MILITARY DIVORCE GUIDE

THE HOLMAN LAW FIRM

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The Holman Law firm, which is the father and son team of Stephen T. and Justin T. Holman, is dedicated to the principle that "The BEST parent is BOTH parents." As experienced litigators who choose to be primarily involved in family law cases, their firm concentrates on outcomes that ensure children are able to interact with both mother and father. At one time, it was customary that the mother was automatically granted custody; but this is no longer the norm.

Stephen, an attorney for 34 years, says that people tend to think that The Holman Law Firm mainly represents fathers, "but that is generally because when I first started doing this, fathers didn't think they had a voice. However, after years of fighting for equality, it's pretty common that fathers have equal rights except in extenuating circumstances. Children deserve and should have access to BOTH parents, whether or not they are married."

Justin's commitment to the legal profession got its start with his experiences as a youngster. He was often present in a corner of the courtroom watching his dad when he was so small that his feet barely touched the floor. Witnessing the gratitude expressed by a parent when a case was settled equitably was a compelling influence on him.

It is understandable that today, like his father, Justin is committed to "helping parents." He explains, "When there's children involved, no monetary verdict you can get for a parent compares to knowing their children will be forever involved in their life. That type of reward and seeing that in a parents' eyes... that's what I have a passion for."

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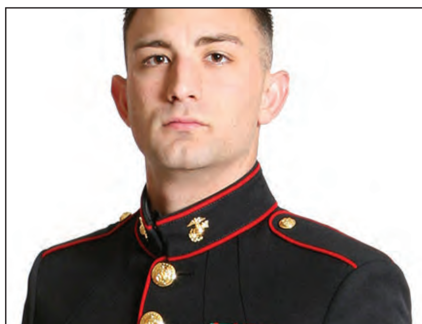
There are many questions that couples with one or both spouses in the military struggle with during and after divorce. If you or your spouse is in the military, your divorce is going to be different from one with two civilian spouses. This special **Military Divorce Guide** provides you with useful articles and guidance about the special issues you're facing; understanding the key issues in a military divorce will allow you to make better, more informed decisions for you and your family.



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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.

The Servicemembers Civil Relief Act

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.

By Karen Robbins, Family Lawyer

The federal government encourages military service. While servicemembers are serving their country and unable to appear in court, the government wants to ensure that their 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 or your 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 of 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 a 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. ■

Karen Robbins is an attorney practicing family law in Maryland. She is an active member of the American Bar Association, Family Law Section's Military Committee, and has presented on military issues in divorce on the state and national levels. www.KarenRobbinsLaw.com

The Impact of Military Deployment on Custody & Visitation

Divorced military servicemembers face unique difficulties regarding custody while deployed. The *Uniform Deployed Parents Custody and Visitation Act* can help anticipate problems and offer solutions to protect the parental rights of men and women in uniform.

By Mark E. Sullivan, Family Lawyer

With widespread military forces around the world, there are unique challenges for the men and women in uniform who make up the Army, Navy, Air Force, Marine Corps, and Coast Guard. Mobilizations, TDY (temporary duty), deployments, and remote assignments can lead to stress at home and less time for families. They also take their toll on the judges who handle custody cases and the parents involved in the lawsuit. It can seem like there are no clear rules to guide them when a family separation arises and there is a dispute over the care of the 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 2012, the Uniform Law Commission (ULC) published the newest tool for dealing with deployment and custody. The *Uniform Deployed Parents Custody and Visitation Act* (UDPCVA) is the latest in a series of "uniform laws" which serve as models for state legislation. 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 (June 2021), the Act is law in 15 states and the territory of Guam. While Oklahoma has not enacted the UDPCVA, its current statute is a virtual copy of the Act.

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.

"The 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 Professor Maxine Eichner of the School of Law, University of North Carolina. "There has been no consistency in state statutes, and that's a real problem for military members and their families," says Eichner, the ULC's Reporter for the UDPCVA. "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 cases, appellate courts have found that a judge has the power – even without implementing legislation – to 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). The Act makes specific statutory provisions for the delegation of visitation and decision-making during military absences.

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.

Building Blocks in 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, Skype, FaceTime) 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 military member's return from deployment is governed by Article 4. This includes termination of the temporary custody arrangement following the return, with one set of procedures for mutual agreement to end a temporary custody settlement, a second for mutual agreement to terminate a court order for temporary custody, and a third for cases in which court 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. ■

Mark Sullivan is the principal at Law Offices of Mark E. Sullivan, P.A., Raleigh, NC and a retired Army Reserve JAG colonel with 34 years of commissioned service. He is the author of The Military Divorce Handbook: A Practical Guide to Representing Military Personnel and Their Families *(Am. Bar Assn., 3rd Ed.) and a frequent speaker and writer on military divorce topics.* www.ncfamilylaw.com

6 Tips for Bouncing Back After Infidelity

When someone has cheated on you, the anger and resentment you feel towards them is understandable. But these emotions can paralyze you, affecting your ability to move on from infidelity.

By Chris Armstrong,
Certified Relationship Coach

One of my four rules of relationship coaching is that I will not try and salvage a relationship or marriage if there has been infidelity. I will not waiver from this. But dammit if I will not help a client who has been cheated on and has decided to end their marriage. Bouncing back after such deceit is not easy but it is achievable.

Here are six things you can do to move on after your spouse has cheated.

1. Let Yourself Grieve

You will cry. You will have anger. You will want to be alone. This is you. This is us. This is human. One of the worst things that one can do is to put on a false sense of bravado or hide their emotions. When we suppress our feelings instead of allowing ourselves to grieve, the internal pain manifests itself in ways and at times that are unhealthy. This can yield long-term, negative consequences.

2. Do Not Overthink the "Why"

Your marriage has ended because they cheated on you. To this day, you are still not sure why. So there you sit, thinking about every possible rationale.

- You've gained weight and they were no longer attracted to you?
- They went on a lot of trips and grew lonely in the hotels?
- There was so much time with the children and working on the online business that you were always too tired to stay connected in the bedroom?

It could be these reasons and it could be many other reasons. I need to share something with you that you may not want to hear. In the scheme of things, the "why" does not matter. Again, your marriage has already ended and no rationale you can think of will justify the infidelity. And the more you think about the why, the more you are second-guessing yourself and unwittingly sabotaging the life you are trying to rebuild.

3. Resist Posting It All Over Social Media

Posting your tale of woe on Facebook may give you an opportunity to release in the moment, but it will also create weeks of constant reminders through the countless "likes," comments, and emojis. It will also create opportunities for friends and family to weigh in, throwing unintended fuel on the fire. This will not help you bounce back.

