

# GODFREAD LAW FIRM, P.C.

100 South Fifth Street, Suite 1900, Minneapolis, MN 55402

January 6, 2012

## Via Electronic Mail

The Honorable James T. Swenson  
Chief Judge, Hennepin County District Court  
300 South Sixth Street  
Minneapolis, MN 55487

**Re: Rickmyer v. Fabian et al.**  
**File No.: 27-CV-11-11012**  
**Plaintiff's Motion To Remove Bench and Vacate Orders**

Dear Judge Swenson:

I submit this response on behalf of Defendant John Hoff. This letter is not meant to constitute a formal appearance and Hoff asserts that he has not been served in this matter. Plaintiff's motion is without merit and is intended to delay the proceedings so as to harass the Defendants including my client. I therefore ask that you deny the motion and in particular deny Plaintiff's request to vacate Judge Bush's December 23, 2011 Order staying further proceedings against Hoff. Please also consider this letter and the attached letter (Ex. A) to be a renewed request to stay any further proceedings against Hoff.

Judge Bush's Order was entirely appropriate because it is beyond doubt that Hoff is currently serving active duty in Afghanistan as a part of the National Guard. see Ex. A. Plaintiff has made repeated attempts to move for a default judgment despite ineffectual service and despite the fact that such a motion is improper when made against an active duty soldier. Plaintiff has actual knowledge of Hoff's active duty status and his repeated attempts to move for default judgement despite that knowledge is improper.

As Judge Bush correctly notes in his Order and Memorandum (Ex. B), the Servicemember's Civil Relief Act allows a judge to stay proceedings *sua sponte*. See 50 U.S.C. § 522(b)(1). The statutory language makes clear that the court *may* do this on its own motions and *shall* do this upon application by the servicemember. *Id.* Because the language **requires** any presiding judge to stay the proceedings, Plaintiff's request to vacate Judge Bush's December 23 Order could not have any meaningful effect. If the case were reassigned, any new judge would be compelled to issue substantially the same order. This is nothing but an attempt by Plaintiff and his attorney to continue to harass Hoff by prolonging this litigation.

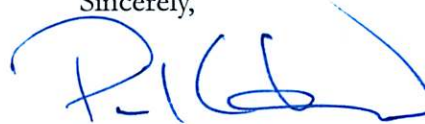
The Servicemember's Civil Relief Act also requires any plaintiff seeking a default judgement to sign an affidavit of non-military service. 50 U.S.C. § 521(b). Plaintiff has not done so and I have repeatedly informed Plaintiff's counsel of that deficiency. There is no way that Plaintiff could in good faith sign such an affidavit now, even if Judge Bush's Order were lifted. There is no reasonable explanation why Plaintiff would repeat his motion for default against Hoff now that his attorney has been served a stay, a finding of fact that Hoff is in Afghanistan, mobilization orders, and now a letter from Hoff's commanding officer (Ex. A). Plaintiff offers no legal authority or fact to suggest the SCRA does not apply.

The Honorable James T. Swenson  
January 6, 2012  
Page Two

With respect to Hoff, Plaintiff's most recent motion is an objection to fact more than procedure. Plaintiff objects to the fact that the Court learned of Hoff's active duty military status. Plaintiff does not suggest that the fact is incorrect. If Plaintiff seeks a default judgment, he has a duty to state whether or not Hoff was active duty. He has failed to do so. This is not an indication of procedural mistake, bias, or conspiracy. Hoff simply *is* active duty. Plaintiff's motion will not change that fact.

Because I have just recently been retained and my client has not been served a copy of pleadings, I cannot comment on the remaining issues. Nevertheless, considering Plaintiff's history as a frivolous litigant and the egregious procedural abuses by Plaintiff and his attorney, denial of his motion is appropriate.

