

WHEN PARENTS GO TO WAR

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CHAPTER 47

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EDUCATION

B.A. (Math/Hist), University of Texas, Austin, TX (1967).

M.B.A. (Econ/Mgmt), University of West Florida, Pensacola, FL (1973).

J.D., St. Mary's University, School of Law, San Antonio, TX (1975).

PROFESSIONAL ACTIVITIES & CERTIFICATIONS

Partner, Higdon, Hardy & Zuflacht, L.L.P.

State Bar of Texas (1976—): Board of Directors (Mbr as Small Sections Representative to Board (2007-2009); Current Member, Sections on Family Law, Litigation, , Civil Appellate, Military Law (Chair 2005-07) and ADR; Member, Texas Bar Journal Committee (1980-96).

Board Certified, Family Law, Texas Board of Legal Specialization (1981; Recertified: 1986, 1991, 1996, 2001, 2006).

Board Certified, Civil Appellate Law, Texas Board of Legal Specialization (1996; Recertified: 2001, 2006).

San Antonio Bar Association: Member (1976—); Director (1992-94); Founding Chair, SABA Family Law Section (1992—); Chair, CLE Committee (1990-1992).

San Antonio Family Lawyers Association: Member (1982—); President (2007-08;1988-89); Officer/ Director (2006-2009, 1986-1990).

Texas Academy of Family Law Specialists: Member (1982—).

American Academy of Matrimonial Lawyers, Fellow (1994—)

Matrimonial Arbitrator, AAML Trained & Certified (1995—).

San Antonio Bar Foundation, Life Fellow (1992—).

Texas Bar Foundation, Life Fellow (1996—).

Associate Member (Mediator), Society of Professionals in Dispute Resolution (SPIDR)(1993-2000).

Member, Texas Association of Mediators (San Antonio Chapter) (2000—)

Bexar County Dispute Resolution Center, Member, Board of Directors (1997—)

Panel of Pre-Suit Mediators, San Antonio Bar Association (1992-1996).

Member, Panel of Settlement Week Mediators, State District Courts in San Antonio (1988-).

Author and Speaker: American Bar Association, State Bar of Texas; San Antonio, Travis County, Val Verde County and Victoria County Bar Associations; San Antonio Family Lawyers Association; San Antonio College; public school classes, military, civic and other groups.

Marquis' *Who's Who in American Law* (1991—).

Marquis' *Who's Who in America* (2004—).

Marquis' *Who's Who in the World* (2004—).

Marquis' *Who's Who in Finance and Business* (2007—).

“AV” Rating, Martindale-Hubbell Law Directory (1992—).

Texas Monthly Magazine, “Texas Super Lawyers,” 2003, 2004; 2006, 2007 (Selected by peers).

Scene in SA Magazine “Best Family Lawyers in San Antonio,” August 2005, 2006, 2007 (Selected by peers).

National Registry of Who's Who, Selected as a Life Member (#138952) (2001—).

National Register's Who's Who in Executive and Professionals, (2001, 2002, 2004, 2005).
International Directory of Distinguished Leadership, Tenth Edition, Distinguished Leader, American Biographical Institute, Inc. (2002).
Global Directory of Who's Who, (2006).
 Settlement Consultants, Inc. -- Mediator Training
 Managing Commercial Conflicts Through Mediation (40 hrs., 9/92).
 Family Dynamics (24 hrs., 10/93).

SPEAKING AND/OR PUBLISHED PROFESSIONAL LEGAL ARTICLES

Pension Division Issues involving Concurrent Retirement and Disability Pay (CRDP) and Combat Related Special Compensation (CRSC), ABA Legal Assistance to Military Personnel (LAMP) Committee and Texas Military Law Section Joint CLE and Meeting, November 17-18, 2006, Sam Houston Club, Fort Sam Houston, San Antonio, Texas; (no written work; oral presentation in conjunction with B.Gen. Michael W. McCarthy, USAF (Ret.) of Phoenix, AZ.

Military Issues in Family Law Cases, San Antonio Family Lawyers Association Monthly Meeting, November 2, 2006, San Antonio, Texas.

Military Issues in Family Law Cases, Lackland AFB Legal Assistance Attorneys' CLE Training, Lackland AFB, August 30, 2006, San Antonio, Texas.

War and Peace, Military Benefit Issues in War Time with co-author, Stephanie J. Bandoske, 32nd Annual Advanced Family Law Course, State Bar of Texas Professional Development Program, August 14--17, 2006, San Antonio, Texas. **Selected by the College of the State Bar of Texas as its recipient of the Franklin Jones Outstanding CLE Article for 2006.**

Military Divorces (part of Retirement QDROs Panel Discussion), 32nd Annual Advanced Family Law Course, State Bar of Texas Professional Development Program, August 14--17, 2006, San Antonio, Texas.

Child Support and Service Members, A Short Court on Military Family Law Issues, American Bar Association Family Law Section, May 3, 2006, Henderson Hall, Arlington, Virginia.

Texas Family Law, 16th Biennial Institute on Texas Law for Military Attorneys, Military Law Section of the State Bar of Texas, April 27-28, 2006 (Speaker/presenter of Article written by John Compere, Jo Chris Lopez and Charla M. Davies), Sam Houston Club, Fort Sam Houston, Texas.

Military Divorces, 29th Annual Marriage Dissolution Institute, State Bar of Texas Professional Development Program, April 20-21, 2006, Austin, Texas.

Military Issues in Family Law Cases, Extreme Family Law Make Over IV, San Antonio Bar Association Family Law Section, March 3, 2006, San Antonio, Texas.

Should Your Next Expert Be a Licensed Private Investigator, San Antonio Family Lawyers Association Monthly Meeting, January 5, 2006, San Antonio, Texas.

Servicemembers Civil Relief Act and Amended New Benefits, 31st Annual Advanced Family Law Course, State Bar of Texas Professional Development Program, August 8-11, 2005, Dallas, Texas.

Servicemembers Civil Relief Act and Amended New Benefits, State Bar College Summer School, State Bar of Texas Professional Development Program, July 21-23, 2005, Galveston, Texas.

Military Retirement—Temporary Orders, Types of Compensation, Collecting Child Support, Military Retirement Registration, and Survivor Benefit Registration Deadlines, 28th Annual Marriage Dissolution Institute, State Bar of Texas Professional Development Program, April 21-22, 2005, Galveston, Texas.

The Law of Military Retirement and Military Retirement, Its Calculation and the Drafting of Orders Acceptable for Processing, Family Law and The Military Seminar, The University of Texas School of Law, El Paso Family Law Bar Association, Office of the Staff Judge Advocate and Military Law Section of the State Bar of Texas, February 24-25, 2005, Briggs Army Airfield, Fort Bliss, El Paso, Texas.

Texas Family Law, 15th Biennial Institute on Texas Law for Military Attorneys, Military Law Section of the State Bar of Texas, April 22-23, 2004 (Speaker/presenter of Article written by John Compere, Jo Chris Lopez and Charla M. Davies), Fort Sam Houston NCO Club, San Antonio, Texas.

Soldiers, Sailors & Military Divorces, Family Law and The Military Seminar, El Paso Family Law Bar Association, Office of the Staff Judge Advocate, El Paso Domestic Relations Office and El Paso County Family Court Judges, February 27-28, 2003, Briggs Army Airfield, Fort Bliss, El Paso, Texas.

- Soldiers, Sailors & Military Divorces*, 28th Annual Advanced Family Law Course, State Bar of Texas Professional Development Program, August 5-8, 2002, Dallas, Texas.
- Texas Family Law*, 15th Biennial Institute on Texas Law for Military Attorneys, Military Law Section of the State Bar of Texas, April 25-26, 2002 (Speaker/presenter of Article written by John Compere and Jo Chris Lopez), Fort Sam Houston NCO Club, San Antonio, Texas.
- Military Marriage Dissolution, Separation Pension Division and DFAS QDROS*, ABA Standing Committee on Legal Assistance to Military Personnel (LAMP) and Military Law Section of the State Bar of Texas, November 8, 2001, San Antonio, Texas (at St. Mary's University Law School)
- Handling the Federal Retirement Plans: Military Retirement and Civil Service Retirement, Including Survivor Benefits*, 27th Annual Advanced Family Law Course, State Bar of Texas Professional Development Program, August 6-9, 2001, San Antonio, Texas.
- The UCCJEA in Texas*, Children's Records Law in Texas Seminar, Lorman Education Services, Inc., June 15, 2001, Austin, Texas; June 18, 2001, San Antonio, Texas.
- Military and Civil Service Retirement Plans*, Family Law for General Practitioners and Legal Assistants, Stromar Educational Services, Inc., September 27, 2000, San Antonio, Texas.
- The UCCJEA in Texas*, Children's Records Law in Texas Seminar, Lorman Education Services, Inc., June 8, 2000, San Antonio, Texas.
- QDROS, Military, and Other Benefits*, 23rd Annual Marriage Dissolution Institute, State Bar of Texas Professional Development Program, May 11-12, 2000, Fort Worth, Texas.
- Military and Civil Service Retirement Plans*, Family Law for General Practitioners and Legal Assistants, Stromar Educational Services, Inc., January 26, 2000, San Antonio, Texas.
- Military and Civil Service Retirement Plans*, 25th Annual Advanced Family Law Course, State Bar of Texas Professional Development Program, August 16-19, 1999, Dallas, Texas.
- Overview of Military Benefits*, Basic Family Law Seminar, San Antonio Bar Association and SABA Family Law Section, June 19, 1997, San Antonio, Texas.
- Military Retirement—An Update*, 1997 20th Annual Marriage Dissolution Institute, State Bar of Texas Professional Development Program, May 8-9, 1997, Dallas, Texas.
- Military/Civil Service Family Law: Getting the QDRO's Right*, American Bar Association 1997 Mid-Year Meeting, General Practice, Solo and Small Firm Section, Military Law Committee, January 31, 1997, San Antonio, Texas.
- Soldiers' and Sailors' Civil Relief Act and Military Retirement*, Val Verde County Bar Association, December 13, 1996, Del Rio, Texas.
- Drafting To Incorporate Changes in Military and Federal QDRO's*, 1995 Advanced Family Law Drafting Course, State Bar of Texas Professional Development Program, December 14-15, 1995, San Antonio, Texas.
- Division of Military Retirement Benefits*, San Antonio Bar Association Afternoon CLE, October 20, 1994, San Antonio, Texas.
- Voluntary Separation Benefit Programs*, San Antonio Bar Association Military Law Section, February 25, 1993, San Antonio, Texas; Travis County Bar Association, May 5, 1993, Austin, Texas; as revised, presented to Victoria County Bar Association, May 17, 1993, Victoria, Tx, and published in 21 *The SALSA Summons* No. 2 at 26 (June 1993) (Publication of San Antonio Legal Secretary's Association).
- Using The Soldiers' And Sailors' Civil Relief Act To Stay Civil Proceedings*, American Bar Association's Legal Assistance for Military Personnel (LAMP) Seminar, January 21, 1993, Randolph Air Force Base, Texas.
- Survivor Benefit Plan And Other Military Benefits*, San Antonio Family Lawyers Association, January 14, 1993, San Antonio, Texas; also published in 20 *The SALSA Summons* No. 9 at 9 (February 1993).
- Military/Fringe Benefits, How Retirement/Employee Benefits Affect You and Your Clients* Seminar, State Bar of Texas Professional Development Program, February 20-21, 1992, Austin/Dallas, Texas.
- Soldiers' and Sailors' Civil Relief Act*, 17th Annual Advanced Family Law Course, State Bar of Texas Professional Development Program, August 19, 1991, Dallas, Texas.
- Family Violence Protective Orders, Domestic Law in Texas* Seminar, National Business Institute, Inc., May 16, 1991, San Antonio, Texas.
- Military Retirement, Active and Reserve*, Advanced Family Law Drafting Course, State Bar of Texas Professional Development Program, December 14, 1990, San Antonio, Texas.

Military Retirement Notes, 1 *Family Law Forum* No. 3 (Dec. 1, 1988). (Method for calculation of Reserve Military Retirement.) (Publication of Texas Academy of Family Law Specialists).

COURT ADMISSIONS

Supreme Court of Texas (1976).
 U.S. District Court, Western District of Texas (1978).
 U.S. Court of Appeals, Fifth Circuit (1979).
 U.S. District Court, Northern District of Texas (1979).
 U.S. Supreme Court (1979).
 U.S. District Court, Eastern District of Texas (1980).

MILITARY

Captain, U. S. Naval Reserve (Ret.) - 24 years commissioned service (US Navy 1967-1973; US Naval Reserve 1973-1991); ***now drawing retired pay!***
 Designated Naval Aviator No. V-27972 (February 20, 1969).
 Last Billet before retirement: Commanding Officer, NR AVT-16 Lexington 1010, Naval Reserve Center and aboard USS Lexington (AVT-16), Pensacola, FL. (1990-1991).
 Naval Reserve Association: Life Member (1977-); Alamo Chapter (President, 1981-83; Officer, Director 1978-1983); Eighth District (Vice-President JAG 1989-93; Vice-President Chapter Activities 1980-1982).
 San Antonio Recruiting District Assistance Council (RDAC) (1980-1992), Chairman (1989-1991).
 Navy League of the United States, Life Member (2000-); Alamo Council (1989-).
 Military Officers Association of America, *formerly* The Retired Officers Association, Life Member (1992-).
 Military Officers Association of America, Alamo Chapter, *formerly* San Antonio Retired Officers Association, (1992-), Life Member (1993-).
 Military Awards: Navy Commendation Medal, Armed Forces Reserve Medal, Vietnam Service Medal, Vietnam Campaign Medal w/ 1 silver star (5 campaigns), National Defense Service Medal, Pistol Expert Medal, Meritorious Unit Commendation (w/ 4 bronze stars), Navy Recruiting Ribbon, Rifle Sharpshooter Ribbon.

CIVIC/COMMUNITY ORGANIZATION PARTICIPATION

San Antonio, Texas Oak Hills Rotary Club: (1978—); President (1991-92); Director (1986-93); Paul Harris Fellow (1987—); Paul Harris Benefactor (1991—).
 Rotary International District 5840: District Secretary (1992-1993).
 Alamo Masonic Cemetery Corporation: Member, Board of Directors: Vice-President (05/90—); Treasurer (03/86--05/90).
 City of San Antonio, Texas AIDS/HIV Commission: Commissioner (1990-1993).
 Bexar County Dispute Resolution Center, Member, Board of Directors (1997—).
 San Antonio Public Library Foundation, Member, Board of Directors (1997-2001).
 The Grand Commandery Knights Templar of Texas: Sesquicentennial Grand Commander (State Presiding Officer) (2004-2005); Elected Progressive Grand Line Officer (1996-2005); Editor, Texas Page, *Knight Templar Magazine* (2004-2006); Appointed Grand Prelate (2007-2008).
 San Antonio Scottish Rite Learning Center of South Texas, Member, Board of Directors (2000-).
 Lee Lockwood Scottish Rite Foundation of Texas, Member, Board of Directors (2000-2006).
 San Antonio, Texas Masonic Bodies:
Past Presiding Officer of: Alamo Lodge #44, A.F.&A.M. (1980-81)(Treasurer: 1985-1989; 2005-); Blue Bonnet Chapter #470, R.A.M. (1983-84, 1999-2001) (Treasurer: 1985-1989; 2004-); Blue Bonnet Council #409, R.&S.M. (1984-85) (Treasurer: 1985-1989; 2004-); San Antonio Commandery #7, K.T. (1992); Texian York Rite College #60 (1994-95); San Antonio Council #261, Allied Masonic Degrees

(Charter Member) (1997-98); Alamo Camp, Heroes of '76, National Sojourners, Inc. (1999-2000); San Antonio Scottish Rite Bodies: San Antonio Consistory (2000-2001); Fort Sam Houston Chapter #17, National Sojourners, Inc. (2001-2002); St. Anthony Conclave #50, Order of the Red Cross of Constantine (2004-2005); Texas Council #45, Order of Knight Masons (Charter Member) (2005-2006). Also member of Scottish Rite Bodies, Valley of San Antonio, Southern Jurisdiction; Alzafar Shrine; Texas Priory #23 and Texian Priory #78, Knights York Cross of Honour (KYCH); Nazareth Tabernacle No. 34, Holy Royal Arch Knight Templar Priests (Elected Progressive Line Officer 2003—), and other appendant/related Masonic bodies.

Endowed member of Lodge, Chapter, Council, Commandery, College, Scottish Rite Bodies and National Sojourners, Inc.

Member, Woodland Baptist Church, San Antonio, Texas (Mbr, Deacon Body 2000—).

PERSONAL

Born October 20, 1944, McAlester, Oklahoma.

Married to former Barbara Ann Downing of Eagle Pass, Texas and have two sons, Travis, an entrepreneur and webpage developer/designer living in Austin, and Andrew, a certified public accountant formerly with PriceWaterhouseCoopers in Dallas, now with Aimco of Denver, CO. All are graduates of The University of Texas at Austin.

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EDUCATION

B.S., The University of Maryland, College Park, MD (1999)

M.H.R., The University of Oklahoma, Norman, OK (2000)

J.D., St. Mary's University School of Law, San Antonio, Texas (2005)

PROFESSIONAL ACTIVITIES

Associate, Higdon, Hardy & Zuflacht, L.L.P. (2005 – present)

Law Clerk, Higdon, Hardy & Zuflacht, L.L.P. (2003-2005)

Training Manager, United States Air Force, Lackland Air Force Base,
San Antonio, Texas (2001-2003)

Training Instructor, United States Air Force, Lackland Air Force Base,
San Antonio, Texas (2001)

Family Child Care Program Manager, United States Air Force, Royal Air Force Station Lakenheath,
Lakenheath England (1998-2000)

Police Officer, Northside Independent School District, San Antonio, Texas (1994-1997)

ADMISSIONS AND MEMBERSHIPS

Admitted to the State Bar of Texas in 2005

American Bar Association:

Current member, Family Law Section

State Bar of Texas:

Current member, Family Law Section, Military Law Section, Civil Appellate Section

San Antonio Bar Association:

Current member, Family Law Section, Civil Appellate Section

PUBLISHED LEGAL ARTICLES

War and Peace, Military Benefit Issues in War Time with co-author, James N. Higdon, 32nd Annual Advanced Family Law Course, State Bar of Texas Professional Development Program, August 14--17, 2006, San Antonio, Texas. **Selected by the College of the State Bar of Texas as its recipient of the Franklin Jones Outstanding CLE Article for 2006.**

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 d. *Williams v. Williams*, 552 So.2d 531 (La.App. 1989)..... 7

 e. *Ex parte K.N.L.*, 872 So.2d 868 (Ala.Civ.App.2003) 7

 f. *In re Marriage of Grantham*, 698 N.W.2d 140 (Iowa 2005)..... 8

12. SCRA Cases – before amendment to §511(9) 8

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 b. *Diffin v. Towne*, 787 N.Y.S.2d 677 (N.Y.Fam.Ct., 2004, unpublished) 9

13. Non-SSCRA/SCRA Deployment Cases 9

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 b. *In re Marriage of Rayman*, 273 Kan. 996, 47 P.3d2d 407(Ind.App.1983)..... 9

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- E. Family Member Deployment Screening Sheet (Army) DA Form 5888
- F. Family Care Certification (Air Force) AF IMT 357
- G. Family Care Plan Arrangements (Navy) Navpers 1740/7
- H. Department of the Navy Family Care Certificate (Navy) Navpers 1740/6
- I. Marine Corps Order 1740.13 A (use Navy forms)
- J. United States Code Annotated, Title 50 Appendix. War and National Defense (SCRA)
- K. Sample Motion and Order to Obtain Military Pay (or Personnel) Records
- L. Sample Subpoena for Military Pay (or Personnel) Records
- M. Sample Interest Rate Reduction Notice Letter
- N. Sample Lease Termination Letter
- O. *It's Inevitable . . . Have You Prepared Properly?*
- P. Useful Military and Military Related Websites

TABLE OF AUTHORITIES

Cases

<i>Bassham v. Evans</i> , 216 S.W. 446 (Tex.Civ.App.—Amarillo 1919, no writ)	16
<i>Bond v. Bond</i> , 547 S.W.2d 43 (Tex.Civ.App.—Eastland 1976, writ dism'd w.o.j.)	4
<i>Boone v. Lightner</i> , 319 U.S. 561, 63 S.Ct. 1223, 87 L.Ed. 1587 (1943)	4
<i>Cathey v. First Republic Bank</i> , 2001 US Dist. LEXIS 13150	15
<i>Chaffey v. Chaffey</i> , 382 P.2d 365 (Cal. 1963).....	5
<i>Cherubini v. Cherubini</i> 2003 NY Slip Op 50569U; 2003 N.Y. Misc. LEXIS 114 (Supreme Court of Dutchess County, February 13, 2003, unpublished)	10
<i>Diffin v. Towne</i> , 3 Misc.3d 1107(A), 787 N.Y.S.2d 677 (N.Y.Fam.Ct., 2004, unpublished)	9
<i>Engstrom v. First Nat. Bank of Eagle Lake</i> , 47 F.3d 1459, 31 Fed.R.Serv.3d 966 (5th Cir.), <i>cert. denied</i> , 516 U.S. 818, 116 S.Ct. 75, 133 L.Ed.2d 35 (1995)	4, 16
<i>Ex parte K.N.L.</i> , 872 So.2d 868 (Ala.Civ.App. 2003)	7
<i>Gilmore v. Gilmore</i> , 185 Misc. 535, 58 N.Y.S.2d 556 (1945).....	10
<i>Hampton v. Commercial Credit Corp.</i> , 176 P.2d 270 (Mont. 1946)	16
<i>Hanson v. Crown Toyota Motors, Inc.</i> , 572 P.2d 380 (Utah 1997)	16
<i>Hawkins v. Hawkins</i> , 999 S.W.2d 171 (Tex.App.—Austin 1999, no pet.).....	4
<i>Hibbard v. Hibbard</i> , 230 Neb. 364, 431 N.W.2d 637 (1988).....	6
<i>In re Diaz</i> , 82 B.R. 162 (Bankr. Ga. 1988)	15
<i>In re Marriage of Grantham</i> , 698 N.W.2d 140 (Iowa 2005).....	8, 14
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<i>Jelks v. Jelks</i> , 207 Ark. 475, 181 S.W.2d 235 (1944)	10
<i>Keefe v. Spangenberg</i> , 553 F. Supp. 49 (W.D. Okla. 1981)	15
<i>Kelley v. Kelley</i> , 38 N.Y.S.2d 344 (1942).....	10
<i>Kline v. Kline</i> , 455 N.E.2d 407 (Ind. App. 1983)	6
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<i>Lenser v. McGowan</i> , 358 Ark. 423, 191 S.W.3d 506 (Ark. 2004)	8
<i>Luke v. Mercantile Acceptance Corp.</i> , 244 P.2d 764 (Cal.App. 1952).....	16
<i>Martin v. Strong</i> , 1998 WL 1765716 (USDC, W.D. Tex. 1998).....	16
<i>Massey v. Kim</i> , 455 S.E.2d 306 (Ga.Ct.App. 1995).....	14
<i>McAllister v. Samuels</i> , 857 S.W.2d 768 (Tex.App.—Houston [1st Dist] 1993, no writ).....	14
<i>Moll v. Ford Consumer Finance Company</i> , 1998 WL 142411 (N.D. Ill. 1998)	16
<i>Power v. Power</i> , 720 S.W.2d 683 (Tex.App. —Houston [1st Dist.] 1986, writ dism'd)	4
<i>Riley v. White</i> , 563 So. 2d 1039 (Ala. Ct. App. 1990)	11
<i>Rosenthal v. Smith</i> , 35 Ohio Law Abs. 629, 42 N.E.2d 464 (1942)	14
<i>Shelor v. Shelor</i> , 383 S.E.2d 895 (Ga. 1989)	10, 14
<i>Strong v. Potomac Leasing Co.</i> , 722 S.W.2d 479 (Tex.App.—Dallas 1986, no writ)	4
<i>Trevino v. Trevino</i> , 193 S.W.2d 254 (Tex.Civ.App. —Waco 1946, no writ).....	4
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“When Parents Go To War”

By James N. Higdon

We are engaged in a declared war and have been actively engaged in the War on Terror since September 11, 2001. The terrorists, on the other hand, have been at war with us for more than ten years prior to 9/11. Many of our Service Members (SMs) are parents of children, often single or remarried parents of children of divorce. When the custodial parent is a drilling Reservist or a National Guardsman and gets recalled to active duty or that parent is an Active Duty SM who gets deployed to an “unaccompanied” location, whether in a war zone or not, problems arise for that parent, the child(ren), and often for the non-custodial parent. The believed intent of the request for this paper is to discuss those several scenarios and suggest ways for their attorneys to best deal with the problems attendant to recall and/or deployment of those SM custodial parents prior to them becoming immediate problems.

Family Care Plans

What is a Family Care Plan (FCP)?

Since a FCP is required by the Federal Government, does it trump the provisions of a custody order?

Can the SM have their FCP designated child caregiver obtain court-appointed status, and, if so, how, and then, when should the SM do so?

What effect will the Servicemembers Civil Relief Act (SCRA) have on the non-SM parent seeking to enforce their visitation and/or possessory rights to their child when the SM custodial parent deploys and implements their Family Care Plan that may not include nor address the existence of the non-SM parent?

All of these are questions that have either been asked or the SM’s attorney will have to ask and have answered, as well as many more, in order to adequately and properly represent their deploying client, or, for that matter, their non-deploying non-custodial parent. This article will attempt to answer them, at least some of them and/or direct you to resources to find the answer or, at least, an answer.

What is a Family Care Plan? It is a “plan” that provides for the SM’s dependent children, whether the SM parent is married or single, in the event that the

SM has to deploy. Since the SM must be able to deploy on a moment’s notice, the SM must have a plan in place to ensure that his dependents are and will be adequately provided and “cared” for. Thus, the Family Care Plan, whose purpose is to delineate for the SM’s service branch, i.e., the Army, Navy, Marine Corps and/or Air Force, the specific “care plan” the SM has put in place to ensure that his/her dependents will not be the responsibility of the government, whether federal, state or local, if he is or becomes deployed.

Although each service branch has its own Family Care Plan form, they are substantially similar. Attached as Exhibits A - I are exemplars of these service branch forms and/or related instructions, as well as, in the case of the Army, related checklist forms its personnel use to ensure the FCP is fully and completely completed by “all concerned,” at least from the Army and the SM’s perspectives.

The fundamental purpose of a FCP is to designate an individual who will be responsible for and provide for the SM’s dependents [children] in the event of the SM’s deployment. The problem with each service branch’s FCP is that, in the case of divorced parents, the caregiver designated in the FCP is almost always someone other than the children’s other parent, that is, someone other than the children’s other parent, the only other person with court-ordered rights to possession of the children. Therein lies the rub: the FCP fails to inquire as to the existence of a child custody order affecting the children in question or whether any one other than the SM completing the FCP has custodial rights to/with the SM’s dependents. Thus, the problem surfacing, often long after the SM has already deployed, because the SM is not required to even notify the other parent that a FCP has been executed, as to who has the right to possession of the children, the FCP appointed caregiver or the court-appointed non-custodial parent?

To further aggravate the problem, the SM is required, as part of the completion of the FCP, to execute a special power of attorney to allow the designated agent, naturally not the other parent, to execute documents for and on behalf of the children during the SM’s absence on deployment. The person designated in the FCP is also required to sign the FCP acknowledging that, as the child’s substitute caregiver, he/she agrees to provide care to and for the child and has been given all of the necessary legal documents needed to do so in the event that

circumstances arise necessitating the implementation of the FCP and their duties thereunder.

However, in making that representation, both by the SM as well as the designated agent, the form does not require the SM nor the designated agent to acknowledge the existence of the children's other parent nor that their designation as the children's FCP caregiver might be in direct conflict with the SM's divorce and/or custody decree, and, more specifically, with the possessory rights of the children's other parent.

Who requires it? As noted above, each service branch requires each SM, whether Active Duty member or Reservist or Guardsman, to prepare and execute a FCP.

Who is required to have one? Each Active Duty SM, who is a parent of minor children residing with and dependent upon him or has adult dependents residing with him who are dependent upon him. Thus, a SM with a wife (but no minor children) and/or adult parents who are living with and dependent upon him/her would also be required to submit a FCP, but only if they are disabled.

When does a FCP have to be prepared? Each Active Duty SM, who, upon becoming a single parent, just marrying, whether a SM or not, must notify his commanding officer (CO) within thirty days, and, thereafter, must, prepare and submit within sixty days a FCP that complies with that branch's regulations that proposes to provide for the care of their dependents in the event of the SM's deployment. In the case of a Reservist or Guardsman, they must notify their CO within sixty days of their marriage and then file an acceptable FCP within ninety days. This also applies to a single SM who acquires and/or claims a "dependent" for military purposes and/or services, such as a dependent parent, sibling and/or adult child, any of whom reside with and/or are legally dependent upon the SM.

Who can be designated? Really, just about anyone can be designated if they are at least twenty-one (21) years old, agree to the terms of the FCP, and sign off agreeing to comply with its terms. In the case of the married SM whose spouse is the parent of the SM's children, the FCP designation is simple and obvious since his spouse will be designated and continue to fulfill the parental duties of both parents in the SM's absence. If the SM is a widow or widower or the only living parent of the children, again, not much of a

problem since, as the sole parent, their designation of a person to function as the caregiver in their absence will be controlling, except, perhaps, in the case where there is a non-parent joint managing conservator, in which case the following scenario would, or, might, be applicable.

When the SM is divorced with children, that is when the problem really surfaces that often requires the involvement of a family law attorney. Quite often in the case of the divorced SM custodial single parent, when they complete their FCP, no mention is made of there being another parent, and, certainly, the non-custodial parent is not the designated caregiver in their FCP. Thus, we have the festering churning volcano waiting to explode and erupt into a very nasty lawsuit over who, in the absence of the SM, has the prior right to possession of the children: the person(s) designated in the SM's FCP or the other parent pursuant to the parties' divorce decree or SAPCR order.