4. Find Meaningful Outlets

"Meaningful" is a very deliberate word, because we are good at doing things, anything, to occupy our minds, but if those things are not who we really are and do not truly resonate with us, they will prove to be temporary buffers from the negative feelings of the infidelity and divorce. On the other hand, if there are hobbies and activities that have always brought you joy, find a couple of hours a week to get back into them. You will smile, and it will be natural. You will remember the good things in life, and those memories will be pleasant.

This brings me to the most important reasons for finding meaningful outlets. The more you can invest in them, the more they will help.

5. Remind Yourself of Who You Were When You Were Happy

Divorce can be an embarrassing experience; being cheated on can be even worse. We feel unattractive and unworthy of a faithful relationship with someone who supposedly loved us. What's more, it is almost always the case that some of our friends and family knew about the infidelity. But, your spouse's cheating is just a moment in a life that was full of moments that made us happy.

- We remember being asked to the prom by three guys we liked.
- We remember having game night and martinis with our friends.
- We remember being flirted with by the bartender at that place on Sycamore.

Keep these memories in your frontal lobe so that the pain of divorce and infidelity can be replaced by the confidence of who you are and the faith that there is a happy life to be had.

6. Be the Bigger Person

When someone has cheated on you, the anger and resentment that you are prone to feel towards them is understandable. But when these emotions are turned outwards towards the cheater, they can paralyze you, affecting your ability to move on. You must resist this.

Be the bigger person: it will show your cheating partner that you are not a wounded bird, and in the long term, the effect that they had on you was nil.

- When you see them every other weekend to drop the kids off, converse with them.
- When they come to the soccer game with their new squeeze, introduce yourself – don't wait for the awkward moment where you bump into each other.

Taking this approach will help you find your pride and self-regard that almost certainly lapsed when you found out about the infidelity. Say to yourself, "I am not hiding because I am bigger and stronger than that."

It will also put things into perspective for the one who cheated on you. You are not a wounded bird, and in the long term, the effect that they had on you was nil. This puts the rest of your interactions with them on a level playing field.

This is *not* to suggest that you should forgive cheating – I think the complete opposite. *But*, one needs to forgive an offense in order to truly move on. ■

Chris Armstrong is a Certified Relationship Coach and Emotional Intelligence facilitator who cuts to the chase and speaks from the heart. A regular blogger at DivorcedMoms.com*, he is also an experienced advocate for women's equality and empowerment, having taught more than 350 sessions on these matters.* www.mazeoflove.com

HOW TO DE-ESCALATE CONFLICT DURING DIVORCE

Arguing during divorce is both destructive and pointless. Use these eight tips to de-escalate conflict – which will reduce your time, money, and emotional costs.

By Dr. Ann Buscho, Licensed Clinical Psychologist

While divorce is common in our culture, it is usually a new experience for those going through the process. It is often said that a divorce is 95% emotional and only 5% legal. A divorce is a life crisis, with intense emotional reactions, such as anger, fear, guilt, and despair.

In the midst of this emotional soup, you must make huge decisions regarding your finances and your children.

Although the situation is abnormal for you, emotions are normal and expected. However, if your emotions are not monitored and managed they can derail your divorce process. The attack-defend model that may have become a part of your marriage will not work. Arguing during a divorce is both destructive and pointless.

It can also be quite expensive. Anger itself is not wrong or bad, but what you do with your anger is what matters. With professionals in the room, fighting is costly in both time and money. Here are some ideas to help you de-escalate.

Tips to De-Escalate Conflict

1. **Take Your Time**
   Rushing into and through a divorce is usually a mistake as emotions easily hijack your good judgment. Once the decision to divorce is made, take the time to digest what is happening, especially if you didn't want the divorce. Use the time for self-care, and get emotional support from family, friends, or mental health professionals. Even if you want the divorce, allow yourself and your soon-to-be-ex some time to feel emotionally ready for the legal process.
2. **Respect Is Key, No Matter What Your Spouse Does**
   Speak respectfully, even if your spouse does not. Use "I statements" and avoid words like "always," "never," and "yes, but…" It may be difficult to avoid the triggers that lead to an escalation of the conflict. Monitor your own voice and body language, and speak calmly and quietly. Avoid language of blame, criticism, threats, and insults, and if you (or your spouse) find this difficult, simply call for a break. "This isn't a good time for us to talk about this. Let's get back to it when we have each had some time to cool down."

   Agree to treat each other with respect, even when disagreeing. If necessary, set a boundary to end the conversation if you feel it is no longer respectful. You may need to limit your conversations by meeting in a coffee shop, or communicating by email. Never, ever bring your children into the conflict.
3. **Focus on the Future**
   Focus on the future. In a divorce, rehashing the same arguments that ended the marriage will be unproductive, hurtful, and could lead to an impasse. If you feel that getting to the heart of the conflict will help clear the air, or strengthen your future relationship, especially if you have children, then perhaps a mental health professional can facilitate the conversation before you get into legal discussions.
4. **Listen to Understand, Even if You Don't Agree**
   Listen to your spouse with an open heart and curiosity. Focus on one thing at a time; don't bring other issues into the discussion. People tend to escalate when they don't feel heard. Listening to your spouse does not mean you agree with what your spouse is saying.

   Ask questions to clarify issues and convey your interest. Listening to understand and then reflecting back what you understand (in a non-judgmental way) will help your spouse de-escalate. For example: "You feel angry when I don't pick up the kids from you on time." Then ask, "Did I get that right? Is there anything more you'd like to say about this issue?"

   People shout and repeat themselves when they don't feel heard. Let your spouse know that you are listening attentively, even if you don't agree with what they are saying. *Understanding* is not the same as *agreeing*.
5. **Say What Really Matters to You**
   Conflict often escalates when one's wants or needs are not being met. Ask yourself, "What do I truly want here? What do I need?" "What does my spouse want, and need?" When you can say what you want and need and reflect your understanding of what your partner wants and needs, you may find common ground and be able to develop win-win solutions. This may require you to think through your priorities, what really matters to you, and where there is room for compromise. A divorce coach can help you identify what matters most to you and find a way to express it.
6. **Own Your Part in the Conflict and (maybe) Apologize**
   Take ownership of your part in the conflict, and apologize if necessary. "I'm sorry you feel that way" is not an apology. A non-defensive apology will de-escalate a conflict quickly. You may not have intended to hurt, insult, or goad your partner, but if your partner feels that way, the conflict will grow worse. A good apology conveys your awareness of what you did that crossed a line, and how it affected your spouse. A real apology expresses genuine remorse, and a sincere commitment to change the behavior that offended or hurt your spouse.
7. **Compromise**
   Compromise when you can. Compromise builds goodwill and increases trust, so remember what is most important and focus on those things.
8. **Deep Breaths**
   Conflict raises your fight-flight reactions, depriving your brain's frontal lobes of the oxygen needed to think rationally and clearly. Therefore, remember to take three deep breaths if you get triggered. Keep breathing and notice that your body will calm down, your pulse will slow, and your muscles will relax.

