

MILITARY DIVORCE GUIDE



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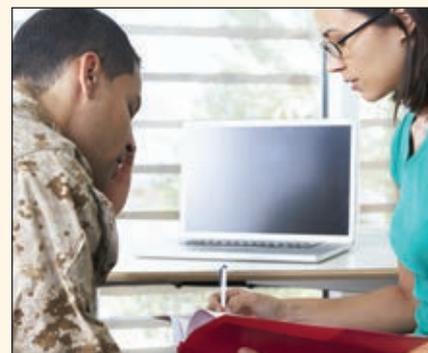
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Will deployment affect my custody or visitation rights with my children? How does the military respond to domestic violence? Can the military force my ex to pay child or spousal support?

These are a few of the many questions that couples with one or both spouses in the military struggle with during and after divorce. This special **Military Divorce Guide** provides you with useful articles and guidance about the unique issues you're facing; understanding these issues will allow you to make more informed decisions for you and your family.



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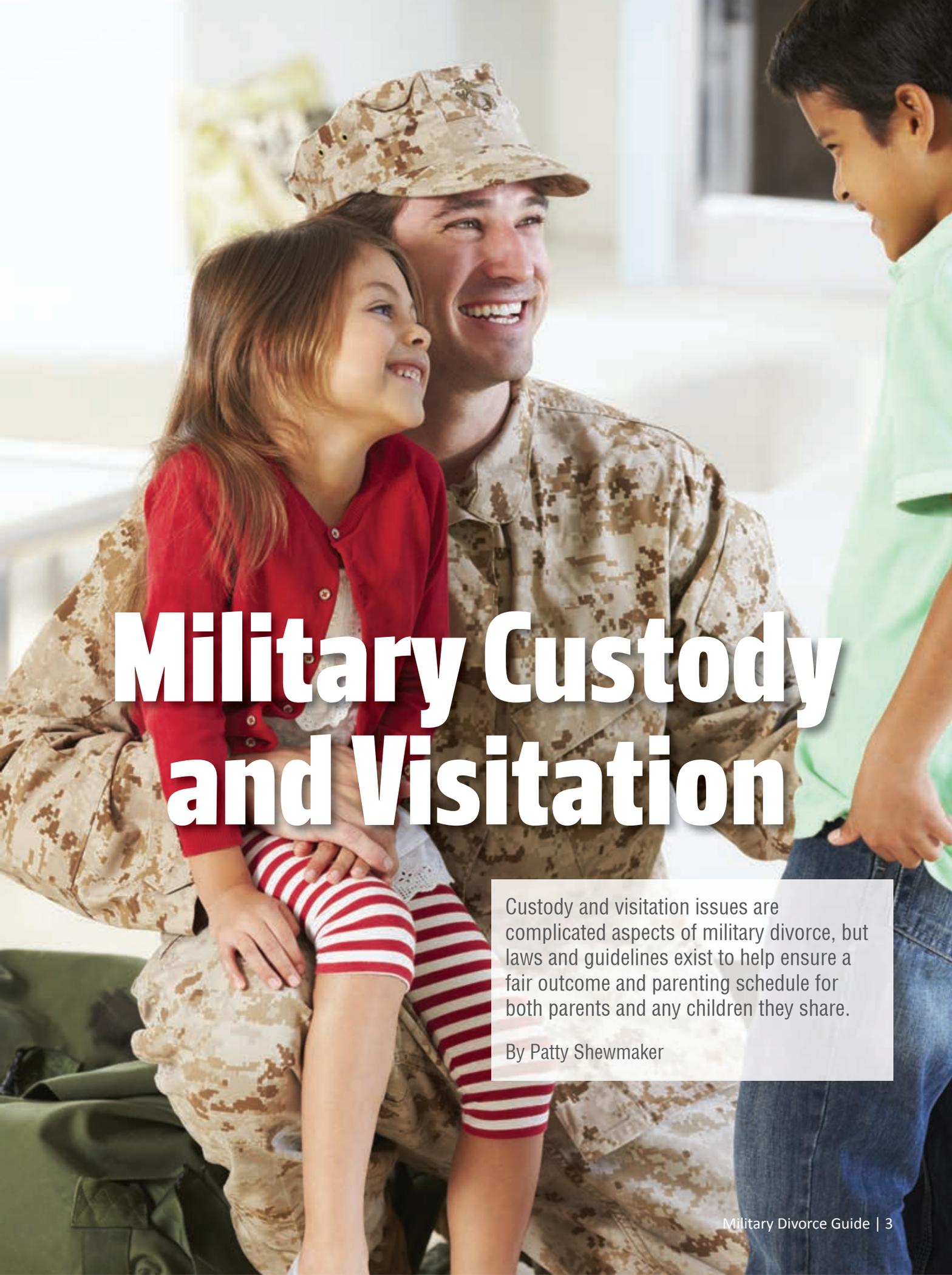
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The articles in this Guide are provided for general information and may not apply to your unique situation. These articles do not take the place of a lawyer, accountant, financial planner, therapist, etc.; since laws and procedures vary by region, for professional advice, you must seek counsel from the appropriate professional in your area. The views presented in the articles are the authors' own and do not necessarily represent the views of this firm or of Divorce Marketing Group. This Guide is published by and Copyright © Divorce Marketing Group. ALL RIGHTS RESERVED. Any use of materials from this Guide – including reproduction, modification, or distribution – without prior written consent of Divorce Marketing Group is prohibited.



Military Custody and Visitation

Custody and visitation issues are complicated aspects of military divorce, but laws and guidelines exist to help ensure a fair outcome and parenting schedule for both parents and any children they share.

By Patty Shewmaker

According to the *2012 Demographics Report* published by the U.S. Department of Defense (DoD), “The total number of military personnel is over 3.6 million strong.” This includes DoD Active Duty military personnel (1,388,028) and Selected Reserve Force (848,302). The *2012 Report* states that: “Approximately five percent (5.2% or 72,471) of Active Duty members are single parents” and “9.4 percent, or 79,321, of Selected Reserve members are single parents.” (You can read the full *Report* at www.militaryo-nresource.mil/12038/MOS/Reports/2012_Demographics_Report.pdf.)

The operational tempo (“optempo”) of the Armed Forces – including the repeated mobilizations, deployments, and frequent changes of duty stations – is a significant challenge to custody and visitation arrangements. The optempo also places additional stress on the family unit leading to higher incidents of divorce and the custody issues resulting from divorce.

Here are a few examples of issues I’ve seen involving servicemembers and child custody.

Scenario #1

Vince and his wife get a divorce. They have two minor children, and they agree to a joint legal and physical custody arrangement. Vince has parenting time with his children approximately 40% of the time. Vince is also a Sergeant in the Army National Guard. In 2014, Vince gets called to active duty overseas. While he is deployed, his ex-wife doesn’t allow him to call the children, and she doesn’t allow him to see the children when he comes home on mid-tour leave. What should he do?

Scenario #2

Crystal is a divorced mother of her son. She has primary physical custody, and her ex-husband has “standard” visitation. Crystal is in the Reserves, and she has remarried since the divorce. Crystal gets mobilized and is scheduled to deploy in ten days. She wants to leave her child with her new husband; however, her ex-husband thinks the child should stay with him and says he is going to file a modification of custody and get primary physical custody of the child. What should she do?

Scenario #3

Connie was married to Alex, an active duty Marine, and they had a son. They subsequently divorced and Alex had primary custody of their son. Alex deployed and left their son with his new wife, Sally, which is in accordance with the family care plan that Alex put together and submitted to the Marine Corps. Connie thinks that their son should be with her. What should she do?

These are just three examples, and the possibilities are endless. Custody issues between parents can be difficult and complex; adding the challenges of military life can dramatically exacerbate the difficulty and complexity of custody issues.

The Servicemembers Civil Relief Act

Not only does the military provide a great service to this nation, but it also provides great opportunities for servicemembers and their families. Servicemembers should not have to choose between serving their country and taking care of their children.

Any discussion of civil actions and servicemembers must start with and include a discussion about the *Servicemembers Civil Relief Act (SCRA)*. This was formerly the *Soldiers’ and Sailors’ Civil Relief Act of 1940 (SSCRA)*, but was updated and amended in 2003. One of the purposes of the *Act* is “to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.” Title III of the *SCRA* provides procedural protections for the servicemember, including a stay of civil proceedings. The *SCRA* provides that “at any stage before a final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met.”

The stay proceedings of the *SCRA* are intended to protect servicemembers from worrying about possible litigation and having to deal with civil litigation when deployed. Soldiers who are distracted by things going on at home are often and understandably unable to focus on their mission and can be a danger to themselves and their comrades. The *SCRA* provides specific guidelines that a servicemember must follow to apply for a stay of proceedings – and even then, there is no guarantee that the court will grant the stay. If there is an issue regarding child custody or related matters in which the servicemember is not materially

Parenting plans should contemplate what happens in the event of a deployment... some states require that these issues be contemplated when a parent is also a servicemember.

affected, a court has the discretion to enter temporary orders even while the servicemember is deployed.

Parenting Plans

Any time there is a custody case involving a servicemember, whether on active duty or part of the reserve component, the parenting plan or visitation schedule should contemplate the military service of that parent. A servicemember on active duty changes his/her station every few years, so even though the servicemember and the other parent may be in close proximity at the time of the custody order, it is reasonably foreseeable that the servicemember will be moving while the order is still in place. What will the parenting time schedule look like when the servicemember moves? Every other weekend may no longer work if the parents reside in different cities or states. Addressing these issues in a parenting plan can help to alleviate the need for the parents to return to court for a modification. In some jurisdictions, it is standard practice to include provisions in a parenting plan for when the parents live within 100 or 150 miles of each other, and provisions for when they live more than 100 or 150 miles apart.

Parenting plans should also contemplate what happens in the event of a deployment. Does the deployed parent get parenting time during pre-deployment leave and/or mid-tour leave? Does the deployed parent have contact with the child(ren) while he or she is deployed via telephone or Skype? Does the deployed parent's family get parenting time with the child(ren) during the deployment? When does the original parenting schedule resume? Contemplating these things in the parenting plan can reduce problems and litigation as well as reduce the stress of a deployment on a family; some states even require that these issues be contemplated when a parent is also a servicemember.