What is the effect of a FCP on an existing custody order? Or, stated differently, when the FCP and the court order collide, which takes precedent?

Well, obviously, the court order should take precedence and prevail in such a documentary collision. However, the FCP designated caregiver will often try to maintain their preeminence in the dispute based upon their FCP designation and their often closer relationship with the children than that of the non-custodial parent conservator.

No Standing to Sue

But, just what is the FCP designee's "standing" to be in court at all? They are or have been unilaterally designated by the custodial SM parent, and, even though, as to the military, they have "apparent authority" to act, or "apparent standing," they will usually not pass the muster required by Tex.Fam.Code §102.003, since a person designated in a military FCP is not one of those listed as being authorized to file an original SAPCR. So, as between the non-custodial parent conservator and the FCP designated caregiver, the parent conservator should always prevail. The non-custodial parent conservator's attorney should plead this lack of standing, and the Court should dismiss any suit filed by the FCP designee for want of standing. But remember, no pleadings, no relief! Don't commit this kind of gross malpractice!

Applicability of a Petition for Writ of Habeas Corpus

Another method for the non-custodial parent to obtain possession of the children from the FCP designee would be to file a Petition for Writ of Habeas Corpus pursuant to Tex.Fam.Code §157.371 *et seq.* The only way that the FCP designee could possibly prevail in such a proceeding, although it is far fetched, is for the trial court to find that “the relator [the non-custodial parent conservator] has by consent or acquiescence relinquished actual possession and control of the child for not less than 6 months preceding the date of the filing of the petition for the writ.” Tex.Fam.Code §157.373.

The reason that such a finding should be “far fetched” is that the person relinquishing “actual possession and control of the child” is the custodial parent, not the non-custodial parent. The latter parent ostensibly has never had the possession to relinquish. Additionally, just what standing, *vis-à-vis* the non-custodial parent, does someone appointed in a unilateral document have to contest such a writ, or, if the non-custodial parent has obtained possession of the children and then has refused to return them, to file even a petition for such a writ? The answer, of course, is none.

At this juncture, however, if the issue of immediate possession of the children for the duration of the deployment is now moot, the non-SM parent should, nevertheless, file a motion to suspend any existing Wage Withholding Order and obtain a declaratory judgment that the non-SM parent owes no child support during the non-SM’s “temporary possessory period” of the children, that is, for the duration of the SM’s deployment, or, upon the SM parent’s return, obtain an order requiring the SM parent to refund child support paid to the SM parent by virtue of child support withheld and paid monthly to the SM parent from the non-SM parent’s income during the non-SM parent’s possession.

Of course, the issue of temporary custody may not be moot, however, since the non-SM parent, by possession of the child during the “Habeas” temporary custody period, may now have an arguable case upon which to base a claim of changed circumstances, etc., to pursue a permanent change of custody.

Since it is required by an agency of the Federal Government, does a FCP appointment trump the provisions of a valid court order appointment?

The short answer is simply NO! And the rationale for this short answer is that the FCP and its designation of a caregiver in the SM’s absence, although required by the SM’s service branch, is still a unilateral designation by the SM, usually of someone other than the only other person addressed in the parties’ custody order, the non-custodial parent, without the sanction of a court, much less of the court of continuing jurisdiction. It is merely a piece of paper signed by the SM and the FCP designated child caregiver that, in most cases, the non-custodial parent is not even aware has been executed, much less given a copy.

Can the SM have their FCP designated child caregiver obtain court-appointed status, and, if so, how, and then, when should the SM do so? Yes, use SCRA §391 to request anticipatory relief!

[**Note:** 50 U.S.C. Appx 501, *et seq.* contains the SCRA provisions. For clarity, the author may cite to 50 U.S.C. Appx 501, *et seq.* with the shorthand SCRA instead of using the full citation.]

Since the SM is or should be in receipt of either verbal or written orders to deploy, the SM, upon receipt of those orders, becomes *instantly entitled* to the protections afforded by the SCRA. As such, as soon as the SM becomes aware of his/her potential and/or probable deployment, the SM should avail himself of the SCRA’s *anticipatory relief* provision (§391) and be proactive in asking for “anticipatory relief” from the possible transfer of the parties’ child/children to the non-custodial parent if good cause for the temporary appointment of a substitute SMC or primary JMC is or can be proven. Obviously, the presence of the custodial parent presenting their position to the court will certainly go a long way to getting their FCP designee appointed to serve in the SM parent’s absence than if the designee has to go it alone after the SM has deployed and suffer almost, if not certain, defeat as noted above.

Plan ahead; put “recall” provisions for possession of the child in your possession order.

Another way, if not better way, to handle this situation when you know you represent a SM or a Reservist is to build into the Decree of Divorce a provision to cover the eventuality that the SM will be deployed to an unaccompanied assignment for six or more months or the Reservist will be recalled and deployed overseas for a similar length of time. Of course, such far-sighted planning will not prevent a subsequent suit, but it will, or should, go a long way in

convincing the trial court that the ordered and/or agreed provision is *res judicata* on the point or the non-custodial parent is collaterally estopped to request the change when the anticipated event that was the reason for its inclusion in the order is occurring or has occurred. *See also* Tex.Fam.Code §156.105 which provides that it is a material change in circumstances if custodial parent is ordered on unaccompanied deployment for six or more months, but change in custody is only for duration of deployment.

The deploying SM can also file, under 50 U.S.C. Appx §391 a precautionary and preemptive motion for a declaratory judgment for a finding and order confirming that the “recall” provision of the Possession Order will be honored by the court and the other parent in the SM’s absence.

Deployment and SCRA does not automatically equal an abatement; material affect proof is also required!

If the non-custodial parent waits until the SM is “ready to board the plane” to file, the automatic stay provision should be pleaded and heeded by the trial court. Remember, however, that *the “automatic stay” is presumed unless* you present legally sufficient evidence that the SM’s participation in the legal proceedings will not be *materially affected* by their military service. The key to this proof is that their participation in a temporary order proceeding (1) will not materially affect the performance of their military duties at that time; and (2) it is in the children’s best interest to have the matter resolved before the SM departs for their deployment. However, the longer the non-custodial parent waits to file their request for relief, the more sure is the likelihood that the court is going to make that presumed finding of *material affect* and give the SM the automatic initial ninety-day stay; then, once gone, good luck on proving no material affect.

New SCRA Resource

An new publication of the Army JAG School that is available to the practitioner on the SCRA is *The Judge Advocate General’s School Guide to the Servicemembers Civil Relief Act*, which is available from the ABA webstore. The ABA Standing Committee on Legal Assistance to Military Personnel (LAMP Committee) is the lead sponsor of this publication. It costs \$20.00; \$15.00 if you are a member of the General Practice, Solo and Small Firm

Division; \$9.50 for individual members of the military.

Other resources can be accessed at the ABA LAMP website: www.abanet.org/legalservices/lamp/.

What proof is presented that the SM’s participation in the legal proceeding is not and/or will not be materially affected by their military service or military duty, and what should the SM do to prove that it does?

There is no simple or pat answer to this question, but one of the simplest would be to have one or more of the SM’s superiors subpoenaed to testify that they cannot be allowed leave to be present in court or to assist their lawyer in the presentation of their case in court. Another would be to have a JAG officer or an officer from a similar unit testify to the needs of the service as it relates to the job the SM is doing and/or his availability in preparing for the deployment, etc. In general, most trial court judges are going to err on the side of protecting the SM within reason and upholding the SCRA protections. After all, giving liberal construction to the interpretation of the Act and its provisions is and has been the Law of the Land since at least 1943. *Boone v. Lightner*, 319 U.S. 561, 575, 63 S.Ct. 1223, 1231, 87 L.Ed. 1587 (1943); *U.S. v. Bomar*, 8 F.3d 226, 231 (5th Cir. 1993); *Engstrom v. First Nat. Bank of Eagle Lake*, 47 F.3d 1459, 1462, 31 Fed.R.Serv.3d 966 (5th Cir.), *cert. denied*, 516 U.S. 818, 116 S.Ct. 75, 133 L.Ed.2d 35 (1995); *Hawkins v. Hawkins*, 999 S.W.2d 171, 175 (Tex.App.—Austin 1999, no pet.). But, if you are before one that is not, remember that the SCRA sets up a federally mandated presumption of material affect, which, if backed up by cognizant military authority, it would certainly seem that the trial court overruling the requested SCRA abatement would certainly be held by a court of appeals to have been an abuse of the trial court’s discretion.

The test on appeal, if the ruling is adverse in the trial court, is an “abuse of discretion” standard. *Hawkins v. Hawkins, supra* at 174-175; *Womack v. Berry*, 156 Tex. 44, 291 S.W.2d 677, 681-682 (1956); *Power v. Power*, 720 S.W.2d 683, 685 (Tex.App. —Houston [1st Dist.] 1986, writ dismissed); *Strong v. Potomac Leasing Co.*, 722 S.W.2d 479 (Tex.App.—Dallas 1986, no writ); *Bond v. Bond*, 547 S.W.2d 43, 45 (Tex.Civ.App.—Eastland 1976, writ dismissed w.o.j.); *Trevino v. Trevino*, 193 S.W.2d 254 (Tex.Civ.App. —Waco 1946, no writ) (modification of custody case,

best interest of child mandated that requested stay be denied).

SCRA only applies to active duty military; it does not extend to civilians!

The SCRA protections apply only to those who come within its express provisions. Thus, it only applies to persons who are on *active duty in the military service* who are defined to be , (a) an active duty member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the term “active duty” is defined in 10 USC §101(d)(1); or (b) a member of the National Guard under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 USC §502(f), for purposes of responding to a national emergency declared by the President and supported by Federal funds; or, (c) a Reservist member of one of the armed forces who is on active duty for training, annual training or has been recalled to active duty for a term. 50 U.S.C. Appx §502. The SCRA does not protect civilians who are working for contractors employed by the military, even if they are “deployed” with the Armed Forces. Thus, all of the retired or former SMs and/or other civilian employees of the Armed Forces or of civilian contractors who are “deployed” to Iraq or Afghanistan, or wherever outside the Continental United States, are not “covered” by the SCRA’s protections from suit. *Id.*

Temporary Custody Proceedings and the SCRA

As noted above, the SCRA provides that a court, upon the motion of the SM or on that court’s own motion and upon proof that the SM’s *military service materially affects* the SM’s ability to participate and/or defend (or prosecute) a legal proceeding, **SHALL GRANT** the SM a stay of the proceeding for an automatic ninety (90) days, and, thereafter, for so long as the SM’s military service continues to materially affect his ability to participate/defend/prosecute his case. But how does this play in conjunction with a court’s obligation to always act in the best interest of the child? Tex.Fam.Code §153.002.

Can a court issue a “temporary order” when the SM has requested a stay pursuant to the SCRA?

Not in view of the 2004 amendment to the definition of judgment in the SCRA: “The term “judgment” means any judgment, decree, order, or ruling, final or

temporary. [Emphasis added.] 50 U.S.C. Appx §511 (9). See Appendix J, p. 2.

Additionally, how does the SM’s unilaterally appointing someone other than the child’s other parent in the FCP fit with this State’s public policy to encourage and foster “frequent and continuing contact” with the other parent? Tex.Fam.Code §102.001. As to a FCP, it doesn’t.

There are no Texas appellate cases practitioners can provide to the trial courts to show that a SCRA abatement should be and must be automatically granted without hearing any evidence or giving any consideration to the needs and/or best interest of the child before the court. As noted above, there are two very strong and staunch public policy arguments in favor of the court entering appropriate temporary orders to “protect and provide for” the child during the SM parent’s government mandated absence. Tex.Fam.Code §153.001-.002.

Additionally, there is also the mandate of no discrimination between the sexes or based upon the marital status of the parties before the court, although in this type of proceeding, this public policy should not be a factor. Tex.Fam.Code §153.003. So, what is a practitioner to do? Well, what follows are some cases from other jurisdictions that may be illustrative in the presentation of your client’s temporary custody position, regardless of your client’s then custodial position.

CAVEAT: Note that the following cases were all decided prior to 2004 amendments to the SCRA which specifically included “temporary orders” as being affected by the SCRA. 50 U.S.C. Appx §511(9). The SSCRA and the SCRA as originally signed into law on December 19, 2003 did not have “temporary orders” included in the definition of a “judgment.”

SSCRA Cases

Chaffey v. Chaffey, 382 P.2d 365 (Cal. 1963). **Deployment Case, but with accompanying children; SSCRA trumps judge’s restraining order to not remove children from state.**

SM-father (F) had custody of the three children, mother (M) tried unsuccessfully twice to obtain a change of custody. When M was notified that her ex-husband (F) had received orders to transfer to Guam, she served the motion and show cause order on F as

he was about to leave for Guam. Although the order restrained F from taking the children outside the state and required him to appear at a hearing some two weeks hence, he left with the children and his attorney obtained a continuance of the initial hearing for four months. The court at the second setting denied F's motion for a stay under the SSCRA and proceeded to hear testimony from the mother and her husband. At the end of the trial, the judge awarded custody to M, commenting that F had placed himself in the position of violating an order of the court and was not now in a position to request a stay of proceedings.

The **Supreme Court of California reversed**, stating that F **"understandably did not comply with the state court's restraining order"** when he took the three children with him to Guam, departing the morning after he was served, the court noted that "It is, of course, **common knowledge that a military man on active duty, particularly when overseas, is not a free agent.**" Thus, the military transfer orders and the SSCRA trump a trial court's authority in this fact situation.

Kline v. Kline, 455 N.E.2d 407 (Ind. App. 1983).
– **Deployment Case; Good SSCRA Proof in Trial Court by SM Parent Wins Appeal.**

The trial court had granted the parties' divorce and awarded custody of the couple's two children to the husband (F), who was in the Marine Corps. About 18 months later, Mother (M) filed a motion for contempt and emergency custody, claiming that she had been denied visitation and that there had been a substantial change in circumstances entitling her to custody of the children. Ordered to appear, F, stationed in Okinawa where the children resided with him, obtained a continuance based upon his SSCRA motion to which he attached an affidavit that stated that he was a gunnery sergeant in counterintelligence; was scheduled to deploy for classified maneuvers off Okinawa shortly; that his team commander had determined that there was no replacement for F as team chief; and that the performance of his military duties made it impossible for him to appear for the initial hearing.

Two months later, the trial court held a hearing at which F's attorney advised the court that F was still on Okinawa; that he had applied for leave but his commander had refused to grant leave; detailed F's unsuccessful attempts to get his commander's order countermanded; stated that F had to stay in the Far East until about eight months after the hearing date,

when he would be eligible for leave; and that F could not take leave for the reasons stated in the commander's affidavit that:

- Marine Corps policy did not allow the disclosure of the mission of F's counterintelligence team;
- F was assigned to the unit because he possessed specific and necessary skills; and,
- F's loss would adversely affect the ability of the team to accomplish its mission.

The trial court, however, denied F's renewed motion for another SSCRA continuance, found F in contempt and awarded custody to M. The judge gave three reasons for refusing to grant F's renewed SSCRA stay/continuance:

- F did not advise the court promptly of his inability to appear for trial;
- The case involved a claimed serious abuse of the court's prior order; and,
- M had incurred significant travel expenses to appear for the hearing.

F's attorney argued for a continuance before and after the trial. M's attorney argued that F had not complied with state rules of procedure in trying to obtain a continuance and that F was using the SSCRA as a delaying tactic to slow down the judicial process and frustrate a prompt decision.

The appellate court, reviewing these facts, pointed out that F's absence from the second hearing was solely due to his military service and that there was nothing in the record to show that his absence was otherwise; given the nature of the hearing, that his absence was prejudicial to him; that the father had shown good cause for his absence and prejudice to his defense; and held that **the trial court abused its discretion in denying F's SSCRA stay** and continued the contempt and modification hearings.

Hibbard v. Hibbard, 230 Neb. 364, 431 N.W.2d 637 (1988). – **Deployment Case; No SSCRA Proof by SM Parent as well as Bad Conduct of SM Parent.**

Trial court found that the SM-father (F), who had custody of the three children in the divorce decree, had denied the mother (M) adequate visitation and that this was a change of circumstances sufficient to grant custody to her. Noting that the F made little showing for a stay other than alleging in his motion

that he was in the armed forces on active duty in England and claiming that a failure to stay the hearing would create a disadvantage to him, the court stated that F **had not presented any competent factual evidence in support of his stay request. A mere showing that the SM-parent is on active duty is not sufficient to obtain a stay.**

Williams v. Williams, 552 So.2d 531 (La. App. 1989). – **Modification of Support/Visitation Case; Good SSCRA Proof by Overseas SM Parent; Bad Conduct by Non-SM Parent.**

Parties separated in Germany, mother (M) taking child back to Louisiana with her to live. M, five months after an uncontested divorce that awarded custody to her, filed a request for an increase in child support, for a restriction on father's (F) visitation rights to the continental United States (CONUS) and for a restraining order stopping the father from removing their three-year-old child from the United States. F responded with a SSCRA stay request, citing his ability to answer and defend was prejudiced by his military duties in Germany; that, as a result of his location he: was impaired in obtaining counsel to represent him; was financially unable to hire an attorney or come to Louisiana to defend himself; had no leave; had substantial debts; and had already incurred travel costs in coming to Louisiana from Germany three times in the previous year for litigation purposes. He asked that the proceeding be stayed until about a year later, when he was scheduled to be transferred back to the United States.

The trial judge appointed an attorney for the absent F, then denied F's requested stay. As to M's visitation restriction, it found that M was merely trying to clarify the divorce judgment regarding restricted visitation, and granted the requested restriction although M did not plead the necessity for restricting F's visitation to CONUS. As to her child support request, it found F's appearance was unnecessary since it had reviewed F's answers to interrogatories regarding monthly income and expenses and more than doubled his child support. [*But he was not prejudiced by not being able to be present!?*].

Reversing the trial court, the appellate court found that F had exhausted his available leave in his three prior trips related to the domestic litigation; M had filed her motion to increase child support and restrict visitation a mere five months after the rendition of the divorce judgment; the hearing on the motion was held only one month after its filing [*That's Louisiana speedy*

trial procedural due process, or was it a locomotive at full throttle on a downhill grade???]; F had been cooperative in the litigation and had not sought to obtain an unreasonable delay due to his military service. Thus, on the facts before it, the appellate court also found that it did not appear to it that F's SSCRA stay request was ill-founded or filed solely for purposes of delay. The appeals court also found that the child support and visitation restriction issues alleged by M were significant issues concerning the F's parental rights and responsibilities. It did not go without notice to the court that M was "seeking to nearly triple [F's] child support obligation a mere five months after the consent judgment was entered." The court also held that F's testimony was "crucial evidence" on the restrictive visitation issue, and that the trial court's CONUS only visitation by F would effectively deny him visitation since he had no more leave.

Ex parte K.N.L., 872 So.2d 868 (Ala.Civ.App. 2003). – **Recall/Mobilization Case; Bad Conduct of SM Parent.**

The mother (M) and father (F) of the child had never married, but had lived together for the first six years of the child's life in Alabama. The mother, an army Reservist, moved to Pennsylvania in 1999, but the child, by agreement of the parties, remained in Alabama, where he lived with F during the school year; the child lived with M during the summers. In May 2000, M executed a power of attorney (probably a Family Care Plan (FCP) designation, although the opinion does not say so) in favor of F giving him "guardianship" of the child in the event her reserve unit was recalled to active duty. When F filed a custody petition in May 2002, followed by the girl's departure to live with M for the summer months as they had agreed, it should have come as no surprise to anyone that the child was not returned to dad at the end of the summer for school. Instead, mother, after filing a motion to extend the date for filing her answer, filed a limited appearance and motion to dismiss F's custody petition on the grounds that Alabama did not have personal jurisdiction over her. When that failed, she refused to allow F to see the child and moved to challenge his paternity. When her paternity tissue-testing issue was dismissed based on *res judicata* grounds, mom dropped "the bomb"—her Army Reserve unit was mobilized to depart for Iraq on February 10, 2003. F's motion for *pendente lite* custody was heard amid allegations that the mother's unit had been activated. The mother, of course, moved to stay the *pendente lite* proceeding until she

returned from her overseas assignment. The judge denied the stay and granted temporary custody to F. M appealed. The Alabama Court of Civil Appeals stated that, **when a military parent requests a stay of proceedings in a custody or visitation case, “the trial judge should consider the impact of such a stay on the other parent’s right to visit and communicate with the children.”** The court concluded that the SSCRA is not to be used **“as a vehicle of oppression or abuse.”** The courts should not allow SM-litigants to take advantage of it, since it was enacted to protect SMs, but was not to be employed unjustly.

In re Marriage of Grantham, 698 N.W.2d 140 (Iowa 2005). – **Recall/Mobilization Case; Family Care Plan appointment of SM’s mother; Bad Conduct of SM Parent.**

The SM-father (F), a member of the Iowa National Guard, had been awarded custody of the parties’ two children in their divorce. Upon the F’s unit’s call to active federal service, he advised the children’s mother (M) that he was going to leave them with his mother, the children’s grandmother (GM). M objected to this arrangement and discussions ensued between F and M about the children’s living arrangements during F’s absence. F reviewed his FCP in consultation with his attorney that provided that the children would be cared for by GM. This discussion was followed by a meeting with M and her attorney during which an agreement was reached that M would have temporary custody of the children during F’s absence on active duty. After the agreement was typed up, F told M that he was refusing to sign it and that GM would have the children in his absence pursuant to his FCP and that M would have possession during his absence only as provided in their divorce decree. A temporary custody proceeding ensued where F, now on active duty, requested a SSCRA stay (proceeding filed in 2002) “until he returned to a civilian status.” The stay was denied and the case proceeded with the trial court, in F’s absence, entering a temporary order appointing M as temporary custodian, suspending her child support obligation and ordering F to pay M child support. Although F was on active duty until a week following the hearing on M’s petition for a permanent change of custody, F was present at the hearing. The trial court entered a custody order that awarded permanent custody to M. On appeal, the appellate court discusses the problem of noncustodial parents and the lack of knowledge of a SM’s FCP or who it designates until after its implementation or plans for its implementation are

taking place and that “by the time the noncustodial parent can challenge the [FCP], the proceedings to do so are subject to the [SCRA] stay. **We are unable to agree that the SSCRA is so inflexible that it precluded the district court from determining a matter of immediate importance concerning the temporary custody of these children.**” [*Emphasis added.*]

The court further said that, as to the temporary custody hearing, the F did not demonstrate how his presence at the hearing would have changed the result since “[a]s parent and joint custodian of the children, her claim to temporary custody was clearly superior to that of [GM].” The court found that F had attempted to conceal his FCP arrangement for GM’s custody of the children until it was too late for M to seek judicial relief before he was called to active duty and that **to allow F to continue the temporary proceedings until after his return to a civilian status would have been a serious denial of M’s rights.**

As an aside, as a reason for the permanent change of custody to M, the court found that F practiced a “persistent pattern of conduct that has served to diminish the children’s relationship with their mother.” Thus, the facts of this case before SM’s active military service, as well as his actions at the time of his call up, dictated, in part, his ultimate permanent loss of custody to M.

SCRA Cases – Before amendment to §511(9).

It should be noted that these cases predate the addition of “temporary orders” to SCRA §511(9)’s definition of “judgment.”

Lenser v. McGowan, 358 Ark. 423, 191 S.W.3d 506 (Ark. 2004). – **Deployment Case; Bad Conduct of SM Parent.**

The mother (M) and father (F) were married, but separated. F was an active duty service member and, pursuant to the parties’ agreement, had the child for about ten days at the end of 2003, just before his return to Ft. Hood, Texas in preparation for his unit’s deployment to Iraq. There was not a divorce proceeding on file and no custody order in place. Rather than returning the child to M, with whom the child had lived since the parties’ separation in November 2003, he gave the child to his mother, the paternal grandmother (PGM). The trial court entered a temporary custody order in favor of M but stayed

the remainder of the case based upon F's SCRA stay petition until his return.

The F and PGM argued that the stay was automatic and prevented entry of a temporary custody order. The Supreme Court of Arkansas, considering the case pursuant to an extraordinary writ application, first defined what a "stay" is, noting that a stay does not deprive a court of jurisdiction, but holds all or part of an action in abeyance, freezing its proceedings, or a particular phase of it, at a particular point. Noting that the order in which a court acts on or considers a stay and a temporary custody order – which is considered, acted upon or entered first, and which second – is immaterial, the court stated that **a SCRA stay does not freeze a case, leaving it in limbo indefinitely and allowing no authority for the trial court to act.** Rather, the court said that **a trial judge may properly entertain the issue of temporary custody, even if a stay is in place when the issue is considered.** A child's life cannot be put in suspended animation awaiting the return of the SM-F to proceed with the case on the merits; the trial court also has jurisdiction to consider support, custody and other similar issues that come up during the course of the stay. [*Analogous to a Texas court applying Tex.Fam.Code §§153.001-002.*] The court's actual holding was that the SCRA "provides a stay of the domestic relations case but did not prevent the circuit court from entering a temporary order of custody."

Diffin v. Towne, 3 Misc.3d 1107(A), 787 N.Y.S.2d 677 (N.Y.Fam.Ct., 2004, unpublished). – **Recall/Mobilization Case; Family Care Plan Appointment of SM's Husband and SM's Mother; Bad Conduct of SM Parent.**

The SM-M urged the court to find that a stay of proceedings barred the entry of a custody order, even on an interim basis, and that M's new husband should take care of the child of her former marriage, despite the fact that F shared joint custody with her.

The court, in its opinion, reminded the parties that **a stay of proceedings was simply intended as a shield to protect SMs, not as a sword with which to deprive others of their rights. In the absence of extraordinary circumstances, such as abandonment, unfitness or persistent neglect, the court must grant custody to the other parent in a case such as this when the primary custodian cannot fulfill her custodial duties.** Finding no such disqualifying circumstances, the court swept aside M's argument that her new husband should take care of the child

pending her return from an indefinite mobilization period, stating that "...the step-father has no legal or moral obligation to support the child, has no legal ability to obtain medical care for the child, and has no legal ability to inquire as to the education of the child."

The Court stated it is not in the child's best interest to leave the child with a step-parent until such time as M is able to proceed, and the law requires the Court to enter a temporary order pending the trial of this action. [*Analogous to a Texas court applying Tex.Fam.Code §§153.001-.002.*]

Non-SSCRA-SCRA Deployment Cases

Lebo v. Lebo, 886 So.2d 491 (La.App., 2004). – **Recall/Mobilization Case; Non-SM Parent prevails over SM's Family Care Plan appointment of SM's Wife.**

Although this court discusses the SSCRA and SCRA stay provisions in a footnote, it is actually not a SSCRA or a SCRA case. The court notes that the SM-father was entitled to request the SCRA's 90-day mandatory stay and then discretionary stays thereafter, but also states that the SM-father chose not to use the SCRA stay provisions to abate the proceedings, deciding instead to hire counsel and proceed with the litigation.

This case is relevant to our discussion of the issue of temporary custody in a recall/deployment situation, however, the SM attempted to use a power of attorney (apparently a guardianship power of attorney executed as part of his military Family Care Plan (FCP)) to give custody to his wife, the child's stepmother. The trial court upheld the SM's transfer of custody to his wife by virtue of the power of attorney. The court of appeals reversed the trial court and remanded for a hearing to determine temporary custody of the minor child, stating that **a parent who has primary custody** (denominated here the "domiciliary parent") **may not unilaterally change custody; the power to modify a custody order belongs to the courts.** [*Analogous to a Texas court applying or invoking Tex.Fam.Code §§102.003—.007.*]

In re Marriage of Rayman, 273 Kan. 996, 47 P.3d 413 (2004). – **Deployment by SM, but Custody Remains with SM.**

SM-father (F) was awarded physical custody of his

two children in his divorce from M, who had joint custody with F. F remarried; his new wife (W) developed a good relationship with the children.

In anticipation of F's upcoming one-year unaccompanied tour of duty in Korea, M moved for temporary custody during F's tour in Korea. At trial, F testified that he was planning to leave the children with W and that he would take 30-days' leave in the middle of his year in Korea. Additional testimony by F and W addressed not changing the parenting techniques already in place with the children, about how W had been a primary caretaker with F for them for the past several years, and how she was a stay-at-home mom who had a strong relationship with the children.

M, on the other hand, testified, she was soon to be medically retired from the Army, that she planned to attend school in Tennessee, that her current husband would not join her in Tennessee until about 10 months later, and that she knew about a possible hardship tour for F when she agreed to his being the primary physical custodian of the children.

The trial court retained custody with F, despite his planned absence, but provided liberal visitation for M.

Responding to M's argument that the trial court's ruling was a violation of the parental preference doctrine and a grant of custody to W, the Kansas Supreme Court held the contest was between M and F, that F had won, and that:

Each situation involving military families has distinct differences, as do the facts of temporary changes which relate to nonmilitary custodial relationships. The temporary transfer of the parent with residential custody must not automatically trigger a custody change. We reject... [M's] argument that the parental preference doctrine was violated by the trial court's ruling under the facts of this case. Custody is an issue to be determined on a case-by-case basis as the trial court did here.

Id. at 1001, 47 P.3d at 416.

Although not a SSCRA or SCRA case, it is a deployment case, the outcome of which clearly turned upon the facts proven by the SM and shows the practitioner the importance of proving the facts of their case if representing the SM and his FCP

caregiver appointee, whether it be his then wife (children's stepmother) or anyone else.

Recall and/or Deployment and Child Support

When a Reservist gets recalled, frequently his income is going to decrease, but it will certainly change in any event. Representing the SM, if his income decreases, obviously, you must immediately file a motion to reduce his child support. Once the SM has received verbal and/or written orders, the practitioner should also plead and use the SCRA's anticipatory relief provision (§391) to effect a "timed future" court-ordered reduction that becomes effective coincident with the SM officially entering active duty. Additionally, this order may be a temporary one to more easily facilitate a change in the child support upon the SM's return to civilian life and his civilian job.