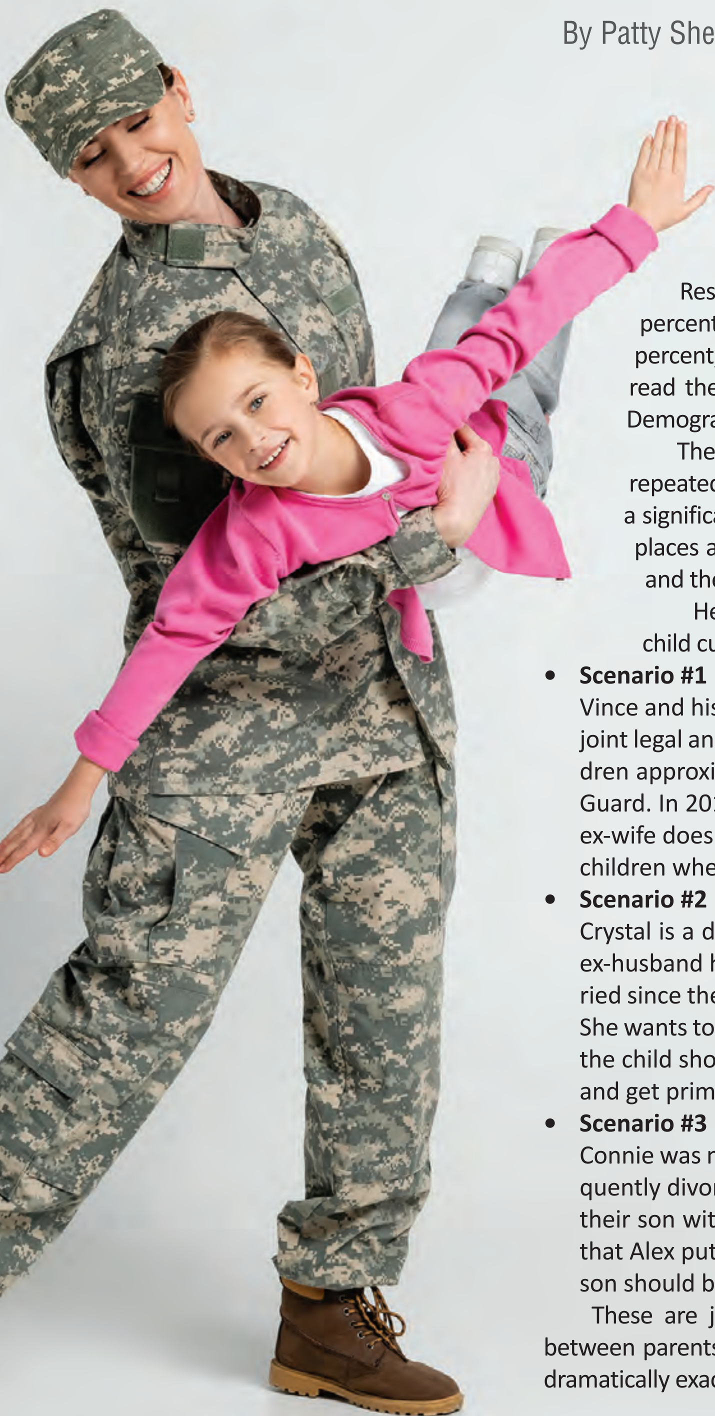
Divorce is a painful process. There are many ways things can go wrong in a divorce, and there are many ways to avoid those risks. De-escalating conflict comes down to mutual respect, a commitment to non-defensive communication, and constructive problem-solving. ■

Dr. Ann Buscho, Ph.D., believes divorce does not have to be viewed as a failure, or a "broken home." Her mission is to help parents divorce respectfully and to stay out of court to protect their children. She works with family law professionals as a divorce coach, in a specialty called Collaborative Divorce. www.drannbuscho.com

Military Custody & 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, Family Lawyer



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.militaryonesource.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*

Any discussion of civil actions and servicemembers must start with or 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 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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Military Retirement Benefits in Divorce Actions

Understanding the implications of military retirement benefits for servicemembers and their spouses during divorce is extremely important. Understanding these key rules can help you protect your rights to the retirement benefits.

By Marshal S. Willick, Family Lawyer

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. The rules governing which benefits are available during life and upon death, how they can be divided, and how they can be protected or lost, are extremely complex. Knowing a few basic concepts can help you protect your interests in a military divorce.

A court order dividing military retired pay as property may only be directly paid from the military pay center to the former spouse if the parties were married for at least ten years during military service.

The Most Valuable Asset

Retirement benefits are usually the most valuable asset of marriages, often exceeding the value of all other assets combined.

Almost universally, pension benefits are recognized as community or marital property, including benefits that are still being earned or not yet in pay status (i.e., "unvested" or "unmatured"). This is because the benefits accrued during marriage, to be received after retirement, are part of the benefits earned by the labor performed during marriage.

Most military personnel who retire do so after 20 years of active service in their early forties and receive a lifetime pension of half their basic pay.[1] This means a minimum of about $2,000 per month, every month for life, plus cost of living adjustments ("COLAs"). These benefits are worth some million dollars or more in "present value."

The traditional military retirement is a "defined benefit" type of plan – it does not have a cash balance, but pays monthly benefits (which vary depending on the service member's rank and length of service and when they entered the service) every month from the time of retirement for life. Reservists have a slightly different retirement system, which begins payments much later in life.

Occasionally, the military permits members to take an early retirement without serving the usual minimum 20 years. If the divorce is during service, the attorney for the spouse must know about these programs and build into the decree protections for them to make sure that possibility is adequately covered.

A former spouse's right to a portion of retired pay as property terminates upon the death of the member 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 all pensions according to the "time rule" – each spouse gets 50% of whatever benefits accrued during the marriage. Under the *Uniformed Services Former Spouse Protection Act* (USFSPA), a spouse may get direct payment of up to 50% of "disposable retired pay" directly from the military pay center. If arrears are also owed for child or spousal support, up to a total of 65% can be collected.

In 2016, Congress changed the USFSPA to "freeze" the member's rank and time in service at the time of the order dividing the military benefits. This is a major change that affects the former spouse's share significantly. It is essential to have a lawyer trained in these matters to ensure benefits are protected.

