “frequently asked questions” (FAQ) document prepared by the Judge Advocate General of the Navy provides as follows:

Eligibility for legal assistance varies somewhat among the services. Generally, Navy legal assistance is available to the following:

- a. Members of the armed forces *on active duty* (including members of a reserve component).
- b. Following release from active duty orders for 30 days or more, members of reserve components are eligible for legal assistance *for a period beginning on the date of release from active duty and continuing for a period equal to twice the length of the period served on those active duty orders.*
- c. Retired military personnel.
- d. Dependents (spouses and minor children) of those listed above, and those who died on active duty, who are entitled to a military identification card.
- e. Any inactive Reserve personnel *consistent with mobilization readiness needs.*³

Unless you are on active duty or have been on active duty recently, you are not eligible for Navy legal assistance. Moreover, even if you are on active duty or have been recently, you are not eligible for military legal assistance for the sort of problem for which you are seeking advice and assistance. That same Navy FAQ document states:

³ <https://www.jag.navy.mil/legal-services/rlso/faq> (emphasis supplied).

What services are not available from Navy legal assistance offices? *Legal assistance attorneys do not provide advice or assistance in official military matters.* Legal assistance concerning official military matters is outside the scope of the legal assistance program.⁴

Q: I heard about a sailor who was being court martialed. The Navy provided a Navy lawyer to represent him at no expense. What gives?

A: Under the Uniform Code of Military Justice (UCMJ), you are entitled to a detailed military defense attorney at no expense if you have been charged with a military criminal offense and are to be tried by general court martial or special court martial. You can also make a by-name request for a specific active-duty Navy lawyer to represent you. If that lawyer is reasonably available, he or she will be provided to you. You can also retain a civilian lawyer to represent you, at your own expense or possibly your family's expense. Your situation does not involve a court martial, so the UCMJ does not apply.

Q: Can the Reserve Organization of America (ROA) represent me or provide a lawyer to represent me?

A: No. On its website, ROA states:

The Service Members Law Center [of ROA] provides resources, links, and information on the laws governing the service member/ employer relationship [and other laws that are especially pertinent to those who serve our country in uniform]. *The SMLC does not accept clients nor engage in the practice of law.* This site

⁴ Id. (Emphasis supplied.)

includes more than 2,300 law reviews on areas of law affecting citizen warriors.⁵

We can probably refer you to a lawyer who can represent you at a reasonable cost or maybe on a pro bono (no fee) basis.

Q: Do you have “law review” articles about the rights of the individual service member in his or her relationship with the military service of which he or she is a member?

A: I confess that we have not covered that topic in the 2,300 “Law Review” articles that we have published in the last 29 years. I have recruited a life member of ROA who is a recently retired military judge advocate and an expert on this topic. We plan to publish several articles on that topic in the coming months.

Join the Organization That Fights for You

This article is one of more than 2,300 "Law Review" articles available at www.roa.org/lawcenter— a free legal resource that the Reserve Organization of America (ROA) has built and maintained since 1997, adding new articles every month.

ROA is the only national military organization dedicated exclusively to America's reserve components — all eight of them. From the 6,179 members of the Coast Guard Reserve to the 329,705 soldiers of the Army National Guard, ROA exists to serve the nearly 773,000 men and women who answer the call while maintaining civilian lives. No other organization does what we do, for the people we serve.

⁵ <https://roa.org/law-center/>. (Emphasis supplied.)

Our roots run deep. On October 2, 1922, veterans of the Great War gathered at Washington's historic Willard Hotel — at the invitation of General of the Armies John J. Pershing — to build something lasting. One of the junior officers in that room was Captain Harry S. Truman, who, as President, signed ROA's congressional charter in 1950. That charter gives us a clear mission: advocate for policies that ensure adequate national security. For more than a century, we've made the case that America's Reserve Components and National Guard are among the most cost-effective pillars of our national defense.

Beyond this library of legal resources, ROA files amicus curiae ("friend of the court") briefs in the Supreme Court and federal courts, and actively educates service members, military spouses, attorneys, employers, legislators, and others about the legal rights of those who serve — and how to enforce them. We provide this information to all service members, regardless of membership. But it's ROA members — through their dues and contributions — who make it possible.

Your membership makes the mission possible.

If you are currently serving, or have ever served, in any of America's eight uniformed services, you are eligible to join ROA — and membership starts at just \$20 for a full year, or \$450 for life. Officers and enlisted personnel alike qualify, whether your service was in the Active Component, the National Guard, or the Reserve. ROA has also recently expanded eligibility to include ancestors and lineal descendants of past or present service members, so families can stand with those who serve. **Join online at roa.org/memberoptions or call 800-809-9448.**

If you are not eligible for membership but believe in this mission, your financial contribution directly funds this resource and the advocacy work that protects those who serve. Donations may be mailed to:

Reserve Organization of America
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Washington, DC 20002