Upon receipt of orders, the SM should immediately review his income situation to determine if his income will *decrease* as a result of his recall and/or deployment, consult his attorney and, especially if he is a recalled Reservist, determine whether to file a motion to obtain temporary orders to *temporarily* reduce his child support for the duration of his recall. This should be a "no brainer," but often the SMs who need to do this the most may not be able afford the legal representation to pay to have it reduced. As such, we have a duty to these individuals to ensure that our SMs who are "going to war" are protected while they are protecting our usually rather affluent, safe and secure lifestyles here at home.

The practitioner should not be afraid to ask for a temporary order of support. In 1989, the Georgia Supreme Court ruled that an order which granted a temporary change in child support did not significantly affect the rights of the SM since it was an interlocutory decree and was subject to modification in the future. *Shelor v. Shelor*, 383 S.E.2d 895 (Ga. 1989). See also *Gilmore v. Gilmore*, 185 Misc. 535, 536, 58 N.Y.S.2d 556, 557 (1945), *Jelks v. Jelks*, 207 Ark. 475, 181 S.W.2d 235 (1944), *Kelley v. Kelley*, 38 N.Y.S.2d 344, 348-50 (1942) and *Cherubini v. Cherubini* 2003 NY Slip Op 50569U; 2003 N.Y. Misc. LEXIS 114 (Supreme Court of Dutchess County, February 13, 2003, unpublished) for examples of cases involving the entry of temporary support orders despite stay requests under the Soldiers' and Sailors' Civil Relief Act. **CAVEAT: The foregoing cases, however, were decided prior to 2004 amendments to the SCRA which specifically added "temporary**

orders” as being affected by the SCRA. So, *Shelor’s* holding is probably not good law today, that is, is not applicable under the current SCRA.

Thus, our courts should readily comply with the federal mandate of the SCRA to stay a case, even when it involves a temporary order for support, since, as noted, it also applies to temporary orders as well. 50 U.S.C. Appx §511 (9) defines “[t]he term ‘judgment’ [to mean] any judgment, decree, order, or ruling, final or *temporary*. [Emphasis added.] 50 U.S.C. Appx §511 (9). See Appendix J, p. 2. But, if the SM is the Movant, he can voluntarily waive the protections, as necessary, of the SCRA as to this issue.

So, if you represent a SM in receipt of recall orders, you should immediately initiate a proceeding to *temporarily* reduce his support based upon his new status as an active duty SM and his reduced income.

Although the Attorney General’s office should be taking the lead in this arena, that is, initiating such child support reduction suits, it is doubtful that they will since, contrary to their publicist, they usually will not help an obligor and really do not just represent the State of Texas. They rarely will represent the obligor parent in seeking and obtaining a reduction in child support, even when the facts mandate it. Their charge is to show an increase in collected child support. Thus, obtaining a decrease in child support is not good for their statistics! They purport to represent ALL OF THE CITIZENS OF TEXAS, obligees, as well as obligors, but, in actuality, they really don’t! They rarely will conduct a review and propose a decrease in an obligor’s child support. This similarly includes obligor Reservists who realize a reduction in their income due to being recalled to active duty. Again, this should be a “no brainer,” but not for the Attorney General’s office that does not have a system in place to conduct such reviews in the first place, even though they have the computer capabilities to virtually instantly determine the obligor’s income.

Nevertheless, Courts should take a dim view of an obligee who attempts to delay having a hearing on a SM’s motion to reduce child support. Courts should also liberalize the application of the Texas Rules of Evidence as to the entry of a SM’s LES as “proffered evidence” in his absence without a strict adherence to the Rules of Evidence in these situations. The authenticity of a SM’s LES should not generally be questioned, at least not unreasonably so.

If the Court is reasonably certain that a delay has been precipitated by the obligee for no good reason or for the reason that she believes that the delay will result in continued inflated child support, the Court should award sanctions for the delay as well as make the reduced child support retroactive to the earliest applicable date. Further, Courts that don’t sit in a county with regularity should take special steps to ensure that the needs of a recalled SM are accommodated as much as possible to afford him the consideration of his reduced income and, thereby, his need for a corresponding reduction in his child support. We are not dealing with “deadbeat dads” in this situation; far from it. We are dealing with men and women who are ensuring we can exercise and enjoy the freedoms we have in the U.S.; we are dealing with the men and women who are putting their lives on the line to protect those freedoms. They deserve some special treatment by our State Agencies as well as by our court system to ensure that their financial needs in this arena are met.

If it is the SM, on the other hand who is causing an unnecessary delay, remember that bad faith may defeat the SM’s attempt to slow down the case with an SCRA stay request. When a SM demonstrates bad faith in his dealings with the court, a stay of proceedings should be denied. In *Riley v. White*, 563 So. 2d 1039 (Ala. Ct. App. 1990), a soldier failed to submit to blood tests in a paternity action before going overseas and was aware of the court proceedings, had an attorney to represent him, and was previously given a delay by the court to take the required tests; the trial court’s denial of his SSCRA stay request was upheld.

Obtaining Military Pay Records

Okay, you say that child support modification is a proceeding that may not require the SM’s presence since most SM’s income will clearly fall within the TEX.FAM.CODE guidelines for the setting of child support, but **how does one obtain the SM’s pay records, especially if the SM is not cooperating or is already deployed or remotely deployed?**

If you have any cooperation at all, the practitioner should have no real difficulty in obtaining a SM’s pay records since SM should always have a fairly recent LES since he receives one each month. If the SM and/or his counsel are uncooperative and refuses just to give you the needed LESs, however, their production should be requested in discovery and, of course, if the SM is still recalcitrant, their production can be compelled. If he still refuses or says he does

not have them or threw them away and never keeps them, you can have him ordered to access his *myPay* online account with DFAS. With this internet tool, he can very easily download at least the past twelve months or so of his LESs. He will need “his password” to do so, but if the court has internet access, the court could order the SM to download and print the required LESs right there in open court (well, in chambers, anyway).

If the SM is not available and will not provide you with a signed release to allow you to contact DFAS or the pay agent at his command, you may want to use the sample motion and order that is attached as Appendix K to obtain copies of the SM’s military pay records from the DFAS or from his command. The sample motion and order was modified from a sample of such a motion included in Mark E. Sullivan’s recent book, *The Military Divorce Handbook*, which is available from the ABA Family Law Section at \$149.95 (\$129.95 for ABA Family Law Section members). Col. Sullivan (JA, USA, Ret.) is a preeminent writer and speaker on military family law issues and is certified as a family law specialist by the North Carolina Board of Legal Specialization. His book is available from the ABA.

You can also just subpoena the pay records, with or without a records custodian affidavit, although it is suggested that it be “with” since you want the records in admissible form. However, be advised that most Federal agencies will not honor a subpoena **UNLESS** it has been signed and/or issued bearing a judge’s signature. An exemplar of such a subpoena for military pay and/or personnel records is attached to this article as Appendix L.

Military Child Support Guidelines When No Court Order

What about the situation where paternity has been established or the parties are separated or the non-SM has filed for divorce and the SM has not and/or cannot be easily served, there is not a court order for child support in place and the SM is not paying support? What can the non-SM parent do to get the SM to pay support?

One “help” in dealing with such a SM in such an eventuality is to contact his command to get them to *suggest* that the SM provide monetary support for his child. You need to be aware, however, that each service branch has a different policy and method of dealing with interim child support in paternity and/or

separation and/or pending divorce situations in absence of a court order. Not only are each Service’s guidelines different, but each Service’s enforcement methods and rules differ as well. Although each Service does enforce written agreements between parties, it behooves the practitioner to know not only the interim support guidelines of “your” SM’s Service branch, but their enforcement rules as well for situations when there is not an existing court order. These guidelines, rules and/or regulations for each service branch can be found in the following publications:

Army – Army Regulations (AR) 608-99, Family Support, Child Custody & Paternity (you can access this one online by “googling” “608-99”)

Navy – Navy Military Personnel Manual art. 1754-030, para. 4

Marine Corps – Order P5800,16a Marine Corps Manual for Legal Administration, Ch. 15, para. 15001

Air Force – Secretary of the Air Force Instr. 36-2906, Personal Financial Responsibility, para. 3.1 – 3.3

Coast Guard – U.S. Coast Guard Commandant Instr. M1000.6A, ch. 8M

In general, many of the components of a SM’s military pay and allowances were discussed in the author’s 2006 article, *War and Peace, Military Benefits in Wartime*, so they will not be repeated here for the most part since that article is available from the State Bar’s Online Library, as well as on our website at www.texasfamilylawinfo.com.

However, you should be reminded that there is a difference between how the various pays and allowances are treated for child support purposes. In general, pays are always taxable, while allowances are usually non-taxable. Thus, they should be treated differently when applying them to the Attorney General’s tax charts.

SERVING THE SM

Serving the SM on Post/Base/Station in CONUS

Service on the SM in CONUS is usually not a problem. If the SM lives aboard a Post, Base or a Station, your process server should already know how to effect service upon him. However, the simplest way is to go to the Provost Marshal’s office on an Army Post or Base Security on an Air Force Base or Naval Station or Marine Corps Camp and request their

assistance, and it will usually be provided by them calling the SM to their office to receive the citation.

Of course, you can also personally serve him wherever you find him off-Post, as well as by substituted service and/or by certified mail, if authorized.

Serving the SM Overseas; Hague Convention Signatory Country

When trying to serve a SM overseas, first determine if the country where he is stationed and/or physically located is a signatory to the Hague Convention or not. If he is stationed in Germany, a Hague signatory, for instance, you can only serve him by complying with the rather detailed and lengthy process mandated by the Hague Convention. In general, Hague Convention member countries include all of the Common Market Countries, Japan, Australia, South America, etc. The Hague Convention procedures for service of process can be located on the web at http://travel.state.gov/law/info/judicial/judicial_686.html (U.S. State Department Judicial Assistance Website);

<http://www.hagueservice.net/homepage.html> (U.S. Central Authority Website); <http://www.legallanguage.com/llsprocess.htm> (a commercial service of process website). These were obtained by “googling” “service of process & hague convention.”

Since June 1, 2003, PFI Process Servers (PFI) has been acting on behalf of the United States Central Authority, US Department of Justice (USDOJ), under Contract # 03-C-0655. PFI’s contract authorizes it to manage all formal service of process for the U.S. on judicial documents under the following treaties and conventions: Hague Service Convention, Inter-American Convention, and Letters Rogatory.

Serving the SM Overseas; Non-Hague Convention Signatory Country

If the country where the SM is stationed is not a member country, you may be able to serve the SM pursuant to Tex.R.Civ.P. 106 substituted service methods. Two non-member countries where many SMs are deployed are Iraq and Afghanistan. You may even be able to obtain service on the SM in non-member countries by certified mail from the District Clerk. You may also obtain a civilian process server on the overseas base, but the person would probably have to be an American citizen that otherwise

qualifies for appointment under Rule 106. **CAVEAT:** Check with the U.S. Embassy or Consulate there before having a local civilian appointed to ensure “good service.” You will also want to ensure that the “service” on base is not in violation of an order of that particular military base. Another method might be confirmed personal delivery by Federal Express, UPS, Airborne, etc. or by email to the SM at his official email address. However, you should be able to prove your email service with confirmed read receipt and not just an indication that it was “displayed” on the recipient’s computer. It can be displayed “as spam” and never opened and read, so that it will be difficult to prove “notice” without the “read” receipt in the opinion of the author.

General Hague Convention Compliance Issues

The following is an excerpt from page 9 of Brian Webb’s paper entitled *International Issues and the Hague Convention* presented at the 31st Advanced Family Law Course in Dallas in August 2005 that may also be helpful. His article was primarily addressed to child abduction and custody issues involving children and/or a parent located in a foreign country, but is equally informative in this context as well.

The State Department’s guide, “The Foreign Service Family and Divorce” offers various options for obtaining proper service when a spouse is at post abroad:

1. If the location has an APO/FPO facility, a registered letter may be sent. If not, an international registered letter will suffice.
2. Countries that are parties to the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 28 U.S.C.A. 1977, will have a Central Authority that can complete service of process. The Inter-American Convention of Letters Rogatory and Additional Protocol is another treaty addressing service of documents. Please note that as of June 1, 2003 the United States is now employing a private contractor, Process Forwarding International of Seattle, Washington, to handle requests under the Hague and Inter-American Service Conventions, as well as requests from countries not party to either treaty. This process server will have the exclusive authority to act on behalf of the United States

in transmitting outgoing requests for service of process in foreign countries. For more information on the Hague Conventions and Inter-American Service Conventions, please access

http://www.travel.state.gov/judicial_assistance.html.

3. If a country is not a party to the Hague Convention or Inter-American Convention, your client may need to explore hiring a local attorney or an attorney's agent to serve the documents. The State Department notes that the foreign attorney can make an affidavit of the service before a local notary or at the American Embassy or Consulate. Please be advised that some countries do regard this type of service of process to be illegal. Please see

<http://www.travel.state.gov/retainforeignattorney.html> for more information.

4. Another option for service of process abroad is a letter rogatory. A letter rogatory is a letter of request from a U.S. court to a foreign court requesting international judicial assistance, authorized by Tex. R. Civ. P. 201.1. These can serve as formal requests for service of process in countries that prohibit service of foreign court papers. The State Department notes that this process may be overly time consuming to be beneficial. For one thing, the request and all documents accompanying it must be translated into the official language of the country to which the request is directed. The cost is \$500. Clearly, this option is a last resort for service of process, but it is out there to aid those challenged by foreign jurisdiction problems. For more information on letter rogatory, please see <http://www.travel.state.gov/lettersrogatory.html>.

SCRA Pleaded; Can You Proceed with Case in SM's Absence.

In some circumstances, it is appropriate for a court to allow a proceeding to go forward in the SM's absence, particularly when the SM's presence is not necessary for the performance of a court's ministerial duty, such as the entry of an order in conformity with a court's prior ruling or entering a decree or order in conformity with the party's Mediated Settlement Agreement or

conducting a hearing on a motion for summary judgment. See also synopsis of *In re Marriage of Grantham*, *supra* above for holding that temporary change of child custody to other parent can proceed without SM's presence since result of temporary change to M from SM-F was only temporary during SM's absence due to his military service. But remember this case was decided prior to the current version of the SCRA.

As noted above, a child support increase/decrease case might be another situation in which, with proper proof of the SM's income by production of his LES or by stipulation of his income based upon his LES, the imposition of the guidelines to determine the child support should be able to occur without the SM's presence in court. The court, however, should make an explicit finding that the issue lends itself to being considered without the necessity of the SM's presence. Of course, the order would be subject, pursuant to the SCRA, to being vacated upon the SM's return. Additionally, the trial court could, in addition to making the "presence not necessary" finding, only enter the relief as a temporary order, subject to being finalized upon the SM's return, which would afford him some protection if the increase can be proven to have been improvident, and then the court could, at that time, enter a final order either confirming the prior established child support or reducing it and affording the SM some payment credit for the "excess child support" withheld under the "temporary order."

Additionally, if the SM is represented by legal counsel and the work incident to litigation (or appeal) does not require SM's presence or assistance, although protected, his request for a SCRA stay may be denied. For cases supportive of this view of the application of the SCRA, these SSCRA cases may be illustrative and/or may assist the practitioner in the resolution of their particular issue that may not or does not require the physical presence of the SM: *McAllister v. Samuels*, 857 S.W.2d 768, 774 (Tex.App.—Houston [1st Dist] 1993, no writ); *Rosenthal v. Smith*, 35 Ohio Law Abs. 629, 42 N.E.2d 464 (1942). See also *Shelor v. Shelor*, 383 S.E.2d 895 (Ga. 1989) (temporary modifications of child support, in general do not materially affect the SM's rights since they are interlocutory and subject to modification); *Massey v. Kim*, 455 S.E.2d 306 (Ga.Ct.App. 1995) (SM's request for stay of proceedings pending discovery until completion of his overseas tour denied, the court pointing out improvements in modern communications since the passage of the SSCRA); *Keefe v. Spangenberg*, 553 F. Supp. 49 (W.D. Okla.

1981) (SM's request to delay discovery on basis of SSCRA denied, the Court indicating he could appear by video tape deposition); *In re Diaz*, 82 B.R. 162, 165 (Bankr. Ga. 1988) ("Court reporters may take depositions in Germany, including videotape depositions, for use in this country").

Additionally, think about coordinating the taking of the SM's telephonic and/or video deposition and/or arranging for the SM to be able to testify in court by telephonic and/or video conferencing. Cell phones are prolific in this day and time and are in use in some areas of declared combat zones and are even more readily available in OCONUS non-combat areas of operation. Arrangements can even be made to have shipboard facilities made available in some cases. The use of current technology is a two-edged sword and can be used by the SM as well as against him.

SCRA and Abatement of Legal Proceedings Generally

This topic was addressed in 2005 in the author's presentation at the 31st Advanced Family Law Course. The reader is referred to the paper for that Course entitled *Servicemembers Civil Relief Act and Amended New Benefits*. It is available from the SBOT CLE department either online or in printed version. Generally, however, the SM is, upon receipt of orders, entitled to an automatic stay upon presenting proof that his recall to active duty and/or his receipt of deployment/PCS orders in the performance of his military duties materially affect his ability to participate in the pending legal proceedings. The SCRA stay is available irrespective of whether the forum is a court of record or not, irrespective of where in the court system the case is, that is whether it is in a trial or appellate court, and irrespective of whether the SM is a plaintiff/petitioner or a defendant/respondent.

The stay may also apply to his dependents as well, depending on the type of case. Beyond this brief synopsis, refer to and review *Servicemembers Civil Relief Act and Amended New Benefits* from the 31st Advanced Family Law Course.

SCRA BENEFITS

When the SM is deployed outside the continental United States (OCONUS), whether to a war zone or to Europe or even to Alaska or Hawaii, or when a Reservist or National Guard member is called to Active Duty, the first benefit that they realize is really

a panoply of benefits that come from the SCRA, 50 U.S.C. Appx §501, *et seq.* Appendix J.

Without addressing the "stay" and "default" provisions of the Act that was the subject of the author's 2005 article referenced above, there are many provisions of the Act that provide significant benefits to the SM and his immediate family and some indirect benefits to the children of his first and/or second families.

6% Interest Rate Cap

One of the first and most significant benefits is the interest rate cap on existing loans, credit card accounts, IRS debts and debts of whatever variety, save and except possibly guaranteed student loans. 50 U.S.C. Appx §527. Upon receipt of orders to deploy in support of Operation Enduring Freedom (Afghanistan) Operation Iraqi Freedom (Iraq or its environs) or to Kosovo, to OCONUS sites, or Reserve/National Guard recall to active duty orders, as applicable (hereinafter generically called "receipt of orders"), the SM should review all of his debts and determine which are charging interest in excess of six percent (6.0%) simple per annum and IMMEDIATELY draft a letter in the form attached as Appendix M to each creditor charging him interest in excess of that amount. A copy of the SM's orders will need to be attached, but, if the orders have not been physically received and the SM has are oral orders, send the letter and then follow it with a copy of the orders when received. 50 U.S.C. Appx §527.

Federally guaranteed student loans may be exempt as well since the SCRA did not exempt them from its application, but they are covered by 20 U.S.C. §1078(d) and 34 C.F.R. Section 682.211. Following the logic that the Congress enacted the SCRA after and in "recognition and knowledge of an existing and potentially conflicting but affected statute," 20 U.S.C. §1078(d), the legal presumption is that even the interest rates of federally guaranteed student loans are also affected by the SCRA rate cap. However, there is no case that has interpreted this supposition.

If the creditor fails or refuses to reduce the interest rate to 6.0% simple, they are in violation of 50 U.S.C. Appx §527 and may be liable for all damages (actual and consequential and/or punitive, i.e. DTPA damages) arising from their failure to comply with the SM's request. The existence of a private cause of action for this violation has been confirmed in *Cathey v. First Republic Bank*, 2001 US Dist. LEXIS 13150.

See also *Martin v. Strong*, 1998 WL 1765716 (USDC, W.D. Tex. 1998) (“Congress clearly intended to create a private cause of action when it enacted §526.”); *Moll v. Ford Consumer Finance Company*, 1998 WL 142411 (N.D. Ill. 1998) (Court thought it illogical that Congress intended to afford SM only “defensive relief” under §526); *Hanson v. Crown Toyota Motors, Inc.*, 572 P.2d 380 (Utah 1997); *Engstrom v. First Nat. Bank of Eagle Lake*, 47 F.3d 1459, 1464, 31 Fed.R.Serv.3d 966 (5th Cir.), cert. denied, 516 U.S. 818, 116 S.Ct. 75, 133 L.Ed.2d 35 (1995) (recognizing that plaintiff could have brought a cause of action in which plaintiffs sought relief against a person who was not a party to the suit at the time); *Luke v. Mercantile Acceptance Corp.*, 244 P.2d 764 (Cal.App. 1952); *Hampton v. Commercial Credit Corp.*, 176 P.2d 270 (Mont. 1946); *Bassham v. Evans*, 216 S.W. 446 (Tex.Civ.App.—Amarillo 1919, no writ) (soldier who was ejected from his premises by means of sequestration proceedings and deprived of the protection to which he was entitled under SSCRA could recover damages regardless of whether facts stated in affidavit for sequestration were true or false).

The cap can be rescinded if the creditor shows/proves that the SM is not “materially affected” by the continued implementation of the higher interest rate. 50 U.S.C. Appx §527.

Cap Applies to Others Liable with SM

This interest rate cap also applies to debts for which the SM is personally liable, including debts on which he is primarily or secondarily liable with the SM, such as a

surety (bail bondsman),
 guarantor,
 endorser,
 accommodation maker,
 comaker, or
 any other person who may be primarily or secondarily subject to the obligation or liability.

The interest rate cap also applies to debts on which he is a personal guarantor, such as a corporate or partnership debt. In *Cathey*, Mr. Cathey owned several gas station/convenience stores in a Sub-Chapter S corporation and personally guaranteed the debt of the corporate entity. The Bank said that the debt was not covered by the Act, but the Court held otherwise. Mr. Cathey had also pledged his home as collateral for the debt. His damages were very significant and, following 9/11, the Bank settled for an

undisclosed sum that netted his attorney undisclosed fees he says were in the six figures.

This applies in the legal context in that attorneys frequently practice law via a Sub-Chapter S corporation, a regular corporation, or a general or limited partnership. In each case, if the SM attorney is recalled and he is liable for a note or other obligation of the law firm (Westlaw or LexisNexis book or research contract note, for instance), the law firm will reap the benefit of their SMs recall, a small and token benefit to try to make up for the lost revenue during his military service.

Installment Contracts for Purchase or Lease

Frequently, the SM and his dependents will find themselves in a home or an apartment lease with six or more months to go on their lease when he receives orders. Can he terminate his lease and do his wife and children (or other adult dependents) have the right to terminate the rental? The answer is “yes.” Section 535 applies to all types of lease agreements, from the home or apartment lease to a business lease to an automobile lease and obviates the necessity for “military clauses” in a lease. This section also provides criminal penalties for its violation by a landlord/lessor, in addition to creating private causes of action to enforce its violation. 50 U.S.C. Appx §527. See *Martin v. Strong*, 1998 WL 1765716 *3, *supra*; *Moll v. Ford Consumer Finance Company*, *supra*; *Hanson v. Crown Toyota Motors, Inc.*, *supra*; *Engstrom v. First Nat. Bank of Eagle Lake*, 47 F.3d at 1464; *Luke v. Mercantile Acceptance Corp.*, *supra*; *Hampton v. Commercial Credit Corp.*, *supra*; *Bassham v. Evans*, *supra*.

Home Lease or Rental Contract

This provision will most likely come into play for the married SM in the home or apartment context. The right to terminate the lease is irrespective of whether the lease was entered into before or after the SMs entry into the service, but is dependent upon his receipt of orders. He is required, however, to give notice to the landlord. An exemplar of a form that can be used to provide that notice is attached as Appendix N.

Some apartment organizations, especially the Texas Apartment Association in the Fort Hood area, determined that the cancellation of a lease by the SM did not release his wife or other dependents from the lease if they signed the lease. An amendment to the

Act in 2004 cured this anomaly and now there is no question that the notice of termination or cancellation of a lease by the SM is effective as to his spouse or other co-signing dependent.

Business Lease or Rental Contract

To the professional or business owner, this provision is equally applicable and probably more financially significant than the ability to cancel a home or apartment lease. Frequently, business leases are much longer lease terms than are home or apartment lease terms. Again, the inception date of the lease, that is, pre- or post-service, is immaterial, the key triggering and overriding factor being the receipt of orders. Here, remember the issue of and protection afforded to a surety, guarantor, and/or if the SM is personally and/or secondarily liable on the obligation, that is, the lease agreement. Again, using the attorney example, his partners will be able to get out of their law firm premises lease if the recalled SM partner is liable on the lease. He is required, however, to give notice to the landlord. An exemplar of a form that can be used to provide that notice is attached as Appendix C. 50 U.S.C. Appx §535.

Automobile Lease

If the SM is called up OR enters the service for 180 days or more, OR he receives OCONUS PCS (outside continental US permanent change of station) orders OR he receives deployment orders for a period of 180 days or more, he may cancel his automobile lease. To do so, however, he must **provide notice of termination** of the lease **to the lessor in writing** (oral notice is not sufficient) **AND deliver** the written notice **to the lessor or his agent or grantee** (if the lease has been transferred, as many are) **along with a copy of his military orders**. 50 U.S.C. Appx §535 (b)(2). The delivery may be accomplished by hand, mail (certified, RRR is recommended) or by FedEx or other delivery service. It may even be effected by email if one can ensure receipt of a confirmation of its receipt, but some form of physical delivery is best and will ensure an ability to prove the delivery. Of course, if the delivery is by "hand", the SM should insist upon a signed receipt acknowledging the delivery of the cancellation notice.

Upon delivery of the termination notice, the vehicle must be surrendered within fifteen days, and the lease is terminated effective the date the vehicle is surrendered, and there can be no penalties for early termination. Upon surrender of the vehicle, the lessor

must surrender to the terminating lessee any and all personal property and/or security deposits in lessor's possession or be liable for damages suffered by lessee, as well as be subject to criminal misdemeanor liability. 50 U.S.C. Appx §535.

Lease Termination Relief to Lessor

Lessor may apply to a court, prior to the termination date provided in the written notice, for relief from the termination, that is, to modify the relief, if a court determines that justice and equity requires it. 50 U.S.C. Appx §535.

Breach by SM of Contracts for Purchase or Lease

In the event that a SM in receipt of orders does not timely and/or properly avail himself of the SCRA purchase money contracts and/or lease provisions and breaches the purchase money contract and/or lease terms, the lease may not be terminated by the lessor/landlord nor any personal property be repossessed without first obtaining a court order to do so. This applies to pre-service obligations for the purchase, lease or bailment of real or personal property. 50 U.S.C. Appx §532.

Mortgage Foreclosure Protection

Just as there is there is a protection for personal property contracts, leases and bailments, there is also a protection to the SM from default of a mortgage installment contract. 50 U.S.C. Appx §533.

Among the protections afforded is a court staying foreclosure proceeding and/or adjusting the payment obligation (reducing it) to an affordable monthly payment within the SM's new budget within the general terms of the mortgage commitment. Of course, this assumes that the interest rate would be lowered to six percent per annum and may include tacking any additional principal and/or interest payments (within the 6.0% cap) to the end of the note. 50 U.S.C. Appx §533. This also presumes proof of material affect.

Private Health Insurance Protections

Just as the Act suspends an applicable malpractice insurance policy, the same protections are afforded the SM as to health insurance policy protection. 50 U.S.C. Appx §574. During the period of active service, the SM and his dependents are covered by

military medicine and/or TRICARE. Upon his release from active duty and return to civilian life, his previous health insurance policy must be reinstated at the same pre-service rates. 50 U.S.C. Appx §574.

Family Separation Allowance

Upon deployment, all SMs having families, which include dependent children, regardless of their pay grade, are each paid Family Separation Allowance (FSA). Since it is an “allowance,” it is not taxable income. The current FSA is \$250.00 per month of deployment. This is a payment that is only paid while in a deployed state and only for that portion of a month that the SM is deployed; that is, this payment is prorated based upon the number of days of the month the SM is actually “separated from his family”—deployed.

In the case of a Reservist, FSA is only paid to Reservists *with dependents* when serving on active duty for periods of more than thirty (30) days.

FSA is paid in addition to any other allowance or per diem to which the SM is entitled. There are two types:

FSA I — Its purpose is to pay the added housing expenses resulting from the SM’s enforced separation from his dependents. To be entitled to receive this allowance, the SM must be on permanent duty outside the U.S. or in Alaska for 140 days or more. The FSA I rate is equal to BAQ without dependents for the SM’s pay grade regardless of how many dependents he has, as long as it is at least one.

FSA II provides compensation for the added expenses due to the SM’s enforced family separation for periods greater than 30 days but less than 140 days, normally. The current FSA II monthly amount is \$250, irrespective of the pay grade of the entitled SM.

OTHER RELEVANT SCRA PROVISIONS

Anticipatory Relief

As alluded to and/or discussed above in regard to preemptive child support modification and/or temporary possessory orders associated with a deployment, the SCRA doesn’t require breach or default before offering protections to covered individuals, specifically allowing the SM or other “covered” persons to bring suit for anticipatory relief. 50 U.S.C. Appx §591. Thus, a SM may, during military service or within 180 days of termination of or release from military service, apply to a court for relief —

- (1) from any obligation or liability incurred by the SM before the SM’s military service; or
- (2) from a tax or assessment falling due before or during the SM’s military service.

This section covers requests for anticipatory relief from tax liability or assessment (50 U.S.C. Appx §591 (b)), stay enforcement of real estate contracts (§591(b)(1)), stay enforcement of other contractual obligations (§591(b)(2)), and when a stay under this section is granted, the effect is that the fine or penalty shall not accrue on the obligation, liability, tax, or assessment for the period of compliance with the terms and conditions of the stay (50 U.S.C. Appx §591 (c)).