Uniform Deployed Parents Custody and Visitation Act

The majority of the states have now passed laws regarding child custody and military servicemembers. However, these laws are not standard and vary greatly from state to state. Some state statutes only apply to National Guardsmen and/or Reservists. Some provide that a deployment alone does not justify a child custody modification, while others do not have this provision. Given the prevalence of the issue and the disparity among the states on dealing with custody and the military, there has been relevant legislation introduced at the federal level. The most recently proposed legislation was

H.R. 1898 introduced on May 8, 2013; this legislation would amend the *SCRA* to include provisions regarding deployments and child custody. While uniformity among the states may be desirable, the introduction of federal legislation regarding child-custody matters has created much concern regarding the involvement of the federal government in areas that have strictly and historically been dealt with by state courts.

In response, the National Conference of Commissioners on Uniform State Laws approved and recommended for enactment by the states the *Uniform Deployed Parents Custody and Visitation Act (UDPCVA)* at its annual conference in July 2012. The National Conference of Commissioners on Uniform State Laws has previously given us such laws as the *Uniform Commercial Code*, the *Uniform Child Custody Jurisdiction and Enforcement Act*, and the *Uniform Interstate Family Support Act*. The *UDPCVA* has already been enacted by four states: Colorado, Nevada, North Carolina, and North Dakota.

The *UDPCVA* addresses issues such as:

1. the entry of temporary orders when a servicemember deploys;
2. contact between the servicemember and his or her child(ren) during deployment;
3. delegation of visitation rights so other family members may see the child(ren) in the servicemember's absence; and
4. returning to the prior visitation/custody upon redeployment.

The *UDPCVA* also provides that "a court may not consider a parent's past deployment or possible future deployment in itself in determining the best interest of the child."

Not only does the military provide a great service to this nation, but it also provides great opportunities for servicemembers and their families – including children. Servicemembers should not have to choose between serving their country and taking care of their children. ■

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The Servicemembers Civil Relief Act

By Karen Robbins

Military servicemembers and their spouses should be aware of the protections provided by the *Servicemembers Civil Relief Act*, including postponements for active servicemembers who are unable to attend court. Here's how the *Act* could affect you.

The federal government encourages military service. While they are serving their country and unable to appear in court, the government wants to ensure that our servicemembers' homes will not be foreclosed upon; their vehicles will not be repossessed or their loans called; and their spouses will not be able to divorce them, or change their child support obligation or custody arrangement.

The Servicemembers Civil Relief Act (SCRA) protects our active servicemembers from all of those occurrences. It's important to know that the *SCRA* applies only to those servicemembers who are on active duty, reservists who have received orders to report, and national guardsmen who have been activated. (For ease of reference, individuals of those

categories will be referred to as a “servicemember”.) If you are a servicemember or their spouse, you must be aware of the *SCRA* and what it can and cannot do. You also need to make a decision if you wish to take advantage of its protections.

A Shield, not a Sword

When family law attorneys talk about the *SCRA*, they often say that the Act is intended to work as a shield and not a sword. What they mean is that the *SCRA* is intended to protect those servicemembers who are on active duty from having court actions proceed without them and orders being entered without their having the opportunity to appear and defend themselves. It is not to be used by a servicemember as a way to prolong or postpone legal actions indefinitely, or deprive others of the ability to enforce their rights in court.

The part of the *SCRA* with which most people are familiar is dealing with default judgments, in which the court can enter a judgment against a party who fails to respond to an initial pleading of a lawsuit within the required time period. The *SCRA* has a procedure that has to be followed if someone wants to proceed with a case in which a servicemember is the party who failed to respond. The *SCRA* does not prevent a court case from going ahead without the servicemember or entering a judgment against the servicemember – it only ensures that there is a procedure the court has to follow before that can happen. That procedure includes a postponement of the court case for 90 days and the appointment of a lawyer to represent the absent servicemember. That lawyer investigates and decides if the servicemember has a defense to the action, and whether the servicemember is able to appear in court. If there is no defense, and the servicemember is able to appear in court, then the court can enter a judgment against them. If the servicemember has a defense to the action, then the appointed lawyer may request another postponement of the court case so that the servicemember can file the necessary paperwork and make arrangements with their commanding officer to appear in court.

Spouse of Servicemember

If you are the spouse of the servicemember on active duty, you’re probably thinking that your case will never move ahead, as your spouse will ask for postponements forever. The *SCRA* limits the ability to request postponements by requiring that the servicemember submit a letter from their commanding officer certifying that the servicemember is not eligible for leave because of military responsibilities, and stating when that status will change. Of course, even if the

servicemember is able to participate in the court case when it begins, if that status changes, the provisions for postponement may apply. The *SCRA* also allows a servicemember to request that a court set aside any order entered when the servicemember didn’t receive notice of the pleading because their active duty. To make sure your family law case moves forward as smoothly as possible, it is in your best interest to make sure the servicemember knows about the case and consults with a lawyer. Although this last statement might seem counter-intuitive (after all, who wouldn’t want to avoid a contested family law case?), your case will take less time and effort in the long run if you pay attention to the requirements of the *SCRA*.

Servicemember on Active Duty

If you are a servicemember on active duty, you need to think about whether you should invoke the protections of the *SCRA* in your case. There are times in which if you can appear in court, you should. For example, in most states, the court can order child support or alimony from the date a request is filed in court. That means that invoking the *SCRA* won’t help you avoid the entry of a support award against you, and you could face hefty accumulated support payments when you finally appear before the court. As the court will also order a payment plan for those arrearages to be added to the monthly support amount, your monthly payment will be far greater than had you not invoked the postponement provisions of the *SCRA*. There may be other situations like this in your state, and you should consult a lawyer to decide whether a stay request is the right decision for you.

The *SCRA* contains additional safeguards for servicemembers and their families in the areas of interest-rate reductions on loans, eviction proceedings, vehicle leases, and foreclosures on mortgages. These protections are not available to the general public, and may be used successfully by a lawyer well-versed in the *SCRA* to resolve a family law case involving a servicemember.

Whether you are the servicemember or the spouse of a servicemember, you should contact a family law attorney with experience in dealing with military issues to help guide and advise you. ■

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The Implications of UDPCVA on Military Divorce

Divorced military servicemembers may face unique complications related to child custody while deployed, but the *Uniform Deployed Parents Custody and Visitation Act* is in place to protect the parental rights of men and women in uniform.

By Mark E. Sullivan

With widespread military forces around the world, there are unique challenges in front of the men and women in uniform who make up the Army, Navy, Air Force, Marine Corps, and Coast Guard. This can mean stress at home and less time for families. Mobilizations, TDY (temporary duty), deployments, and remote assignments can take their toll on the judges who handle custody cases, as well as the parents involved in the lawsuit. It often appears that there are no clear rules to guide them when a family separation arises and there is a dispute over the care of children. Custody litigation is often the result.

The single biggest area of change in family law in the last decade has been the movement among states to enact legislation protecting the rights of servicemembers and their children in custody and visitation matters. There are a growing number of laws and cases dealing with custody jurisdiction in the event of deployment, delegated visitation rights, communications with the child during deployment, expedited hearings, and electronic evidence and testimony in court. And in a few states, there has been total inaction.

In July 2012, the Uniform Law Commission (ULC) published the newest tool for dealing with deployment and custody. The latest in a series of “uniform laws” that serve as models for state legislation is the *Uniform Deployed Parents Custody and Visitation Act (UDPCVA)*. The *UDPCVA*



adopted the best provisions found in the state court decisions and state statutes in a single act. At the time of this writing, it has already been enacted in Nevada, Oklahoma, North Dakota, North Carolina, and Colorado.

The Uniform Law Commission

Between 2009 and 2011, a committee of the ULC met to assemble a uniform-law solution to problems with military custody and visitation cases, such as:

- Rules for custody, visitation, and decision-making when one parent is absent due to military duties;
- Substitute visitation by step-parents and grandparents during deployment;
- Military service as a factor in custody determinations; and
- Whether a temporary custody order should be made permanent when a parent comes back from a military absence.

“States have been doing a great job in proposing and passing laws dealing with military personnel and custody, but they’re just all over the board on what the laws contain,” says Jim Higdon, a San Antonio family lawyer and the ABA’s delegate to the ULC committee that wrote the *UDPCVA*. “There’s no consistency in state statutes, and this can be a real problem for military members and their families. What the ULC did was to gather the best provisions from states such as Alaska, Florida, Hawaii, Georgia, and Louisiana, and then assemble them into a model act.”

Tales from the Trenches

Visitation cases illustrate how military parents have fought to keep contact through their new spouses or their parents when the children are denied such access by the children’s mothers. In a number of state cases, courts have found that the court can delegate or assign visitation rights to family members during a deployment. These include *Webb v. Webb*, 148 P. 3d 1267

(Ida. 2006); *Settle v. Galloway*, 682 So. 2d 1032 (Miss. 1996); *In re Marriage of DePalma*, 176 P.3d 829 (Colo. App. 2008); *In re Marriage of Sullivan*, 342 Ill. App. 3d 560, 795 N.E. 2d 392 (2003); and *McQuinn v. McQuinn*, 866 So. 2d 570 (Ala. Civ. App. 2003).

Military Absence and Custody

One of the key points of the *UDPCVA* is the issue of “military absence” – such as deployment, unaccompanied tours of duty, and TDY – and its impact on the court’s jurisdiction. The *Act* sets out the standard: the mere absence of a military parent from a state will not be used to deprive that state of custody jurisdiction.

In most family law cases, a parent’s move is a voluntary choice. For servicemembers, however, moves from base to base, and stateside to overseas are not voluntary: they are the product of military orders. Failure to comply is a criminal offense. Such involuntary moves should not also punish the servicemember by the loss of custody jurisdiction. This is one of the fundamental principles of the *UDPCVA* – past or future military absence cannot be the basis for a change in custody determined by the best interest of the child.

Enter the *UDPCVA*

The *UDPCVA* is divided into five articles. The first article covers definitions, such as “deploying parent” or “family member”. It also covers enforcement, attorney fees, and a requirement that the residence of a parent not be changed by reason of deployment. Parents are required to provide notice of impending deployment and of address changes during a deployment. A court may not consider a parent’s past deployment or possible future deployment – by itself – in deciding the best interest of the child.