Military retirement benefits may be divided by percentage or dollar sum. COLAs will be included if divided by percentage. This secures both parties against any erosion of the value of their portions of the retirement by inflation.[2]

The 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. Beginning in 2018, TSP enrollment will be automatic and the government will make

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[1] This is calculated by taking 50% of the average of the high 36 months of pay. Under the Blended Retirement System (BLS), which became effective in January 2018, the defined benefit portion of the pension would be 40% at 20 years.

[2] However, one of the provisions in the new version of the USFSPA only allows for retired COLAs to be applied to the former spouse's share from the date of the order dividing the benefit. This is true even before the member retires.

contributions between 1% and 5% depending on the contributions made by the member.

TSP balances are also divisible upon divorce; typically, each spouse is awarded half of whatever benefits and growth accrued during the marriage. Orders dividing TSP should deal properly with gains/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 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.

You should never default a member in a divorce case who has not made a general appearance.

Disposable Retired Pay

Since 1991, the USFSPA has permitted division of "disposable pay," which was re-defined to eliminate 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.[3]

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 receives the disability pay in addition to a share of the retired pay). But sometimes the election of a disability award increases payments to the member while greatly reducing the amount of money considered "disposable retired pay" and therefore reducing the money paid to the former spouse.

A recent decision by the United States Supreme Court has made indemnification for the loss of benefits due to disability unavailable to the former spouse. Again it is critical that an attorney with specific knowledge of these rules gets involved early on in the divorce action to address the possibility of a significant loss to the former spouse.

The bottom line to these cases is that it is incumbent upon the attorneys to anticipate post-divorce status changes or military orders and build that anticipation into the decree.

The "Ten Year Rule"

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 parties were married 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 the military pay center, 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 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 from many other kinds of retirements, 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 is eligible for medicare. If the overlap of marriage and service was shorter than 20 years, certain lesser benefits are available, and 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

You can find a more detailed explanation of these and other aspects of military retirement in divorce – including drafting guides, model clauses, special calculators, and more – at www.willicklawgroup.com/military-retirement-benefits.

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[3] The FY 2017 amendment to the USFSPA has again redefined disposable retired pay.

Getting Organized

During your divorce, you need to develop an organizational system that will work for you – and prevent you from drowning in a sea of paperwork.

By Diana Shepherd, Divorce Financial Analyst

You'll save time, money, and reduce your stress levels if you can put your hands on a document the moment your lawyer or financial professional asks for it. An accordion folder is a good way to keep everything in one place – and it's portable so your files can travel with you to meetings. You'll want to relabel some of the tabs so they're specific to your situation. For instance:

- ❑ Documents for my Lawyer
- ❑ Documents from my Lawyer
- ❑ Documents for my Financial Professional
- ❑ Documents from my Financial Professional
- ❑ Marital Property Inventory and/or Receipts
- ❑ Separate Property Inventory and/or Receipts
- ❑ Household Inventory
- ❑ Household Bills and/or Receipts
- ❑ Bank Accounts (joint and separate)
- ❑ Credit Cards (joint and separate)
- ❑ Debts (including Mortgage, Loans, and Credit)
- ❑ Monthly Expenses (download an "Expense Worksheet" here to help complete this task)
- ❑ Income Statements
- ❑ Child or Spousal Support (paid or received)
- ❑ Insurance

Divorce To-Do Lists

Start making one or more Divorce To-Do Lists now. You can use computer software to track tasks and appointments, or you can use a diary or appointment book that you'll refer to every day. Make sure to put deadlines on everything: you don't want to keep your lawyer waiting for a document you promised last week because you forgot about it! Here are some suggestions to get you started:

- ❑ Consult a divorce lawyer before taking any big steps – including moving out of the family home.
- ❑ Consult a financial expert specializing in divorce.
- ❑ Ask your lawyer whether you should close, keep, or divide your joint bank, savings and brokerage accounts. If you must keep the account(s), ask your financial institution to require both spouses to approve withdrawals over a certain dollar amount and/or frequency from the account(s).
- ❑ Open your own checking and savings accounts.
- ❑ Order a credit report on yourself, which will show joint or sole debts in your name. Pay off all marital debts.
- ❑ Apply for your own credit card, then pay off and cancel or freeze all joint credit cards.
- ❑ Take care of any medical or dental issues while you are still covered by your spouse's insurance plan.
- ❑ Revoke any power of attorney previously given to your spouse.
- ❑ Evaluate your estate planning needs with an experienced estate planning attorney.
- ❑ Inventory your safe or safe deposit box. Make videos of and photograph all items.
- ❑ Inventory your valuables, including artwork, antiques, wine and other collections, jewelry, furniture, furnishings. Make videos of and photograph all items.
- ❑ Safeguard cherished items that are your separate property. If you're moving out, take those items with you.
- ❑ If you intend to move out, save enough money to cover the cost of moving and incidentals, and speak with your lawyer about timing.
- ❑ Get a cell phone in your own name. Request a private number if your spouse is likely to harrass you.
- ❑ Create a new email account without a login/password your spouse could easily guess.
- ❑ If you don't regularly attend your children's plays, concerts, sports events, and parent-teacher conferences, start now! Make a point of meeting their teachers.
- ❑ If you name a child as a beneficiary, you may choose to select a guardian other than your soon-to-be-ex. ■

Military Retirement Pay and Divorce:

What is a Former Spouse "Entitled" to?

If the division of military retirement pay isn't handled properly during your divorce, you may lose your "entitlement" to share your ex-spouse's retirement pay.

By Cathy Meyer, Master Certified Divorce Coach

With so many divorces in the military, laws were created to protect servicemembers and their former spouses. One of the most important of these laws is the *Uniformed Services Former Spouses Protection Act* (USFSPA). Although divorce is a matter for civilian courts, the military legal system does recognize the protection offered by the USFSPA and works to inform soldiers and spouses of the law's importance.

The "Right" to a Retired Servicemember's Pension is Not Automatic

There is a common misunderstanding regarding the "entitlements" provided to a military spouse under the USFSPA. During divorce, some military spouses believe that they will automatically receive a portion of their ex-spouse's retirement pay once the servicemember reached retirement age. Nothing could be further from the truth!

The USFSPA was enacted to protect former spouses – but it does not automatically give a former spouse the right to a retired servicemember's pension. To collect under the USFSPA, a former spouse *must have been awarded a portion of the servicemember's military retirement pay as property in their final divorce decree.*

The only difference between a civil divorce and military divorce is the way that the servicemember's retirement plan is divided. That is why you *must* hire an family lawyer who has experience in dividing military retirement during divorce; otherwise, you'll need to educate yourself – and your lawyer – on how the military handles the issue.