Sincerely,



Paul Godfread

Enclosures

cc: Jill Clark  
David Schooler  
The Honorable Philip D. Bush  
Kelly Kemp  
Megan Goodmanson  
David James  
Julie Bowman

To whom it may concern:

Re: A Civil Action (child custody/support) involving CPL John Willard Hoff

**COMMANDING OFFICER'S AFFIDAVIT AND REQUEST FOR STAY OF PROCEEDINGS UNDER THE SERVICE MEMBERS' CIVIL RELIEF ACT**

I, **Captain Adam B. Headrick**, being duly sworn upon oath, depose and say:

1. That I am a commissioned officer presently on active duty in the United States Armed Forces and I am the Commanding Officer of **HHC 1-279 IN**.
2. That CPL **John Willard Hoff** (hereinafter "the Soldier"), a named party to a certain Civil Action, case number **to be determined**, in the State of **Minnesota**, is a member of the U.S. Army who is on active duty and assigned to my command.
3. That, as the Soldier's Commanding Officer, I hereby state that his ability to appear and protect his interests in this action is materially affected by his military service for the following reasons: he is serving in **Afghanistan** and will not be re-assigned to the United States prior to the end of our deployment. I cannot spare him during this deployment and will not grant him leave to appear in the civil action. He cannot possibly appear in this civil action due to his overseas status.
4. That I therefore request a stay of the proceedings under the Service Members' Civil Relief Act, 50 U.S.C. app. § 521, for the Soldier until such time as his ability to present a defense is no longer materially affected by his active duty military service. I am sure that he will fully cooperate with any necessary legal proceedings when he returns to the United States. We are currently scheduled to redeploy in or about March, 2012, specific date not yet determined.



ADAM B. HEADRICK  
MAJ,  
Commanding

FEDERAL NOTARY PUBLIC

WITH THE UNITED STATES ARMED FORCES  
AT Forward Operating Base Gardez AFGHANISTAN

Before me, a person authorized to administer oaths under Title 10 U.S.C. 1044a, Title 72 O.S. §50.1 et seq., and/or other applicable state and federal law, on this 30 day of December, 2011, personally appeared the above-signed, known to me to be the identical person who executed the foregoing instrument and acknowledged to me that he/she executed the same as his/her free and voluntary act and deed for the uses and purposes therein set forth.

I, the undersigned officer, do hereby certify that I am, on the date of this certificate, a person with the power described in Title 10 U.S.C. 1044a, Title 72 O.S. §50.1 et seq., and/or other applicable state and federal law, of the grade, branch of service, and organization stated below in the active service of the United States Armed Forces, or an authorized civilian attorney under Title 10 U.S.C. 1044a, and that **by statute no seal is required on this certificate**, under authority granted to me by Title 10 U.S.C. 1044a.

Jeffrey R. Erickson  
Officer

Name of Officer and Position: Erickson, Jeffrey R. BN. S1

Grade and Branch of Service: 02 ARMY

Command or Organization: HHC 1-279 IN

THE AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

DEC 28 2011

STATE OF MINNESOTA

FILED

DISTRICT COURT

COUNTY OF HENNEPIN

2011 DEC 23 PM 4: 27

FOURTH JUDICIAL DISTRICT

BY \_\_\_\_\_ DEPUTY

HENNEPIN COUNTY DISTRICT  
COURT ADMINISTRATOR

State ex rel. Peter Stephenson a/k/a  
Peter Rickmyer, Peter Rickmyer

Court File No. 27-CV-11-11012  
The Honorable Philip D. Bush

Plaintiff,

**ORDER STAYING FURTHER  
PROCEEDINGS AGAINST  
DEFENDANT JOHN HOFF**

v.

Joan Fabian, in her capacity as Minnesota  
Commissioner of Corrections, and her  
successor, Tom Roy, in his official capacity,  
Jeff Peterson, in his individual capacity, Will  
McDonald, in his individual capacity, John  
Hoff, an individual, Megan Goodmundson, an  
individual, Michael "Kip" Browne, an  
individual, and John Does 1-3,

Defendants.