Of course, this is a provision for which “material affect” must be shown, but once proven, the restructured note/tax payments may be deferred and must be paid over the “extension period” plus any new payments must be paid as they become due.

These anticipatory relief provisions can and should be used in a Family Law context to request relief from pre-service obligations, such as child support or alimony, when a prospective breach is likely. For example, when the SM is earning more in his civilian job before mobilization than he will be earning on active duty, and the civilian wage garnishment will terminate upon his call to active duty, the SM should use this section to request a reduction in child support or alimony and to request a new garnishment from DFAS (Defense Finance and Accounting Service) to pay the other party on a timely basis.

BENEFITS UPON DEATH OF AN ACTIVE DUTY SM

The following is edited from two articles prepared by Capt. Thomas L. (Tom) McAtee of the Naval Reserve Association entitled *It's Inevitable . . . Have You Prepared Properly?* and *When Something Bad Happens* and were published in the November 2005 and May 2003 editions, respectively of *NRA News*, respectively. The former article, his more recent version of it, is attached in its entirety as Appendix 0.

Social Security Administration (SSA) Notification and Benefits

The death of an individual, whether a Social Security recipient or wage earner, has implications regarding the Social Security Administration (SSA). The death should be promptly reported by calling the SSA toll free at 1-800-772-1213. This initial call will start the process of information and filing guidance for benefits. Additional information can be found at the SSA Web site at www.ssa.gov. A Lump Sum Death Benefit of \$255.00 is payable, upon filing, to the surviving spouse or eligible child. No payment is made to adult children.

Dependency and Indemnity Compensation (DIC)

DIC payments are administrated by the Department of Veteran's Affairs. Surviving spouses who have not remarried, certain children, and low-income parents of Reservists or retirees who die from:

- A disease or injury incurred or aggravated while on active duty or active duty for training.
- An injury incurred or aggravated in line of duty while on inactive duty training.
- A disability compensated by the Department of Veteran's Affairs.

DIC payments to a surviving spouse are payable for life, as long as the spouse does not remarry. To apply for DIC, the claim form VA Form 21-534 must be submitted. Documentation to support your request for DIC payments would, at a minimum, be military medical record and any VA disability documentation. DIC payments are excluded from taxation.

FINAL THOUGHTS

It is the service men and women, past, present and future, to whom we owe the preservation of the freedoms we enjoy under the Constitution. May God hold them in the palm of His protective hands, keep them safe when they must go in harm's way, and return them safely to their loved ones here. May God also keep and protect those who also serve who watch and wait; who keep the home fires burning, caring for our service members' children and other loved ones, while patiently and constantly watching, waiting and praying for them and their safety. Actively and consciously pray for the safety of our service men and women wherever deployed! **GOD BLESS OUR SERVICE MEN AND WOMEN! GOD BLESS AMERICA!**

APPENDIX A

Army:

<http://www.army.mil/usapa/eforms/pdf/A5305.pdf> (Family Care Plan)

http://www.operationhomefront.org/downloads/A5304_R.pdf (Family Care Plan Counseling Checklist)

<http://www.army.mil/usapa/eforms/pdf/A5840.pdf> (Certificate of Acceptance as Guardian or Escort)

http://www.1perscom.army.mil/38th/forms/DA5888_r.pdf (Family Member Deployment Screening Sheet)

Navy:

http://buperscd.technology.navy.mil/bup_updt/upd_CD/BUPERS/FORMS/PDF/N1740_6.pdf
(Online "fillable form.")

Marine Corps:

[http://www.usmc.mil/directiv.nsf/82001916d226893285256d12004936dd/d318e637cdf2538a852564970041ba34/\\$FILE/MCO%201740.13A.pdf](http://www.usmc.mil/directiv.nsf/82001916d226893285256d12004936dd/d318e637cdf2538a852564970041ba34/$FILE/MCO%201740.13A.pdf) (This is the Marine Corps instruction requiring the completion of a Family Care Plan. The Marine Corps uses the Navy Family Care Plan.)

Air Force:

<http://www.e-publishing.af.mil/pubfiles/af/36/afi36-2908/afi36-2908.pdf> (This is the instruction for completing the form, but the author could not access the actual FCP (AF Form 357).)

APPENDIX B

FAMILY CARE PLAN COUNSELING CHECKLIST

For use of this form, see AR 600-20; the proponent agency is DCSPER

Careful planning is required to ensure adequate care of dependent family members while performing required military duties. Pregnant soldiers, single parents, and dual-military couples with dependent family members will be counseled in accordance with AR 600-20. The soldier and the commanding officer (*or designated representative*) will initial each item on the checklist.

PART I - ACTIVE AND RESERVE COMPONENT	SOLDIER	COMMANDER
A. I am receiving Family Care Plan counseling by my commander (or designated representative) because my current family status is:		
1. A pregnant soldier who: a. Has no spouse; is divorced; widowed, or separated; or is residing without her spouse.		
b. Is married to another service member of AC or RC of any service (<i>Army, Air Force, Navy, Marines, Coast Guard</i>).		
2. A soldier who has no spouse; is divorced, widowed, or separated or is residing apart from his/her spouse; who has joint or full legal and physical custody of one or more dependent family members under age 19 or who has adult dependent family members incapable of self-care regardless of age.		
3. A soldier who is divorced (<i>not remarried</i>) and who has liberal or extended visitation rights by court decree which would allow dependent family members to be solely in the soldier's care in excess of 30 consecutive days.		
4. A soldier whose spouse is incapable of self-care or is otherwise physically, mentally, or emotionally disabled so as to require special care or assistance.		
5. A soldier categorized as half of a dual-military couple of the AC or RC of any service (<i>Army, Air Force, Navy, Marines, Coast Guard</i>) who has joint or full legal custody of one or more dependent family members under age 19 or who has adult dependent family members incapable of self-care regardless of age.		
B. I understand that I must arrange for the care of my dependent family member(s) so as to be: (1) Available for duty when and where the needs of the Army dictate; (2) Able to perform my assigned military duties without interference of family responsibilities.		
C. I have been counseled on the importance of:		
1. Selecting qualified, reliable, and stable guardians (<i>temporary and long-term</i>), whom I would have no reservations about entrusting the sole care of my dependent family members, and who are both capable and willing to care for them in my absence.		
2. Providing maximum information to guardians on the full extent of their responsibilities and on procedures for gaining access to military/civilian facilities, services, entitlements and benefits on behalf of my dependent family member(s).		
3. Providing all necessary documentation and financial support so that the designated guardians have everything necessary to act in that capacity.		
D. I understand that designated guardians must be able to assume responsibility for my dependent family member(s) during any periods of absence to include: during duty hours, alerts, field duty, roster duty, TDY, deployments, AT, MUTAs, ADT, or in the event of hospitalization, or other periods of absence for military duty, emergencies or unexpected circumstances.		
E. I understand that I am fully responsible for making all necessary arrangements (<i>housing, educational, legal, transportation, financial, religious, special, etc.</i>) to ensure a smooth, rapid turnover of dependent family member care responsibilities in case the plan is implemented.		
F. I understand that I must initiate legal documentation such as the power of attorney for guardianship (DA Form 5841-R) which will authorize guardian(s) to act in loco parentis; to perform any and all acts as fully to all intents and purposes as I might or could if personally present; to authorize for the care and treatment of my dependent family member(s) regardless of whether on an emergency basis, or for routine care, including all major surgery deemed necessary by a duly licensed staff physician at any military or civilian hospital; to register my child(ren) in school, and to grant or to withhold permissions as my attorney shall deem appropriate.		
G. I understand that designated guardians must submit notarized certificates of acceptance (DA Form 5840-R), agreeing to accept full responsibility for my dependent family member(s); attesting that they have received all necessary and essential documents; and attesting to the fact that they have been provided information on how to gain access to military/civilian facilities, services, entitlements and benefits on behalf of my dependent family member(s).		
H. I understand that I must maintain in my Family Care Plan, a DD Form 1172 for each dependent family member to ensure the issue/renewal of Uniformed Services Identification Cards in my absence.		
I. I understand that my Family Care Plan must be updated and recertified by my commander at least annually (<i>more often if required by my commander or mission of my unit</i>), or in the event of any change in my family status, guardians, legal custody, duty station, etc.		
J. I understand that it is strongly encouraged (<i>though not mandatory</i>) that I ensure that I have an updated will which specifies my desires concerning custody of my dependent family member(s) in the event of my death.		
K. I understand that there are voluntary and involuntary procedures for my separation from military service when my parental responsibilities interfere with the performance of my military duties.		

PART I - ACTIVE AND RESERVE COMPONENT <i>(Continued)</i>	SOLDIER	COMMANDER
L. I understand that I will receive no special consideration in duty assignments or duty stations based on my responsibility for my dependent family member(s) unless enrolled in the Exceptional Family Member Program (EFMP) in accordance with AR 600-75.		
M. I understand that I am fully responsible for all transportation arrangements and costs pertaining to transportation of dependent family member(s) to guardian or guardian to dependent family member(s).		
N. If I am assigned OCONUS, I understand that I must identify an escort for my dependent family member(s) in the event that Noncombatant Evacuation Operations (NEO) are put into effect.		
O. If NEO procedures are not initiated at the time I am required to implement my Family Care Plan, I understand that I may request the opportunity to personally escort my dependent family member(s) back to CONUS if time and the nature of the military situation permits, and my commander approves. I also understand that I may request approval for the designated guardian to reside in my government quarters in my absence. I further understand that the Army will not be responsible for reimbursement of any travel costs incurred by the guardian or escort unless they are otherwise eligible under their own military dependent family member status.		
P. I understand that members of a dual-military couple may submit the same basic Family Care Plan to both commanders, provided that neither military member is identified as the long-term guardian in the plan. The original Family Care Plan will be maintained by the commander of the military member least likely to deploy, with a copy of the plan forwarded to the spouse's commander. If both military members are equally likely to deploy, the original will be filed with the Army member's commander and a copy with the commander of the other service. If both are Army members and equally likely to deploy, it is inconsequential which commander has the original, so long as both commanders have copies in the unit files.		
Q. I understand that I should provide letters of instruction outlining all special arrangements and instructions the guardians or escort should be aware of (See Figure 5-4, AR 600-20).		
R. I have received copies of all the required forms and documentation, and know whom to contact in the event I have additional questions or need additional assistance in preparing the Family Care Plan.		
S. I understand that I must submit the complete Family Care Plan with all attendant documents to my commander within the time limits specified by my commander (or designated representative): <input type="checkbox"/> AC 30 days from date of this counseling session. <input type="checkbox"/> RC 60 days from date of this counseling session.		
T. I understand that it is my responsibility to notify my commander in advance if I am aware of any circumstances beyond my control that might prevent me from meeting the submission deadlines. The commander is authorized to grant a one-time extension of 30 days based on extenuating circumstances.		

PART II - ACTIVE AND RC SERVING ON ACTIVE DUTY

Policies, Provisions, Entitlements, Benefits, and Services:		
A. Policies governing deletion or deferment from assignment instructions because of personal reasons. See Chapter 3, AR 614-200 (AC enlisted) or Chapter 6, AR 614-100 (AC officers) or AR 135-91 (RC).		
B. Policies governing reassignment eligibility. All soldiers are expected to serve CONUS and OCONUS tours (including unaccompanied tours). The needs of the Service provide the basis for selecting a soldier for reassignment in accordance with AR 614-30, AR 614-200, and AR 614-100.		
C. Entitlements to assignment of government or pay of basic allowances for quarters. See Chapter 10, AR 210-50.		
D. Policies governing entitlement to basic allowance for subsistence, application procedures, and payment. These are contained in Chapter 1, part 3, AR 37-104-3; and Chapter 20, DoD Military Pay and Allowances Entitlements Manual.		
E. Provisions for applying for concurrent travel of dependent family members when alerted for overseas movement. Approved joint domicile assignments do not constitute authority to move dependent family members to the overseas command at government expense. Application for dependent family member travel must be made in accordance with AR 55-46.		
F. Eligibility requirements for shipment of household goods to the next permanent duty station at government expense. See Chapter 4, AR 55-71 and Part D, Chapter 5, Volume 1, Joint Federal Travel Regulation (JFTR).		
G. The entitlement to government paid transportation of dependent family members to the next permanent duty station. See Chapter 9, AR 37-106 and Part C, JFTR. Transportation allowances for dependent family member movement will be paid for under the following conditions: 1. If traveling in a PCS status between CONUS permanent duty stations. However, dependent family members are not authorized to move to or from TDY stations at government expense.		
2. If traveling to, from, or between OCONUS duty stations in PCS status provided tour length requirements have been satisfied. See Section III, Chapter 1, AR 55-46 regarding tour length requirements to qualify for dependent family member movement to, from and between overseas areas.		

PART II - ACTIVE COMPONENT <i>(Continued)</i>	SOLDIER	COMMANDER
H. The status of noncommand sponsored dependent family members in the overseas command. See paragraph 1-17, AR 55-46.		
I. Services provided by the Army Community Services (ACS) regarding financial planning. See chapter 9, AR 608-1.		
J. Services available from Personal Assistance Points at major points of embarkation in the CONUS.		
K. Maternity counseling for pregnant single soldiers on the costs of child bearing and raising.		
L. Provisions of CHAMPUS.		

PART III - MILITARY SPOUSE AND SPOUSE'S COMMANDER CERTIFICATION

A. Military spouse: *We have been counseled on our responsibilities to the military service and our dependent family member(s.)*

1. SIGNATURE OF SPOUSE	2. DATE	
3. TYPED OR PRINTED NAME OF SPOUSE		4. SSN

B. Spouse's commander: *I have provided counseling for the military spouse assigned to my unit concerning Family Care Plan requirements.*

1. SIGNATURE OF SPOUSE'S COMMANDER	2. DATE	3. UNIT ADDRESS
4. TYPED OR PRINTED NAME OF SPOUSE'S COMMANDER		

PART IV - SOLDIER AND COMMANDER CERTIFICATION

A. Soldier: *I have been counseled on my responsibilities to the Army and to my dependent family member(s).*

1. SIGNATURE OF SOLDIER	2. DATE	
3. TYPED OR PRINTED NAME OF SOLDIER		4. SSN

A. Soldier's commander: *I have provided counseling to the soldier on his/her responsibilities to the military service and to his/her dependent family member(s).*

1. SIGNATURE OF SOLDIER'S COMMANDER	2. DATE	3. UNITED ADDRESS
4. TYPED OR PRINTED NAME OF SOLDIER'S COMMANDER		

APPENDIX C

FAMILY CARE PLAN

For use of this form, see AR 600-20; the proponent agency is DCS, G-1.

PRIVACY ACT STATEMENT

AUTHORITY: 10 U.S.C. Section 3013, Secretary of the Army: Army Regulation 600-20, Army Command Policy and E.O. 9397 (SSN)
PRINCIPAL PURPOSE: To emphasize to soldiers the significance of their responsibilities to the military service and their family members while performing required military duties.
ROUTINE USES: None
DISCLOSURE: Mandatory; Failure to maintain a Family Care Plan could subject the soldier to separation, administrative action, or disciplinary action under the UCMJ.

PART I - SOLDIER'S FAMILY CARE

<p>A. I was counseled on _____ (date), and fully understand the policy on family member care responsibilities. I understand that I must arrange for care of my family members, remain available for deployment and training, and report for duty as required without interference of responsibility for family members. I assume responsibility for all obligations for such things as child care, food, adequate housing, transportation, and emergency needs of my family members regardless of age.</p>	<p>INITIALS</p>															
<p>B. I have made and will maintain arrangements for the care of my family members during all the following:</p> <table border="0"> <tr> <td>1. Duty</td> <td>6. Temporary Duty</td> <td>11. Deployment</td> </tr> <tr> <td>2. Exercises/field duty</td> <td>7. Unit Training Assembly</td> <td>12. Other Military Duty</td> </tr> <tr> <td>3. Permanent Change of Station</td> <td>8. Active Duty Training</td> <td>13. Emergencies</td> </tr> <tr> <td>4. Alerts</td> <td>9. Unaccompanied Tours</td> <td>14. Leave/non-duty Time</td> </tr> <tr> <td>5. Annual Training</td> <td>10. Mobilization</td> <td></td> </tr> </table>	1. Duty	6. Temporary Duty	11. Deployment	2. Exercises/field duty	7. Unit Training Assembly	12. Other Military Duty	3. Permanent Change of Station	8. Active Duty Training	13. Emergencies	4. Alerts	9. Unaccompanied Tours	14. Leave/non-duty Time	5. Annual Training	10. Mobilization		
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4. Alerts	9. Unaccompanied Tours	14. Leave/non-duty Time														
5. Annual Training	10. Mobilization															
<p>C. I understand the importance of ensuring the proper care for my family members, and ensuring my own readiness and deployability as well. I further understand that in light of the critical nature of both these requirements:</p>																
<p>1. Failure to make and maintain adequate family member care arrangements in accordance with the Army's policy is grounds for disciplinary action or separation.</p>																
<p>2. Nonavailability for worldwide assignment and/or unit deployment may lead to my separation from the Army.</p>																
<p>3. If arrangements for the care of my family members fail to work, I am not automatically excused from prescribed duties, unit deployment, or reassignment.</p>																
<p>4. If I fail to maintain a Family Care Plan or provide false information regarding my plan, I am subject to separation, administrative action, or disciplinary action under UCMJ.</p>																
<p>5. I must maintain an up-to-date Family Care Plan and revise my Plan when circumstances change. I understand that Family Care Plans may be tested at the discretion of the commander.</p>																
<p>6. I will receive no special consideration in duty assignments or duty stations based on my responsibilities for my family members unless enrolled in the Exceptional Family Member Program (EFMP) in accordance with AR 600-75.</p>																
<p>D. I have made all necessary arrangements (legal, educational, financial, religious, special, etc.) to ensure a smooth, rapid turnover of family member care responsibilities in case this plan is implemented.</p>																
<p>E. I have arranged for necessary travel required to transfer my family members to a designated person. If my principal designee is not in the local area, I have arranged with a nonmilitary person in the local area to assume temporary guardianship of my family members until they are transferred to my principal care designee, or that designee arrives to assume responsibility for their care.</p>																
<p>F. A copy of DA Form 5841 (Power of Attorney) or equivalent documents and a copy of DA Form 5840 (Certificate of Acceptance as Guardian) for each escort or guardian whether temporary or long-term is attached to this plan.</p>																
<p>G. The following additional required documents are completed, included in this plan, and will be put into effect as part of my Family Care Plan.</p>																
<p>1. DD Form 1172 (Application for Uniformed Services Identification Card) for each family member whether they have a currently valid ID card or not.</p>																
<p>2. DD Form 2558 (Authorization to Start, Stop or Change an Allotment for Active Duty or Retired Personnel) or other proof of financial support for expenses incurred by guardian and family members.</p>																
<p>3. Copies of Letters of Instruction (which have been forwarded to designated escorts or guardians along with powers of attorney and other pertinent documents), outlining all special instructions concerning the care of my family members have also been included in my Family Care Plan.</p>																
<p>H. I have thoroughly briefed escorts and guardians on the full extent of their responsibilities and on procedures for gaining access to military/civilian facilities, services, entitlements and benefits on behalf of my family members.</p>																
<p>I. I am confident that my Family Care Plan is workable, and to the best of my knowledge, the guardian(s) and escort(s) I have designated will be both willing and able to carry out the responsibilities of caring for my family members.</p>																

PART II - DESIGNATION OF GUARDIANS/ESCORTS

<p>A. I (We) have designated the following temporary guardian to care for my (our) family member (s) until responsibility is transferred to escort or principal (long-term) guardian.</p>	
<p>1. TYPED OR PRINTED NAME</p>	<p>2a. COMPLETE ADDRESS (Including Street, Apartment Number, P.O. Box Number, Rural Route Number, City, State, and ZIP + 4 where applicable)</p>
<p>3. TELEPHONE NUMBER (Include Area Code)</p>	<p>2b. E- MAIL ADDRESS</p>

B. I (We) have designated the following individual(s) as principal long-term guardian(s) for my(our) family member(s). The designated guardian(s) reside in the continental United States or United States territories.

1. TYPED OR PRINTED NAME	2a. COMPLETE ADDRESS (Including Street, Apartment Number, P.O. Box Number, Rural Route Number, City, State, and ZIP + 4 where applicable)
3. TELEPHONE NUMBER (Include Area Code)	
2b. E-MAIL ADDRESS	

C. I (We) have designated the following individual(s) as escort for my(our) family member(s) if evacuation from OCONUS becomes necessary (applies only to persons assigned OCONUS):

1. TYPED OR PRINTED NAME	2a. COMPLETE ADDRESS (Including Street, Apartment Number, P.O. Box Number, Rural Route Number, City, State, and ZIP + 4 where applicable)
3. TELEPHONE NUMBER (Include Area Code)	
2b. E-MAIL ADDRESS	

**PART III - DUAL MILITARY COUPLES ONLY
MILITARY SPOUSE AND COMMANDER CERTIFICATION**

A. Spouse: We have made arrangements and will maintain arrangements for the care of our family member(s) in all circumstances required by our commitment to the military and our family.

1. SIGNATURE OF SPOUSE						2. DATE (YYYY/MM/DD)				
3. TYPED OR PRINTED NAME OF SPOUSE					4. SSN					
5. Recertification	a. INIT.	DATE	b. INIT.	DATE	c. INIT.	DATE	d. INIT.	DATE	e. INIT.	DATE

B. Commander: I have counseled the military spouse assigned to my unit, reviewed the Family Care Plan, and I am satisfied that the members have made adequate family care arrangements.

1. SIGNATURE OF COMMANDER			2. DATE		3. UNIT ADDRESS					
4. TYPED OR PRINTED NAME OF COMMANDER										
5. Recertification	a. INIT.	DATE	b. INIT.	DATE	c. INIT.	DATE	d. INIT.	DATE	e. INIT.	DATE

PART IV - SOLDIER AND COMMANDER CERTIFICATION

A. Soldier: I (We) have made arrangements and will maintain arrangements for the care of my(our) family member(s) in all circumstances required by my(our) commitment to the military and my(our) family.

1. SIGNATURE OF SOLDIER						2. DATE (YYYY/MM/DD)				
3. TYPED OR PRINTED NAME OF SOLDIER					4. SSN					
5. Recertification	a. INIT.	DATE	b. INIT.	DATE	c. INIT.	DATE	d. INIT.	DATE	e. INIT.	DATE

B. Commander: I have reviewed the Family Care Plan, and I am satisfied that the members have made adequate family care arrangements that will allow for a full range of military duties and for worldwide availability as defined here.

1. SIGNATURE OF COMMANDER			2. DATE		3. UNIT ADDRESS					
4. TYPED OR PRINTED NAME OF COMMANDER										
5. Recertification	a. INIT.	DATE	b. INIT.	DATE	c. INIT.	DATE	d. INIT.	DATE	e. INIT.	DATE

APPENDIX D

CERTIFICATE OF ACCEPTANCE AS GUARDIAN OR ESCORT <small>For use of this form, see AR 600-20; the proponent agency is DCS, G-1.</small>	
PRIVACY ACT STATEMENT	
AUTHORITY:	10 U.S.C. Section 3013, Secretary of the Army: Army Regulation 600-20, Army Command Policy and E.O. 9397 (SSN).
PRINCIPAL PURPOSE:	Guardian's agreement to care for a soldier's child(ren) in his or her absence.
ROUTINE USES:	None.
DISCLOSURE:	Voluntary; However, failure to provide all the requested information could lead to rejection of a soldier's Family Care Plan.
<p>I _____ was provided an original DA Form 5841 <i>(Power of Attorney)</i> or other legally sufficient authority naming me as guardian/escort for:</p>	
NAME (s) / AGE (s) OF FAMILY MEMBERS	
family members of:	
NAME (s)	SSN (s)
<p>I agree to accept responsibility for these family members. I have received all necessary documents required to provide financial, medical, educational, quarters, and subsistence support for these family members. I have been briefed on procedures for accessing military/civilian facilities, services, benefits, and entitlements on behalf of these family members.</p>	
TYPED OR PRINTED NAME OF GUARDIAN	
ADDRESS <i>(Include ZIP Code)</i>	
SIGNATURE	DATE (YYYY/MM/DD)
TELEPHONE NUMBER <i>(Include Area Code)</i>	E-MAIL ADDRESS
<p>NOTARY:</p> <p>STATE OF _____</p> <p>COUNTY OF _____</p> <p>Acknowledged before me this _____ day of _____,</p> <p>_____</p> <p style="text-align: center;"><i>(Notary Public)</i></p> <p>My commission expires:</p>	

APPENDIX E

FAMILY MEMBER DEPLOYMENT SCREENING SHEET

For use of this form, see AR 608-75; the proponent agency is OACSIM

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY: Title 10, USC Section 3013.
PRINCIPAL PURPOSE: Personnel support.
ROUTINE USES: To validate family member deployment screening, and to provide gaining command with data to assist in making an assignment decision.
DISCLOSURE: The provision of requested information is mandatory. Failure to respond may preclude successful processing of an application for family member travel/command sponsorship and may lead to appropriate administrative or disciplinary action against the soldier.

PART A - SOLDIER/FAMILY MEMBER DATA

1. NAME OF SOLDIER <i>(Last, first, MI)</i>	2. SOCIAL SECURITY NUMBER	3a. RANK	3b. MOS/BRANCH
4a. HOME ADDRESS	5a. DUTY ADDRESS		6. DATE OF EDAS CYCLE OR RFO <i>(OFF)</i> DATE
4b. HOME PHONE NO. <i>(Include Area Code)</i>	5b. DUTY PHONE NO. a. DSN b. COMMERCIAL <i>(Include area code)</i>		

7. FAMILY MEMBERS

a. NAME	b. RELATIONSHIP	c. DOB <i>(YYYYMMDD)</i>	d. HOME ADDRESS

8. AUTHENTICATION

a. MILITARY PERSONNEL DIVISION/PERSONNEL SERVICE COMPANY REPRESENTATIVE'S NAME	c. RANK <i>(Grade)</i>	d. SIGNATURE
b. TITLE	e. DATE <i>(YYYYMMDD)</i>	

PART B - FAMILY MEMBER SCREENING RESULTS

9. NAME	EXCEPTIONAL FAMILY MEMBER PROGRAM <i>(EFMP)</i> ENROLLMENT <i>(Check one)</i>				
	a. NOT WARRANTED	b. CONSIDERATION WARRANTED <i>(Date sent for Coding)</i>	c. SUBSTANTIAL CHANGE SINCE ENROLLMENT		
			NO	YES	DATE SENT FOR CODING

10. ARMY MEDICAL TREATMENT FACILITY *(MTF)* EFMP MEDICAL PRACTITIONER COMPLETING THIS FORM

a. PRINTED NAME OF MEDICAL PRACTITIONER	b. SIGNATURE	c. DATE <i>(YYYYMMDD)</i>
d. ADDRESS	e. PHONE NUMBER <i>(Include Commercial and DSN)</i>	

11. ARMY MTF EFMP PHYSICIAN'S AUTHENTICATION *(To be signed when a medical practitioner other than a physician completes this form.)*

a. TYPED OR PRINTED NAME OF PHYSICIAN	b. TITLE	c. RANK
d. SIGNATURE	e. DATE <i>(YYYYMMDD)</i>	

APPENDIX F

FAMILY CARE CERTIFICATION			
(PRIVACY ACT STATEMENT OF 1974 APPLIES - SEE BELOW)			
<p>AUTHORITY: 10 U.S.C. 8013 and E.O. 9397, Secretary of the Air Force: powers and duties; delegation by. PRINCIPAL PURPOSE: To contact persons designated by the member as accepting family care responsibilities, to verify their willingness to act for the member in this capacity, to advise the caregivers when they are expected to discharge these responsibilities and to insure member's compliance with the instruction. ROUTINE USES: None. DISCLOSURE IS VOLUNTARY; Use of the SSN is required to establish positive identification. Other information is required to ensure members have met their family care responsibilities. Failure to provide the information may result in discharge from the Active Air Force, Air National Guard, or Air Force Reserve.</p>			
SECTION I. MEMBER'S CERTIFICATION			
<p>1. I have been counseled and fully understand Air Force policy on family care responsibilities pertaining to the performance of military duties. I have read and understand AFI 36-2908 and that I must arrange for family care so that I will remain worldwide available as defined in AFI 36-290, and I must report for duty as required without my family members. I affirm I have made and will maintain arrangements for the care of my family to permit me to be worldwide available during all the following circumstances: a. Duty Hours; b. Exercises; c. Unaccompanied Tours; d. Alerts; e. TDY; f. Extended Duty Hours; g. PCS or PCA, and h. Similar Military Obligations. I understand I am subject to deployment on short notice and I will not be guaranteed special privileges because I have family members. I understand if these arrangements for the care of my family fails, I must still report for duty.</p> <p>2. I understand failure to make and maintain adequate family care arrangements may be grounds for disciplinary action and separation from the Air Force, Air National Guard and/or Air Force Reserve components. I understand I must verify or revise this plan at least yearly or on reassignment, reenlistment, extension of enlistment, or if circumstances for family care change. I have made all necessary arrangements (legal, educational, monetary, religious, etc.) for a smooth, rapid turnover of family care responsibilities. I have arranged to complete travel that may be required to transfer my family members to the designated person. If my primary long term family caregiver is not in the local area, I understand I must arrange with a nonmilitary person in the local area to assume temporary custody of my family members until responsibility is transferred to my primary long term caregiver. I understand that while serving in an oversea area, I must arrange for escort and care of my family members if a Noncombatant Evacuation Operation (NEO) is implemented, I know I will be required to remain in place and perform my military duties.</p> <p>3. All my family members are 19 or older and capable of self-care, (Initials) _____.</p> <p>4. I understand I may be subject to action under the Uniform Code of Military Justice (UCMJ) and/or appropriate Reserve component discharge authorities if this statement is not accurate.</p>			
A. DATE	TYPED OR PRINTED NAME, GRADE, AND SSN	SIGNATURE	
<i>(Complete Block B. only when a military couple with family members share a joint domicile and have the same family care plan.)</i>			
B. DATE	TYPED OR PRINTED NAME, GRADE, AND SSN	SIGNATURE	
SECTION II. CAREGIVER CERTIFICATION <i>(The following statements may be signed by as many as three different individuals or as few as one)</i>			
<p>5. PRIMARY SHORT TERM CAREGIVER: I agree to accept responsibility for the family members of _____ if he or she must report for duty for extended work hours, recall or TDY for a duration of less than _____ days. I also certify that the financial and travel arrangements made by the legal guardian are adequate for the care of their family members while in my custody. I <input type="checkbox"/> will <input type="checkbox"/> will not be authorized use of commissary and BX facilities. I know of possible behavioral changes in the family members and the nearest assistance center.</p>			
TYPED OR PRINTED NAME		SIGNATURE	DATE
ADDRESS - MUST BE IN LOCAL AREA <i>(Include ZIP Code)</i>		HOME PHONE	WORK PHONE
<p>6. PRIMARY LONG TERM CAREGIVER: I agree to accept responsibility for the family members of _____ if he or she is reassigned in an unaccompanied status or deployed TDY for a duration to exceed the responsibilities of the short term caregiver. I also certify the financial and travel arrangements made by the legal guardian are adequate for the care of their family members while in my custody. I <input type="checkbox"/> will <input type="checkbox"/> will not be authorized use of commissary and BX facilities. I know of possible behavioral changes in the family members and the nearest assistance center.</p>			
TYPED OR PRINTED NAME		SIGNATURE	DATE
ADDRESS <i>(Include ZIP Code)</i>		HOME PHONE	WORK PHONE
<p>7. ALTERNATE CAREGIVER: In the event the caregiver in item _____ <i>(item 5 and/or 6)</i> is unavailable, I agree to accept responsibility for the family members of _____ I also certify that the financial and travel arrangements made by the guardian are adequate for the care of their family members while in my custody. I <input type="checkbox"/> will <input type="checkbox"/> will not be authorized use of commissary and BX facilities. I know of possible behavioral changes in the family members and the nearest assistance center.</p>			
TYPED OR PRINTED NAME		SIGNATURE	DATE
ADDRESS <i>(Include ZIP Code)</i>		HOME PHONE	WORK PHONE
SECTION III. TEMPORARY CUSTODY DESIGNATION OF A DUAL MILITARY COUPLE OR SINGLE PARENT			
<p>8. TEMPORARY CUSTODY DESIGNEE: I agree in the event of their death or incapacity to assume temporary custody of their family members until a legal guardian is appointed by a court of competent jurisdiction.</p>			
TYPED OR PRINTED NAME		SIGNATURE	DATE
ADDRESS <i>(Include ZIP Code)</i>		HOME PHONE	WORK PHONE

SECTION IV. CAREGIVERS CERTIFICATION FOR NONCOMBATANT EVACUATION OPERATION (NEO) (For personnel assigned overseas only)

9. ESCORT CAREGIVERS: I agree to accept responsibility for the family members of _____ to serve as an escort, if evacuation from an oversea area becomes necessary.