Eligibility Requirements for Military Retirement Pay to be Awarded

- **Meet the 10/10 rule.** There must be at least 10 years of marriage, with an overlap of 10 years of military service creditable towards retirement.
- **The court must meet jurisdictional requirements** over the servicemember.

How a Servicemember's Retirement Pay is Divided in a Divorce

The former spouse must have a court order stating that they will receive a portion of the servicemember's retirement pay. As an ex-spouse, you are not "entitled" to anything

unless it is explicitly ordered by a court and signed by a judge.

Retired servicemember's pay as property awards must be expressed in your divorce court order. Here are the factors the court will consider:

1. **If the member entered the service *before* September 8, 1980:**

- A fixed amount, a percentage, a formula, or a hypothetical retirement amount awarded to the former spouse;
- The member's pay grade at the time of divorce;
- The member's years of creditable service at the time of divorce; and in the case of a reservist, the member's creditable reserve points at the time of divorce *and* years of service for basic pay purposes (list number of years and months).

2. **If the member entered military service on or *after* September 8, 1980:**

- A fixed amount, a percentage, a formula, or a hypothetical amount awarded to the former spouse;
- The member's High-3 (retirement pay equaling the average of the highest 36 months of basic pay) amount at the time of divorce (list the actual dollar figure);
- The member's years of creditable service at the time of divorce or, in the case of a reservist, the member's creditable reserve points at the time of divorce.

The proper language and formula *must* be used in your court order or you will not receive direct payment of the servicemember's retirement pay from the Defense Finance and Accounting Service (DFAS).

Formula Used to Calculate Military Retirement During Divorce

In the following hypothetical example, I'm using a marriage of five years where the servicemember has been on active duty for six years. You'll use the same calculations based on the length of your marriage and the number of years the servicemember has served.

1. **Calculate marital percentage.** First, we calculate the marital share as a percentage: five years of marriage divided by six years of service equals 83.33%. (Normally the calculation is more granular than this, and it is done by months, or even days in some cases).
2. **Calculate hypothetical retirement.** Although a soldier obviously cannot retire with just six years of service, we still need to calculate the hypothetical retirement of that servicemember at the time of divorce. Assume that the E-5 (the member's pay grade rank) had a High-3 pay of $2,800/month, and that the member's retirement benefits accrue at the rate of 2.5% per year (this assumption is not necessarily a safe one with the new blended retirement system, however). That means the hypothetical retirement amount comes to 6 x 2.5% x $2,800, or $420/month.
3. **Calculate spouse's share**. The spouse receives one-half of the 83.33% marital share, or 41.67%. So her share comes to 0.4167 x $420, or $175/month, plus COLAs (health insurance rider). NOTE: this dollar amount is solely for planning purposes – the actual share should be expressed as a percentage to ensure the former spouse receives COLAs.

Application to the DFAS

Simply being awarded a portion of military retirement isn't enough: you have to apply to DFAS to receive it.

To apply for payments under the *Uniformed Services Former Spouses' Protection Ac*t, a completed application form (DD Wizard Form 2293) signed by a former spouse together with a copy of the applicable court order certified by the clerk of court should be served either by facsimile or by mail to:

DFAS Garnishment Law Directorate
P.O. Box 998002
Cleveland OH 44199-8002
Phone: 888-DFAS411 (1-888-332-7411)
Fax: 877-622-5930 (toll free)

To ensure that DFAS processes your document in a timely and efficient manner, you must include the following information on all correspondence you mail or fax to the Garnishment Department:

- Member/Employee Social Security Number (SSN) – Court Orders/Documents will not be processed if the SSN is not on the document
- Return Phone Number
- Return Fax Number

To receive payments by direct deposit, you need to sign up by completing a Direct Deposit Form and send it to DFAS at the address below. Alternatively, you could send a written request including your name, the servicemember's name and social security number, and your signature. Include a copy of a void check clearly showing your banking information, and mail it to:

DFAS-HGA/CL
DFAS Garnishment Law Directorate
P.O. Box 998002
Cleveland OH 44199-8002

Final Words

Remember, you cannot apply to the DFAS to receive payments if the division of military retirement isn't properly handled at the time of your divorce. I learned my lesson the hard way. I didn't get my fair share of my ex's retirement pay because I didn't know any better; unfortunately, neither did my divorce attorney. To avoid this fate, it is imperative that you hire a divorce attorney who has plenty of experience in handling military divorce and retirement issues. ■

Cathy Meyer is a former military spouse. She was married to an Air Force Officer for 17 years. After her divorce, Cathy became a Master Certified Divorce Coach and has spent the last 18 years coaching and empowering clients as they navigate the divorce process. www.EmpoweredDivorcee.com. *She is also the Managing Editor of* www.DivorcedMoms.com.

Marital Property VS. Separate Property in Divorce

During property division, all marital property will go into the marital pot to be divided between the spouses. But how do you know which is which?

By Diana Shepherd, Divorce Financial Analyst

In a divorce, all assets are designated as either separate or marital (known as "community" in some states) property in accordance to the state or provincial laws and prenuptial or marital agreements (if any). During property division, all marital property will go into the marital pot to be divided between the spouses, and each spouse gets to keep his/her own separate property (assuming it has been kept separate for the entire marriage).

You should know that "property division" does not necessarily mean a physical division of all assets: physical assets, like a house or a car, can't be split into two parts. Instead, the judge could award each spouse a percentage of the total value of the property, meaning that each spouse will receive assets (from cash to cars to real estate) and debts whose worth adds up to the percentage specified by the judge.

Exactly what constitutes separate vs. marital property can be a gray area, which you should discuss with your divorce lawyer. However, here's an explanation of how the courts typically define the two types of property.

Separate Property

Separate property consists of items like:

- Property owned by either spouse prior to marriage, *and kept in that spouse's separate name.*

- Inheritance received by either spouse before or during the marriage, *and kept in that spouse's separate name.*
- Gifts received by either spouse before or during the marriage by a third party.
- Payment received for pain and suffering in a personal injury judgment.

Let's look at some examples. John and Jane have been married for 20 years. On their wedding day, she made a grand romantic gesture and changed the title on the lakeside cottage she had inherited from her grandparents from her name alone to both of their names. So although she inherited the cottage (which would make it separate property), she changed the title, which made it marital.

During her marriage, Jane inherited $20,000 when her Uncle Pete passed away. She deposited it into a bank account in her own name, and didn't touch a penny of the funds. The $20,000 would be her separate property – but in some states, the interest on the original sum might be considered marital property. (Ask your divorce lawyer whether this is the case in your area.)