Based upon all the files, records, and proceedings herein, the Court makes the  
following:

**FINDING OF FACT**

1. Defendant John Hoff is currently in "military service" as defined in 50  
App. U.S.C.A. § 511(2)(a)(ii).

**ORDER**

1. Pursuant to 50 App. U.S.C. § 522(b)(1), all further proceedings against  
Defendant John Hoff are stayed pending further order of the Court.
2. Plaintiff may proceed against all other Defendants pending further order  
of the Court.

Exhibit B  
Pg \_\_\_\_ of \_\_\_\_

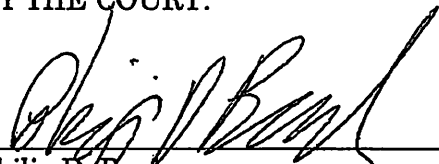
3. The Court will not issue an order lifting the stay unless one of the parties makes a written request to lift the stay.

4. A written request to lift the stay will not be granted unless the requesting party submits evidence that at least sixty days have elapsed since the conclusion of Defendant John Hoff's active service.

5. The attached Memorandum is incorporated by reference.

Dated: December 23, 2011

BY THE COURT:

  
Philip D. Bush  
Judge of District Court

## MEMORANDUM

Plaintiff has named John Hoff as a Defendant in this action<sup>1</sup> and has requested a hearing date on a motion for default judgment against Hoff.

In November 2011, Hoff sent a letter to the Court noting that he is on active duty with his National Guard unit and asserting his rights under the Servicemembers Civil Relief Act. On December 7, 2011, counsel for Defendant Michael Browne emailed a copy of Hoff's mobilization orders to the Court. The mobilization orders required Hoff to report for active duty on May 3, 2011 for the purpose of deployment with Operation Enduring Freedom.

Section 522 of the Servicemembers Civil Relief Act ("the Act") applies:

[T]o any civil action or proceeding . . . in which the plaintiff or defendant at the time of filing an application under this section –

(1) is in military service or is within 90 days after termination of or release from military service; and

(2) has received notice of the action or proceeding.

50 App. U.S.C.A. § 522(a). Section 522 applies to this action because (1) the mobilization orders establish that Hoff is currently in military service<sup>2</sup> and (2) Hoff's correspondence with the Court establishes that he has received notice of this action.<sup>3</sup>

Given the applicability of section 522, the Court may stay this action on its own initiative. *See* 50 App. U.S.C.A. § 522(b)(1). A stay is necessary to protect Hoff's rights under the Act because Plaintiff may otherwise move for default judgment against Hoff.

*See* 50 App. U.S.C.A. § 521 (protecting servicemembers against default judgments);

*State ex rel. Stenstrom v. Wilson*, 48 N.W.2d 513, 514-515 (Minn. 1951) ("While the act

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<sup>1</sup> Hoff denies service.

<sup>2</sup> *See* 50 App. U.S.C.A. § 511(2)(a)(ii) (defining "military service" by members of the National Guard).

<sup>3</sup> Notice does not equate to service.

does not arbitrarily stay all trials, it should be liberally construed so as to protect the civil rights of those serving in our armed forces during the tenure of their service.”).

The stay does not preclude Plaintiff from proceeding against the other Defendants because (1) Hoff will not be prejudiced by a hearing on Defendants’ motion to dismiss and (2) testimony is unnecessary for a ruling on a Rule 12 motion. *See, e.g., Heck v. Anderson*, 12 N.W.2d 849, 853 (Iowa 1944); *see also* 50 App. U.S.C.A. § 525(b).<sup>4</sup> If Plaintiff or the other Defendants are concerned that they may be prejudiced by proceeding in Hoff’s absence, the concerned party may request an expansion of the stay.

PDB

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<sup>4</sup> Section 525(b) provides that “the plaintiff may proceed against those other defendants with the approval of the court.” 50 App. U.S.C.A. § 525(b). However, for some unknown reason, section 525 does not apply to section 522. *See* 50 App. U.S.C.A. § 525(c).