A. TYPED OR PRINTED NAME - (PRIMARY)	SIGNATURE	DATE
ADDRESS - MUST BE IN SAME OVERSEA AREA (Include ZIP Code)		HOME PHONE WORK PHONE
B. TYPED OR PRINTED NAME - (PRIMARY)	SIGNATURE	DATE
ADDRESS - MUST BE IN SAME OVERSEA AREA (Include ZIP Code)		HOME PHONE WORK PHONE
C. TYPED OR PRINTED NAME - (ALTERNATE)	SIGNATURE	DATE
ADDRESS - MUST BE IN SAME OVERSEA AREA (Include ZIP Code)		HOME PHONE WORK PHONE
D. TYPED OR PRINTED NAME - (ALTERNATE)	SIGNATURE	DATE
ADDRESS - MUST BE IN SAME OVERSEA AREA (Include ZIP Code)		HOME PHONE WORK PHONE

10. POST EVACUATION CAREGIVER: I agree to accept responsibility for the family members of _____ after they have arrived at their Continental United States (CONUS) destination, if evacuation from an oversea area becomes necessary. I also certify that arrangements made by the legal guardian are adequate for the care of their family members while in my custody. I know of possible behavioral changes in the family members and the nearest assistance center.

TYPED OR PRINTED NAME	SIGNATURE	DATE
ADDRESS (Include ZIP Code)		HOME PHONE WORK PHONE

SECTION V. STEPPARENT CERTIFICATION

11. STEPPARENT CERTIFICATION: I have read the Family Care Plan of my spouse. In no way will the presence of my spouse's family members in my household preclude me from performing the full range of military duties as outlined in AFI 36-2908. I am also aware that at anytime I cannot perform my duties because of these family members, I am subject to disciplinary action under the UCMJ and/or separation outlined in AFI 36-3908.

TYPED OR PRINTED NAME	SIGNATURE OF STEPPARENT	DATE
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SECTION VI. COMMANDER CERTIFICATION (If additional space is needed, continue on bond paper)

12. I have reviewed this Family Care Certification and I am satisfied that the member has made adequate family care arrangements that will allow for a full range of military duties and for worldwide availability as defined in AFI 36-2908.

A. SIGNATURE OF COMMANDER OR FIRST SERGEANT	DATE
B. SIGNATURE OF COMMANDER OR FIRST SERGEANT	DATE
C. SIGNATURE OF COMMANDER OR FIRST SERGEANT	DATE
D. SIGNATURE OF COMMANDER OR FIRST SERGEANT	DATE

SECTION VII. RECERTIFICATION (If additional space is needed, continue on bond paper)

13. I have reviewed this family care and certify they are still current

A. RECERTIFICATION REASON		B. RECERTIFICATION REASON	
SIGNATURE OF MEMBER	DATE	SIGNATURE OF MEMBER	DATE
C. RECERTIFICATION REASON		D. RECERTIFICATION REASON	
SIGNATURE OF MEMBER	DATE	SIGNATURE OF MEMBER	DATE
E. RECERTIFICATION REASON		F. RECERTIFICATION REASON	
SIGNATURE OF MEMBER	DATE	SIGNATURE OF MEMBER	DATE

AF IMT 357, BLANK CONTINUATION SHEET.

APPENDIX G

REQUIRING DIRECTIVE OPNAVINST 1740.4

FAMILY CARE PLAN ARRANGEMENTS

PRIVACY ACT

AUTHORITY: 10 U.S.C. Section 5013, Secretary of the Navy; E.O. 9397; and OPNAVINST 1740.4C

PRINCIPAL PURPOSE: To identify and ensure that single military members and military couples with dependents have made adequate dependent care arrangements. To ensure the member is world-wide assignable. To ensure combat readiness and document a plan for the care of family members in the event of a medium or long term absence. To evaluate compliance with DOD and Navy programs requiring Family Care Plans. To ensure family members are cared for during deployments, reserve mobilizations, temporary duty, etc. and that arrangements are in place for the financial well being of family members covered by the Family Care Plan during separations.

ROUTINE USES: Used by the Commanding Officer or his/her representative to ensure Family Dependent Care Program is in place.

DISCLOSURE: Individuals who fail to maintain a current Family Care Plan may be subject to separation from the Navy (OPNAVINST 1740.4C paragraph 7.d.(6)).

CHECK THE ITEMS THAT YOU HAVE COMPLETED FOR YOUR FAMILY CARE PLAN. PLEASE PROVIDE THE PERSONAL CONTACTS AND LOCATION OF INFORMATION. ATTACH COPIES OF IMPORTANT DOCUMENTS.

1. FINANCIAL ARRANGEMENTS:

- ALLOTMENTS TO CAREGIVER
- IDENTIFICATION OF ACCOUNTS WITH ACCESS FOR CAREGIVER
- ACCESS TO FUNDS WITH ACCOUNTABILITY
- AUTO-PAYMENT OF OBLIGATIONS
- MODIFICATION OF SUPPORT AGREEMENTS/ORDERS

ADDITIONAL COMMENTS:

2. LOGISTICAL ARRANGEMENTS:

- MOVEMENT OF FAMILY MEMBERS AND/OR CAREGIVER(S)
 - EXISTING CUSTODY/VISITATION ORDERS
 - MODIFICATIONS OF EXISTING CUSTODY/VISITATIONS ORDERS
 - NOTIFICATION TO OTHER NATURAL OR ADOPTIVE PARENT
 - COURT ORDER GRANTING PERMISSION TO RELOCATE
 - WRITTEN CONSENT TO RELOCATE FROM OTHER NATURAL OR ADOPTIVE PARENT
- METHOD OF RELOCATION
 - AIR AIRLINES: _____ DATE DEPARTURE: _____
 - GROUND VEHICLE: _____
 - ITINERARY AND MAPS PROVIDED
- FINANCIAL SUPPORT AT THE NEW LOCATION
- CARE OR MAINTENANCE OF HOME/QUARTERS
- LANGUAGE TRANSLATOR (IF REQUIRED)

FAMILY CARE PLAN ARRANGEMENTS (CONTINUED)

2. LOGISTICAL ARRANGEMENTS (CONTINUED):

- SCHOOL ARRANGEMENTS (MAY NOT BE ABLE TO ENROLL CHILD IN SCHOOL WITHOUT COURT ORDER)
- ACCESS TO AND USE OF GOVERNMENT SERVICES (COMMISSARY, EXCHANGE, ETC.)
- NON-MILITARY ESCORT FOR FAMILY MEMBERS NEEDING ASSISTANCE (CHILDREN, ELDERLY, DISABLED)

NAME:: _____ PHONE: _____ CELL PHONE: _____

ADDRESS: _____

E-MAIL: _____

ADDITIONAL COMMENTS:

3. MEDICAL/HEALTH CARE SERVICES:

- IN LOCO PARENTIS POWER OF ATTORNEY TO ALLOW TREATMENT OF CHILDREN
- EXPLAINED INSURANCE AND MEDICAL PAYMENT METHODS
- IDENTIFIED CURRENT HEALTH CARE CONCERNS AND ON-GOING TREATMENTS
- PROVIDED LOCATION OF MEDICAL FACILITIES

NAME OF FACILITY: _____ PHONE: _____

ADDRESS: _____

- PROVIDED NAME OF MEDICAL, DENTAL AND OTHER HEALTH CARE PROVIDERS

DOCTOR: _____ DENTIST: _____

ADDITIONAL COMMENTS:

4. EDUCATIONAL FACILITIES LOCATION:

- IDENTIFIED EDUCATIONAL FACILITIES

NAME OF SCHOOL: _____ PHONE: _____

ADDRESS: _____ PRINCIPAL: _____

- CONTACTED SCHOOLS AND LOCAL BOARD OF EDUCATION FOR ENROLLMENT INFORMATION
- EDUCATIONAL/CHILDCARE FACILITIES WILL ACCEPT CHILDREN

FAMILY CARE PLAN ARRANGEMENTS (CONTINUED)

4. EDUCATIONAL FACILITIES LOCATION (CONTINUED):

- POWER OF ATTORNEY
- COURT ORDER FOR CAREGIVER

ADDITIONAL COMMENTS:

5. LEGAL:

- PROVIDED COPIES OF EXISTING COURT ORDERS FOR CUSTODY/VISITATION/SUPPORT/OTHER
- DISCUSSED PENDING COURT CASES FOR CUSTODY/VISITATION/SUPPORT/OTHER

NAME OF COURT: _____ LOCATION: _____

PENDING CIVIL MATTERS FOR OTHER ISSUES: _____

PROVIDED LOCATION OF LEGAL DOCUMENTS (WILLS, POER OF ATTORNEY, COURT ORDERS)

IDENTITY OF PERSONS/AGENTS TO MANAGE YOUR AFFAIRS IN THE EVENT OF INCAPACITY

NAME: _____ PHONE: _____

ADDRESS: _____

E-MAIL: _____

LEGAL POINTS OF CONTACT FOR THE CAREGIVER

ATTORNEY: _____ PHONE: _____

LEGAL SERVICE OFFICE: _____ PHONE: _____

EXPLAINED WHAT THE CAREGIVER SHOULD DO IN THE EVENT THEY ARE NO LONGER ABLE TO CARE FOR FAMILY MEMBERS

ADDITIONAL COMMENTS:

6. TYPED OR PRINTED NAME OF MEMBER:

7. MEMBER'S SIGNATURE:

8. DATE:

APPENDIX H

<h1 style="margin: 0;">DEPARTMENT OF THE NAVY</h1> <h2 style="margin: 0;">FAMILY CARE CERTIFICATE</h2>	SUPPORTING DIRECTIVE OPNAVINST 1740.4C
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PRIVACY ACT ADVISEMENT

AUTHORITY: 44 U.S.C. Section 3101; 5 U.S.C. Section 301; 10 U.S.C. Sections 133 and 5031; E.O. 9397; and OPNAVINST 1740.4B
PRINCIPAL PURPOSE: To identify and ensure that single military members and military couples with dependents have made adequate dependent care arrangements and to ensure the member is world-wide assignable. The information which will be solicited is intended principally for the following purposes: (a) The personal information will facilitate combat readiness and document a plan for the care of your family members in the event of a medium or long term absence; (b) it will be used to evaluate compliance with the DOD and Navy programs requiring Family Care Plans.
ROUTINE USES: To designate persons who will accept dependent care responsibility and to contact those persons to verify their willingness to act for the member in this capacity, and to advise the designee(s) when they are expected to discharge these responsibilities. The information may be used also to determine overseas suitability, to conduct authorized investigations, and for other lawful purposes.
DISCLOSURE IS MANDATORY: Disclosure of information concerning family members, their caregivers, and the personal arrangements surrounding the care of family members is mandatory.

PART I. SERVICEMEMBER AKNOWLEDGEMENT

- | | |
|---|----------|
| 1. I have been counseled and fully understand Navy policy on dependent care responsibilities. I have read and understand the Navy's policy that I must arrange for dependent care so that I will remain worldwide available as defined, and that I must report for duty without dependents, as required. | INITIALS |
| 2. I understand that failure to make and maintain an adequate Family Care Plan in accordance with the Navy's policy may be grounds for disciplinary action or separation from the Navy, or both. | |
| 3. I understand that I may be subject to action under the Uniform Code of Military Justice if this statement is not accurate. | |
| 4. I understand that I am subject to deployments on short notice and that I will not be given special privileges because I have dependents. | |
| 5. My normal working hours are _____ . I have made arrangements for the care of my family members during these hours as well as absences due to extended working hours and the execution of my military duties. I understand that if these arrangements for the care of my dependents fail, my absence from assigned duty is without authority unless I have been excused by my commanding officer. | |
| 6. I affirm that I have made and will maintain arrangements for the care of my dependents to permit me to be worldwide available during Duty Hours, Extended Duty Hours, Exercises, Unaccompanied Tours, Temporary Additional Duty, Permanent Change of Station, and other similar military obligations. | |
| 7. I understand that I must revise or verify this plan at least yearly or on reassignment, reenlistment, extension of enlistment, or within 60 days (90 days for Ready Reserve) of any change in my family or caregiver status. | |
| 8. I understand that while serving in an overseas area, I must arrange for the escort to and care of my dependents by the designated person. If my principal caregiver is not in the local area, I understand that I must arrange with a nonmilitary person in the local area to assume temporary responsibility for my dependents until that responsibility is transferred to my principal caregiver. | |
| 9. In the event of my death or incapacity, (name, address, telephone number) has agreed to assume temporary responsibility for my minor children until the guardian named in my will assumes responsibility, or until a legal guardian or other custodian is appointed by a court of competent jurisdiction, or until my child(ren)'s non-custodial natural parent assumes custody, whichever occurs first. | |
| 10. The attached form (NAVPERS 1740/7) explains what financial arrangements have been made to provide support for my family member(s) while they are under someone else's care, what logistical arrangements have been made to get my family members to the designated caregiver; where to go for routine and emergency medical treatment for my family member(s), and what the caregiver should do in the event they are no longer able to care for my family members. | |

11. TYPED OR PRINTED NAME, RANK/RATE & SSN:	12. SIGNATURE:	13. DATE:
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PART II. CAREGIVER ACKNOWLEDGEMENT

14. I agree to accept responsibility and provide care for the family members of _____, if he/she must report for duty for extended work hours, recall, or TAD. I acknowledge that I have been fully briefed on : (a) Financial and logistical arrangements and location of important papers, (b) Military and civilian support resources available to assist in the care of family members including location and/or points of contact for the member's command, local Fleet and Family Support Center, child care center, and Navy Marine Corps Relief Society, and (c) Family member entitlements, available services, and access requirements for military base resources including medical and dental treatment facilities, exchanges, commissaries, and recreation facilities.

DEPARTMENT OF THE NAVY FAMILY CARE CERTIFICATE (CONTINUED)

SUPPORTING DIRECTIVE OPNAVINST 1740.4C

A. Member's absence is for a duration of less than 30 days.

TYPED OR PRINTED NAME OF CAREGIVER:	ADDRESS OF CAREGIVER:
SIGNATURE OF CAREGIVER:	
TELEPHONE NUMBER OF CAREGIVER (INCLUDE AREA CODE):	
TYPED OR PRINTED NAME OF WITNESS:	WITNESS' SIGNATURE:

B. Member's absence is for a duration of greater than 30 days.

TYPED OR PRINTED NAME OF CAREGIVER:	ADDRESS OF CAREGIVER:
SIGNATURE OF CAREGIVER:	
TELEPHONE NUMBER OF CAREGIVER (INCLUDE AREA CODE):	
TYPED OR PRINTED NAME OF WITNESS:	WITNESS' SIGNATURE:

C. Applies to single servicemember sponsors & dual military couples with dependents serving overseas and accompanied by dependents.

I agree to be responsible for accompanying and caring for the family members of
as an escort if evacuation from an overseas area becomes necessary.

TYPED OR PRINTED NAME OF ESCORT:	SIGNATURE OF ESCORT:
TYPED OR PRINTED NAME OF WITNESS:	WITNESS' SIGNATURE:

PART III. FOR DUAL MILITARY COUPLES ONLY

15. Statement of Military Spouse: I have read my spouse's plan and concur.

16. SPOUSE'S COMMAND:	17. COMMAND'S FAMILY CARE PLAN COORDINATOR AND TELEPHONE NUMBER:
18. TYPED OR PRINTED NAME AND SSN OF SPOUSE:	19. SPOUSE' SIGNATURE:

PART IV. COMMAND CERTIFICATION

20. I have reviewed this Family Care Plan and (I am/I am not) satisfied that the member has made adequate family care arrangements that will allow for a full range of military duties and for worldwide availability as defined here.

21. TYPED OR PRINTED NAME OF COMMANDING OFFICER	22. SIGNATURE OF COMMANDING OFFICER:	23. DATE:
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APPENDIX I



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

MCO 1740.13A
MHF
3 Dec 1993

MARINE CORPS ORDER 1740.13A

From: Commandant of the Marine Corps
To: Distribution List

Subj: FAMILY CARE PLANS

Ref: (a) DoDInst 1342.19
(b) MCO 1300.8P
(c) MCO P1900.16D
(d) MCO P1080.35H
(e) MCO P1080R.38C

Encl: (1) Definitions
(2) Special Power Of Attorney
(3) Quick Reference Checklist For Items To Consider in
Developing a Family Care Plan

1. Purpose. To publish policy and establish procedures for family care plans of Marines and emergency essential (EE) civilian personnel who are single parents; dual military couples with dependents; Marines who otherwise bear sole responsibility for the care of children under the age of 19; or Marines with family members who are unable to care for themselves in the Marine's absence.

2. Cancellation. MCO 1740.13.

3. Information. The personal readiness of Marines is directly affected by the arrangements they have made for the care of their families when they must deploy. The more thorough the family care plan, the easier it will be on Marines who must deploy. This is especially true for Marines who have sole responsibility for the care of dependents or who share that responsibility with a spouse who is also a servicemember. DoD's concerns about the readiness of servicemembers and the welfare of their dependents resulted in the promulgation of reference (a).

4. Definitions. Provided in enclosure (1).

5. Policy

a. Individual Marines are solely responsible for initiating a family care plan with their command under the following conditions:

(1) Marine is or becomes a single parent with custody of children.

(2) Dual military couples with dependents, in which case both servicemembers must have a plan.

(3) Family circumstances or other personal status changes in which the Marine becomes solely responsible for the complete care (housing, medical, logistical, financial, food, clothing, or transportation) of another family member who may or may not reside in the same household. Such circumstances include, but are not limited to:

(a) Birth or adoption of a child(ren). Reference (b) addresses assignment issues related to birth and adoption of children for servicemembers.

(b) Loss of a spouse through death, separation, or divorce resulting in the Marine assuming the responsibilities in paragraph 5a(3) above.

(c) Enlistment (or commissioning) in the military (Regular or Reserve component) by a spouse when the Marine and spouse become a dual military couple with dependents.

(d) Assumption of sole care for an elderly or disabled family member.

(e) Assumption of sole care for a member with limited command of the English language, or the inability to drive or to gain access to basic life-sustaining facilities. Exercise of personal judgement will be considered by commanders in implementing this subsection based on considerations of geographic location or mission.

(f) Recurring absence of a spouse through career/job commitments or other reasons which result in the servicemember assuming the responsibilities as outlined in paragraph 5a(3) above.

b. Marines are responsible for immediate availability during rapid response situations to worldwide deployment contingencies. Failure to produce a family care plan in accordance with this Order can result in administrative separation, per reference (c). In the case of Reserve Marines, transfer to an inactive status, discharge, or separation may be recommended.

c. A military single parent cannot be designated as a primary caregiver.

d. Commanding officers of Marines of the Regular component, reservists on active duty, and Selected Marine Corps Reservists have the primary responsibility to ensure that Marines who meet the conditions in paragraph 5a above have an up-to-date family care plan. Commanding officers or their designated representatives shall discuss/assist their Marines in the following:

(1) Require completion of comprehensive family care plans that provide provisions for all possible-contingencies, both short term and long term deployments or absences. Enclosure (2) is a sample power of attorney that may be used to assist in the preparation of and be incorporated in a family care plan. Enclosure (3) is a quick reference checklist for provisions to be considered, but is not all-encompassing.

(2) Inform Marines that failure to provide an adequate family care plan resulting in a nondeployable status for training or contingencies may subject the Marine to disciplinary action and/or separation from the Marine Corps.

(3) Recommend to their Marines that they seek assistance from organizations listed below:

(a) Family Service Centers (FSC's).

(b) Legal Assistance Offices.

(c) Child Development Programs, i.e., child development centers, family child care homes, and child care resource and referral services.

(d) Community organizations that maintain lists of licensed caregivers in the community. This information is available through the FSC's.

e. FSC's, upon the request from unit commanders or individual Marines, shall provide information and assistance in developing a family care plan. FSC directors shall ensure that their staff have information that covers all aspects of deployments, stress management, financial arrangements, referrals, and guidelines for selection of caregivers. Commanders who do not have access to an FSC shall ensure that their Marines are provided information regarding outreach programs from the following (but not limited to) sources:

(1) Marine Corps Family Service/Assistance Centers.
Regional Marine Corps FSC's are:

(a) MCCDC Quantico, VA. East of the Mississippi River (minus Wisconsin) is served by MCCDC Quantico, VA by calling (800) 336-4663; if calling from VA, call (703) 640-2659.

(b) MCB Camp Pendleton, CA. West of the Mississippi River (plus Wisconsin) is served by MCB Camp Pendleton, CA by calling (800) 253-1624; if calling from CA, call (619) 725-5361.

(c) Marine Reserve Forces. Reservists can call (504) 942-6586 or DSN 363-6586.

(2) DoD, National Guard, or other Military Department Family Service or Assistance Centers.

f. Each military child development center and command approved family child care home shall keep a copy of the family care plan for each child who is enrolled on a regular basis, and whose sponsor is on active duty, and who is required to have a family care plan.

6. Procedures

a. Regular Component Marines and Reservists on Active Duty

(1) Must notify their commanders no later than 30 days after a change in family status as specified in paragraph 5a above.

(2) Submission of a final family care plan must be made to the commanding officer within 60 days of the notification. Commanders may grant an additional 30 days to submit an acceptable family care plan.

b. Selected Reservists

(1) Must notify their commanders no later than 60 days after a change in family status as specified in paragraph 5a above.

(2) Submission of a final family care plan must be made to the commanding officer within 90 days of the notification. Commanders may grant an additional 30 days to submit an acceptable family care plan.

c. Individual Ready Reservists (IRR). During the annual screening of members of the IRR (either by mail or at a muster), Marines who indicate that family care will prevent their immediate mobilization will be provided a copy of enclosures (2) and (3).

d. All documents of the family care plan will become part of the individual Marine's service record.

7. Action

a. CMC (IG). Verify that family care plans are included in the inspection process during the conduct of inspections.

b. CMC (MHF). Family Programs Branch is responsible for the content of this Order and will ensure FSC's are providing appropriate assistance to commanders and individual Marines. MHF will conduct inspections of all FSC operations for compliance with this Order.

c. Commanding Officers of Marines of the Regular Component
Reservists on Active Duty and Selected Marine Corps Reservists

(1) Ensure that all Marines who are the primary providers to children under the legal age of 19 (or applicable State law), or other family members who are unable to care for themselves in the absence of the Marine, complete a family care plan and submit it to the commanding officer for review.

(2) Conduct an annual review of family care plans to verify accuracy, viability, and currency. This can be accomplished during the annual audit of the Marine's service records.

(3) Ensure that the local staff judge advocate reviews the legal documents of the family care plan for applicability to State law.

(4) Ensure family care plans are incorporated into the command's family readiness program.

(5) Ensure that unit diary entries accurately reflect child/dependent custody status per references (d) and (e) for each Marine required to complete a family care plan.

d. CG MCRSC. Ensure that members of the IRR are provided copies of enclosures (2) and (3) if they indicate that family care may prevent immediate mobilization.

e. Commanding officers of EE civilian personnel will encourage them to have a current family care plan.

8. Reserve Applicability. This Order is applicable to the Marine Corps Reserve.

R. B. Johnston

R. B. JOHNSTON
Deputy Chief of Staff for
Manpower and Reserve Affairs

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7000144 (5)
7000093/8145005 (2)
7000099/8145001 (1)

DEFINITIONS

1. Caregiver. An individual who is not a member of the Armed Forces or a member of a Reserve component, is at least 21 years of age, and is capable of self-care and care of children or other dependent family members. This individual must agree in writing to care for one or more family members during the Marine's absence for indefinite periods to ensure the Marine is available for worldwide duties.

2. Discuss. The conversation between the Marine and the commanding officer or designated representative on Marine Corps policy as it pertains to family care plans. The commanding officer must ensure that the Marine fully understands the unique demands of military service as it relates to personal and family responsibilities and the necessity for realistic family care arrangements to ensure the Marine is available for worldwide duty.

3. Dual Military Couple With Dependents. Regular or Reserve component members married to each other who have joint responsibility and physical custody for the care of children under 19 years of age or family members for whom the Marine bears medical, legal, financial, and/or logistical responsibility.

4. Emergency Essential (EE) Personnel. Civilians whose positions are located overseas or would be sent overseas during a crisis situation to assist in combat operations or to support combat essential systems subsequent to mobilization and/or an evacuation order.

5. Family Care Plan. A document that outlines the person(s) who shall provide care for the Marine's children, disabled, elderly, and/or other family member(s) dependent on the Marine for financial, medical, or logistical support (housing, food, clothing, transportation) in the absence of the Marine due to military duty (training exercises, temporary duty, deployments, etc.). The plan outlines the legal, medical, logistical, educational, monetary, and religious arrangements for the care of the Marine's family member(s). The plan must include all reasonably foreseeable situations and be sufficiently detailed and systematic to provide for a smooth, rapid transfer of responsibilities to the caregiver upon the absence of the Marine.

6. Family Care Planning. The advance process of planning for the care of children, disabled, elderly, and/or other family members dependent upon the Marine for support specified in definition 7 below. The planning is the initiative taken by the Marine to use all available military and private sector resources to ensure that covered family members, as prescribed in this Order, receive adequate care, support, and supervision during the Marine's absence.

ENCLOSURE (1)

3 Dec 1993

7. Family Members. Includes those individuals for whom the Marine provides medical, financial, and logistical support (e.g., food, housing, clothing, transportation). This includes, but is not limited to, children under the age of 19, elderly adults, persons with disabilities, and others who are unable to care for themselves in the absence of the Marine, as described in definition 5 above.

8. Marine. Includes Regular component Marines, members of the Selected Marine Corps Reserve, and members of the Individual Ready Reserve.

9. Separated. The status of married Marines who are legally separated from their spouse under a court order or legally recognizable agreement, or Marines who customarily live apart from their spouse.

10. Single Parents. Marines who have no spouse or who are separated or otherwise apart from their spouse, but who have physical custody of children under 19 years of age. Also included under the provisions of this Order are single Marines who have physical custody of disabled dependents of any age for whom the Marine bears full medical, legal, logistical, and/or financial responsibility.

ENCLOSURE (1)

SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That I, _____

_____ currently residing at: _____

do make, constitute, and appoint: _____

who currently reside(s) at: _____

_____ Ph: () _____

(if no street address, give directions to home) my true and lawful attorney(s) in fact to act as follows GIVING AND GRANTING unto my said attorney(s) in fact full powers to:

1. Act as legal guardian of child(ren) herein named, more specifically in loco parentis, to accomplish any and all acts necessary to enroll, register, take care of any/all matters pertaining to school, and to execute any parental consent forms for said child(ren).

2. Authorize any and all medical and hospital care and treatment, including major surgery, deemed necessary by a duly authorized and licensed physician, for the health and well-being of my child(ren) as herein named. In caring for and maintaining my said child(ren), my said attorney(s) in fact are authorized to perform those parental functions and make those decisions as would I, the legal parent and guardian, if I were present.