Some states make a distinction between "active appreciation" and "passive appreciation" when it comes time to decide whether money is separate or marital. *Active appreciation* is when one spouse contributes or puts in effort directly or indirectly to increase the value of his/her separate property, such as a business or other investment. *Passive appreciation* is when property increases in value due to inflation or other reasons (sometimes, simple bank-account interest).

Let's go back to Jane's inheritance. In this example, she withdrew $15,000 from the $20,000 inheritance to renovate the marital home. In some states, if she can trace the $15,000 back to the original inheritance, it might still be counted in separate property; in others, she changed the designation to marital by spending the money on marital property.

The same would be true if she deposited the $15,000 in a joint account, co-mingling her separate property with the marital property. (Again, ask your lawyer whether this is the case in your area.)

Do you get a sense for why this can be such a gray area?!

Marital Property

Generally speaking, all assets acquired or earned during the marriage are considered marital (or community) property – regardless of whose name it is in. Marital property consists of items such as:

- Employment income
- All bank accounts (except for those that pre-dated the marriage and did not have any marital funds – e.g., a paycheck – deposited into them during the marriage)
- Businesses
- Professional practices and licenses
- Limited partnerships
- Real estate
- Vehicles and boats
- Art and antiques

Generally speaking, all assets acquired or earned during the marriage are considered marital (or community) property – regardless of whose name it is in.

- Pension and retirement plans
- Brokerage accounts, mutual funds, stocks, and bonds
- Bonuses and commissions
- Memberships
- Annuities
- Life insurance
- Tax refunds

Again, the distinction between marital property and separate property is a legal one and it varies from place to place, so you must speak to your divorce lawyer about how the local laws might affect your property division.

Community Property vs. Equitable Distribution

If you and your spouse can't agree on how to divide jointly-owned property, then the courts will divide it for you according to "equitable distribution" or "community property" principles. (By the way, your joint debts will also be divided according to either equitable distribution or community property principles.) Although the specific details vary from state to state, the main difference between the two schemes is that in community property states, there is an absolute 50/50 split of all property acquired during the marriage, whereas in equitable distribution states, more assets might be considered marital property, but the split is not necessarily 50/50.

Currently, there are nine community property states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Three other states – Alaska, South Dakota, and Tennessee – have an "opt-in" law that allows for community division of property if both parties agree to this. Registered domestic partners who live in California, Nevada, and Washington are also subject to community property laws. The remaining states are equitable distribution jurisdictions.

NOTE: A valid prenup, postnup, or other written agreement can change the rules, making some or all community property the separate property of one spouse – or turn some or all separate into community property. Talk to a family lawyer to ensure your agreement will stand up in court.

Diana Shepherd is the co-founder and Editorial Director of Divorce Magazine *and a Certified Divorce Financial Analyst® (CDFA®). She has been writing about the financial issues of divorce since 1996.* www.DivorceMag.com

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,
Military Family Lawyer

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. ■

Susan Darnell is a Rhode Island attorney whose practice concentrates on military family law under the name Darnell Law. She is a retired Air Force officer and the spouse of a retired Air Force officer and has been a member of the Military Committee of the Family Law Section of the American Bar Association for 12 years.

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

Military Responses to 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, Family Lawyers

Military families experience high levels of stress with the demands of military readiness and frequent deployments. With the increased number of deployments in the last 20 years, this stress has only accelerated for servicemembers and their families. Complicating matters and impacting family stress is the prevalence of Post-Traumatic Stress Disorder (PTSD) in 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 and even criminal issues. Returning servicemembers sometimes turn to drugs and alcohol to self-medicate their PTSD symptoms, compounding family issues. Unfortunately, one way this stress can manifest itself is through incidents of family violence.

The Department of Defense (DoD) recognizes that domestic violence is an issue, issuing Instruction Number 6400.06: "Domestic Abuse Involving DoD Military and Certain Affiliated Personnel" in 2007. The DoD's policy is to prevent and eliminate domestic abuse across the DoD, to provide for the safety of victims, to hold abusers appropriately accountable for their behavior, and to coordinate the response to domestic abuse with the local community. Every Commander has the duty and authority to take action and to respond to domestic violence situations.

The military has multiple responses for dealing with domestic violence ranging from criminal punishments to administrative remedies to services to treat victims of domestic violence to compensation for victims. However, most of the remedies and tools available to the Commander to address domestic violence deal only when the servicemember is the abuser. Here's an overview of the most common responses.

Military Justice: Punishment

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 states:

"... 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."

Sentences under the UCMJ can include confinement, reduction in pay grade, forfeiture of pay, and discharge.

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, which outlines methods of 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 assignment of extra duty may worsen tensions at home or take funds away from an already cash-strapped family.

Military Protective Orders (MPOs)

In addition to punishment under the UCMJ, unit Commanders can issue MPOs to an active duty servicemember to protect a victim of domestic violence or child abuse (the victim could be another servicemember or a civilian). To qualify, the victim must be the spouse, ex-spouse, current or former intimate partner, or have a child in common with the accused. A victim, victim advocate, installation law enforcement agency, or Family Advocacy Program (FAP) clinician may ask 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)." The MPO supplements 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. Section 1567(a) of Article 10 of the U.S. Code provides that military authorities shall notify local civilian law enforcement agencies of the issuance of an MPO, the individuals involved, any changes to the MPO, and the termination of the MPO. However, there is no requirement for local law enforcement to enforce an MPO – which is why the victim should get a CPO as well. Section 1561(a) of Article 10 of the U.S. Code provides that "a Civilian Protective Order 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 to:

- have no contact or communication (including face to face, by telephone, in writing, or through a third party) with you or members of 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,
- to surrender their government weapons custody card.

Commanders may further tailor the order to meet the specific needs and circumstances 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 no longer valid. If the victim still believes that the MPO is necessary to keep them safe, the victim, a victim advocate, or a FAP staff member may 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.

Commanders can only issue MPOs against servicemembers; civilian abusers aren't subject to MPOs. However, a commanding officer may order that the civilian abuser stay away from the installation.

Family Advocacy Programs

The DoD Directive 6400.1 also provides that each of the services must establish Family Advocacy Programs (FAPs) at each of the installations. The FAPs provide assistance to victims and military families through the prevention of domestic violence, education, and counseling. Every installation has a victim advocacy office, which will help victims obtain MPOs and CPOs as well as offer access to or information about other assistance – whether military or civilian – that may be locally available. The victim advocate can also help the Commander to develop safety plans as the situation requires.

