



# ***MILITARY DIVORCE:***

## **Returning Warriors and “The Home Front”**

By Mark E. Sullivan



In 2014, the Pentagon announced plans for massive cuts in manpower and spending in the next two years. With plans to reduce up to \$75 billion from the defense budget in 2015-16, the United States Army will lose two brigade combat teams in Europe, and the Air Force will see the inactivation of a squadron in Germany and one in Italy. Similar cuts will affect the Navy.

Empty outposts overseas mean full billets and bedrooms back at home. Many servicemembers (SMs) are being redeployed back to stateside assignments and their homes. While reuniting with one's family will be a joyous experience for SMs, it may create significant stresses for others. These stresses may lead to legal consequences.

Stresses may arise due to one party's having been solely in charge of the home for the entire deployment, without any help and with heavy responsibilities for running the home, managing the budget, taking care of children and — quite often — holding down a job as well. Having been away for a year in most cases, the returning SMs have their own issues. They may need time to decompress and to adjust to new responsibilities, routines and duties — both at home and at work.

Sometimes these stresses can lead to trouble in the marriage. The impacts on the parties next can include separation, interim support, domestic violence, temporary custody and more issues.

The result for the family law attorney is a confusing welter of rules, laws, cases and problems. When does state law govern? When should the injured party seek redress through the military? How does federal law affect the conflict? Where can one locate co-counsel who is familiar with these matters, a consultant who can give quick and accurate advice, or an expert witness who is available in person or by phone or Skype to assist the court?

## Rules and Resources

Where to find the resources for a military divorce case will depend on the issue involved. The usual matters involved are custody and visitation for minor children, support for the spouse and children, the role of the Servicemembers Civil Relief Act in default rulings and motions to stay proceedings, and division of the military pension. Domestic violence may also be involved in some family law cases involving military personnel. The well-read attorney is the one best armed to defend or prosecute in these areas. They are complex and often counter-intuitive.

There are several sources of information for the attorney caught up in these problem areas.

### Servicemembers Civil Relief Act (SCRA)

Formerly known as the Soldiers' and Sailors' Civil Relief Act, the SCRA is found at 50 U.S.C. App. § 501 *et seq.* The two most important areas in civil litigation are the rules for default judgments (when the SM has not entered an appearance) and the motion for stay of proceedings. The former requires an affidavit as to the SMs military status and the appointment of an attorney for the SM by the judge. The duties of the attorney are not specified, and there are no provisions for payment. The default section of the SCRA is at 50 U.S.C. App. § 521.

At 50 U.S.C. App. § 522 are the requirements for the SM's obtaining a continuance (called a "stay of proceedings" in the Act) for 90 days or more. Here are the requirements:

#### **Elements of a Valid 90-Day Stay Request. Does the request contain:**

► *A statement as to how the SM's current military duties materially affect his ability to appear, and stating a date when the SM will be available to appear?*

► *A statement from the SM's commanding officer stating that the SM's current military duty prevents appearance, and stating that military leave is not authorized for the SM at the time of the statement?*

An overview of the Act is found in "A

Judge's Guide to the Servicemember's Civil Relief Act," located on the website of the American Bar Association Family Law Section's Military Committee at: [www.abanet.org/family/military](http://www.abanet.org/family/military).<sup>1</sup> The guide includes information about the requirements and protections of the SCRA and the steps one should take to comply with the Act's requirements.

### Family Support / Military Rules and Regulations

SMs are required to provide adequate support to spouses and their children; each of the military services has a regulation requiring adequate support of family members.

The Air Force's support policy is found at SECAF INST. 36-2906 and AFI 36-2906. (Note: Numbered rules and regulations can be located by typing the number of the regulation into an online search engine.)

The Marine Corps' policy on support of dependents is found at Chapter 15, LEGALADMINMAN, found at: [www.military-divorce-guide.com/military-family-support/marine-corps-family-support.htm](http://www.military-divorce-guide.com/military-family-support/marine-corps-family-support.htm).

The Navy's Policy for support issues is at MILPERSMAN, arts. 1754-030 and 5800-10 (paternity). Go to: [www.public.navy.mil/bupers-npc/reference/milpersman/Pages/default.aspx](http://www.public.navy.mil/bupers-npc/reference/milpersman/Pages/default.aspx).

The Coast Guard's policy is located at COMDTINST M1000.6A, ch. 8M, found at: <http://isddc.dot.gov/OLPFiles/USCG/010564.pdf>.

The Army's non-support policies and rules are found at AR [Army Regulation] 608-99. See also the SILENT PARTNER info-letter on "Child Support Options" at the ABA website above.

Knowing the pay and allowances of the SM is a key factor in determining support. All SMs receive a twice-monthly LES (leave-and-earnings statement). To learn how to decipher one of these, just type into any search engine "read an LES" to find a guide explaining the various entries on the form. Base pay is the "salary" which each SM receives. There is also the BAH (Basic Allowance for Housing) and BAS (Basic Allowance for Subsistence), which are non-taxable. Those stationed overseas

and living off-base receive a non-taxable OHA (Overseas Housing Allowance). Information on these allowances is at: <http://militarypay.defense.gov/Pay/Allowances.html>.