Articles 2 and 3 of the *Act* deal with matters that arise upon notice of deployment and during the actual absence, depending on whether the case is resolved by settlement or litigation. The

Act encourages parents to settle visitation and custody issues. Where there is an agreement, Article 2 sets out the terms and procedural protections. When parents cannot agree, Article 3 states provisions for a court’s resolution of custody and visitation issues. It includes terms for electronic testimony (e.g., telephone or internet) and expedited procedures for a temporary custody order during deployment. A permanent custody order cannot be entered before or during deployment without the consent of the servicemember. Article 3 also states that the judge may grant substitute visitation and decision-making to a non-parent with a close and substantial relationship with the child if it is in the best interest of the child.

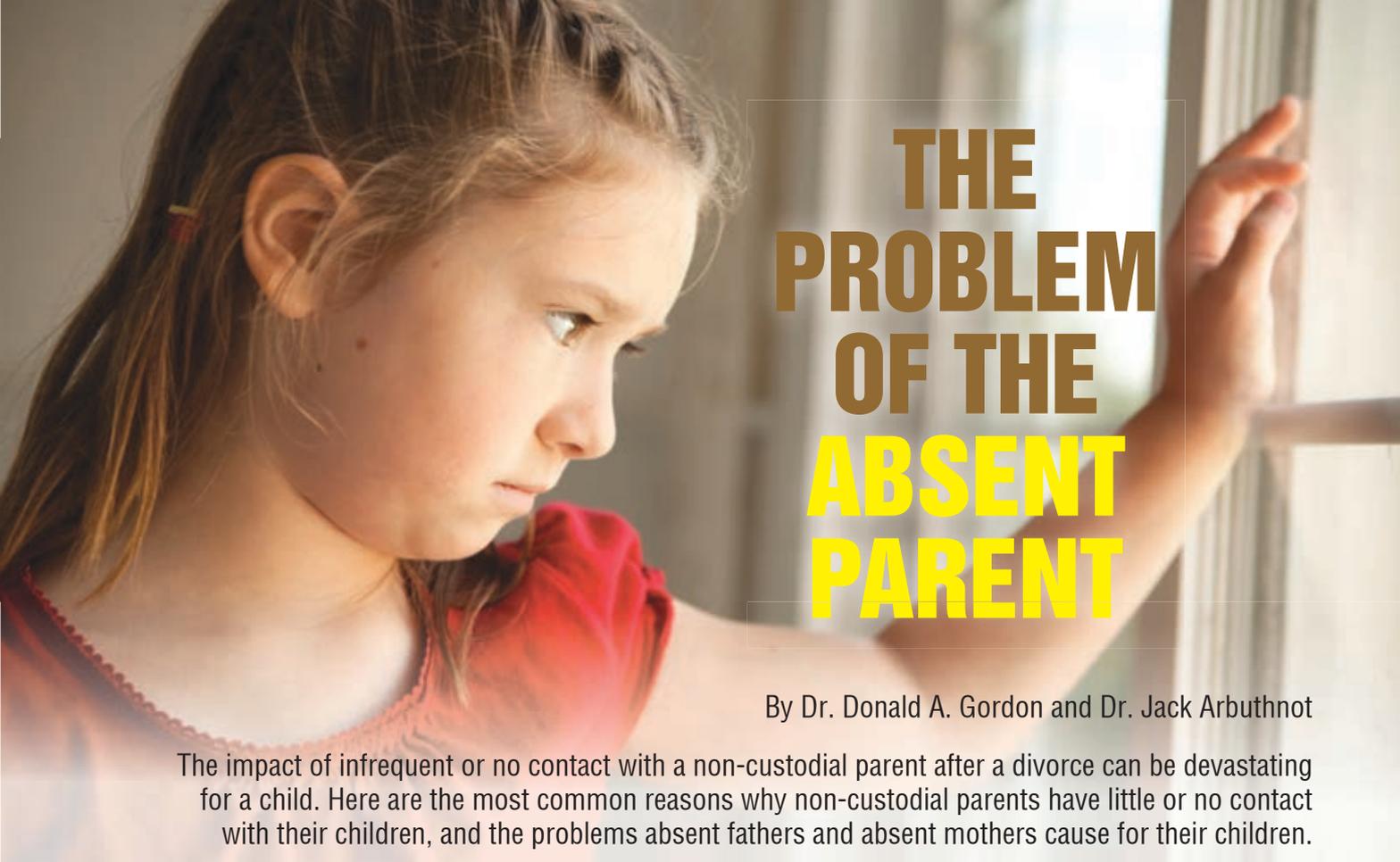
The return from deployment is governed by Article 4. This includes termination of the temporary custody arrangement following the servicemember’s return, with one set of procedures for mutual agreement to end a temporary custody settlement, another for mutual agreement to terminate a court order for temporary custody, and a third to deal with the situation where a court’s intervention is required.

The final part is Article 5. This contains the effective date provision and a transition provision regarding prior orders for temporary custody entered before the effective date of the *Act*.

A Step Forward

The *UDPCVA* is a vast step forward in providing standard steps, rights, and procedures to use when a military parent leaves on unaccompanied military business. These absences are never easy for single parents in uniform. The *Act* is a solid step in the right direction to protect those who protect our freedoms. ■

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THE PROBLEM OF THE ABSENT PARENT

By Dr. Donald A. Gordon and Dr. Jack Arbuthnot

The impact of infrequent or no contact with a non-custodial parent after a divorce can be devastating for a child. Here are the most common reasons why non-custodial parents have little or no contact with their children, and the problems absent fathers and absent mothers cause for their children.

How often do non-custodial parents see their children? Only a third of children in sole residential homes see their other parent at least once a month. Another third have contact less than once a month, and half of these have contact less than once a year. A final third have no contact at all with their non-custodial parent. Things get worse during adolescence, when there is a dramatic drop in the amount of contact with the absent parent. Over half of non-custodial fathers have no contact within a year; this is a sad fact for our nation's children.

A non-custodial parent with a low income has a greater chance of losing contact with the child. Part of the reason is the cost of access, which can include travel, clothes, food, and lodging. The damage caused to a child by loss of contact is huge. There are many risk factors that come with poverty, and loss of contact with the children makes problems worse.

There are many reasons the non-custodial parent has little or no contact.

The reasons are different for each situation, but they usually include one or more of the following:

- **The resident parent has discouraged or destroyed the child's bond with the absent parent.** This is usually out of anger or bitterness.
- **The nonresident parent thinks it is emotionally too difficult.** This could be because of deep feelings of loss. It could be because of the resident parent's new live-in partner. Or it could be to avoid conflict with the other parent. Maybe the parent feels rejected by the child.
- **The access arrangement is unnatural.** It doesn't permit real parenting to take place. This creates discomfort and stress for both the children and parent.
- **The residential parent won't allow access (visitation).**
- **The residential parent has moved far away.** Regular access is not possible. This is especially true for low-income parents. It happens in almost 30% of families within the first two years after the break-up.
- **The child is psychologically or**

physically abandoned by the absent parent. This is often because of a mistaken belief that the children would be better off. Or it is because the children aren't the most important things in that parent's life.

All of these reasons cause many parents to abandon their child. Usually, parents don't withdraw from their children: they simply feel forced out of their child's life. Many things can drive them out of their children's lives: the judicial and governmental system may seem unfair; they may feel judged by society's attitudes; and they may feel excluded by the other parent.

Problems for the Children Caused by the Father's Absence

The impact of infrequent or no contact with a parent (usually the father) can devastate a child. There are many reasons; here are some of the most important.

1. **Most children deeply miss their fathers.** A young child often mourns the loss of their father as if he was

dead. (In fact, lack of contact because of a father's death causes fewer problems than for children of a break-up.) Many children engage in bizarre fantasies to explain his absence. Or they worry that he will replace them with a new family. They worry that he might forget about them. There is one request often made by a child of a break-up. They want to be able to spend more time with Dad. They are unsure about how long the separation is going to last. And this leads to continuing grief. This grief lasts well after the parents' own grief has been resolved.

2. **Boys need their fathers for sex role identity.** They need to be with a parent who has grown up as a male. Fathers and sons need time together. (Just as do mothers and daughters.) This is how boys learn about male interests and activities. They learn male skills and social behaviors. Mothers may engage in male activities with their sons. But this is not a suitable substitute for the real thing. Boys need an older male authority figure. They need his approval and interest. They need his support in order to feel good about themselves.
3. **Both boys and girls need exposure to a father.** They need his love, guidance and discipline.
4. **A child with an absent father will not do as well in school.** They get more criticism from teachers for their behavior.
5. **Social behaviors are damaged.** This applies to both boys and girls. Girls tend to be more flirtatious with boys and men; they may become more promiscuous, and they may marry earlier. Both boys and girls have high levels of worry and anxiety, poor concepts of self, and delinquency rates are higher. Boys also show impaired moral development.

A child needs to be involved with their father. There must be meaningful parent-child situations. This is more than just visiting, more than weekends and summer vacations. Children need

to know they will see their fathers on a regular basis. Time together should be predictable, and it should be under the most "normal" conditions possible.

Contact should be expected: a child can accept an absent parent if they know when they will see them again. Contact works best when the mother is supportive, so she should encourage contact.

Sometimes parents live far apart. They need to work out a clear plan to share the costs of access; this may be something that parents should put in their divorce or separation agreements.

There are many risks and costs when one parent drops out; it affects both the families and society. Many separated parents want no contact with the other parent, but when they avoid their child to accomplish this, there are risks to the child. Since many of them side with their mothers, some children may be reluctant to see their fathers.

A father often feels shaken by the loss of his family, and it's very hard for him if there is initial rejection by his child. This rejection will disappear if Dad continues having regular contact. The child will trust the father's love, and that love will be returned.

Problems for the Children Caused by the Mother's Absence

An absent mother is much less frequent, but it devastates a child just as much as an absent father. Less is known about the effects of a mother's absence after a break-up since it is relatively rare. We can assume the effects on children are significant: they will likely have emotional and learning problems.

1. **With the mother absent, girls lose their main role model, and their sex-role identity is damaged.** Some fathers are limited in their ability to understand their daughters. Boys also suffer from the absence of a mother, who can relate to and help identify their feelings.