Interim Family Support

MPOs, CPOs, and safety plans may require the separation of a servicemember from their spouse and/or family. During this separation, the servicemember may have to provide temporary financial support 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 have published administrative regulations which 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 is punitive under the 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 the 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. 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. 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 Dependent," in the Coast Guard's Discipline and Conduct (COMDTINST M1600.2) manual demonstrates their commitment to honoring family support obligations. See https://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 only states that allotments from a servicemember's pay may be had pursuant to other statutory authority (e.g., state court orders).

Transitional Compensation

In certain, very specific instances, the former spouse may be entitled to transitional compensation under 10 U.S.C. § 1059. Section 1059 establishes transitional compensation as an extreme remedy available for dependents of certain active duty servicemembers who have been abused by the servicemember. (See DoD Instr. 1342.24, "Transitional Compensation for Abused Dependents.") It is important to always remember that transitional compensation is only available under these certain, very specific circumstances:

1. The offending servicemember must be serving on active duty for 30 or more days;
2. The offending servicemember must have been discharged pursuant to court martial or administrative separation (this

shall also include a pre-trial agreement); and,

3. The basis for the servicemember's separation must result from the abuse of the dependent.

Section 1059 establishes transitional compensation rates as defined by 38 U.S.C. § 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 shall be paid for the remaining months of active duty service obligation, or for twelve months if the remaining obligation is less than twelve months. Transitional compensation payments are not subject to income tax.

During the period of transitional compensation payments, the recipient shall be 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. Transitional compensation shall be forfeited by the abused spouse if, during the period of payments, that spouse later cohabitates with the offending servicemember or if the spouse 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.

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 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 fee of bodily injury to the partner or child."

If a servicemember is unable to carry a weapon based on a conviction or court order implicated under the Lautenberg Amendment, the servicemember will be administratively separated from the military. A civilian protective order is a court order that will implicate the Lautenberg Amendment.

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 practitioners should carefully counsel their clients regarding the extreme results that may arise from a court order invoking 18 USC 922.

Remedies if the Abuser Is a Civilian

A Commander has fewer remedies at their disposal if the civilian dependent is the abuser. Naturally, the Commander has no authority over civilians (including the dependents of servicemembers). However, in some cases, where the dependent has received the benefit of travel expenses and on-installation housing in overseas locations under the command's "sponsorship" of dependents abroad, the Commander may revoke such command sponsorship for abuse. Otherwise, the 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 from the installation any civilian (including a servicemember's dependent or spouse) whom the Commander deems to be a threat to the servicemember, other servicemembers, or persons residing or working on the installation.
2. **Coordination with Civil Authorities.** If the installation Commander bars the civilian from the installation, the Commander may coordinate with local civil authorities to notify them of the ban. In addition, 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 a referral to the federal magistrate court which has jurisdiction over the installation. In cases where non-military abusers have committed criminal acts on military installations, the family law practitioner should inquire of 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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Long-Distance Co-Parenting
After Divorce

It's crucial for long-distance parents to make frequent contact with their children. Here are six ways to stay connected with your child after divorce.

By Terry Gaspard, Licensed Therapist and Author

Divorce presents families with many challenges, and living at a distance is one of the most difficult to cope with for both parents and children. It's never easy for children to be separated from their parents, whether it's because of a brief business trip or a move across the country due to a job or personal reason. Likewise, many parents miss their kids when they don't see them on a daily or even weekly basis.

After divorce, it's crucial for parents to make the utmost effort to keep in touch with their children when they live in a different state or country. Parents need to make the additional effort because children often experience loyalty conflicts that may make it hard for them to reach out to their non-custodial parent. They may feel stuck in the middle between their parents – especially if their mom and dad don't get along.

It's also normal for children and young adults whose parents have separated or divorced to experience feelings of loss and rejection when one of their parents moves

away. Likewise, children raised by a stepparent may experience some of these same emotions if they are close to their stepparent and they move out or lose contact with them after divorce.

One 17-year-old posted this message on my blog: "Can I have a good relationship with my dad from a 300-mile distance?" Another teenager asked: "Is it possible for me to stay close to my mom now that she lives half-way across the country?" Inherent in both of these questions is the child-of-divorce's desire to maintain a loving connection with his or her parent.

While it's probably more common for fathers to live at a distance from their children after a divorce or breakup, some mothers may need to move due to career or personal reasons and may be separated from their children at times. Consequently, the following long-distance parenting tips were written in a gender-neutral manner.

6 Long-Distance Ways to Stay Connected with Your Kids

1 Email or mail your child or teenager funny or interesting postcards once a month.

If you have more than one child, some group cards are acceptable. Make sure to make the messages positive, such as "I can't wait until our visit next month!" or "Good luck on your spelling test."

2 Call your child at various times.

While it's a good idea to have a regular time to call your child, spontaneous phone calls can be a nice surprise and help your child know that you are thinking of him/her.

3 Be creative and use text, Skype or other video chat, email, and Instagram in addition to regular phone calls.

Be sure to send photos and ask questions about their week, such as: "How was the sleepover at Shana's house?"

4 Get acquainted with your children's friends and try to include one or more "BFFs" on vacations and outings.

Meeting the parents of your children's friends can be a big plus because they will feel more comfortable if you invite them on a weekend excursion such as a camping trip or a stay at a hotel.

5 Show that you are attuned to your child's interests and engage in small talk about them.

Research online and in-person ways to engage with him or her about their favorite sports, hobbies, and other special interests.

6 Spend quality time with your children when they visit.

If you have a new partner in your life, don't introduce them unless you're fairly sure it's a permanent relationship.

Don't Let Guilt Get in Your Way

It often comes down to a matter of quantity versus quality time when you're parenting after divorce. Try not to let guilt get in the way and make the best of the situation by focusing on the quality of contact and not the amount of time you are together.

In the years to come, your adult child won't remember the exact hours you spend with him or her, but they'll remember the love, care, and concern you showed them. So be sure to make the most of the time you have when you're with your kids and make those moments count.

What About Introducing Your Child to a New Partner?

One of the biggest mistakes parents can make is introducing their children to a new love-interest too soon after divorce. Be sure to have special time with your children, apart from your new partner, and give them time to adjust to the divorce before you introduce them to your love interest. This is especially important for long-distance parents who have less time with their kids.

Your child or teenager may show interest in your new partner – girls particularly tend to do this – but later feel rejected if they believe they are missing out on quality time with you. What's the hurry? There's no such thing as an instant family, and healing takes place over the course of many years.

It's great if you meet someone you care about, but hopefully you'll wait to introduce them to your child once the relationship seems permanent. It's important to assure your kids that your new partner will not replace their other parent or change your relationship with them.