NAME OF CHILD(REN)	AGE	RELATIONSHIP
_____	_____	_____
_____	_____	_____
_____	_____	_____

FURTHER, I do authorize my aforesaid attorney(s) in fact to perform all necessary acts in the execution of the aforesaid authorizations with the same validity as I could effect if personally present. I further declare that any act or thing lawfully done hereunder by my said attorney(s) in fact shall be binding on myself, and my heirs, legal and personal representatives, and assigns whether the same shall have been done either before or after my death, or other revocation of this instrument,

ENCLOSURE (2)

unless and until reliable intelligence or notice thereof shall have been received by my said attorney(s) in fact; and whether or not I, the grantor of this instrument, shall have been reported or listed, either officially or otherwise, as "missing-in-action" or "captured" as those terms are used in military parlance, it being the intendment hereof that such status designation shall not bar my attorney(s) in fact from fully and completely exercising and continuing to exercise any and all powers and rights herein granted, and that such report of "missing-in-action" or "captured" shall neither constitute nor be interpreted as constituting notice of my death nor otherwise operate to revoke this instrument.

PROVIDED, however, that all actions taken hereunder for me or for my account shall be transacted in my name, and that all endorsements and instruments executed by my said attorney(s) in fact for the purpose of carrying out the foregoing powers shall contain my name, followed by that of my said attorney(s) in fact and the designation "attorney in fact."

FURTHER, unless sooner revoked or terminated by me, this Special Power of Attorney shall become null and void from and after _____

This power of attorney shall not terminate on disability, incompetence, or incapacity of the principal at law.

IN WITNESS WHEREOF I have hereunto set my hand and seal this the ___ day of _____ 19

(SIGNATURE) (SEAL)

WITNESS: _____
WITNESS: _____

INDIVIDUAL ACKNOWLEDGEMENT

STATE of _____
COUNTY of _____

On this ___ day of _____ 19__, before me personally came _____ to me known to be the individual described in and who executed the foregoing instrument, and he/she acknowledged that he/she executed the same.

Notary Public _____
My Commission Expires _____

ENCLOSURE (2)

QUICK REFERENCE CHECKLIST FOR ITEMS TO CONSIDER IN DEVELOPING A
FAMILY CARE PLAN

Family care plans shall include provisions for short and long term absences. Plans shall include designating a caregiver (to include person for temporary custody in the event of their death or incapacity). Arrangements for financial, logistical, and medical care must be part of the plan. In short, planning for all possible contingencies is recommended.

CHECKLIST

	YES	NO
CAREGIVER DESIGNATED:		
AGREEMENT SIGNED BY CAREGIVER	___	___
CAREGIVER COUNSELED BY FAMILY SERVICE CENTER	___	___
TEMPORARY CUSTODY AGREEMENT	___	___
DOCUMENTS FOR CAREGIVER TO USE BASE FACILITIES		
CAREGIVER MEETS REQUIREMENTS / STANDARDS	___	___
LEGAL:		
WILLS	___	___
POWER OF ATTORNEY	___	___
FINANCIAL:		
ALLOTMENTS FOR CARE OF DEPENDENTS	___	___
BANK ACCOUNTS/ACCESS/ARRANGEMENTS	___	___
LOGISTICAL:		
MOVEMENT / TRANSPORTATION ARRANGEMENTS	___	___
ESCORTS IN TRAVEL TO LOCATION OF CAREGIVER	___	___
USE OF PERSONAL PROPERTY AGREEMENTS	___	___
CARE OF HOME/QUARTERS	___	___
MEDICAL CARE/SUPPORT (IF REQUIRED)	___	___
LANGUAGE TRANSLATOR (IF REQUIRED)	___	___
FAMILY CONTACTS	___	___
FAMILY SERVICE CENTER:		
ASSISTANCE PROVIDED	___	___
DISCUSSION WITH MARINE/CAREGIVER ON:		
CHILD CARE/BEHAVIORAL CHANGES	___	___
FAMILY ADVOCACY	___	___
REFERRAL/ASSISTANCE	___	___

ENCLOSURE (3)

APPENDIX J

United States Code Annotated
Title 50 Appendix. War and National Defense

Servicemembers Civil Relief Act
Act Oct. 17, 1940, C. 888, 54 Stat. 1178,
as Amended Dec. 19, 2003, Pub.L. 108-189, SEC. 1, 117 Stat. 2835

§ 501. Short title

This Act [sections 501 to 596 of this Appendix] may be cited as the "Servicemembers Civil Relief Act".

§ 502. Purpose

The purposes of this Act [sections 501 to 596 of this Appendix] are--

- (1) to provide for, strengthen, and expedite the national defense through protection extended by this Act [said sections] to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and
- (2) 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.

§ 510. Omitted**§ 511. Definitions**

For the purposes of this Act [sections 501 to 596 of this Appendix]:

(1) Servicemember

The term "servicemember" means a member of the uniformed services, as that term is defined in section 101(a)(5) of title 10, United States Code.

(2) Military service

The term "military service" means--

- (A) in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard--
 - (i) active duty, as defined in section 101(d)(1) of title 10, United States Code, and
 - (ii) in the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a

national emergency declared by the President and supported by Federal funds;

(B) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and

(C) any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(3) Period of military service

The term "period of military service" means the period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember is released from military service or dies while in military service.

(4) Dependent

The term "dependent", with respect to a servicemember, means--

- (A) the servicemember's spouse;
- (B) the servicemember's child (as defined in section 101(4) of title 38, United States Code); or
- (C) an individual for whom the servicemember provided more than one-half of the individual's support for 180 days immediately preceding an application for relief under this Act [sections 501 to 596 of this Appendix].

(5) Court

The term "court" means a court or an administrative agency of the United States or of any State (including any political subdivision of a State), whether or not a court or administrative agency of record.

(6) State

The term "State" includes--

- (A) a commonwealth, territory, or possession of the United States; and
- (B) the District of Columbia.

(7) Secretary concerned

The term "Secretary concerned"--

(A) with respect to a member of the armed forces, has the meaning given that term in section 101(a)(9) of title 10, United States Code;

(B) with respect to a commissioned officer of the Public Health Service, means the Secretary of Health and Human Services; and

(C) with respect to a commissioned officer of the National Oceanic and Atmospheric Administration, means the Secretary of Commerce.

(8) Motor vehicle

The term "motor vehicle" has the meaning given that term in section 30102(a)(6) of title 49, United States Code.

(9) Judgment

The term "judgment" means any judgment, decree, order, or ruling, final or temporary.

§ 512. Jurisdiction and applicability of Act

(a) Jurisdiction

This Act [sections 501 to 596 of this Appendix] applies to--

- (1) the United States;
- (2) each of the States, including the political subdivisions thereof; and
- (3) all territory subject to the jurisdiction of the United States.

(b) Applicability to proceedings

This Act [sections 501 to 596 of this Appendix] applies to any judicial or administrative proceeding commenced in any court or agency in any jurisdiction subject to this Act [said sections]. This Act [said sections] does not apply to criminal proceedings.

(c) Court in which application may be made

When under this Act [sections 501 to 596 of this Appendix] any application is required to be made to a court in which no proceeding has already been commenced with respect to the matter, such application may be made to any court which would otherwise have jurisdiction over the matter.

§ 513. Protection of persons secondarily liable

(a) Extension of protection when actions stayed, postponed, or suspended

Whenever pursuant to this Act [sections 501 to 596 of this Appendix] a court stays, postpones, or suspends (1) the enforcement of an obligation or liability, (2) the prosecution of a suit or proceeding, (3) the entry or enforcement of an order, writ, judgment, or decree, or (4) the performance of any other act, the court may likewise grant such a stay, postponement, or suspension to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily subject to the obligation or liability the performance or enforcement of which is stayed, postponed, or suspended.

(b) Vacation or set-aside of judgments

When a judgment or decree is vacated or set aside, in whole or in part,

pursuant to this Act [sections 501 to 596 of this Appendix], the court may also set aside or vacate, as the case may be, the judgment or decree as to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily liable on the contract or liability for the enforcement of the judgment or decree.

(c) Bail bond not to be enforced during period of military service

A court may not enforce a bail bond during the period of military service of the principal on the bond when military service prevents the surety from obtaining the attendance of the principal. The court may discharge the surety and exonerate the bail, in accordance with principles of equity and justice, during or after the period of military service of the principal

(d) Waiver of rights

(1) Waivers not precluded

This Act [sections 501 to 596 of this Appendix] does not prevent a waiver in writing by a surety, guarantor, endorser, accommodation maker, comaker, or other person (whether primarily or secondarily liable on an obligation or liability) of the protections provided under subsections (a) and (b). Any such waiver is effective only if it is executed as an instrument separate from the obligation or liability with respect to which it applies.

(2) Waiver invalidated upon entrance to military service

If a waiver under paragraph (1) is executed by an individual who after the execution of the waiver enters military service, or by a dependent of an individual who after the execution of the waiver enters military service, the waiver is not valid after the beginning of the period of such military service unless the waiver was executed by such individual or dependent during the period specified in section 106 [section 516 of this Appendix].

§ 514. Extension of protections to citizens serving with allied forces

A citizen of the United States who is serving with the forces of a nation with which the United States is allied in the prosecution of a war or military action is entitled to the relief and protections provided under this Act [sections 501 to 596 of this Appendix] if that service with the allied force is similar to military service as defined in this Act [sections 501 to 596 of this Appendix]. The relief and protections provided to such citizen shall terminate on the date of discharge or release from such service.

§ 515. Notification of benefits

The Secretary concerned shall ensure that notice of the benefits accorded by this Act [sections 501 to 596 of this Appendix] is provided in writing to persons in military service and to persons entering military service

§ 516. Extension of rights and protections to reserves ordered to report for military service and to persons ordered to report for induction

(a) Reserves ordered to report for military service

A member of a reserve component who is ordered to report for military service is entitled to the rights and protections of this title and titles II and III [of this Appendix] during the period beginning on the date of the member's receipt of the order and ending on the date on which the member reports for military service (or, if the order is revoked before the member so reports, or the date on which the order is revoked).

(b) Persons ordered to report for induction

A person who has been ordered to report for induction under the Military Selective Service Act (50 U.S.C. App. 451 et seq.) is entitled to the rights and protections provided a servicemember under this title and titles II and III [of this Appendix] during the period beginning on the date of receipt of the order for induction and

ending on the date on which the person reports for induction (or, if the order to report for induction is revoked before the date on which the person reports for induction, on the date on which the order is revoked).

§ 517. Waiver of rights pursuant to written agreement

(a) In general

A servicemember may waive any of the rights and protections provided by this Act [sections 501 to 596 of this Appendix]. In the case of a waiver that permits an action described in subsection (b), the waiver is effective only if made pursuant to a written agreement of the parties that is executed during or after the servicemember's period of military service. The written agreement shall specify the legal instrument to which the waiver applies and, if the servicemember is not a party to that instrument, the servicemember concerned. Any such waiver that applies to an action listed in subsection (b) of this section is effective only if it is in writing and is executed as an instrument separate from the obligation or liability to which it applies.

(b) Actions requiring waivers in writing

The requirement in subsection (a) for a written waiver applies to the following:

- (1) The modification, termination, or cancellation of--
 - (A) a contract, lease, or bailment; or
 - (B) an obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage.
- (2) The repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that--
 - (A) is security for any obligation; or
 - (B) was purchased or received under a contract, lease, or bailment.

(c) Prominent display of certain contract rights waivers

Any waiver in writing of a right or protection provided by this Act [sections 501 to 596 of this Appendix] that applies to a contract, lease, or similar legal instrument must be in at least 12 point type.

(d) Coverage of periods after orders received

For the purposes of this section--

- (1) a person to whom section 106 [section 516 of this Appendix] applies shall be considered to be a servicemember; and

(2) the period with respect to such a person specified in subsection (a) or (b), as the case may be, of section 106 [section 516 of this Appendix] shall be considered to be a period of military service.

§ 518. Exercise of rights under Act not to affect certain future financial transactions

Application by a servicemember for, or receipt by a servicemember of, a stay, postponement, or suspension pursuant to this Act [sections 501 to 596 of this Appendix] in the payment of a tax, fine, penalty, insurance premium, or other civil obligation or liability of that servicemember shall not itself (without regard to other considerations) provide the basis for any of the following:

- (1) A determination by a lender or other person that the servicemember is unable to pay the civil obligation or liability in accordance with its terms.
- (2) With respect to a credit transaction between a creditor and the servicemember--
 - (A) a denial or revocation of credit by the creditor;
 - (B) a change by the creditor in the terms of an existing credit arrangement; or
 - (C) a refusal by the creditor to grant credit to the servicemember in substantially the amount or on substantially the terms requested.
- (3) An adverse report relating to the creditworthiness of the servicemember by or to a person engaged in the practice of assembling or evaluating consumer credit information.
- (4) A refusal by an insurer to insure the servicemember.
- (5) An annotation in a servicemember's record by a creditor or a person engaged in the practice of assembling or evaluating consumer credit information, identifying the servicemember as a member of the National Guard or a reserve component.
- (6) A change in the terms offered or conditions required for the issuance of insurance.

§ 519. Legal representatives

(a) Representative

A legal representative of a servicemember for purposes of this Act [sections 501 to 596 of this Appendix] is either of the following:

- (1) An attorney acting on the behalf of a servicemember.
- (2) An individual possessing a power of attorney.

(b) Application

Whenever the term "servicemember" is used in this Act [sections 501 to 596 of this Appendix], such term shall be treated as including a reference to a legal representative of the servicemember.

§ 520. Omitted

§ 521. Protection of servicemembers against default judgments

(a) Applicability of section

This section applies to any civil action or proceeding in which the defendant does not make an appearance.

(b) Affidavit requirement

(1) Plaintiff to file affidavit

In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit--

(A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or

(B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

(2) Appointment of attorney to represent defendant in military service

If in an action covered by this section it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember.

(3) Defendant's military status not ascertained by affidavit

If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any

loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act [sections 501 to 596 of this Appendix].

(4) Satisfaction of requirement for affidavit

The requirement for an affidavit under paragraph (1) may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury.

(c) Penalty for making or using false affidavit

A person who makes or uses an affidavit permitted under subsection (b) (or a statement, declaration, verification, or certificate as authorized under subsection (b)(4)) knowing it to be false, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(d) Stay of proceedings

In an action covered by this section in which the defendant is in military service, the court shall grant a stay of proceedings for a minimum period of 90 days under this subsection upon application of counsel, or on the court's own motion, if the court determines that--

- (1) there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or
- (2) after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

(e) Inapplicability of section 202 procedures

A stay of proceedings under subsection (d) shall not be controlled by procedures or requirements under section 202 [section 522 of this Appendix].

(f) Section 202 protection

If a servicemember who is a defendant in an action covered by this section receives actual notice of the action, the servicemember may request a stay of

proceeding under section 202 [section 522 of this Appendix].

(g) Vacation or setting aside of default judgments

(1) Authority for court to vacate or set aside judgment

If a default judgment is entered in an action covered by this section against a servicemember during the servicemember's period of military service (or within 60 days after termination of or release from such military service), the court entering the judgment shall, upon application by or on behalf of the servicemember, reopen the judgment for the purpose of allowing the

- servicemember to defend the action if it appears that--
- (A) the servicemember was materially affected by reason of that military service in making a defense to the action; and
 - (B) the servicemember has a meritorious or legal defense to the action or some part of it.

(2) Time for filing application

An application under this subsection must be filed not later than 90 days after the date of the termination of or release from military service.

(h) Protection of bona fide purchaser

If a court vacates, sets aside, or reverses a default judgment against a servicemember and the vacating, setting aside, or reversing is because of a provision of this Act [sections 501 to 596 of this Appendix], that action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment.

§ 522. Stay of proceedings when servicemember has notice

(a) Applicability of section

This section applies to any civil action or proceeding in which the plaintiff or defendant at the time of filing an application under this section--

- (1) is in military service or is within 90 days after termination of or release from military service; and
- (2) has received notice of the action or proceeding.

(b) Stay of proceedings

(1) Authority for stay

At any stage before 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.

(2) Conditions for stay

An application for a stay under paragraph (1) shall include the following:

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

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

(c) Application not a waiver of defenses

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

(d) Additional stay

(1) Application

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

(2) Appointment of counsel when additional stay refused

If the court refuses to grant an additional stay of proceedings under paragraph (1), the court shall appoint counsel to represent the servicemember in the action or proceeding.

(e) Coordination with section 201 [section 521 of this Appendix]

A servicemember who applies for a stay under this section and is unsuccessful may not seek the protections afforded by section 201 [section 521 of this Appendix].

(f) Inapplicability to section 301 [section 531 of this Appendix]

The protections of this section do not apply to section 301 [section 531 of this Appendix].

§ 523. Fines and penalties under contracts

(a) Prohibition of penalties

When an action for compliance with the terms of a contract is stayed pursuant to this Act [sections 501 to 596 of this Appendix], a penalty shall not accrue for failure to comply with the terms of the contract during the period of the stay.

(b) Reduction or waiver of fines or penalties

If a servicemember fails to perform an obligation arising under a contract and a penalty is incurred arising from that nonperformance, a court may reduce or waive the fine or penalty if--

- (1) the servicemember was in military service at the time the fine or penalty was incurred; and
- (2) the ability of the servicemember to perform the obligation was materially affected by such military service.

§ 524. Stay or vacation of execution of judgments, attachments, and garnishments

(a) Court action upon material affect determination

If a servicemember, in the opinion of the court, is materially affected by reason of military service in complying with a court judgment or order, the court may on its own motion and shall on application by the servicemember--

- (1) stay the execution of any judgment or order entered against the servicemember; and
- (2) vacate or stay an attachment or garnishment of property, money, or debts in the possession of the servicemember or a third party, whether before or after judgment.

(b) Applicability

This section applies to an action or proceeding commenced in a court against a servicemember before or during the period of the servicemember's military service or within 90 days after such service terminates.

§ 525. Duration and term of stays; codefendants not in service

(a) Period of stay

A stay of an action, proceeding, attachment, or execution made pursuant to the provisions of this Act [sections 501 to 596 of this Appendix] by a court may be ordered for the period of military service and 90 days thereafter, or for any part of that period. The court may set the terms and amounts for such installment payments as is considered reasonable by the court.

(b) Codefendants

If the servicemember is a codefendant with others who are not in military service and who are not entitled to the relief and protections provided under this Act [sections 501 to 596 of this Appendix], the plaintiff may proceed against those other defendants with the approval of the court.

(c) Inapplicability of section

This section does not apply to sections 202 and 701 [sections 522 and 591 of this Appendix].

§ 526. Statute of limitations

(a) Tolling of statutes of limitation during military service

The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns.

(b) Redemption of real property

A period of military service may not be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.

(c) Inapplicability to internal revenue laws

This section does not apply to any period of limitation prescribed by or under the internal revenue laws of the United States.

§ 527. Maximum rate of interest on debts incurred before military service

(a) Interest rate limitation

(1) Limitation to 6 percent

An obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent per year during the period of military service.

(2) Forgiveness of interest in excess of 6 percent

Interest at a rate in excess of 6 percent per year that would otherwise be incurred but for the prohibition in paragraph (1) is forgiven.

(3) Prevention of acceleration of principal

The amount of any periodic payment due from a servicemember under the terms of the instrument that created an obligation or liability covered by this section shall be reduced by the amount of the interest forgiven under paragraph (2) that is allocable to the period for which such payment is made.

(b) Implementation of limitation

(1) Written notice to creditor

In order for an obligation or liability of a servicemember to be subject to the interest rate limitation in subsection (a), the servicemember shall provide to the creditor written notice and a copy of the military orders calling the servicemember to military service and any orders further extending military service, not later than 180 days after the date of the servicemember's termination or release from military service.

(2) Limitation effective as of date of order to active duty

Upon receipt of written notice and a copy of orders calling a servicemember to military service, the creditor shall treat the debt in accordance with

subsection (a), effective as of the date on which the servicemember is called to military service.

(c) Creditor protection

A court may grant a creditor relief from the limitations of this section if, in the opinion of the court, the ability of the servicemember to pay interest upon the obligation or liability at a rate in excess of 6 percent per year is not materially affected by reason of the servicemember's military service.

(d) Interest

As used in this section, the term "interest" includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.

§ 530. Omitted

§ 531. Evictions and distress

(a) Court-ordered eviction

(1) In general

Except by court order, a landlord (or another person with paramount title) may not--

(A) evict a servicemember, or the dependents of a servicemember, during a period of military service of the servicemember, from premises--

(i) that are occupied or intended to be occupied primarily as a residence; and

(ii) for which the monthly rent does not exceed \$2,400, as adjusted under paragraph (2) for years after 2003; or

(B) subject such premises to a distress during the period of military service.

(2) Housing price inflation adjustment

(A) For calendar years beginning with 2004, the amount in effect under paragraph (1)(A)(ii) shall be increased by the housing price inflation adjustment for the calendar year involved.

(B) For purposes of this paragraph--

(i) The housing price inflation adjustment for any calendar year is the percentage change (if any) by which--

(I) the CPI housing component for November of the preceding calendar year, exceeds

(II) the CPI housing component for November of 1984.

(ii) The term "CPI housing component" means the index published by the Bureau of Labor Statistics of

the Department of Labor known as the Consumer Price Index, All Urban Consumers, Rent of Primary Residence, U.S. City Average.

(3) Publication of housing price inflation adjustment

The Secretary of Defense shall cause to be published in the Federal Register each year the amount in effect under paragraph (1)(A)(ii) for that year following the housing price inflation adjustment for that year pursuant to paragraph (2). Such publication shall be made for a year not later than 60 days after such adjustment is made for that year.

(b) Stay of execution

(1) Court authority

Upon an application for eviction or distress with respect to premises covered by this section, the court may on its own motion and shall, if a request is made by or on behalf of a servicemember whose ability to pay the agreed rent is materially affected by military service--

(A) stay the proceedings for a period of 90 days, unless in the opinion of the court, justice and equity require a longer or shorter period of time; or

(B) adjust the obligation under the lease to preserve the interests of all parties.

(2) Relief to landlord

If a stay is granted under paragraph (1), the court may grant to the landlord (or other person with paramount title) such relief as equity may require.

(c) Penalties

(1) Misdemeanor

Except as provided in subsection (a), a person who knowingly takes part in an eviction or distress described in subsection (a), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies and rights

The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion (or wrongful eviction) otherwise available under the law to the person claiming relief under this section, including any award for consequential and punitive damages.

(d) Rent allotment from pay of servicemember

To the extent required by a court order related to property which is the subject of a court action under this section, the Secretary concerned shall make an allotment from the pay of a servicemember to satisfy the terms of such order, except that any such allotment shall be subject to regulations prescribed by the Secretary concerned establishing the maximum amount of pay of servicemembers that may be allotted under this subsection.

(e) Limitation of applicability

Section 202 [section 522 of this Appendix] is not applicable to this section.

§ 532. Protection under installment contracts for purchase or lease

(a) Protection upon breach of contract

(1) Protection after entering military service

After a servicemember enters military service, a contract by the servicemember for--

(A) the purchase of real or personal property (including a motor vehicle); or

(B) the lease or bailment of such property,

may not be rescinded or terminated for a breach of terms of the contract occurring before or during that person's military service, nor may the property be repossessed for such breach without a court order.

(2) Applicability

This section applies only to a contract for which a deposit or installment has been paid by the servicemember before the servicemember enters military service.

(b) Penalties

(1) Misdemeanor

A person who knowingly resumes possession of property in violation of subsection (a), or in violation of section 107 of this Act [section 517 of this Appendix], or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies and rights

The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any award for consequential and punitive damages.

(c) Authority of court

In a hearing based on this section, the court--

(1) may order repayment to the servicemember of all or part of the prior installments or deposits as a condition of terminating the contract and resuming possession of the property;

(2) may, on its own motion, and shall on application by a servicemember when the servicemember's ability to comply with the contract is materially affected by military service, stay the proceedings for a period of time as, in the opinion of the court, justice and equity require; or

(3) may make other disposition as is equitable to preserve the interests of all parties.

§ 533. Mortgages and trust deeds

(a) Mortgage as security

This section applies only to an obligation on real or personal property owned by a servicemember that--

(1) originated before the period of the servicemember's military service and for which the servicemember is still obligated; and

(2) is secured by a mortgage, trust deed, or other security in the nature of a mortgage.

(b) Stay of proceedings and adjustment of obligation

In an action filed during, or within 90 days after, a servicemember's period of military service to enforce an obligation described in subsection (a), the court may after a hearing and on its own motion and shall upon application by a servicemember when the servicemember's ability to comply with the obligation is

materially affected by military service--

(1) stay the proceedings for a period of time as justice and equity require, or

(2) adjust the obligation to preserve the interests of all parties.

(c) Sale or foreclosure

A sale, foreclosure, or seizure of property for a breach of an obligation described in subsection (a) shall not be valid if made during, or within 90 days after, the

period of the servicemember's military service except--

- (1) upon a court order granted before such sale, foreclosure, or seizure with a return made and approved by the court; or
- (2) if made pursuant to an agreement as provided in section 107 [section 517 of this Appendix].

(d) Penalties

(1) Misdemeanor

A person who knowingly makes or causes to be made a sale, foreclosure, or seizure of property that is prohibited by subsection (c), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies

The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including consequential and punitive damages.

§ 534. Settlement of stayed cases relating to personal property

(a) Appraisal of property

When a stay is granted pursuant to this Act [sections 501 to 596 of this Appendix] in a proceeding to foreclose a mortgage on or to repossess personal property, or to rescind or terminate a contract for the purchase of personal property, the court may appoint three disinterested parties to appraise the property.

(b) Equity payment

Based on the appraisal, and if undue hardship to the servicemember's dependents will not result, the court may order that the amount of the servicemember's equity in the property be paid to the servicemember, or the servicemember's dependents, as a condition of foreclosing the mortgage, repossessing the property, or rescinding or terminating the contract.

§ 535. Termination of residential or motor vehicle leases

(a) Termination by lessee

(1) In general

The lessee on a lease described in subsection (b) may, at the lessee's option, terminate the lease at any time after--

- (A) the lessee's entry into military service; or
- (B) the date of the lessee's military orders described in paragraph (1)(B) or (2)(B) of subsection (b), as the case may be.

(2) Joint leases

A lessee's termination of a lease pursuant to this subsection shall terminate any obligation a dependent of the lessee may have under the lease.

(b) Covered leases

This section applies to the following leases:

(1) Leases of premises

A lease of premises occupied, or intended to be occupied, by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose if--

- (A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service; or
- (B) the servicemember, while in military service, executes the lease and thereafter receives military orders for a permanent change of station or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days.

(2) Leases of motor vehicles

A lease of a motor vehicle used, or intended to be used, by a servicemember or a servicemember's dependents for personal or business transportation if--

- (A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service under a call or order specifying a period of not less than 180 days (or who enters military service under a call or order specifying a period of 180 days or less and who, without a break in service, receives orders extending the period of military service to a period of not less than 180 days); or
- (B) the servicemember, while in military service, executes the lease and thereafter receives military orders--
 - (i) for a change of permanent station--
 - (I) from a location in the continental United States to a location outside the continental United States; or

(II) from a location in a State outside the continental United States to any location outside that State; or
(ii) to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 180 days.

(c) Manner of termination

(1) In general

Termination of a lease under subsection (a) is made--
(A) by delivery by the lessee of written notice of such termination, and a copy of the servicemember's military orders, to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee); and
(B) in the case of a lease of a motor vehicle, by return of the motor vehicle by the lessee to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee), not later than 15 days after the date of the delivery of written notice under subparagraph (A).

(2) Delivery of notice

Delivery of notice under paragraph (1)(A) may be accomplished--

(A) by hand delivery;
(B) by private business carrier; or
(C) by placing the written notice in an envelope with sufficient postage and with return receipt requested, and addressed as designated by the lessor (or the lessor's grantee) or to the lessor's agent (or the agent's grantee), and depositing the written notice in the United States mails.

(d) Effective date of lease termination

(1) Lease of premises

In the case of a lease described in subsection (b)(1) that provides for monthly payment of rent, termination of the lease under subsection (a) is effective 30 days after the first date on which the next rental payment is due and payable after the date on which the notice under subsection (c) is delivered. In the case of any other lease described in subsection (b)(1), termination of the lease under subsection (a) is effective on the last day of the month following the month in which the notice is delivered.

(2) Lease of motor vehicles

In the case of a lease described in subsection (b)(2), termination of the lease under subsection (a) is effective on the day on which the requirements of subsection (c) are met for such termination.

(e) Arrearages and other obligations and liabilities

Rents or lease amounts unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. In the case of the lease of a motor vehicle, the lessor may not impose an early termination charge, but any taxes, summonses, and title and registration fees and any other obligation and liability of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, use and mileage, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

(f) Rent paid in advance

Rents or lease amounts paid in advance for a period after the effective date of the termination of the lease shall be refunded to the lessee by the lessor (or the lessor's assignee or the assignee's agent) within 30 days of the effective date of the termination of the lease.

(g) Relief to lessor

Upon application by the lessor to a court before the termination date provided in the written notice, relief granted by this section to a servicemember may be modified as justice and equity require.

(h) Penalties

(1) Misdemeanor

Any person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a servicemember or a servicemember's dependent who lawfully terminates a lease covered by this section, or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies

The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any award for consequential or punitive damages.

(i) Definitions

(1) Military orders

The term "military orders", with respect to a servicemember, means official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status.

(2) CONUS

The term "continental United States" means the 48 contiguous States and the District of Columbia.

§ 536. Protection of life insurance policy

(a) Assignment of policy protected

If a life insurance policy on the life of a servicemember is assigned before military service to secure the payment of an obligation, the assignee of the policy (except the insurer in connection with a policy loan) may not exercise, during a period of military service of the servicemember or within one year thereafter, any right or option obtained under the assignment without a court order.

(b) Exception

The prohibition in subsection (a) shall not apply--

(1) if the assignee has the written consent of the insured made during the period described in subsection (a);

(2) when the premiums on the policy are due and unpaid; or

(3) upon the death of the insured.