2. **Recent research suggests mothers play a major role in helping to prevent violent behavior in teenage boys.** Young girls who start having children in their teens are most at risk for having problem boys. They tend to have less education and fewer opportunities than their peers, and many are single mothers who find it difficult to maintain a stable environment to raise their children.
3. **A child's self-esteem is damaged when they are rejected by their mother.** This is true whether the rejection is real or perceived in the child's mind. It can affect social relationships well into adulthood. The child loses the opportunity to learn social skills when they are not able to observe the way their mother relates to them and others.
4. **There is greater social stigma for a non-custodial mother than for a non-custodial father.** Society tends to view mothers without custody of their children as being unfit. This is very hard on mothers who are responsible parents; some moms willingly gave up residential status because they believed the father was the better parent.
5. **Most non-custodial mothers have low self-esteem.** They lack clear role definition, and they often feel like victims. However, about a third of them report few or no problems with adjusting to their role as a non-custodial parent. ■

This article was adapted with permission from What About the Children? A Simple Guide For Divorced/ Separated And Divorcing Parents (Center for Divorce Education, 2011) by Donald A. Gordon (Ph.D.) and Jack Arbuthnot (Ph.D.). Based in Athens, OH, the Center for Divorce Education (CDE) is dedicated to advocating for children and helping parents to minimize the harmful effects that divorce and separation has on children. www.divorce-education.com



By Aida Seetner

The Emotional Consequences of Infidelity

When the emotional impact of infidelity is unresolved, the divorce process can be turned into a costly and stressful battle – one that lasts far beyond the end of the marriage.

The topic of infidelity is a heated one, which lends itself to a wide spectrum of speculations, judgments and emotional reactions. It also leads to many questions such as: “How could this have happened?” “Should I stay or should I go?” “Can my marriage be saved?” “Will I ever be able to get past my anger?” and “Will I ever be able to survive this divorce?”

Defining Infidelity

To begin with, we must keep in mind that what constitutes “infidelity” to one person or couple may not constitute “infidelity” to another. The key factor that bonds all definitions of infidelity is the feeling of betrayal as an outcome. The act occurs within a committed relationship and is a

violation of the agreed-upon norms and boundaries (whether clearly stated or implied) within that relationship. It may be sexual and/or emotional. It may be precipitated by either party in the relationship. In a number of studies conducted in 2005, it was found that infidelity occurs in approximately 25% of all relationships and tends to be initiated by more men than women. In my practice, I have found an equal proportion of male and female betrayers.

Infidelity is Often a Symptom

“How could this have happened?” is a common and natural question; and not a simple one to answer. Often, but not always, infidelity is a symptom of an underlying troubled relationship. The betrayer is unable to cope with

unresolved conflicting issues in the relationship, be they emotional and/or physical. Rather than choosing to tackle the issues directly with her/his partner, he/she chooses to seek out another partner in secrecy. One example of an issue that I have seen in my practice was of a man who felt powerless in his relationship with a critical and domineering wife. Having a secret extramarital affair was the only way he could find to assert his independence. Another example was a woman who no longer felt emotionally or physically passionate about her marriage, but feared hurting her partner by telling him. Instead, she found passion in a secret relationship with another man.

A second possible source of infidelity is unresolved emotional issues

within an individual that are not directly related to his/her marriage. These can include a history of childhood sexual abuse, childhood emotional deprivation, sexual identity issues, or an internal struggle with feelings of self-worth.

Whatever the origin of the act of infidelity, the resulting emotional reactions in the betrayed cover a wide spectrum, but tend to be consistent across individuals. Shock, devastation, anger, sadness, shame, anxiety, self-doubt, confusion and a desire for revenge are but a few. Some common emotions in the betrayer include fear, sadness, guilt, remorse, shame, anxiety, confusion, and feelings of worthlessness.

Infidelity: Relationship at a Crossroad

Once the act of infidelity is exposed, the impact on the relationship is typically devastating to both parties. The essential question that follows is: “Should we recommit or quit?” Relationships can be saved through couple therapy as long as both parties are equally committed to the process. Having one party stay at home while the other pursues therapy will not ultimately save the relationship. Both parties must be willing to invest a high degree of effort over an extended period of time, and time itself must pass for true trust to be restored. On the other hand, it is not unusual for one party to choose to reconcile while the other chooses to end the relationship. This will pose an extreme emotional challenge to the partner who wishes to work towards reconciliation. Many of the reactions that I have described above (e.g., shock, devastation, anger, sadness, shame, anxiety, self-doubt, confusion, and a desire for revenge) will be intensified and further complicated by grief and mourning.

The Potential Emotional Damage

When a decision to divorce is made, both partners will be experiencing a “death,” and their emotional

response will be similar to the response to an actual death of a loved one. Each individual will enter a stage of grief and mourning, which will be experienced to varying intensities. If one person does not want to let go while the other is ready to quit, the former person may suffer a more intense grief reaction, which is typically characterized by feelings of anger and depression. An unhealthy divorce will most likely follow if healthy grief work and the resolution of feelings of betrayal are not achieved.

Here are four typical scenarios:

1. A male client was enraged with his wife for pursuing an extramarital affair and then asking him for a divorce. He found that he could not let go of his rage, and chose to use his 10 and 12 year-old children as a weapon against his wife. He attempted to alienate his children from her by continuously bad-mouthing her to them (including telling them that she cheated on him), and evoking guilt in them when they chose to spend time with her rather than him. Furthermore, this client attempted to gain full custody of his children and to prove that his wife was an incompetent parent. In reality, his wife was an extremely competent and compassionate mother with whom the children had a very strong and healthy bond. This serves as a critical example of how unresolved feelings of anger resulting from infidelity cannot only impede a healthy divorce process, but can also cause serious emotional damage to the children. It is crucial that children are given the freedom to bond equally with both of their parents, regardless of whether one parent betrayed the other. The children should *never* be told about the betrayal, as then they will feel pressured to take sides. Furthermore, each child feels that he/she is an extension of each parent. When one parent bad-mouths the other, the child’s self-esteem is

deeply injured.

2. A female client caught her husband in bed with another woman. This client was suffering from feelings of inadequacy prior to the discovery. Her low self-esteem predated her marriage. As her husband distanced himself from her, her self-esteem plummeted. She decided to file for a divorce based on infidelity but, at the same time, concluded that it would be best for her husband and three children if she slid out of the picture as quickly as possible. She therefore directed her lawyer to give her husband 75% of the assets, as well as full custody of the children. Clearly her actions short-changed not only herself, but also the emotional needs of her children to have both parents present and active in their lives.
3. A male client who always felt a deep sense of emotional deprivation in his marriage. In his eyes, his wife attended to everyone else’s needs before his own. This left him feeling chronically and deeply hurt and enraged. To add insult to injury, this man discovered that his wife was having an affair with another man, after which she asked for a divorce. In retaliation, the client was determined to “rob his wife clean” of any equal division of assets. In his mind, she “owed” him for all the years that she deprived him emotionally and for her recent affair. A vicious legal battle followed.
4. A male client who engaged in an extramarital affair for one year while continuously feeling torn. On the one hand, he could not exit the relationship, but on the other hand he experienced extreme guilt and shame. Finally, finding these emotions unbearable, he broke up his relationship with the other woman and approached his wife with a full admission of guilt. Witnessing her distraught state and experiencing her intense rage, his feelings of shame and guilt became unbear-



able. As a means of alleviating the intensity of his emotions, he entered the divorce process with the intent of giving his wife “anything” she wanted. This allowed her to demand “everything” as a means of discharging her anger.

All of the above examples address clients who struggled with deep unresolved emotions resulting from the cause and effects of infidelity. As a consequence, each client entered into an unhealthy divorce process. In the first and third examples, both clients were motivated by rage and a desire to gain revenge against their partners. In the second and fourth examples, the clients were motivated by feelings of extreme inadequacy, shame, and guilt. Such unhealthy sources of motivation typically create the basis for high-conflict and highly problematic divorce processes. *All* family members suffer – including innocent children.

A Healthy Divorce is Possible

Psychotherapy can assist individuals in gaining awareness of their

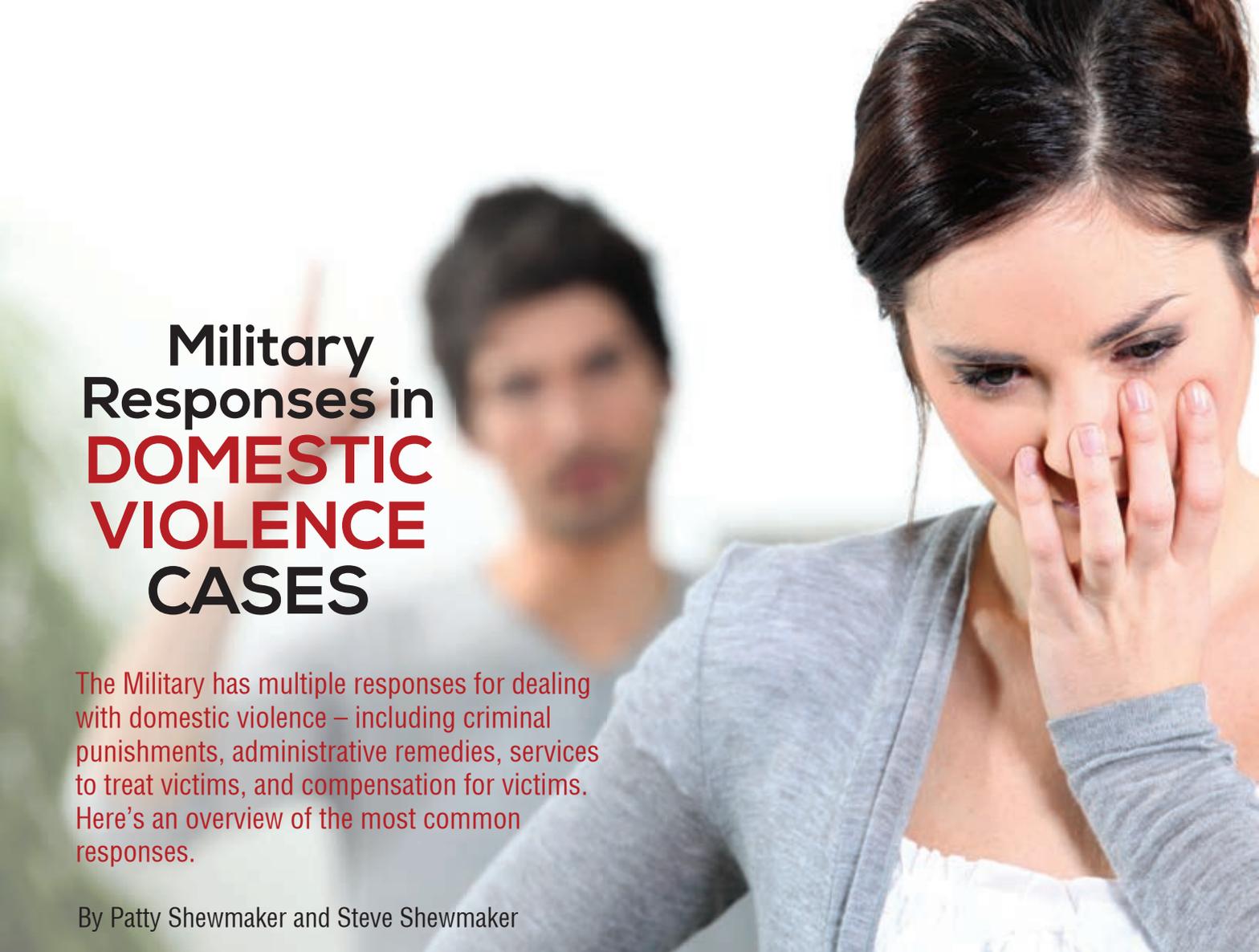
unresolved emotional issues, working these issues through, and developing new skills to cope with the reality of a dissolved marriage. Upon completion of such work, these individuals will be well-equipped to enter a healthy divorce process. It becomes a win-win situation for all family members.