Experts agree that most young children find their parents' dating behaviors confusing after divorce – they may even feel threatened or resentful about having to share their parent with another person. So tread lightly and consult a counselor or divorce coach if you need more in-depth information about how to help your young child to feel more secure.

If you have a new partner, adopt realistic expectations about your children's acceptance of him/her. Just because you are enthralled with this person, it doesn't mean that your kids will share your enthusiasm.

When you see your children, be sure to focus on your relationship and develop new rituals and traditions – such as movie nights – that can help to solidify your bond.

It's normal to miss your children when you don't see them every day, and letting them know this can be healing. On the other hand, if you stay connected with your kids after divorce, you need not be overwhelmed with guilt or self-blame. It's best to focus on things you can control such as maintaining regular communication and staying tuned into their interests and passions. ■

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Why Seek Individual Therapy During Divorce?

Seeking individual therapy can benefit you *and* your family. Most importantly, you will get the support you need to navigate the process in the healthiest way possible.

By Dr. Deanna Conklin-Danao, Clinical Psychologist

Adding a therapist to work with you individually can help you bring your best self to the divorce process. In the end, making decisions about your future from a more solid place will set you up for the life you want after your divorce.

Divorce is a stressful time. You are undergoing a tremendous life change that will require you to make many decisions that will shape your future and your children's.

At the same time, you will be dealing with a constantly swirling mix of powerful emotions such as pain, anger, sadness, and fear.

3 Reasons to Seek out Individual Therapy During Divorce

During this time, individual therapy can be an invaluable tool to help you navigate the divorce process as your best self. Here's what therapy can provide for you.

1 The Support You Need

During a divorce, one of the healthiest things you can have is a strong support system. Being able to count on friends and family who care about you is something that will help you get through difficult times. However, while your personal network can be well-intentioned, they may not provide you with everything that you need. They may tell you what they think you want to hear ("It's all her fault!") or propose strong positions ("You should take him to the cleaners for what he did!") that lead you to make choices out of anger or fear and create conflict instead of resolution.

Individual therapy, on the other hand, provides an external source of support that allows you to process your experience in a healthier way. It will help you identify and work through issues so that you can make decisions that will deliver long-term benefits for you and your family. Therapy can also help prepare you for life after divorce by building your sense of self and your roles in relationships.

2 Honest Feedback

Feedback from a neutral person is also different from the feedback you receive from friends and family. This is especially true if that neutral person is a trained mental health professional. In attempting to be supportive, some friends and family will only tell you what you want to hear. A therapist can help you see situations from multiple perspectives. This can allow you to approach decision-making with more flexibility.

A therapy relationship can also help you sort through the breakup of your marriage and understand your role in the ending of the relationship. While that type of feedback may be painful, it ultimately will allow you to have different relationships in the future instead of repeating the same pattern of your marriage.

3 Tools to Help Your Family

In addition to yourself, seeking therapy during divorce will also benefit your family. You will get the support you need to navigate the process in the healthiest way possible. This will free you up to support your children. Sometimes in divorce, children pick up on their parent's distress and end up as caretakers. When they enter a caretaking role, the child's own ability to develop is put on the back burner.

The second benefit to your children is the expertise of a therapist. Therapists know how to protect kids during the divorce process (e.g. minimize conflict, maintain a positive relationship with both parents, and don't put kids in the middle) and can coach you to apply those techniques. Therapy can help you put those practices in place, even when you are feeling angry or hurt by your spouse.

Involving Mental Health Professionals in Your Divorce

The importance of choosing professionals to assist you within the divorce process cannot be overstated. Involving one or more mental health professionals in your divorce – such as a child specialist, a divorce coach, or both – can create a framework for improved communication.

Adding a therapist to work with you individually can help you bring your best self to the divorce process. In the end, making decisions about your future from a more solid place will set you up for the life you want after your divorce.

Dr. Deanna Conklin-Danao, Psy.D., has been in private practice since 2006. She sees children, adolescents, and adults individually, and in family and couples therapy. Her experience and training have provided Dr. Conklin-Danao with the skills to work effectively with clients as a divorce coach and therapist. www.drconklindanao.com

How to Help Your Children During Your Divorce

By Dr. Donald A. Gordon, Child Clinical Psychologist

Transitioning from married to divorced parents can cause quite an upheaval for the entire family. Unless there has been serious mental illness, substance abuse, or intimate partner violence, you should take steps to immediately reassure your children that both of you will remain in their lives and both of you will continue to love them. As soon as you can agree on a regular schedule of parenting time, you should let your kids know what that is. For younger children, keep a calendar showing which days they will be with each parent in the kitchen; ideally, your co-parent should have the same calendar for continuity between homes.

Even if there's a lot of animosity between the parents, unless one or both of you continue to fan the flames, it will likely dissipate over time. A year later, the conflict should be much lower. There are programs – like Children in Between Online – that offer tools to reduce the conflict and better deal with the stress related to the family break up. These tools will help your children as well.

Shield Your Children from Conflict

This is hard to do when you and your ex are triggered. Even though it may not be apparent, your children are listening to every word, so keep any conflict out of earshot.

Reassure your children about the routines that won't change, such as going to the same school, keeping the same friends, having time with their pets, and morning and bedtime routines. After coaching your relatives not to badmouth your ex to the children, try to increase contact between your relatives and your kids.

Children thrive on their parents' attention, so work on yourself to be fully present with and attentive to them as much as possible. Taking a break from your worries or to-do lists to play, talk, and be in the moment with your kids will also lower your stress level. The Calm app is a good tool to help you stay calm, and it teaches you how to meditate. The quality of your parenting is a big predictor of how well they will adjust to the divorce or separation, regardless of how much conflict you have.

There are a few good online programs and many books to ramp up the quality of your parenting. This is a big and complicated job, and most parents don't think to get help.

Give Them Your Time, Support, and Attention

When your children return from time with their other parent, they are often excited to talk about the fun things they did. Let them do this, and show genuine interest. If you unconsciously communicate your disinterest or disapproval, they'll learn to hide their feelings from you and avoid certain subjects. If you keep communication open, they will come to you with problems that you need to help them with.

Taking care of yourself so that you can be present with your children – and making time to play with and talk to them instead of plopping them in front of the TV or iPad – is something you can control. Eat healthy food, avoid too much alcohol, exercise regularly, meditate daily, spend time with friends, feel gratitude several times a day, and love freely. Not only will you be happier, you'll be setting a great example for your kids. ■

Donald A. Gordon (Ph.D) is a Co-Founder and Executive Director of the Center for Divorce Education. He continues to pursue research that challenges his own assumptions and strives to find best-practices that continue to help families reduce their conflict, shift re-litigation rates, and improve co-parenting communication and interactions. www.divorce-education.com