(c) Order refused because of material affect

A court which receives an application for an order required under subsection (a) may refuse to grant such order if the court determines the ability of the servicemember to comply with the terms of the obligation is materially affected by military service.

(d) Treatment of guaranteed premiums

For purposes of this subsection, premiums guaranteed under the provisions of title IV of this Act shall not be considered due and unpaid.

(e) Penalties

(1) Misdemeanor

A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies

The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any consequential or punitive damages.

§ 537. Enforcement of storage liens

(a) Liens

(1) Limitation on foreclosure or enforcement

A person holding a lien on the property or effects of a servicemember may not, during any period of military service of the servicemember and for 90 days thereafter, foreclose or enforce any lien on such property or effects without a court order granted before foreclosure or enforcement.

(2) Lien defined

For the purposes of paragraph (1), the term "lien" includes a lien for storage, repair, or cleaning of the property or effects of a servicemember or a lien on such property or effects for any other reason.

(b) Stay of proceedings

In a proceeding to foreclose or enforce a lien subject to this section, the court may on its own motion, and shall if requested by a servicemember whose ability to comply with the obligation resulting in the proceeding is materially affected by military service--

(1) stay the proceeding for a period of time as justice and equity require; or

(2) adjust the obligation to preserve the interests of all parties.

The provisions of this subsection do not affect the scope of section 303 [section 533 of this Appendix].

(c) Penalties

(1) Misdemeanor

A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as

provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies

The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any consequential or punitive damages.

§ 538. Extension of protections to dependents

Upon application to a court, a dependent of a servicemember is entitled to the protections of this title if the dependent's ability to comply with a lease, contract, bailment, or other obligation is materially affected by reason of the servicemember's military service.

§ 540. Omitted

§ 541. Definitions

For the purposes of this title [sections 541 to 549 of this Appendix]:

(1) Policy

The term "policy" means any individual contract for whole, endowment, universal, or term life insurance (other than group term life insurance coverage), including any benefit in the nature of such insurance arising out of membership in any fraternal or beneficial association which--

(A) provides that the insurer may not--

(i) decrease the amount of coverage or require the payment of an additional amount as premiums if the insured engages in military service (except increases in premiums in individual term insurance based upon age); or

(ii) limit or restrict coverage for any activity required by military service; and

(B) is in force not less than 180 days before the date of the insured's entry into military service and at the time of application under this title.

(2) Premium

The term "premium" means the amount specified in an insurance policy to be paid to keep the policy in force.

(3) Insured

The term "insured" means a servicemember whose life is insured under a policy.

(4) Insurer

The term "insurer" includes any firm, corporation, partnership, association, or business that is chartered or authorized to provide insurance and issue contracts or policies by the laws of a State or the United States.

§ 542. Insurance rights and protections

(a) Rights and protections

The rights and protections under this title [sections 541 to 549 of this Appendix] apply to the insured when--

(1) the insured,

(2) the insured's legal representative, or

(3) the insured's beneficiary in the case of an insured who is outside a State,

applies in writing for protection under this title [said sections], unless the Secretary of Veterans Affairs determines that the insured's policy is not entitled to protection under this title [said sections].

(b) Notification and application

The Secretary of Veterans Affairs shall notify the Secretary concerned of the procedures to be used to apply for the protections provided under this title [said sections]. The applicant shall send the original application to the insurer and a copy to the Secretary of Veterans Affairs.

(c) Limitation on amount

The total amount of life insurance coverage protection provided by this title [said sections] for a servicemember may not exceed \$250,000, or an amount equal to the Servicemember's Group Life Insurance maximum limit, whichever is greater, regardless of the number of policies submitted.

§ 543. Application for insurance protection

(a) Application procedure

An application for protection under this title [sections 541 to 549 of this Appendix] shall--

(1) be in writing and signed by the insured, the insured's legal representative, or the insured's beneficiary, as the case may be;

(2) identify the policy and the insurer; and

(3) include an acknowledgement that the insured's rights under the policy are subject to and modified by the provisions of this title [said sections].

(b) Additional requirements

The Secretary of Veterans Affairs may require additional information from the applicant, the insured and the insurer to determine if the policy is entitled to protection under this title [said sections].

(c) Notice to the Secretary by the insurer

Upon receipt of the application of the insured, the insurer shall furnish a report concerning the policy to the Secretary of Veterans Affairs as required by regulations prescribed by the Secretary.

(d) Policy modification

Upon application for protection under this title [sections 541 to 549 of this Appendix], the insured and the insurer shall have constructively agreed to any policy modification necessary to give this title [said sections] full force and effect.

§ 544. Policies entitled to protection and lapse of policies

(a) Determination

The Secretary of Veterans Affairs shall determine whether a policy is entitled to protection under this title [sections 541 to 549 of this Appendix] and shall notify the insured and the insurer of that determination.

(b) Lapse protection

A policy that the Secretary determines is entitled to protection under this title [said sections] shall not lapse or otherwise terminate or be forfeited for the nonpayment of a premium, or interest or indebtedness on a premium, after the date on which the application for protection is received by the Secretary.

(c) Time application

The protection provided by this title [said sections] applies during the insured's period of military service and for a period of two years thereafter.

§ 545. Policy restrictions

(a) Dividends

While a policy is protected under this title [sections 541 to 549 of this Appendix], a dividend or other monetary benefit under a policy may not be paid to an insured or used to purchase dividend additions without the approval of the Secretary of Veterans Affairs. If such approval is not obtained, the dividends or benefits shall be added to the value of the policy to be used as a credit when final settlement is made with the insurer.

(b) Specific restrictions

While a policy is protected under this title [sections 541 to 549 of this Appendix], cash value, loan value, withdrawal of dividend accumulation, unearned premiums, or other value of similar character may not be available to the insured without the approval of the Secretary. The right of the insured to change a beneficiary designation or select an optional settlement for a beneficiary shall not be affected by the provisions of this title [said sections].

§ 546. Deduction of unpaid premiums

(a) Settlement of proceeds

If a policy matures as a result of a servicemember's death or otherwise during the period of protection of the policy under this title [sections 541 to 549 of this Appendix], the insurer in making settlement shall deduct from the insurance proceeds the amount of the unpaid premiums guaranteed under this title [said sections], together with interest due at the rate fixed in the policy for policy loans.

(b) Interest rate

If the interest rate is not specifically fixed in the policy, the rate shall be the same as for policy loans in other policies issued by the insurer at the time the insured's policy was issued.

(c) Reporting requirement

The amount deducted under this section, if any, shall be reported by the insurer to the Secretary of Veterans Affairs.

§ 547. Premiums and interest guaranteed by United States

(a) Guarantee of premiums and interest by the United States

(1) Guarantee

Payment of premiums, and interest on premiums at the rate specified in section 406 [section 546 of this Appendix], which become due on a policy under the protection of this title [sections 541 to 549 of this Appendix] is guaranteed by the United States. If the amount guaranteed is not paid to the insurer before the period of insurance protection under this title [said sections] expires, the amount due shall be treated by the insurer as a policy loan on the policy.

(2) Policy termination

If, at the expiration of insurance protection under this title [sections 541 to 549 of this Appendix], the cash surrender value of a policy is less than the amount due to pay premiums and interest on premiums on the policy, the policy shall terminate. Upon such termination, the United States shall pay the insurer the difference between the amount due and the cash surrender value.

(b) Recovery from insured of amounts paid by the United States

(1) Debt payable to the United States

The amount paid by the United States to an insurer under this title [sections 541 to 549 of this Appendix] shall be a debt payable to the United States by the insured on whose policy payment was made.

(2) Collection

Such amount may be collected by the United States, either as an offset from any amount due the insured by the United States or as otherwise authorized by law.

(3) Debt not dischargeable in bankruptcy

Such debt payable to the United States is not dischargeable in bankruptcy proceedings.

(c) Crediting of amounts recovered

Any amounts received by the United States as repayment of debts incurred by an insured under this title [sections 541 to 549 of this Appendix] shall be credited to the appropriation for the payment of claims under this title [said sections].

§ 548. Regulations

The Secretary of Veterans Affairs shall prescribe regulations for the implementation of this title [sections 541 to 549 of this Appendix].

§ 549. Review of findings of fact and conclusions of law

The findings of fact and conclusions of law made by the Secretary of Veterans Affairs in administering this title [sections 541 to 549 of this Appendix] are subject to review on appeal to the Board of Veterans' Appeals pursuant to chapter 71 of title 38, United States Code, and to judicial review only as provided in chapter 72 of such title.

§§ 550 to 554. Omitted

§ 560. Omitted

§ 561. Taxes respecting personal property, money, credits, and real property

(a) Application

This section applies in any case in which a tax or assessment, whether general or special (other than a tax on personal income), falls due and remains unpaid before or during a period of military service with respect to a servicemember's--

(1) personal property (including motor vehicles); or

(2) real property occupied for dwelling, professional, business, or agricultural purposes by a servicemember or the servicemember's dependents or employees--

(A) before the servicemember's entry into military service; and

(B) during the time the tax or assessment remains unpaid.

(b) Sale of property

(1) Limitation on sale of property to enforce tax assessment

Property described in subsection (a) may not be sold to enforce the collection of such tax or assessment except by court order and upon the determination by the court that military service does not materially affect the servicemember's ability to pay the unpaid tax or assessment.

(2) Stay of court proceedings

A court may stay a proceeding to enforce the collection of such tax or assessment, or sale of such property, during a period of military service of the servicemember and for a period not more than 180 days after the termination of, or release of the servicemember from, military service.

(c) Redemption

When property described in subsection (a) is sold or forfeited to enforce the collection of a tax or assessment, a servicemember shall have the right to redeem or commence an action to redeem the servicemember's property during the period of military service or within 180 days after termination of or release from military service. This subsection may not be construed to shorten any period provided by the law of a State (including any political subdivision of a State) for redemption.

(d) Interest on tax or assessment

Whenever a servicemember does not pay a tax or assessment on property described in subsection (a) when due, the amount of the tax or assessment due and unpaid shall bear interest until paid at the rate of 6 percent per year. An additional penalty or interest shall not be incurred by reason of nonpayment. A lien for such unpaid tax or assessment may include interest under this subsection.

(e) Joint ownership application

This section applies to all forms of property described in subsection (a) owned individually by a servicemember or jointly by a servicemember and a dependent or dependents.

§ 562. Rights in public lands

(a) Rights not forfeited

The rights of a servicemember to lands owned or controlled by the United States, and initiated or acquired by the servicemember under the laws of the United States (including the mining and mineral leasing laws) before military service, shall not be forfeited or prejudiced as a result of being absent from the land, or by failing to begin or complete any work or improvements to the land, during the period of military service.

(b) Temporary suspension of permits or licenses

If a permittee or licensee under the Act of June 28, 1934 (43 U.S.C. 315 et seq.), enters military service, the permittee or licensee may suspend the permit or license for the period of military service and for 180 days after termination of or release from military service.

(c) Regulations

Regulations prescribed by the Secretary of the Interior shall provide for such suspension of permits and licenses and for the remission, reduction, or refund of grazing fees during the period of such suspension.

§ 563. Desert-land entries

(a) Desert-land rights not forfeited

A desert-land entry made or held under the desert-land laws before the entrance of the entryman or the entryman's successor in interest into military service shall not be subject to contest or cancellation--

- (1) for failure to expend any required amount per acre per year in improvements upon the claim;
- (2) for failure to effect the reclamation of the claim during the period the entryman or the entryman's successor in interest is in the military service, or for 180 days after termination of or release from military service; or
- (3) during any period of hospitalization or rehabilitation due to an injury or disability incurred in the line of duty.

The time within which the entryman or claimant is required to make such expenditures and effect reclamation of the land shall be exclusive of the time periods described in paragraphs (2) and (3).

(b) Service-related disability

If an entryman or claimant is honorably discharged and is unable to accomplish reclamation of, and payment for, desert land due to a disability incurred in the line of duty, the entryman or claimant may make proof without further reclamation or payments, under regulations prescribed by the Secretary of the Interior, and receive a patent for the land entered or claimed.

(c) Filing requirement

In order to obtain the protection of this section, the entryman or claimant shall, within 180 days after entry into military service, cause to be filed in the land office of the district where the claim is situated a notice communicating the fact of military service and the desire to hold the claim under this section.

§ 564. Mining claims

(a) Requirements suspended

The provisions of section 2324 of the Revised Statutes of the United States (30 U.S.C. 28) specified in subsection (b) shall not apply to a servicemember's claims or interests in claims, regularly located and

recorded, during a period of military service and 180 days thereafter, or during any period of hospitalization or rehabilitation due to injuries or disabilities incurred in the line of duty.

(b) Requirements

The provisions in section 2324 of the Revised Statutes [30 U.S.C.A. § 28] that shall not apply under subsection (a) are those which require that on each mining claim located after May 10, 1872, and until a patent has been issued for such claim, not less than \$100 worth of labor shall be performed or improvements made during each year.

(c) Period of protection from forfeiture

A mining claim or an interest in a claim owned by a servicemember that has been regularly located and recorded shall not be subject to forfeiture for nonperformance of annual assessments during the period of military service and for 180 days thereafter, or for any period of hospitalization or rehabilitation described in subsection (a).

(d) Filing requirement

In order to obtain the protections of this section, the claimant of a mining location shall, before the end of the assessment year in which military service is begun or within 60 days after the end of such assessment year, cause to be filed in the office where the location notice or certificate is recorded a notice communicating the fact of military service and the desire to hold the mining claim under this section.

§ 565. Mineral permits and leases

(a) Suspension during military service

A person holding a permit or lease on the public domain under the Federal mineral leasing laws who enters military service may suspend all operations under the permit or lease for the duration of military service and for 180 days thereafter. The term of the permit or lease shall not run during the period of suspension, nor shall any rental or royalties be charged against the permit or lease during the period of suspension.

(b) Notification

In order to obtain the protection of this section, the permittee or lessee shall, within 180 days after entry into military service, notify the Secretary of the Interior by registered mail of the fact that military

service has begun and of the desire to hold the claim under this section.

(c) Contract modification

This section shall not be construed to supersede the terms of any contract for operation of a permit or lease.

§ 566. Perfection or defense of rights

(a) Right to take action not affected

This title [sections 561 to 571 of this Appendix] shall not affect the right of a servicemember to take action during a period of military service that is authorized by law or regulations of the Department of the Interior, for the perfection, defense, or further assertion of rights initiated or acquired before entering military service.

(b) Affidavits and proofs

(1) In general

A servicemember during a period of military service may make any affidavit or submit any proof required by law, practice, or regulation of the Department of the Interior in connection with the entry, perfection, defense, or further assertion of rights initiated or acquired before entering military service before an officer authorized to provide notary services under section 1044a of title 10, United States Code, or any superior commissioned officer.

(2) Legal status of affidavits

Such affidavits shall be binding in law and subject to the same penalties as prescribed by section 1001 of title 18, United State Code.

§ 567. Distribution of information concerning benefits of title

(a) Distribution of information by Secretary concerned

The Secretary concerned shall issue to servicemembers information explaining the provisions of this title [sections 561 to 571 of this Appendix].

(b) Application forms

The Secretary concerned shall provide application forms to servicemembers requesting relief under this title [sections 561 to 571 of this Appendix].

(c) Information from Secretary of the Interior

The Secretary of the Interior shall furnish to the Secretary concerned information explaining the provisions of this title [sections 561 to 571 of this Appendix] (other than sections 501, 510, and 511 [sections 561, 570, and 571 of this Appendix]) and related application forms.

§ 568. Land rights of servicemembers

(a) No age limitations

Any servicemember under the age of 21 in military service shall be entitled to the same rights under the laws relating to lands owned or controlled by the United States, including mining and mineral leasing laws, as those servicemembers who are 21 years of age.

(b) Residency requirement

Any requirement related to the establishment of a residence within a limited time shall be suspended as to entry by a servicemember in military service until 180 days after termination of or release from military service.

(c) Entry applications

Applications for entry may be verified before a person authorized to administer oaths under section 1044a of title 10, United States Code, or under the laws of the State where the land is situated.

§ 569. Regulations

The Secretary of the Interior may issue regulations necessary to carry out this title [sections 561 to 571 of this Appendix] (other than sections 501, 510, and 511 [sections 561, 570, and 571 of this Appendix]).

§ 570. Income taxes

(a) Deferral of tax

Upon notice to the Internal Revenue Service or the tax authority of a State or a political subdivision of a State, the collection of income tax on the income of a servicemember falling due before or during military service shall be deferred for a period not more than 180 days after termination of or release from military service, if a servicemember's ability to pay such income tax is materially affected by military service.

(b) Accrual of interest or penalty

No interest or penalty shall accrue for the period of deferment by reason of nonpayment on any amount of tax deferred under this section.

(c) Statute of limitations

The running of a statute of limitations against the collection of tax deferred under this section, by seizure or otherwise, shall be suspended for the period of military service of the servicemember and for an additional period of 270 days thereafter.

(d) Application limitation

This section shall not apply to the tax imposed on employees by section 3101 of the Internal Revenue Code of 1986.

§ 571. Residence for tax purposes

(a) Residence or domicile

A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

(b) Military service compensation

Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

(c) Personal property

(1) Relief from personal property taxes

The personal property of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.

(2) Exception for property within member's domicile or residence

This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's domicile or residence.

(3) Exception for property used in trade or business

This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

(4) Relationship to law of State of domicile

Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

(d) Increase of tax liability

A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.

(e) Federal Indian reservations

An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.

(f) Definitions

For purposes of this section:

(1) Personal property

The term "personal property" means intangible and tangible property (including motor vehicles).

(2) Taxation

The term "taxation" includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.

(3) Tax jurisdiction

The term "tax jurisdiction" means a State or a political subdivision of a State.

§§ 572 to 574. Omitted

§ 580. Omitted

§ 581. Inappropriate use of Act

If a court determines, in any proceeding to enforce a civil right, that any interest, property, or contract has been transferred or acquired with the intent to delay the just enforcement of such right by taking advantage of this Act [sections 501 to 596 of this Appendix], the court shall enter such judgment or make such order as might lawfully be entered or made concerning such transfer or acquisition.

§ 582. Certificates of service; persons reported missing

(a) Prima facie evidence

In any proceeding under this Act [sections 501 to 596 of this Appendix], a certificate signed by the Secretary concerned is prima facie evidence as to any of the following facts stated in the certificate:

- (1) That a person named is, is not, has been, or has not been in military service.
- (2) The time and the place the person entered military service.
- (3) The person's residence at the time the person entered military service.
- (4) The rank, branch, and unit of military service of the person upon entry.
- (5) The inclusive dates of the person's military service.
- (6) The monthly pay received by the person at the date of the certificate's issuance.
- (7) The time and place of the person's termination of or release from military service, or the person's death during military service.

(b) Certificates

The Secretary concerned shall furnish a certificate under subsection (a) upon receipt of an application for such a certificate. A certificate appearing to be signed by the Secretary concerned is prima facie evidence of its contents and of the signer's authority to issue it.

(c) Treatment of servicemembers in missing status

A servicemember who has been reported missing is presumed to continue in service until accounted for. A requirement under this Act [sections 501 to 596 of this Appendix] that begins or ends with the death of a servicemember does not begin or end until the servicemember's death is reported to, or determined by, the Secretary concerned or by a court of competent jurisdiction.

§ 583. Interlocutory orders

An interlocutory order issued by a court under this Act [sections 501 to 596 of this Appendix] may be revoked, modified, or extended by that court upon its own motion or otherwise, upon notification to affected parties as required by the court.

§ 584. Omitted

§ 585. Omitted

§ 590. Omitted

§ 591. Anticipatory relief

(a) Application for relief

A servicemember may, during military service or within 180 days of termination of or release from military service, apply to a court for relief--

- (1) from any obligation or liability incurred by the servicemember before the servicemember's military service; or
- (2) from a tax or assessment falling due before or during the servicemember's military service.

(b) Tax liability or assessment

In a case covered by subsection (a), the court may, if the ability of the servicemember to comply with the terms of such obligation or liability or pay such tax or assessment has been materially affected by reason of military service, after appropriate notice and hearing, grant the following relief:

(1) Stay of enforcement of real estate contracts

(A) In the case of an obligation payable in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, the court may grant a stay of the enforcement of the obligation--

- (i) during the servicemember's period of military service; and
- (ii) from the date of termination of or release from military service, or from the date of application if made after termination of or release from military service.

(B) Any stay under this paragraph shall be--

- (i) for a period equal to the remaining life of the installment contract or other instrument, plus a period of time equal to the period of military service of the servicemember, or any part of such combined period; and
- (ii) subject to payment of the balance of the principal and accumulated interest due and unpaid at the date of termination or release from the applicant's military

service or from the date of application in equal installments during the combined period at the rate of interest on the unpaid balance prescribed in the contract or other instrument evidencing the obligation, and subject to other terms as may be equitable.

(2) Stay of enforcement of other contracts

(A) In the case of any other obligation, liability, tax, or assessment, the court may grant a stay of enforcement--

- (i) during the servicemember's military service; and
- (ii) from the date of termination of or release from military service, or from the date of application if made after termination or release from military service.

(B) Any stay under this paragraph shall be--

- (i) for a period of time equal to the period of the servicemember's military service or any part of such period; and
- (ii) subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination or release from military service, or the date of application, in equal periodic installments during this extended period at the rate of interest as may be prescribed for this obligation, liability, tax, or assessment, if paid when due, and subject to other terms as may be equitable.

(c) Affect of stay on fine or penalty

When a court grants a stay under this section, a fine or penalty shall not accrue on the obligation, liability, tax, or assessment for the period of compliance with the terms and conditions of the stay.

§ 592. Power of attorney

(a) Automatic extension

A power of attorney of a servicemember shall be automatically extended for the period the servicemember is in a missing status (as defined in section 551(2) of title 37, United States Code) if the power of attorney--

(1) was duly executed by the servicemember--

- (A) while in military service; or
- (B) before entry into military service but after the servicemember--
 - (i) received a call or order to report for military service; or
 - (ii) was notified by an official of the Department of Defense that the person could receive a call or order to report for military service;

- (2) designates the servicemember's spouse, parent, or other named relative as the servicemember's attorney in fact for certain, specified, or all purposes; and
(3) expires by its terms after the servicemember entered a missing status.

(b) Limitation on power of attorney extension

A power of attorney executed by a servicemember may not be extended under subsection (a) if the document by its terms clearly indicates that the power granted expires on the date specified even though the servicemember, after the date of execution of the document, enters a missing status.

§ 593. Professional liability protection

(a) Applicability

This section applies to a servicemember who--

(1) after July 31, 1990, is ordered to active duty (other than for training) pursuant to sections 688, 12301(a), 12301(g), 12302, 12304, 12306, or 12307 of title 10, United States Code, or who is ordered to active duty under section 12301(d) of such title during a period when members are on active duty pursuant to any of the preceding sections; and

(2) immediately before receiving the order to active duty--

(A) was engaged in the furnishing of health-care or legal services or other services determined by the Secretary of Defense to be professional services; and

(B) had in effect a professional liability insurance policy that does not continue to cover claims filed with respect to the servicemember during the period of the servicemember's active duty unless the premiums are paid for such coverage for such period.

(b) Suspension of coverage

(1) Suspension

Coverage of a servicemember referred to in subsection (a) by a professional liability insurance policy shall be suspended by the insurance carrier in accordance with this subsection upon receipt of a written request from the servicemember by the insurance carrier.

(2) Premiums for suspended contracts

A professional liability insurance carrier--

(A) may not require that premiums be paid by or on behalf of a servicemember for any professional liability insurance coverage suspended pursuant to paragraph (1); and

(B) shall refund any amount paid for coverage for the period of such suspension or, upon the election of such servicemember, apply such amount for the payment of any premium becoming due upon the reinstatement of such coverage.

(3) Nonliability of carrier during suspension

A professional liability insurance carrier shall not be liable with respect to any claim that is based on professional conduct (including any failure to take any action in a professional capacity) of a servicemember that occurs during a period of suspension of that servicemember's professional liability insurance under this subsection.

(4) Certain claims considered to arise before suspension

For the purposes of paragraph (3), a claim based upon the failure of a professional to make adequate provision for a patient, client, or other person to receive professional services or other assistance during the period of the professional's active duty service shall be considered to be based on an action or failure to take action before the beginning of the period of the suspension of professional liability insurance under this subsection, except in a case in which professional services were provided after the date of the beginning of such period.

(c) Reinstatement of coverage

(1) Reinstatement required

Professional liability insurance coverage suspended in the case of any servicemember pursuant to subsection (b) shall be reinstated by the insurance carrier on the date on which that servicemember transmits to the insurance carrier a written request for reinstatement.

(2) Time and premium for reinstatement

The request of a servicemember for reinstatement shall be effective only if the servicemember transmits the request to the insurance carrier within 30 days after the date on which the servicemember is released from active duty. The insurance carrier shall notify the servicemember of the due date for payment of the premium of such insurance. Such premium shall be paid by the servicemember within 30 days after receipt of that notice.

(3) Period of reinstated coverage

The period for which professional liability insurance coverage shall be reinstated for a servicemember under this subsection may not be less than the balance of the period for which coverage would have continued under the insurance policy if the coverage had not been suspended.

(d) Increase in premium

(1) Limitation on premium increases

An insurance carrier may not increase the amount of the premium charged for professional liability insurance coverage of any servicemember for the minimum period of the reinstatement of such coverage required under subsection (c)(3) to an amount greater than the amount chargeable for such coverage for such period before the suspension.

(2) Exception

Paragraph (1) does not prevent an increase in premium to the extent of any general increase in the premiums charged by that carrier for the same professional liability coverage for persons similarly covered by such insurance during the period of the suspension.

(e) Continuation of coverage of unaffected persons

This section does not--

- (1) require a suspension of professional liability insurance protection for any person who is not a person referred to in subsection (a) and who is covered by the same professional liability insurance as a person referred to in such subsection; or
- (2) relieve any person of the obligation to pay premiums for the coverage not required to be suspended.

(f) Stay of civil or administrative actions

(1) Stay of actions

A civil or administrative action for damages on the basis of the alleged professional negligence or other professional liability of a servicemember whose professional liability insurance coverage has been suspended under subsection (b) shall be stayed until the end of the period of the suspension if--

- (A) the action was commenced during the period of the suspension;
- (B) the action is based on an act or omission that occurred before the date on which the suspension became effective; and

(C) the suspended professional liability insurance would, except for the suspension, on its face cover the alleged professional negligence or other professional liability negligence or other professional liability of the servicemember.

(2) Date of commencement of action

Whenever a civil or administrative action for damages is stayed under paragraph (1) in the case of any servicemember, the action shall have been deemed to have been filed on the date on which the professional liability insurance coverage of the servicemember is reinstated under subsection (c).

(g) Effect of suspension upon limitations period

In the case of a civil or administrative action for which a stay could have been granted under subsection (f) by reason of the suspension of professional liability insurance coverage of the defendant under this section, the period of the suspension of the coverage shall be excluded from the computation of any statutory period of limitation on the commencement of such action.

(h) Death during period of suspension

If a servicemember whose professional liability insurance coverage is suspended under subsection (b) dies during the period of the suspension--

- (1) the requirement for the grant or continuance of a stay in any civil or administrative action against such servicemember under subsection (f)(1) shall terminate on the date of the death of such servicemember; and
- (2) the carrier of the professional liability insurance so suspended shall be liable for any claim for damages for professional negligence or other professional liability of the deceased servicemember in the same manner and to the same extent as such carrier would be liable if the servicemember had died while covered by such insurance but before the claim was filed.

(i) Definitions

For purposes of this section:

(1) Active duty

The term "active duty" has the meaning given that term in section 101(d)(1) of title 10, United States Code.

(2) Profession

The term "profession" includes occupation.

(3) Professional

The term "professional" includes occupational.

§ 594. Health insurance reinstatement

(a) Reinstatement of health insurance

A servicemember who, by reason of military service as defined in section 703(a)(1) [section 593(a)(1) of this Appendix], is entitled to the rights and protections of this Act [sections 501 to 596 of this Appendix] shall also be entitled upon termination or release from such service to reinstatement of any health insurance that--

- (1) was in effect on the day before such service commenced; and
- (2) was terminated effective on a date during the period of such service.

(b) No exclusion or waiting period

The reinstatement of health care insurance coverage for the health or physical condition of a servicemember described in subsection (a), or any other person who is covered by the insurance by reason of the coverage of the servicemember, shall not be subject to an exclusion or a waiting period, if--

- (1) the condition arose before or during the period of such service;
- (2) an exclusion or a waiting period would not have been imposed for the condition during the period of coverage; and
- (3) if the condition relates to the servicemember, the condition has not been determined by the Secretary of Veterans Affairs to be a disability incurred or aggravated in the line of duty (within the meaning of section 105 of title 38, United States Code).

(c) Exceptions

Subsection (a) does not apply to a servicemember entitled to participate in employer-offered insurance benefits pursuant to the provisions of chapter 43 of title 38, United States Code.

(d) Time for applying for reinstatement

An application under this section must be filed not later than 120 days after the date of the termination of or release from military service.

§ 595. Guarantee of residency for military personnel

For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence--

- (1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;
- (2) be deemed to have acquired a residence or domicile in any other State; or
- (3) be deemed to have become a resident in or a resident of any other State.

§ 596. Business or trade obligations

(a) Availability of non-business assets to satisfy obligations

If the trade or business (without regard to the form in which such trade or business is carried out) of a servicemember has an obligation or liability for which the servicemember is personally liable, the assets of the servicemember not held in connection with the trade or business may not be available for satisfaction of the obligation or liability during the servicemember's military service.

(b) Relief to obligors

Upon application to a court by the holder of an obligation or liability covered by this section, relief granted by this section to a servicemember may be modified as justice and equity require.

Current through P.L. 109-15, approved 06-17-05

APPENDIX K

SAMPLE MOTION AND ORDER TO OBTAIN MILITARY PAY RECORDS
OR MILITARY PERSONNEL RECORDS, ETC.