At this point I must add a cautionary statement. It is tempting for many individuals who are going through the divorce process, especially one that evolves around infidelity, to reach out only to non-professionals for emotional assistance. Friends and family members can act as sounding-boards and sources of support. A trained psychotherapist, however, possesses the professional and objective skills needed to help individuals tackle their emotional obstacles in a deeper and more fundamental way.

The disclosure of infidelity in a marriage is a traumatic event for most individuals. Both the “betrayed” and the “betrayed” are frequently challenged on deep emotional levels. If reconciliation is chosen by both partners, these

emotions can be addressed and resolved in couple therapy, and the marriage can be saved. On the other hand, if the choice is to dissolve the marriage and these emotions are left unresolved, they can easily motivate individuals to pursue unhealthy and high-conflict divorces. All family members will be injured. Seeking professional help through psychotherapy can prevent these painful consequences. ■

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Military Responses in DOMESTIC VIOLENCE CASES

The Military has multiple responses for dealing with domestic violence – including criminal punishments, administrative remedies, services to treat victims, and compensation for victims. Here’s an overview of the most common responses.

By Patty Shewmaker and Steve Shewmaker

Military families are subject to increased stress with the demands of military readiness and frequent deployments. With the increased number of deployments in the last 12 years, this stress has increased on servicemembers and their families. Complicating matters and increasing family stress is the prevalence of post-traumatic stress disorder (PTSD) felt by servicemembers returning from numerous deployments to Iraq and Afghanistan. The effects of PTSD can inhibit a servicemember’s ability to reintegrate himself/herself post deployment, sometimes resulting in family issues and even criminal issues. Returning servicemembers often seek ways to self-medicate symptoms of PTSD through drugs and alcohol, compounding family issues. Unfortunately, one way PTSD often manifests itself is through incidents of family violence.

The Department of Defense (DoD) has recognized that domestic violence is an issue, issuing DoD Instruction Number 6400.06, “Domestic Abuse Involving DoD Military and Certain Affiliated Personnel” in 2007. DoD policy is to prevent and eliminate domestic abuse in the DoD and to

provide for the safety of victims; hold abusers appropriately accountable for their behavior; and coordinate the response to domestic abuse with the local community. This Instruction states that each commander has the duty and authority to take action and respond to domestic violence situations.

The Military has multiple responses for dealing with domestic violence – including criminal punishments, administrative remedies, services to treat victims, and compensation for victims. Here’s an overview of the most common responses.

Military Justice

Commanders have the authority to punish servicemembers under the Uniform Code of Military Justice (“UCMJ”). Punishment under the UCMJ includes both judicial and non-judicial punishment.

Judicial punishment is for criminal offenses with criminal penalties. Offenses under the UCMJ may include: Article

92. *Failure to Obey Order or Regulation*; Article 128. *Assault*; Article 133. *Conduct unbecoming an Officer and a Gentleman*; and Article 134. *General Article*. Article 134 provides: “Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.”

On the other hand, non-judicial punishment is for minor offenses and includes non-criminal penalties. The guidelines for non-judicial punishment are found under Article 15 of the UCMJ. This Article outlines methods for which Commanders

The effects of PTSD can inhibit a servicemember’s ability to reintegrate himself/herself post deployment, sometimes resulting in family issues and even criminal issues.

can administer punishment for minor offenses. Article 15(b) of the UCMJ provides that “any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial for judicial punishment: 1) restriction to post; 2) restriction to quarters; 3) forfeiture of pay; 4) reduction in grade; and 5) extra duties.

The administration of non-judicial punishment can have unintended consequences on the family unit. A zealous commander may believe that harsh punishment under Article 15 will remedy a situation when in practice a forfeiture of the servicemember’s pay and allowances and extra duty may worsen the tensions at home or take funds away from an already financially strapped family.

Military Protective Orders

Unit commanders may issue Military Protective Orders (MPOs) to an active duty servicemember to protect a victim of domestic abuse/violence or child abuse (the victim could be another servicemember or a civilian). To qualify, the individual seeking the MPO must be the spouse/ex-spouse, current or former intimate partner, or have a child in common. A victim, victim advocate, installation law enforcement agency, or FAP clinician may request a commander to issue an MPO.

Pursuant to DoD Instruction 6400.06, a commander “shall issue and monitor compliance with an MPO when necessary to safeguard a victim, quell a disturbance, and maintain good order and discipline while a victim has time to pursue a protection order through a civilian court, or to support an existing civilian protective order (CPO).” This implies that it is not DoD’s intent that an MPO stand alone without a CPO, rather the MPO should supplement the CPO. The duration of an MPO is until it is terminated or the commander issues a replacement order.

The consequence of violating an MPO is punishment as a criminal offense under the UCMJ. The Commander is required to notify local civilian law-enforcement agencies regarding the existence of an MPO, the individuals involved, any changes to the MPO, and the termination of the MPO (10 U.S.C. § 1567[a]). However, local law enforcement is not required to enforce an MPO, so it the victim should get a civilian protective order in addition to the MPO. According to 10 U.S.C. § 1561(a), “a civilian order of protection shall have the same force and effect on a military installation as such order has within the jurisdiction of the court that issued such order.”

- MPOs may order the abuser (referred to as “the subject”) to:
- have no contact or communication (including face-to-face, by telephone, in writing, or through a third party) with you or members of the your family or household;
 - stay away from the family home (whether it is on or off the installation);
 - stay away from the children's schools, child development centers, youth programs, and your place of employment;
 - move into government quarters (barracks);
 - leave any public place if the victim is in the same location or facility;
 - do certain activities or stop doing certain activities;
 - attend counseling; and
 - surrender his or her government weapons custody card.
- Commanders may tailor the order to meet the specific needs of the situation.

An MPO is only enforceable while the servicemember is assigned to the unit that issued the order. When the servicemember is transferred to a new unit, the order is longer valid. If the victim still believes that the MPO is necessary to keep him or her safe, the victim, a victim advocate, or an FAP staff member can ask the commander who issued the MPO to contact the new commander to advise him or her of the MPO and to request the issuance of a new one. The commander who issued the MPO is supposed to recommend to the new command that a new MPO is issued when the servicemember is transferred to a new command and an MPO is still necessary to protect the victim.

Commanders can only issue MPOs against the servicemember; civilian abusers cannot be subject to MPOs. They may only be subject to a civil protection order issued by a state

or tribal court. However, a commanding officer can order that the civilian abuser stay away from the installation.

Family Advocacy Programs

The DoD Directive 6400.1 provides that each of the services shall establish Family Advocacy Programs (FAPs) at each of the installations. In turn, each of the services has established its own regulations establishing FAPs. The purpose of the FAPs is to “promote public awareness within the military community and coordinate professional intervention at all levels within the civilian and military communities, including law enforcement, social services, health services, and legal services.” (Army Regulation 108-18, Section 1-5.)

The FAPs provide assistance to victims and military families through prevention of domestic violence, education, and counseling. Every installation has a victim advocacy office. The victim advocate will assist the abused individual in seeking MPOs and CPOs as well as getting access or information regarding other assistance that may be locally available whether it is military provided or through a civilian agency. The victim advocate is also available to help the Command develop safety plans as the situation requires.

Lautenberg Amendment

According to 18 USC § 922, it is a felony for any of the following persons to possess a firearm, ammunition, or explosives. Any person who has (or is) been:

1. convicted of any crime punishable by more than one (1) year in prison;
2. convicted of a misdemeanor for domestic violence; or
3. subject to a court order that finds that person “represents a credible threat to the physical safety of an intimate partner or child of that partner” and restrains that person from “harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.”

Obviously, this is an extreme remedy designed to protect the past victims of an offender and society at large. There is no exception for those whose daily employment requires their ability to carry and use firearms.

In some cases, it may be theoretically possible for a servicemember with a court order sufficient to invoke the mandate of 18 USC 922 to continue to serve in some capacities. In reality, most commanders who are made aware of servicemembers subject to a court order invoking 18 USC 922 will begin administrative separation proceedings. As a result, family law practitioners should carefully counsel their clients regarding the extreme results that may arise from a court order invoking 18 USC 922.

Transitional Compensation

Implemented by DoD through DODI 1342.24, “Transitional Compensation for Abused Dependents,” 10 USC § 1059 establishes Transitional Compensation as an *extreme* remedy available for dependents of certain active duty service members who have been abused by the servicemember. However, Transitional Compensation is only available under certain, very specific circumstances. These are:

1. The offending servicemember must be serving on active duty for thirty (30) or more days;
2. The offending servicemember must have been discharged pursuant to court martial or administrative separation; and
3. The basis for the servicemember’s separation must result from the abuse of the dependent.
4. 10 USC § 1059 establishes Transitional Compensation rates as defined by 38 USC 1311 (Dependency and Indemnification Compensation), which typically change each year.

Transitional Compensation is generally paid for 36 months unless the servicemember’s remaining active duty service obligation was less than 36 months at the time of discharge. In this event, transitional assistance will be paid for the remaining months of active duty service obligation or for 12 months if the remaining obligation is less than 12 months. Transitional Compensation payments are not subject to income tax. During the period of Transitional Compensation payments, the recipient is authorized to use military commissary and post-exchange facilities. Recipients are also eligible for Tricare medical, dental, and mental-health treatment during the applicable period. During the period of payments, Transitional Compensation will be forfeited by the abused spouse if he/she cohabitates with the offending servicemember or remarries.