Pay received in a combat zone is tax-free. The Internal Revenue Service (IRS) publishes a guide to the various forms of pay and allowances, as well as the tax benefits for SMs and family members, the *Armed Forces Tax Guide*, IRS Publication 3 (available at [www.irs.gov](http://www.irs.gov)).

There are numerous garnishment resources at the website for the Defense Finance and Accounting Service (DFAS), located at [www.dfas.mil](http://www.dfas.mil). The statutory basis for garnishment is at 42 U.S.C. §§ 659-662 and the administrative basis is at 5 C.F.R. Part 581. A list of designated agents (and addresses) for military garnishment is found at 5 C.F.R. Part 581, Appendix A. Military finance offices will honor a garnishment order that is "regular on its face." 42 U.S.C. § 659 (f).<sup>2</sup>

## Custody and Visitation

Louisiana's Military Parent and Child Custody Protection Act, found at La. R.S. 9:359-359.13, contains robust protections for servicemembers and their children. The specific provisions include:

► Termination of temporary modification orders by operation of law upon completion of the servicemember's deployment (La. R.S. 9:359.5.A.);

► Reasonable visitation during periods of military absence (La. R.S. 9:359.4.B.);

► Expedited hearings when the member's military absence is imminent (La. R.S. 9:359.4.D.);

► Delegation of visitation during periods when the servicemember is absent due to military orders (La. R.S. 9:359.6);

► Electronic testimony when the member cannot appear in person for court because of his/her military duties (La. R.S. 9:359.7);

► Appointment of counsel for the child when a stay of proceedings is denied by the court under the SCRA (La. R.S. 9:359.10);

► Retention of custody jurisdiction when the court has entered a custody order and a child is absent from the state during deployment (La. R.S. 9:359.11); and

► The award of attorney fees when either party causes unreasonable delay or fails to provide information required by the Act (La. R.S. 9:359.12).

In addition to the above specific references, there is available more general information on the military aspects of parental access. The ABA website listed above contains "Silent Partner" info-letters on "Counseling on Custody and Visitation Issues," "Custody and Single-Parent Enlistment," and a guide to custody and visitation during deployment, "Good to Go (and Return Home)."

Relocation and removal are also issues in military custody cases. In the event an SM is retaining the children beyond the date of return in the custody order or keeping the children, and a custody order requires their return, then the custodial parent can use Department of Defense Instruction 5525.09, 32 C.F.R. Part 146 (Feb. 10, 2006), to obtain the return of children from a foreign country. In general, this Instruction requires SMs, employees and family members outside the United States to comply with court orders requiring the return of minor children who are subject to court orders regarding custody or visitation. When relocation of a servicemember-parent is involved, key guidance is available in the leading Louisiana cases of *Richardson v. Richardson*<sup>3</sup> and *Cass v. Cass*.<sup>4</sup>

## Military Pension Division

Rules on retired pay garnishment are at [www.dfas.mil](http://www.dfas.mil), "Find Garnishment Information," "Former Spouses' Protection Act." In addition to a legal overview, there is a section on what the maximum allowable payments are and an attorney instruction guide on how to prepare pension division orders. Information on the Survivor Benefit Plan (SBP) is at the "Retired Military and Annuitants" tab (under "Survivors and Beneficiaries") and at the "Provide for Loved Ones" link at this tab. Military pension division is set out at 10 U.S.C. § 1408, and the Survivor Benefit Plan is located at 10 U.S.C. § 1447 *et seq.* The Defense Department rules for both are in the DODFMR (Department of Defense Financial Management Regulation), <http://comptroller.defense.gov/FMR.aspx>.

There are eight "Silent Partner" info-letters on dividing military retired pay and SBP coverage. All of these are found at the ABA website listed above.

## Domestic Violence

The Defense Department Instruction on domestic violence is DoDI 6400.6, "Domestic Abuse Involving DoD Military and Certain Affiliated Personnel" (Aug. 21, 2007). Other websites containing useful information about the rules and procedures in this area are:

► National Online Resource Center on Violence Against Women, [www.vawnet.org](http://www.vawnet.org).

► National Center on Domestic and Sexual Violence, [www.ncdsv.org/ncd\\_militaryresponse.html](http://www.ncdsv.org/ncd_militaryresponse.html).

► Battered Women's Justice Project, [www.bwjp.org](http://www.bwjp.org).

## FOOTNOTES

1. The Guide also may be found under "Resources" at the website of the North Carolina State Bar's military committee, which contains more than 20 "Silent Partner" info-letters for attorneys in all states who are handling military divorce cases, a similar number of client handouts called "Legal Eagle," and a large number of articles and papers on military family law topics under "Resources."

2. See also, *United States v. Morton*, 467 U.S. 822 (1983) (holding that legal process regular on its face does not require that the court have personal jurisdiction, only subject matter jurisdiction). Limits on garnishment are found in the Consumer Credit Protection Act, 15 U.S.C. § 1673.

3. *Richardson v. Richardson*, 25 So.3d 203 (La. App. 2009).

4. *Cass v. Cass*, 52 So.3d 215 (La. App. 2010).

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