

SBM Attorney on **ACTIVE DUTY** in the Army

By Stephen P. Dunn

I traded my suits and ties for camouflage army combat uniforms, at least for one year.

Along with fellow State Bar of Michigan member Alexander R. Schneider (P71467), I am currently serving on active duty in the United States Army at Fort Bragg, North Carolina. This article explains a bit about my life and work on active duty.

In addition to my work in the litigation division of Howard & Howard Attorneys PC (H & H), I serve as a captain in the United States Army Reserve JAG (Judge Advocate General) Corps. I joined H & H in September 2007 after a little more than two years at the Oakland County Prosecutor's office. However, after I had been at the firm for only three months, my country called.

Just before Thanksgiving 2007, I received orders mobilizing me to active duty for one year in support of Operation Enduring Freedom (Afghanistan). I am stationed at the Office of the Staff Judge Ad-

vocate for the XVIII Airborne Corps at Ft. Bragg. My routine here is a bit different than that to which I am accustomed.

I get up every weekday at 4:45 a.m. The entire office assembles in formation for physical training at 6:25. We stretch, do some calisthenics and then run between four and six miles. Sometimes, instead of running, we sprint up and down the stadium stairs ad infinitum or go on "ruck marches." A ruck march is a 4- to 6-mile speed walk, usually through wooded terrain while carrying a 40-pound pack on your back. After a quick shower and some breakfast, I start work at 9:00.

I work in two capacities: as a military magistrate and as a legal-assistance attorney. As a magistrate, I preside over confinement review hearings and consider search and seizure authorization requests. As a legal-assistance attorney, I represent servicemembers and their dependents in a wide variety of matters, but especially in protecting them from unlawful debt-collection practices. I can practice in North Carolina state courts by virtue of my position as a commissioned military officer and attorney, pursuant to 10 USC 1044. This allows me to do what I love: litigate. Most cases involve violations of the Servicemembers Civil Relief Act, 50 USC Appendix 501 through 596 (the act). The act provides military members and their families several important protections.



50 USC Appendix 527(a) limits to 6 percent a year the rate of interest that creditors may charge on debts incurred, or other obligations made, by servicemembers before they enter active duty. Creditors must forgive interest greater than 6 percent on such debts or obligations. This provision applies when the servicemember's entry into active duty materially affects his or her ability to repay the debt or other obligation. It applies to nearly all debts and obligations before active duty, with the exception of federally subsidized education loans.

50 USC Appendix 522(b) allows an active-duty servicemember to stay for a period of not less than 90 days any civil action to which he or she is a party. The servicemember must write the court in which the case is pending and tell the court that the servicemember's active-duty status materially affects his or her ability to prepare for the case and appear at court proceedings. The servicemember's commander should likewise write the court and confirm the statements contained in the servicemember's letter and further advise the court that military leave to appear at court proceedings in the case will not be authorized. If the initial 90-day stay proves to be insufficient, the servicemember may ask the court for additional delay. This provision does not apply to criminal cases. 50 USC Appendix 522 also allows servicemembers to set aside default judgments.

50 USC Appendix 535 permits a servicemember and his or her dependents to terminate a residential or motor-vehicle lease upon the servicemember's deployment, permanent change of station (including retirement and separation), or entry into active duty. Again, the servicemember or dependent must advise the landlord or dealer in writing of his or her intent to terminate the lease because of the deployment or entry into active duty. The servicemember or dependent must attach a copy of the servicemember's orders or a letter from the commander if those orders are not available.

Many landlords or other creditors are simply unaware of this provision. Other, unscrupulous creditors seek to enforce residential leases despite knowledge of this provision. Servicemembers should sue such landlords or debt collectors under the act.

Here is an example. The wife of a deployed soldier recently came into my office. After the soldier had received notice that he would be deployed to Iraq, he duly notified his landlord of the deployment and of his intention to terminate his lease pursuant to the act. When the soldier went to Iraq, his wife and children vacated the apartment and moved back with her mother. The landlord never returned their security deposit. Months later, while the soldier was still in

Iraq, a debt-collection agency notified the wife of an outstanding debt to the landlord.

She called the debt-collection agency and disputed the validity of the debt. The debt-collection agency merely referred her to the landlord. She called the landlord, who unlawfully insisted on payment. I called the landlord and reasonably attempted to advise him about the act. The landlord, who is not an attorney, essentially dared me to sue him.

I did. The complaint alleges violations of the act, as well as of two complimentary provisions of North Carolina law. Statutory damages could reach \$5,000, plus a return of the security deposit, actual costs and fees, reasonable interest, and consequential and punitive damages under the act. The act is a powerful tool for servicemembers. Military and civilian attorneys should learn how it benefits servicemembers and their dependents.

Life is good here. Ft. Bragg is one of the largest army posts in the world. It is the home of the XVIII Airborne Corps, the 82nd Airborne Division, the Army Special Operations Command, and the Army Parachute Team (the Golden Knights). There are 12 full-service workout facilities. There are running and hiking trails, riding stables, indoor and outdoor swimming pools, gun clubs, and bowling lanes. There are two 18-hole golf courses on the grounds of Ft. Bragg and another at adjacent Pope Air Force Base. And, of course, the weather here in southern North Carolina is beautiful.

I enjoy my life and work here. I appreciate serving with and representing fellow servicemembers. I look forward to taking my meaningful experiences here and applying them when I return to H & H in December 2008. ■

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Captain Stephen P. Dunn (left) and Captain Alexander R. Schneider are members of the State Bar of Michigan currently stationed at the Office of the Staff Judge Advocate for the XVIII Airborne Corps at Fort Bragg, North Carolina.