There are many intricate details to the Transitional Compensation program. Your lawyer should review 10 USC 1059 and 38 USC 1311 or consult with a military family law practitioner, local Judge Advocate or the Transitional Compensation Point of Contact at the servicemember’s assigned post/base.

Interim Family Support

We’ve discussed the establishment of MPOs, CPOs, and safety plans, all of which may require the separation of a servicemember from his or her spouse and/or family. When this separation occurs, it may be necessary to ensure that there is some temporary financial support provided by the servicemember to the spouse and/or family. There is no single, cohesive DoD standard for interim or temporary family support in the absence of a court order or consent agreement between the parties. Instead, each of the branches of military service and the U.S. Coast Guard has published administrative regulations that address family support matters.

These regulations apply only under the following conditions:

1. the servicemember must be on active duty, not in reserve status;
2. there must be no existing court order addressing child support or alimony; and
3. there must be no existing consent agreement addressing child support or alimony between the parties.

The Army addresses family support in Army Regulation (AR) 608-99, which may be found at www.army.mil/usapa/epubs/pdf/r608_99.pdf. This regulation is extensive and instructive regarding the Army's overall perspective of military family support and compliance with state court orders regarding domestic matters. AR 608-99 is punitive under the Uniform Code of Military Justice (UCMJ) when servicemembers fail to comply with its provisions. However, there is no provision for recoupment of arrears, so even if a servicemember is convicted under the UCMJ, commanders cannot lawfully order that arrears be paid. Finally, AR 608-99 also vests the servicemember's commander with the discretion to modify the support requirement under a variety of circumstances – for example, where the spouse's income exceeds that of the servicemember. The servicemember bears the burden by a preponderance of evidence that a modification is warranted under the regulation.

The United States Marine Corps (USMC) addresses family support in *Marine Corps Order (MCO) P5800.16a*, which may be found at <http://sja.hqmc.usmc.mil/Pubs/P5800/15.pdf>. It parallels AR 608-99 in many respects (e.g., modification of support and burden of proof), and it also is punitive if violated, but only after non-support is brought to the commander's attention.

The United States Navy addresses family support in *Naval Military Personnel Manual (MILPERSMAN) 1754-030*: www.public.navy.mil/bupers-npc/reference/milpersman/1000/1700Morale/Documents/1754-030.pdf. The general support requirements are based on a fraction of the servicemember's base-pay; see the Manual for this scale. The Navy also provides a method for modification, albeit at higher command levels than the Army and USMC. Violations may also be administratively or criminally prosecuted.

Section 2.E., "Support of Dependents," in the Coast Guard's *Discipline and Conduct (COMDTINST M1600.2)* manual demonstrates their commitment to honoring family support obligations. See www.uscg.mil/directives/cim/1000-1999/CIM_1600_2.pdf. General interim support requirement is a portion of the BAH and the servicemember's base-pay.

The United States Air Force has no regulation approaching the thoroughness of the other services. In fact, *Air Force Instruction 36-2906*, which may be found at

http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2906/afi36-2906.pdf, only states that allotments from a servicemember's pay may be had pursuant to other statutory authority (e.g., state court orders).

Remedies if the Abuser is a Civilian

Of course, a commander has no authority over civilians (including the dependents of servicemembers). However, in some cases – where the dependent has received benefit of travel expenses and on-installation housing in overseas locations under the command's "sponsorship" of dependents abroad – a commander may revoke the sponsorship for abuse. Otherwise, a commander may bar the offending civilian from the installation or pursue criminal charges against the civilian if the abusive conduct occurs on the installation.

- 1) **Bar to the installation.** The installation commander has authority to ban any civilian (including a servicemember's dependent or spouse) who the commander deems to be a threat to the servicemember, other servicemembers, or persons residing or working there from the installation.
- 2) **Coordination with civil authorities.** If the commander bars a civilian from the installation, the commander can notify local civil authorities of the ban. On many military installations, local civil authorities have concurrent jurisdiction with the military authorities. Even on those where civil authorities do not have concurrent jurisdiction, federal jurisdiction extends over civilians on the installation not subject to the UCMJ.
- 3) **Federal Criminal Jurisdiction.** In cases where the military installation (or a part of the installation) has no concurrent state court criminal jurisdiction, the only remedy for criminal violations committed by the non-military abuser is referral to the federal magistrate court that has jurisdiction over the installation. In cases where non-military abusers have committed criminal acts on military installations, the lawyer should ask the local Staff Judge Advocate whether the local Office of the United States Attorney (Department of Justice) and the Federal Magistrate Court will exercise jurisdiction over the offense. ■

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Financial Support for **Military Family Members**



What to do when there is no court order of support for a servicemember's spouse and children.

By Susan Darnell

There is often a period of time between the actual separation and the first trip to court to get an order for temporary support. A temporary support order is just what it sounds like: it settles money matters temporarily while the divorce is underway. Even in the calmest of times, money matters can be a difficult subject; following a separation, it can seem impossible.

However, determining levels of support for military family members is one area where the military can actually simplify matters. Every branch of the service requires military personnel to support their family members – and they have regulations to back that requirement up. While the regulations exist and can even impose punishment on members who do not comply, it is

important to bear in mind that none of the military services can actually compel a member to make payments to family members. So how can these regulations actually accomplish anything?

If the separated couple cannot agree to a financial arrangement, the next step is to contact the military member's

commander. If the member is in the Army, Navy, Marine Corps, or Coast Guard, these services provide a formula to determine the amount of financial support family members should be given. These services' formulas are all similar and take into account housing, number of children and the working status of the estranged spouse.

The Air Force takes a slightly different approach to support and states in AFI 36-2906, Para 3.2.1., that when there is no court order the member must "provide adequate financial support to family members." Unfortunately, there is no formula or definition of what amount meets the "adequate" standard. But read on – there is still a way to get this settled.

As mentioned, despite these instructions, the military cannot divert a member's pay to the family members without a court order. So how can these directives actually help? As all military members are well aware, there is a key difference between a civilian job and being in the military. Civilian employers are rarely involved in family matters and can even be prohibited by law from taking action against an employee for matters that are unrelated to the employee's work. Not so for military members! All aspects of their personal conduct is expected to comply with good order and discipline. A military member who is not supporting their family members – particularly when ordered to do so by a superior – can be found in violation of the Uniform Code of Military Justice (UCMJ), which requires compliance with lawful orders.

In addition, if the military member is receiving a housing allowance payment at the "with dependent" rate and is not providing a portion of those funds to support family members, he/she can be subject to a fraud charge. These adverse consequences of non-support are powerful tools because they

directly relate to the military members ability to maintain his/her job. Since nobody benefits if the military member is discharged from the service, you should use these tools with caution.

The best course of action would be to try to work out a temporary agreement with your spouse, making him/her aware that you understand their military obligation to continue to support you. If that fails, then seek assistance from the member's commander.

To avoid any problems with the military member's career, find an attorney with experience working with military families, and seek a court order of temporary support as soon as

possible. A court order can be submitted to the military pay center (DFAS), which does have the authority to honor court-ordered family support payments. Best of all, a court order can be submitted without involving the member's commander – a winning solution for everyone. ■

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Every branch of the service requires military personnel to support their family members – and they have regulations to back that requirement up.



Military Retirement Benefits & Divorce

Military retirement benefits are often the most valuable asset in a military marriage, so it's important for servicemembers and their spouses to understand the implications of these benefits during a divorce.

By Marshal S. Willick

Military retirement benefits are perhaps the most important part of any military divorce, and are usually the largest single marital asset in a military marriage. There are complex rules governing what benefits are available during life and upon death, how they can be divided, and how they can be protected or lost. Learning a few basic concepts can help you understand how to protect your interests in a military divorce.

The Most Valuable Asset

Retirement benefits are usually the most valuable asset of marriages, often exceeding the value of all other assets combined – including the equity in the marital residence. This is particularly true in military marriages, in which frequent moves are the norm.

Almost universally, pension benefits are recognized as community or marital property, including benefits that are still being earned (“unvested” and unmatured pensions). This is because the benefits accrued during marriage and future receipt of retirement income is actually a large part of the benefits earned by the labor performed during marriage.

Senior enlisted personnel frequently retire after 20 years of active service in their early forties and receive a lifetime pension of one-half their basic pay. This means a minimum of about \$2,000 per month, every month, for life – plus cost of living adjustments. These benefits are worth some half million to a million dollars or more in “present value” – not including cost of living or inflation increases.

As a practical matter, you may need to deal with pensions during the divorce instead of deferring the matter to be dealt with “later”. Some states do not permit a “partition action”

There are complex rules governing what benefits are available during life and upon death, how they can be divided, and how they can be protected or lost.

after divorce if the retirement is omitted from the divorce itself. Failing to fully address the retirement during the divorce could leave the spouse with no interest in the most valuable asset of the marriage.

In 1982, Congress enacted the *Uniformed Services Former Spouses Protection Act (USFSPA)*, explicitly permitting states to divide military retired pay as property belonging to both spouses in a military marriage, or to use military retired pay as a source of alimony or child support payments. The *USFSPA* does not give former spouses an automatic entitlement to any portion of members’ pay. Only state laws can provide that military retirement pay can be divided in a divorce, or provide for alimony or child support to be paid from a military retirement.

The traditional military retirement is a “defined benefit” type of plan: it does not have a cash balance, but like a traditional pension, it pays monthly benefits (which vary depending on the service member’s rank and length of service) every month from the time of retirement for life. Reservists have a slightly different retirement system, which only starts paying monthly benefits once the reservist becomes 60 years old.

From time to time, the military permits members to take

one of several forms of early retirement without serving the usual 20 years or longer. If the divorce occurs during service, the attorney for the spouse must know about those programs and ensure they are reflected in the decree protections for the spouse.

A former spouse’s right to a portion of retired pay as property terminates upon the death of the servicemember or the former spouse, unless the court order explicitly provides for the former spouse to be the beneficiary of the Survivor’s Benefit Plan (SBP).

Most states divide pensions according to the “time rule”: each spouse gets 50% of whatever benefits accumulated during the marriage. Under the *USFSPA*, a spouse may get direct payment of up to 50% of “disposable retired pay” directly from the military pay center. If debts are also owed for child or spousal support, up to a total of 65% can be collected.

