

RCW 38.42.060 Stay of proceedings when service member has

notice. (1) This section applies to any civil action or proceeding in which a defendant at the time of filing an application under this section:

(a) (i) Is in military service, or it is within one hundred eighty days after termination of or release from military service; or

(ii) Is a dependent of a service member in military service; and

(b) Has received actual notice of the action or proceeding.

(2) At any stage before final judgment in a civil action or proceeding in which a service member or his or her dependent described in subsection (1) of this section is a party, the court may on its own motion and shall, upon application by the service member or his or her dependent, stay the action until one hundred eighty days after termination of or release from military service, if the conditions in subsection (3) of this section are met.

(3) An application for a stay under subsection (2) of this section shall include the following:

(a) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the service member's or dependent's ability to appear and stating a date when the service member or dependent will be available to appear; and

(b) A letter or other communication from the service member's commanding officer stating that the service member's current military duty prevents either the service member's or dependent's appearance and that military leave is not authorized for the service member at the time of the letter.

(4) An application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense, including a defense relating to lack of personal jurisdiction.

(5) A service member or dependent who is granted a stay of a civil action or proceeding under subsection (2) of this section may apply for an additional stay based on the continuing material affect of military duty on the service member's or dependent's ability to appear. Such application may be made by the service member or his or her dependent at the time of the initial application under subsection (2) of this section or when it appears that the service member or his or her dependent is unable to prosecute or defend the action. The same information required under subsection (3) of this subsection shall be included in an application under this subsection.

(6) If the court refuses to grant an additional stay of proceedings under subsection (2) of this section, the court shall appoint counsel to represent the service member or his or her dependent in the action or proceeding.

(7) A service member or dependent who applies for a stay under this section and is unsuccessful may not seek the protections afforded by RCW 38.42.050. [2005 c 254 § 6.]