Military retirement division may be made by percentage or dollar amount, and it is possible to provide for cost-of-living adjustments (COLAs) when dividing the retirement benefits by percentage. This secures both parties against any decrease in the value of their portions of the retirement caused by inflation.

Thrift Savings Plan

The Thrift Savings Plan (TSP) is a defined contribution type of plan for federal employees; like a private employer’s 401(k) plan, it is a mechanism for diverting pre-tax funds into retirement savings. It was made available to military members in 2001. As of 2012, a “Roth” (post-tax contributions) option was added to the TSP.

TSP balances are also divisible upon divorce; typically, each spouse is awarded half of whatever benefits accrued during the marriage. Orders dividing TSP should deal properly with gains and losses, select a proper valuation date, etc.

Special Jurisdictional Rules

Special jurisdictional rules must be followed in military cases to get an enforceable order. An order dividing retired pay as property will only be honored by the military if the court had personal jurisdiction over the member by reason of:

1. residence in the territorial jurisdiction of the court (other than by military assignment);
2. domicile in the territorial jurisdiction of the court; or
3. consent to the jurisdiction of the court.

In most places, and under the current regulations, making a “general appearance” or litigating any issue in a divorce

case usually counts as “consent” to trial of the military retirement issue as well.

Disposable Retired Pay

Since 1991, the *USFSPA* has permitted division of “disposable pay,” which was redefined to remove the deduction of income taxes before retired pay was divided. Since then, each spouse gets a portion of the pre-tax retirement, and each must pay taxes on the sum he or she receives.

If a military member claims a disability award, the total amount of money going to the retired military member will stay the same or be increased (depending on which program is involved), and the money will become partly or entirely tax-free to the member, and so is much more valuable.

Some disability awards are simply in addition to the retired pay, so the spouse is unaffected (while the military member

There are several different disability programs and the ways they affect retired pay are complex.

receives the disability pay in addition to a share of the retired pay). Sometimes, however, the election of a disability award greatly *reduces* the amount of money considered “disposable retired pay” and therefore reduces the money paid to the former spouse.

There are several different disability programs and the ways they affect retired pay are complex. It is critical that the attorney for the spouse in a military case understands all those programs, and knows how to draft appropriate compensation clauses to protect the spouse from being denied benefits after the divorce.

The bottom line to these cases is that the responsibility is upon the attorneys – particularly the attorney for the spouse – to anticipate and prepare for post-divorce status changes or military orders by building that anticipation into the decree.

The “Ten-Year” Rule

The so-called “ten-year” limitation is much misunderstood. A court order that divides military retired pay as property may only be *directly paid* from the military pay center to

the former spouse if the marriage lasted for at least ten years during military service.

If the marriage overlapped service by less than ten years, the right still exists, but the spouse has to obtain the monthly payments from the retired member rather than from the military pay center directly, or the court must characterize the payments as a stream of spousal support in order to obtain direct payment from the military pay center.

Survivor’s Benefits

The Survivor’s Benefit Plan (SBP) provides monthly payments of 55% of the selected retired pay amount to a single named survivor. It can be allocated to the former spouse by the divorce court. There is a premium for coverage, and there is a way to arrange for that premium to be paid by the member, the spouse, or divided between them.

The military retirement system is different than many other kinds of retirement, especially regarding survivorship benefits. If the spouse dies first, the member gets an automatic reversion of the full spousal share. But if the member dies first, the spouse gets nothing at all – unless the SBP is in place.

Medical Benefits

If the parties were married for 20 years during military service, the spouse is entitled to free Tricare until the spouse becomes eligible for Medicare. If the overlap of marriage and service was shorter than 20 years, certain lesser benefits are available; most former military spouses can get Continuation of Health Care Benefits Plan (CHCBP) medical coverage, although there is a premium cost for that coverage.

Additional Resources

Much greater explanation of these and other aspects of military retirement in divorce, including a detailed article titled “Divorcing the Military,” drafting guides, model clauses, special calculators, and lots more, can be found at <http://willicklawgroup.com/military-retirement-benefits>. ■

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TAMING DIVORCE-RELATED ANGER

Divorce-related anger can literally make you crazy – causing you to say and do things you’d never dream of if you were thinking clearly. Even though it’s a normal part of the healing process, anger can become a destructive force in your life. Here’s how to cope.

By Jane Zatylny

Anger is a very familiar emotion for all of us. And in healthy relationships, it can be an overwhelmingly positive force in our lives. “Healthy anger can tell us if there’s something wrong – something painful and threatening that we need to take care of,” says Dr. M. Chet Mirman (Ph.D.), a licensed clinical

psychologist at The Center for Divorce Recovery in Chicago. “It helps us protect ourselves, and lets us know when people are crossing our boundaries.”

But for couples who are going through separation or divorce, anger is often anything but healthy. When

anger is coupled with divorce, it’s often used as a misguided means of hanging on to a failed marriage; for some people, a bad relationship is better than no relationship at all. Divorce anger allows someone to punish his/her ex while maintaining an ongoing (bitter) relationship with him/her. It’s a situation that leaves both

Expressing anger to your ex-spouse through the legal process invariably leads to prolonged, emotional proceedings that will ultimately leave you – and the family resources – drained dry.

partners in divorce limbo: a perilous situation that obstructs growth and self-awareness.

Some people hold onto their anger so tightly that their rage takes over their whole lives, coloring and informing all their thoughts and actions. They weigh every action to see how much emotional or physical harm it will inflict on their ex-spouse – even simply being a nuisance will do in a pinch – without seeing the injuries they may be inflicting on innocent victims.

Divorce anger is also often expressed through the legal process itself. It's very important to remember that your lawyer is your advocate, not your therapist or best friend. Expressing anger to your ex-spouse through the legal process invariably leads to prolonged, emotional proceedings that will ultimately leave you – and the family resources – drained dry.

Using the court as a venue to vent your anger is a bad idea for a couple of key reasons: it's the wrong venue, and it's very expensive (financially and emotionally). Unfortunately, the legal divorce process itself tends to add fuel to the fires of anger. Dividing property (some of which has great sentimental

value) and trying to prove your case for custody and/or support can be very emotionally charged because these issues underline what is being lost or changed because of your divorce. Some degree of upset is inevitable, but driving yourself alongside your ex into bankruptcy is truly cutting off your nose to spite your face.

So how can you cope with divorce-related anger? The key lies in understanding its roots, and in finding constructive ways to express the hurt, disappointment, and loss that both you and your former spouse are feeling now as you proceed through separation and divorce. "Anger can really be a very healthy and positive tool, but if we use it destructively, all we do is scare people and alienate them," stresses Dr. Andrea Brandt (Ph.D. M.F.T.), the author of *Mindful Anger: A Pathway to Emotional Freedom* (W. W. Norton & Company, 2014). "People have to learn to have anger work for them, not against them."

Here's some advice about coping with your own and your ex-spouse's divorce-related anger.

If You are Angry

- **Write it out.** Work through your anger by keeping a journal or by writing letters you don't mail, suggests Dr. Brandt.
- **Shout it out.** "If you can roll up the windows in your car or put your head in a pillow and scream, it can drain some of that negative energy out of your body," she adds.
- **Talk it out.** It's important when you're angry to develop your own personal support system. Instead of directing your anger at your ex-

spouse, talk to a good friend (or two), or find a therapist who specializes in anger management.

- **Get some professional help.** "Remember, anger acts as a shield. Your anger suppresses other vulnerable feelings that may be too hard to deal with. It's easier to feel angry than to feel lost, confused, and worried," says Dr. Mirman. "Talking to a professional can help you begin to feel those emotions you've been suppressing and move past the anger." You could also benefit from a support or anger-management group where you can share your story and develop greater self-awareness around your anger.
- **Re-examine your "core beliefs."** Anger can be based on something that you observed or were told in early childhood, and that you grew up believing. Ask yourself if that belief is actually true, and if it's still serving you well.
- **Take responsibility for your part of the marriage break-up.** "It's a rare couple in which both partners were exactly equal in the breaking of the marriage, but it's an even rarer couple in which one partner was solely at fault," notes Dr. Ahrons.
- **Do some personal growth work.** Your anger can help you identify old patterns, and then you can take the steps to stop repeating them.
- **Learn what "pushes your buttons."** Try to understand your anger – and what triggers it – before you express it. Don't be afraid to say that you need some time to think about your response.
- **Protect your children.** Never make them part of your conflict with your former partner by withholding visitation or support or poisoning their minds against your ex. "For the sake of the children, if for no other reason, learn constructive methods of expressing anger," Dr. Ahrons says.

- **Keep conflicts at a moderate level, and choose your battles carefully.** Expressing every little irritation and disagreement provokes resentment. Think about the most important issues – and let go of the small stuff.
- **Use “I-messages” when expressing anger.** Say: “I feel disappointed when you don’t call,” not: “You stupid idiot, you’re always late!”
- **Give yourself time to recover from the loss of your marriage.** On average, experts say that the healing process takes about two years. “It’s important to realize how sad you are,” says Dr. Ahrons. “This won’t necessarily make you more vulnerable to your ex-spouse; your successful handling of your emotions puts you in a more powerful position.”
- **Forgive, let go, move on.** Anger can become a comfort, a constant in our lives, but as long as you continue to nurse your anger against your ex, you will never have a happy, fulfilled, post-divorce life. Own your responsibility for the break-up, and realize that you have the power to make the choice to forgive and move on, or stay angry and remain stuck. It doesn’t matter what your ex does, you can still choose forgiveness.

If your Ex is Angry

- **Listen to and validate your ex-spouse’s comments.** Your ex may be feeling like he/she isn’t being heard; by really listening to his or her concerns, you may realize where the anger is coming from and identify what you can do to help.
- **Don’t be afraid to take a “time-out.”** Walk away from an angry attack if you can’t handle it. Say, “I think we need to take a break and continue this conversation when we’re both calm.” Put limits on what you’ll take and how you’ll be treated.

How can you cope with divorce-related anger? The key lies in understanding its roots, and in finding constructive ways to express the hurt, disappointment, and loss that both you and your former spouse are feeling now.

way to defusing his or her anger.

- **Be honest with yourself.** Recognize that when someone is angry with you, there may be something in what they’re saying. “Very often, you might hear something that’s really valuable,” says Dr. Brandt. If your ex is yelling at you, you can choose to think he/she’s a jerk and start yelling back, or you can “dig for the gold” in what he/she’s saying. Keep the gold; discard the dirt and rocks.
- **Value your safety above all else.** If your former partner’s divorce anger seems to be headed in a dangerous direction, put some boundaries in place and communicate through a third party. Threats should always be taken seriously: remove yourself from the situation and refuse face-to-face contact if you sense any danger at all. ■

Jane Zatylny is the former Editorial Director of Divorce Magazine.

Taming tension during your divorce will reduce your stress level and help you get through the process.

How to Quiet Your Mind

By Dr. Claire Michaels Wheeler

A quiet mind is a blessing you can grant yourself with practice. Can you remember a time when all you were doing was sitting and maybe looking? Hearing sounds, sensing your body, feeling your breath, but not creating a narrative about what was happening? Can you remember times when you were simply being, not doing anything – not even meditating or “relaxing”? When you are still but highly observant, not bothered by assessments (good or bad, okay or not okay), but simply allowing everything around you to be what it is, you are in a meditative state.

I have found, in my years of leading mind-body groups, that this is a good place for beginners to start exploring the mindful state. I’ve had wonderful experiences of this in airports, riding in cars (not while I was driving!), while lying in the snow after falling down skiing, and at family gatherings, among other places. Time seems to stand still. I’m quiet on the inside, but acutely observant in a curious, gentle way of everything within and around me. Moments like those convinced me that I could use meditation to calm my sometimes manic mind.

How to Relax Your Mind

Here is a good way to begin practicing mindfulness. Find a time when you can take ten minutes to yourself. You do not have to be in a darkened room with candles and incense in order to do this. You can be outside, in the

lobby of a large office building or a hotel, on your front porch – even in your car, if it’s not moving. All you need is to sit and be fairly confident that you won’t be interrupted for a few minutes. Now, get comfortable in your seat. Adjust your clothing or glasses so you aren’t distracted by anything tugging or compressing parts of your body. Uncross your legs, if you’re comfortable with that. With both feet on the ground and your hands in your lap, check your whole body once more to make sure you can relax.

Now, start thinking about the fact that you’re breathing. Don’t make a big deal out of it. Just notice that Hey, guess what, there’s air flowing in and out of me every few seconds. And the air is a bit cool as it flows into my nose and into my throat. I can feel my chest expanding as the air fills it. As I become more relaxed, I’ll feel my belly expanding too. And just at the moment my lungs are full, everything stops for a second, and then I’m exhaling. The air, now warm, is flowing out of me, and my chest is falling. Just notice this for a minute or so. If your mind wanders away from the miracle that is your breath, just let go of whatever your mind has got its teeth into, and return your attention to the air flowing in and out, in and out. This is a good thing, this breath. It brings life in, and it carries used-up old stuff out. It keeps you fresh from moment to moment. Just keep going back to it, and your mind will gradually stop jumping around.

Now, start to pay attention to what is going on around you. This is a shift you need to make carefully, because you might find your mind flooded with words about what things look like and whether things are okay and what's she wearing? And who did her hair? If this happens, gently return your narrative mind to your breath. Say to yourself, "air in, air out" with the movement of your breath until you can be curiously attentive to the world around you without the running commentary. The goal is to appreciate, perceive, and allow all you see, hear, feel, smell, and sense with a quiet, nonjudgmental mind.

A Better Way of Being in the World

Simple awareness is something humans are born with – babies and toddlers use it all the time. They're just observing. As you practice this, you'll slowly develop the ability to shift into simple awareness a few times each day. It's a very different way of being in the world – one that short-circuits stress because there's no need for self-consciousness, for comparing yourself to other people, for complaining or ruminating over past or future problems.

Eventually, you'll want to make the connection between occasionally practicing simple awareness in the world and practicing it continually with respect to your own thoughts and perceptions. Think about this: you can observe your thoughts and actions the way you observe the world, without constant judgment, and simply allow yourself to be as you are. If you notice things you'd like to change, that's fine, but begin by simply allowing yourself to be, and by cultivating an attitude of friendly curiosity about what's going on in your mind and spirit. This type of

self-acceptance is something you have to relearn, because it gets drummed out of you by the culture of materialism and competitiveness, but you can do it.

Meditation for Maniacs

Are you a person who always has something to do? Life is demanding, pulling you in all different directions. There is always something to buy, to do, to see, to figure out, or to fix. The demands on your attention are never ending, starting with the alarm clock in the morning and ending with the late-night news and its dire warnings of the latest health threat or severe storm somewhere across the planet. You, like most people, probably feel like a maniac at least some of the time – rushing about in your head, your car, and your home to maintain some control over what seems like relentless chaos.

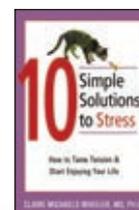
It's vital to your physical, emotional, and psychological health to break the spiral of intensity. You can learn to stop the madness for a few minutes and then dive right back in, refreshed and better able to cope.

One excellent way to do this is to use the three-breath technique. You can do this anytime, anywhere. All you have to do is recognize the signs of stress. As soon as you start to feel overwhelmed, stop for a minute. Say to yourself, "I need a break." Then take it. Take three breaths with your full attention on each one. Start by fully exhaling, and then calmly, carefully observe the next breath coming in. Feel it expanding inside you, and think to yourself, "Thank you." Hold the breath for an instant, and then let it out slowly, thinking to yourself, "Let go." Repeat this twice more. Don't cheat yourself: you have time to

do this carefully, slowly, and mindfully. Just give yourself one minute to reconnect with the miracle of your breathing, and then get back to work. If you practice this every day, you'll notice a shift in the way you perceive stress – from something that just keeps happening to you to something you can observe with detachment.

Mindful Walking

I can't write about meditation, mindfulness, and flow without mentioning my favorite type of meditation: mindful walking. This is simply the act of taking a very slow walk during which you pay close attention to everything that happens. This is a nice thing to do in your neighborhood, in your yard, or in a natural area near where you work. Start by coordinating your breath with your steps. Take a step as you inhale, take a step as you exhale. Continue this for a while, noticing how each foot touches the ground, how your chest expands, whether or not it feels awkward to be walking so slowly. Gradually, turn your attention to your surroundings. It's amazing to discover how many details you've been missing. ■



This article was excerpted with permission from the book 10 Simple Solutions to Stress: How to Tame Tension and Start Enjoying Your Life by Claire Michaels Wheeler, MD, Ph.D. (New Harbinger Publications, Inc., 2007). Dr. Wheeler is on the faculty of the Center for Mind-Body Medicine of Portland, OR; and an instructor at Portland State University's School of Community Health.



Full ESTEEM Ahead

Your self-esteem can take a beating after divorce. Here are some tips to raise it back up again.

By Diana Shepherd

Recognize that what you're going through is normal. "It's an emotional process," says M. Chet Mirman, Ph.D., a clinical psychologist and co-founder of The Center for Divorce Recovery, a Chicago-area psychotherapy center specializing in divorce-related issues. "It helps when someone's going through a divorce if they remind themselves that this is a normal part of the process – that this too will pass."

Go on living your life as fully as possible while grieving the loss of your marriage, advises Jeffrey Rossman, Ph.D., a psychologist and the director of the Behavioral Health Department at Canyon Ranch in the Berkshires. Know that the grieving can take place right alongside full engagement with life, he says. "And try to 'live well': That's a wonderful way to boost your self-esteem."

Calm, subdue, and wrestle those self-punishing thoughts to the ground. In their book, *Conquer Your Critical Inner Voice* (New Harbinger Publications), Robert W. Firestone, Ph.D., Lisa Firestone, Ph.D., and Joyce Catlett, M.A. note that: "The critical inner voice is the language of the defended, negative side of your personality; the side that is opposed to your ongoing personal development."

Work to replace the inner critic with a healthier voice. Pick up a copy of *Self-Esteem*, by Matthew McKay, Ph.D. and Patrick Fanning (New Harbinger Publications). Chapter Four deals with "Accurate Self-Assessment." These important pages will help you create a realistic inventory of your strengths and weaknesses, which the authors claim will lead to a "self-description that is accurate, fair, and supportive."

Avoid assigning blame, either to your ex or to yourself. When you feel yourself blaming either yourself or your spouse, shift to learning, suggests Dr. Rossman. "Ask yourself, 'What can I learn from this?'" Avoiding the blame game is particularly important if you have children. Bad-mouthing your former spouse in front of the children may provide you with a sense of release in the short-term, but it's very damaging for the children in the long-term, stresses Dr. Rossman.

Take responsibility for your own happiness. In his book, *A Woman's Self-Esteem: Struggles and Triumphs in the Search for Identity* (Jossey-Bass), Nathaniel Branden (who also authored *The Six Pillars of Self-Esteem*) explores the origins of personal happiness and suggests that intrinsically happy individuals consciously commit themselves to their state of eternal bliss.

Develop a more positive body image. While physical appearance alone cannot determine an individual's self-esteem, learning to accept and appreciate how you look is important. In his book, *The Body Image Workbook: An 8-Step Program for Learning to Like Your*

Looks (New Harbinger Publications), author Thomas F. Cash, Ph.D., discusses body-image distortions and offers guidance through sensitively written text and useful "Helpsheets for Change."

Start dating again – if you're ready. "Look at it as an opportunity to learn more about yourself. Each date is a chance to cultivate your skills; it's also an opportunity to get to know another person," says Dr. Rossman. But resist the temptation to look at dating as a "spouse hunt," he advises. "If you're on a date, and you decide that this is not the person of your dreams, you can feel like you've wasted your time. Even if that person is not going to be your life partner, there can still be something very worthwhile in getting to know him/her."

Learn to enjoy your own company. "How you think about it makes all the difference," says Dr. Rossman. "Instead of saying, 'Oh, I'm divorced and I'm home alone, what a loser I am,' why not say, 'What a nice opportunity to do whatever I want?'"

Feel the pain, experience the gain. "I think when people want advice about self-esteem, sometimes what they're really saying is, 'What can I do to feel better?'" My advice is almost the opposite," concludes Dr. Mirman. "It's a really difficult and painful process, and if you allow yourself to feel bad, you're going to get through it better. There's going to be more happiness at the other side – but you need to actually give yourself permission to feel badly for a while in order to feel good later on." ■

Diana Shepherd is the Editorial Director and co-founder of Divorce Magazine.