Style of Case

MOTION FOR PRODUCTION OF MILITARY PAY RECORDS

Comes now Movant/Petitioner/Plaintiff/Respondent/Defendant [**name of party**], and moves this court for an order to obtain the military pay records of [**name of respondent party**], and shows as follows:

[Plead facts that justify obtaining records from Defense Finance and Accounting Service or other military agency, such as:]

1. On [date], Movant sent its Requests for Production to Respondent in which was a request for him/her to produce his/her military pay records, but the requested records were not produced, reportedly not in the possession of Respondent. Respondent refuses to provide Movant with a signed authorization to allow Movant to obtain the records directly from the Defense Finance and Accounting Service (DFAS), citing privacy issues.
2. Movant has a necessity to determine so the Court can [divide/partition the military retirement and/or retired pay entitlement of Respondent][determine the various military pay and allowance entitlements due and/or received by Respondent][determine the special pays/allowances and/or special bonuses paid to and/or received by Respondent] for the time period [give period].
3. It will be necessary for Respondent to be identified in the Court's order by name, rank and social security number in order for the DFAS to promptly comply with the order to produce the requested records. In this regard, the order should identify Respondent as: BM3 Joe Sailor, SSN 123-45-6789.
4. In order for Movant to determine and calculate the community property portion of Respondent's military retirement/retired pay entitlement, he/she needs to have the following documents: Respondent's [Retiree Account Statements for the period [state inclusive years], usually only one per calendar year] [Leave and Earnings Statements for the period [state inclusive months/years]].
5. The requested records are, or should be, available through the DFAS, Attention: Garnishment Operations, P.O. Box 998002, Cleveland, OH 44199-8002, but the DFAS will not produce the necessary documents without an order signed by this Court ordering the production of the records.

Wherefore Movant prays this Court enter an order requiring the DFAS to produce the above requested records.

Respectfully submitted,

HIGDON, HARDY & ZUFLACHT, L.L.P.
12000 Huebner Road, Suite 200
San Antonio, Texas 78230-1210
Telephone: (210) 349-9933
Telecopier: (210) 349-9988
Email: jnhigdon@hhzlaw.com

By: _____

JAMES N. HIGDON
TSB#09590500
ATTORNEYS FOR JANE SAILOR

ORDER FOR PRODUCTION OF MILITARY PAY RECORDS

On August 16, 2006, came on for hearing Movant's Motion for Production of Military Pay Records.

All parties appeared by and through their attorneys of record.

The Court finds that it has jurisdiction over the subject matter and the parties.

_____, Official Certified Shorthand Reporter of the ___ District Court of _____ County, Texas made a record of the proceedings. [OR A record of the proceedings was waived by the parties with the consent of the Court.]

The Court, having heard the evidence and argument of counsel, finds that the Motion for Production of Military Pay Records should be in all things granted.

IT IS THEREFORE ORDERED AND DECREED that the Defense Finance and Accounting Service, Attention: Garnishment Operations, P.O. Box 998002, Cleveland, OH 44199-8002, is ordered to produce the following records of

BM3 Joe Sailor, SSN 123-45-6789:

1. All [Retiree Account Statements for the period [state inclusive years]]
2. All [Leave and Earnings Statements for the period [state inclusive months/years]].
3. All [Special pays/allowances and/or special bonuses paid to and/or received by Joe Sailor] for the time period [give period].

IT IS FURTHER ORDERED that the specified documents shall be sent to James N. Higdon, Attorney for Jane Sailor, at 12000 Huebner Road, Suite 200, San Antonio, Texas 78230-1210, with a copy produced and sent to Joe Sailor's attorney, [*name and address*], simultaneously.

Signed on August 16, 2006.

Judge Presiding

APPROVED AS TO FORM ONLY:

HIGDON, HARDY & ZUFLACHT, L.L.P.
12000 Huebner Road, Suite 200
San Antonio, Texas 78230-1210
Telephone: (210) 349-9933
Telecopier: (210) 349-9988
Email: jnhigdon@hhzlaw.com

By: _____
JAMES N. HIGDON
TSB#09590500
ATTORNEYS FOR JANE SAILOR

[Other Attorney's Name and address, etc.]

DEPARTMENT OF DEFENSE
Requests For Military Mailing Addresses

Responsibility for military personnel records falls within the jurisdiction of the military departments, not the Office of the Secretary of Defense. Therefore, requests for military addresses should be sent to the respective service of the individual whose address is being sought. There is no comprehensive source for e-mail addresses. Even if there were, military regulations and the Privacy Act of 1974 do not permit the military departments to provide home addresses or telephone numbers of service personnel. Moreover, regulations do not permit random dissemination of listings of names and addresses of service personnel. These regulations have been established to protect individual service men and women from commercial exploitation and to respect their right of privacy. Because of the large volume of requests that each service locator receives, please allow four weeks processing time for written requests.

Specific information

The following information is needed for all requests for all locator services:

- Give as much identifying information as possible about the person you wish to locate such as full name, rank, last duty assignment/last known military address, service number, and Social Security number.
- The locator service is free to immediate family members and government officials. Other family members, civilian friends, businesses and others must pay \$3.50. The check or money order must be made out to the U.S. Treasury. It is not refundable.

United States Army

The Army will help you locate individuals on active duty only. Mail your request to:

Commander
U.S. Army Enlisted Records & Evaluation Center
ATTN: Locator
8899 East 56th Street
Fort Benjamin Harrison, IN 46249-5301
1-866-771-6357

United States Navy

The Navy's locator service helps locate individuals on active duty and those whose service ended less than a year ago. In addition, the Navy will forward letters as long as the correct postage is affixed to the envelope. You can call the locator service at 1-901-874-3388. Unless you are active military, local or federal government, or a family member, the fee for researching an address is \$3.50 per address. Fees are retained in cases resulting in an unsuccessful search or for unreleasable addresses. Mail your correspondence with your fee, check or money order payable to UNITED STATES TREASURER, to the following address:

World Wide Locator
Bureau of Naval Personnel
PERS 312F

5720 Integrity Drive
Millington, TN 38055-3120

There is also some related information in the Navy "Frequently Asked Questions" section.

United States Marine Corps

The Marine Corps can provide the duty station for active duty personnel and reservists. For retired individuals, the locator service can provide the city and state, but not an address. The service will provide the service member's current rank and unit address; however, due to the locator's staffing, the office cannot forward mail except in special cases. Telephonic requests to 1-703-640-3942/43 are free of charge to immediate family members and government officials calling on official business. In addition, telephonic service will be provided at no cost to any individual, business or organization, if the Marine locator decides the information would benefit the individual. Send written locator requests to:

Commandant of the Marine Corps
Headquarters, USMC
Code MMSB-10
Quantico, VA 22134-5030

United States Air Force

The Air Force can locate active duty personnel, as well as retirees, reservists and guardsmen. This information is not available for those who have separated from the Air Force or are Army Air Corps retirees. Information on individuals stationed overseas or in a sensitive position will not be released. However, the locator service will forward mail to that person for up to 90 days, as long as the correct postage is on the envelope and any required fee has been paid. Parents, spouses, and government officials may call 1-210-652-5774 for a recorded message or 1-210-652-5775 for non-recorded service. For locator service write to:

HQ AFMPC/RMIQL
550 C Street, West, Suite 50
Randolph AFB, TX 78150-4752

From the websites of the various services, you will find the following locator information:

Army Worldwide Locator Site

SOLDIERS and Army civilians can now find their friends, former coworkers and even family members with the touch of a keyboard.

The Enlisted Records and Evaluation Center recently made the Worldwide Locator available to locate any soldier in the active-duty Army via the Internet.

The address for the site is <http://wwl.erec.army.mil>. Usage is limited to those on a .mil or .gov domain.

The site is easy to use. By typing in the first name, last name and a Social Security number of a soldier, the site will provide the address of the unit where the particular soldier is assigned.

Even if a social security number isn't known, a soldier may be located by typing in his or her name. If it happens to be a common name -- like John Smith -- the locator will list all those known soldiers by rank and military occupational specialty.

**Navy World Wide Locator
(PERS-312E2)**

1-866-827-5672
Fax: (901) 874-2000
Fax DSN: 882-2000

The Navy World Wide Locator helps locate individuals on active duty and those who have been recently discharged. The Navy also has a current address for retired Navy service members. Some addresses are protected under the provisions of the Privacy Act and cannot be released. Mail can be forwarded in those cases. You can call the locator service toll free at 1-866-827-5672 or commercial 1-901-874-3388, DSN 882-3388. Unless you are calling on official business or a family member, the fee for researching an address is \$3.50 per address made payable by check or money order to the U.S. TREASURER. Fees are retained in cases resulting in an unsuccessful search. Mail your correspondence with your fee to:

Navy World Wide Locator
Navy Personnel Command
PERS 312E2
5720 Integrity Drive
Millington, TN 38055-3120

If you are looking for active duty personnel, you might also try the [Navy/Marine Corps White Pages Directory](#). Additional locator services may be found at <http://www.nic.mil/dodnic/milloc.html>.

A lot of interesting information about the history and customs, as well as many other items of interest, can be found at the [Naval Historical Center](#). You can find information on items such as deck logs, muster rolls, and Navy casualty files from World War II at the Naval Historical Center link for Frequently Asked Questions (FAQs). This link also contains information on finding retired military personnel and arranging military reunions.

There is some additional help available from other than official sources. If you are looking for retired personnel, you might try a web site called [NAVetsUSA](#).

Air Force World Wide Locator

The AF World Wide Locator handles official and unofficial requests to locate Air Force Personnel. Official requests are defined as requests received from any government agency and the Department of Defense (DoD). All other requests are considered unofficial in nature.

The AF World Wide Locator only has location information on individuals who are currently receiving compensation from the USAF (Active Duty, Guard, Reserve, Retired, and Civil Service Personnel). If the individual has separated from the AF, no information is available.

LOCATION/MAILING ADDRESS:

HQ AFPC/DPDXIDL
550 C St West Ste 50
Randolph AFB, TX 78150-4752

CUSTOMER SERVICE HOURS:

Monday-Friday (except Federal Holidays)
7:30 am - 4:30 pm (Central Standard Time)

COMMERCIAL: (210) 565-2660
MILITARY TO MILITARY: (DSN) 665-2660

REQUIRED INFORMATION:

- The following information is required to make a positive identification:
- Full name to include a middle initial, rank (officer/enlisted/GS)
- Social Security Number or Air Force serial number
- Date of birth or an Air Force duty history including the place, month and year of assignments after June 1970
- No assignment information is available prior to June 1970.

UNOFFICIAL REQUESTS:

- All unofficial requests must be in writing and fees may not be applicable.
- Your request should state who you are looking for, your name, address and telephone number. Put this information in an unsealed envelope with a return address, proper postage affixed and the individual's name in the addressee portion of the envelope. Place this envelope in a larger envelope with your check or money order for \$3.50 made payable to DAO-DE RAFB and mail to the Locator address given above. Your request constitutes consent to release of this information to the member.

FEES:

- A fee of \$3.50, per individual request, is required from all personnel or businesses requesting addresses on military personnel. Requests must be in writing.
- The World Wide Locator also provides a "Statement or Verification of Service". This applies to Active Duty Air Force personnel only. A fee of \$5.20, per individual written request, is required.
- Checks or money orders must be made payable to **DAO-DE RAFB**.

U.S. Coast Guard Personnel World Wide Locator

Active Duty Member Information

The Coast Guard World Wide Locator has duty stations for active duty personnel.

To locate Active Duty Personnel Only: The telephone number is (202) 493-1697 or

Send us an e-mail with the person's full name to CGlocator@Ballston.uscg.mil.

Coast Guard Personnel Command does not have custody of crew lists or current addresses for former Coast Guard service members.

Separated Member Information

The Military Reference Branch, National Archives, Washington, D. C. 20408, holds copies of most deck logs. The Suitland Reference Branch, National Archives, Washington D. C. 20409 has custody of muster rolls.

The National Personal Records Center in St. Louis, Missouri has a repository of records for retired and separate military members.

You will need to fill-in Standard Form 180 to request military records information (<http://www.archives.gov/st-louis/military-personnel/standard-form-180.html>).

The address is:

National Personnel Records Center
Military Personnel Records
9700 Page Ave
St. Louis, Missouri 63132

Individuals have also had success locating former and retired military personnel by placing advertisements or reunion notices in Coast Guard periodicals. These magazines have a combined circulation of several hundred thousand. Please contact the individual editors for assistance.

Marine Corps Locator

Active Duty Marines

To locate active duty Marines, you can contact the Marine Corps World Wide Locator*:

Address:

HEADQUARTERS U S MARINE CORPS
PERSONNEL MANAGEMENT SUPPORT BRANCH (MMSB-17)
2008 ELLIOT ROAD
QUANTICO, VA 22134-5030

Hours of operation: Monday-Friday, 8 a.m. to 4 p.m.

Phone number: (703) 784-3941 / 3942 / 3943.

**Information provided by PERSONNEL MANAGEMENT SUPPORT BRANCH*

- To locate Marines, a Social Security Number may be required.
- Base locators are also available at all major USMC commands.
- News media attempting to locate a Marine should contact the Marine's base Public Affairs Office.

Note: The appearance of these hyperlinks does not constitute endorsement by the Marine Corps. The Marine Corps does not exercise any editorial control over the information you may find at these locations. The purpose of providing the links below is to help find a Marine (active, retired, former). The HQMC Worldwide locator listed above can only help locate active duty Marines.

[Military.com](#)

[MilitaryConnections.com](#)

[SubicbayMarines.com](#)

[TheFew.com](#)

[Third Marines Locator Website](#)

[VetFriends.com](#)

The foregoing Service Branch websites are official government websites. The following, in addition to the sites listed for the Marines above, are “public” or “commercial” websites:

[www.militarysearch.us](#) – This site is owned and run by Randy S. Forschner, President of CommercialCreditor.com. He reports in an email to me about his company’s search and locator services as follows:

“Most everything you need to know about our service is right on the website. We provide our service to law firms and active duty individuals. We are a National company which offers this specialized service as well as others at a sister site <http://www.militarysearch.us> .

“Although the information provided is FIOA, the mechanism we have put in place, ensures that the documents are proper, presentable and will be accepted by any court in the country. We also enforce "Due Diligence and inspect all orders. we reserve the right to refuse orders as we see fit and refer "speculative" requests as well as intrusions to FBI New York.

“Additionally, beyond quality control, we have a long term established relationship with members of the DOD and our clients enjoy a "we're here to serve you" attitude.

“The cost of the basic MSA is \$7.50, and you must provide a SSN(for exact match) or Date of Birth. An MSA Plus is \$57.50, if you have no identifying information.”

Other locator services that can be accessed and/or direct you to the above listed Service Branch Locator sites can be found by “googling” “worldwide locator.” Some of those are:

<http://www.spiesonline.net/military.shtml>

http://www.militarypartners.com/Links/Armed_Forces/Reserves/Locator.asp

<http://usmilitary.about.com/cs/locatorservices/ht/locateaf.htm>

<http://www.angelica.dds.nl/findsoldiers.htm>

<http://www.globemaster.de/faq/locator.html>

<http://canberra.usembassy.gov/dao/veterans-affairs.html>

The author makes no representation as to the quality of any of the services provided by any of the aforementioned sites.

APPENDIX L

**SUBPOENA TO COMPEL PRODUCTION
OF MILITARY RECORDS**

Issued in the Name of the State of Texas

You, Custodian of Records for Texas Army National Guard, Camp Mabry, Austin, Texas are hereby commanded to appear at Higdon, Hardy & Zuflacht, L.L.P., 12000 Huebner Road, Suite 200, San Antonio, Texas, on or before five days after the receipt of this notice and produce at that time and place the following documents or tangible things in your possession, custody, or control relating to the cases entitled—

[name of party] V. [name of party]; Cause No. _____; in the [court] Judicial District Court, Bexar County, Texas:

Any and all documents relating to the duty status of [name of party], including but not limited to, pay records, records of individual duty training days, paid or unpaid, performed by him, travel reimbursement vouchers/records and any other records related to [name of party]'s service as a member of the Texas Army National Guard and/or Army Reserve for which he either applied for and/or was awarded and/or received retirement point credit during the time period [date] through [date].

[name of party]
SSN: xxx-xx-xxxx

This subpoena is issued at the instance of [name of party], Movant in the above-referenced case, by and through her attorney of record, [name of attorney].

FAILURE OF ANY PERSON WITHOUT ADEQUATE EXCUSE TO OBEY A SUBPOENA SERVED ON THAT PERSON MAY BE DEEMED A CONTEMPT OF THE COURT FROM WHICH THE SUBPOENA IS ISSUED OR A DISTRICT COURT IN THE COUNTY IN WHICH THE SUBPOENA IS SERVED, AND MAY BE PUNISHED BY FINE, OR CONFINEMENT, OR BOTH.

This subpoena is issued _____ by:

JUDGE PRESIDING

APPROVED AS TO FORM:

HIGDON, HARDY & ZUFLACHT, L.L.P.

12000 Huebner Road, Suite 200
San Antonio, Texas 78230-1210
Telephone: (210) 349-9933
Telecopier: (210) 349-9988
Email: jnhigdon@hhzlaw.com

By: _____

JAMES N. HIGDON
TSB#09590500

ATTORNEYS FOR [name of party]

Proof of Service

I, Custodian of Records for Texas Army National Guard, Camp Mabry, Austin, Texas accept service of the attached subpoena and will appear at the time and place directed in the subpoena.

Date: _____.

(Signature of witness)

I, _____, am over the age of eighteen years. I am not a party in the above-entitled and -numbered cause of action. On _____, 2007, I served a subpoena, of which this is a true and correct copy, on Custodian of Records for Texas Army National Guard, Camp Mabry, Austin, Texas by facsimile transmission in the above numbered and styled case in accordance with the Texas Rules of Civil Procedure.

Date: _____.

(Signature of person serving subpoena)

APPENDIX M

SAMPLE INTEREST RATE REDUCTION NOTICE LETTER

BM3 Joe Sailor, SSN 123-45-6789 .
USS Dreadnaught, DDG-567
FPO xxxxx

[date]

Name of Creditor/Lessor
Address for notice
City, State, Zip

Re: Interest rate reduction request

TO WHOM IT MAY CONCERN:

I am in receipt of orders recalling me to active duty effective [date]. A copy my orders are enclosed herewith.

Pursuant to the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. Appx. §501 et seq., and, in particular, §527, please consider this notice that I am requesting that the interest rate provided in my [credit card account/motor vehicle lease/home improvement loan/mortgage on my home located at ____/ etc.] be reduced to six percent (6%) per annum in accordance with §527.

It is my understanding that pursuant to §527 of the SCRA, you are to reduce my payment effective the date of the next payment and refund, pro rata, any overpayments of interest effective as of the date of my orders require me to report for duty, that is, [date].

Sincerely,

[signature of servicemember]
Printed Name of Servicemember

Enclosure – copy of military orders

APPENDIX N

SAMPLE LEASE TERMINATION LETTER

BM3 Joe Sailor, SSN 123-45-6789
USS Dreadnaught, DDG-567
FPO xxxxx

[date]

Name of Creditor/Lessor
Address for notice
City, State, Zip

Re: Cancellation/Termination of _____ lease

TO WHOM IT MAY CONCERN:

I am in receipt of orders recalling me to active duty for service aboard ship that is homeported in Norfolk, VA. Pursuant to the orders, a copy of which are enclosed herewith, I am being relocated to the State of Virginia effective [date].

Pursuant to the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. Appx. §501 et seq., and, in particular, §535, please consider this notice that I am terminating my lease of

apartment #___ located at [address], San Antonio, Bexar County, Texas 78230.
the home located at [address], San Antonio, Bexar County, Texas 78230.
The Chevorlet Suburban VIN _____, Texas License Number _____.

The effective date of my lease termination is [date]. [for the vehicle termination, continue: Unless otherwise directed by you or your representative, I intend to return possession of the Suburban to you by delivering it to Ancira Chevrolet, ___ San Pedro, San Antonio, Texas within 15 days of the date of this letter in accordance with §535 of the SCRA.]

To the extent that I owe you any additional lawful charges pursuant to the SCRA, I am prepared to pay them upon notification of the particulars of the charges by addressing the letter to me as follows: [name, address, etc.].

To the extent that I am due any pro rata refund of my rent/lease payment as well as the refund of my security deposit, please send these funds to me at [address].

Sincerely,

[signature of servicemember]
Printed Name of Servicemember

Enclosure – copy of military orders

IT'S INEVITABLE . . .

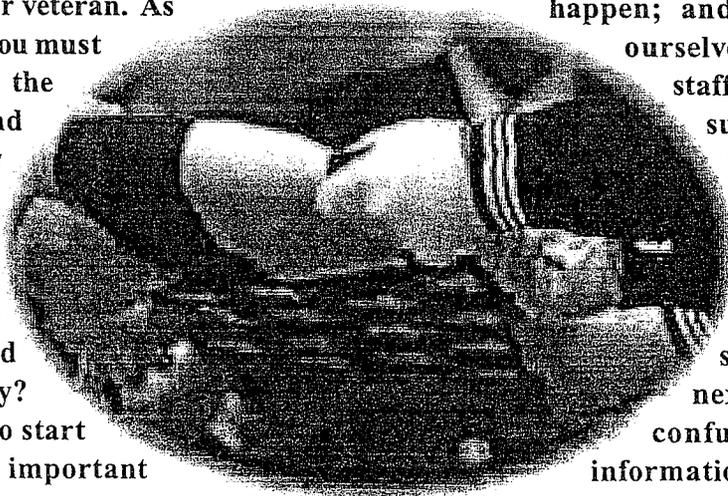
Have You Prepared Properly?

By Tom McAtee

This article provides updated, researched information regarding planning for your own demise and actions to be taken upon the death of a retiree or veteran. As the retiree or veteran, you must look squarely into the mirror and understand that no matter how depressing it may be, your demise is a reality. How much unfinished business do you want to load onto a grieving family?

It is never too early to start planning, gathering important documents, writing down your personal instructions, and talking to those family members who will be the decision-makers regarding your affairs once you have passed away.

And for the families, we understand that the loss of a loved one is not an easy or light subject. However, bad things will continue to happen; and we must prepare ourselves. The Association staff continually assists surviving spouses or family members of members who have passed away. In these difficult times, the last thing a surviving spouse or next of kin needs is confusing or conflicting information about benefits/entitlements. Survivor assistance is one of the Association's most needed and important benefits, and we are dedicated to providing accurate advice.



DEATH IS A REALITY BUT INCAPACITATION IS A POSSIBILITY

In your planning, don't forget about the possibility that you could become incapacitated. What effect would it have on your family? Think about a Power of Attorney for Health Care and a Living Will. Consider a long-term care insurance policy as a way to protect against the depletion of family wealth.

PREPARE; DON'T LEAVE SURVIVORS GUESSING

Although you will never be able to prepare your surviving family members for your loss, you can prevent many of the dilemmas that will face them. Put in order your personal affairs – and don't keep it a secret. Share the fact that you have prepared a personal data file and its location with your spouse and family.

What to Discuss in Advance:

- Location of important documents.
- Desire to be an organ donor.
- Your desires in the case of incapacitation.
- Funds through accelerated benefits for terminally ill from SGLI/VGLI or commercial insurance.
- Final resting place: national or private cemetery, burial at sea, or scattered remains.
- Obituary notice.
- Your desires: military honors, burial flag, and VA provided headstone or marker.
- Power of Attorney, both general and for health care.
- RCSBP/SBP Annuity, whether immediate or deferred and percentage of retired pay.
- Confirm that proper beneficiaries are recorded on all insurance policies, SGLI, and RCSBP. All too often, former spouses become unintended beneficiaries.

What should be included in a personal data file?

The following are general recommendations:

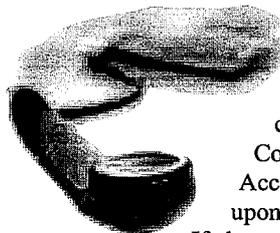
- Location of will or trust.
- Location of Power of Attorney.
- Civilian retirement plan annuity and contact information.
- Military service and retirement information such as DD214(s), RCSBP election, Notice of Eligibility for Retired Pay (NOE), retirement point total, medical record, retirement orders, and contact information for DFAS.
- Personal documents (and copies) such as birth certificate, marriage certificate, divorce decrees, adoption papers, and personal requests. Certain personal decisions such as cremation and burial at sea require signed documents.

- Tax file for recent federal, state, and property tax filings and payments.
- Insurance policies and contact information.
- Listing of bank accounts, stock portfolios, bonds, and other securities.
- Contact list of friends and work associates.
- Listing of singularly held accounts or property such as credit cards, accounts, safe deposit box, notarized vehicles, or real estate.
- Contents of safe deposit box.

And Don't Forget to:

- Preserve your life story. Take some time to write down the story of your life.
- If you're one of the few people who can put names to faces in old family photographs, take some time to label old photos.
- Buy or rent a video recorder and record at least several hours of your family talking and sharing. One day, one or more of you will be gone and the tape(s) will be treasured.

REPORTING THE DEATH OF A RETIREE OR VETERAN



When a retiree or veteran passes, the next of kin or executor of the estate should make timely calls to the Navy Reserve Personnel Command or the Defense Finance and Accounting Service (DFAS) depending upon the status of the retiree.

If the retiree is eligible for retired pay and benefits at age 60, but passed away prior to reaching age 60, contact the Navy Reserve Personnel Center (NRPC) central toll free number 1-866-250-4778. This notification will prompt an information package to be sent to you. Upon completion and return to NRPC, action will be taken in regard to Reserve Component Survivor Benefit Plan annuity (depending on election) and to forwarding to the eligible spouse an application for a new dependent ID card (DD1173-1 RED) reflecting his/her proper status as a surviving spouse. Remember, the surviving spouse's status will change again upon the retiree's 60th anniversary of birth. Upon this anniversary, the surviving spouse will be issued a DD1173 (TAN) ID card reflecting entitlement to TRICARE medical benefits until the surviving spouse's 65th birthday.

If the retiree is age 60 or beyond and receiving retirement pay, contact the Retired Casualty Section of DFAS at toll free 1-800-269-5170 or fax toll free 1-800-469-6559. Notification will start a review of the retiree's pay account and mailing of a survivor benefits packet to the next of kin. Packet will contain forms for unpaid retirement pay and Reserve Component Survivor Benefit Plan annuity. When returning forms, enclose a photocopy of the death certificate.

A Guide To Handle Affairs After A Death Of A Retiree or Veteran

The following guide provides both generalized and specific actions to be accomplished after the death with many of the actions expounded upon in the article. Should assistance ever be needed, do not hesitate to contact the Association toll free at 1-866-672-4968 or e-mail at admin@navy-reserve.org:

IMMEDIATE ACTIONS

Notify the Defense Finance and Accounting Service to stop retired pay and start Survivor Benefit Plan at 1-800-269-5170.

Or (in all other cases, except veteran)

Notify Naval Reserve Personnel Center to research eligibility for Survivor Benefit Plan and application for new ID card at 1-866-250-4778.

Contact employer for existence of death benefits if deceased was still employed.

Call the Social Security Administration at 1-800-772-1213 or visit a local Social Security Administration office. Stop Social Security payment and file for Lump Sum Death Benefit. Web site at www.ssa.gov.

Contact Veterans Affairs Regional Office 1-800-827-1000. VA benefits are numerous and eligibility varies.

Contact SGLI/VGLI at 1-800-419-1473 (Fax 1-877-832-4943) or e-mail osgli.claims@prudential.com for death and accelerated benefits claims only.

Contact commercial life insurance companies having policies on the deceased. Request a claim form or ask for help from the local agent. Normally, a claim form, the policy, and a certified copy of the Death Certificate are required.

GENERALIZED ACTIONS

Contact credit card companies of accounts held solely by the deceased. Remember, some credit card and charge accounts include a life insurance policy with them. If the card is held jointly, find out what documentation is required to change the account to the survivor's name.

List assets that need to be changed from sole ownership (e.g., real estate, car titles, stocks, bonds, and other bank accounts). Probate proceedings may need to begin to accomplish legal ownership.

Contact financial institutions where the deceased had a loan. Inquire if the loan was covered by the credit life and what needs to be done to file the appropriate claim.

Collect bills and make sure all the credit obligations of the deceased are known.

Contact retirement funds, including IRAs that the deceased was receiving, and apply for any benefits that are due. A Death Certificate is often required.

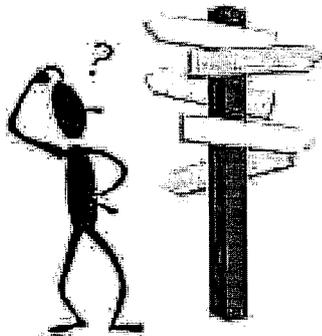
Remove deceased's name from utilities, etc. In the case of an elderly survivor, the accounts may be placed in a joint account with another family member to help in processing a future estate.

Contact health insurance companies to stop coverage on the deceased. Check for existence of a death-benefit rider.

Maintain extra copies of the Death Certificate to send with your income tax returns and for future requests.

Surrender the deceased's military identification card (ID) to the nearest ID card issuing facility. To find the nearest location and ID card return procedure, call 1-800-535-2699 or go to <http://www.dmdc.osd.mil/rsl>. Eligible surviving family members must obtain new ID cards.

DEATH BENEFITS SHOULD BE UNDERSTOOD



Reserve Survivor Benefit Plan (RCSBP) Annuity

As stated previously, the proper reporting of the death of a Reservist eligible for retired pay or a Reserve retiree will start the process for the designated survivor to receive monthly annuity. When the annuity starts depends upon the previously selected RCSBP option by the member:

Option A – election declined until age 60. If member dies before age 60, survivor receives no annuity.

Option B – deferred annuity, in which survivor receives annuity on the date of the member's 60th birthday.

Option C – immediate annuity, in which survivor receives annuity beginning the day after death of member. If no election was made at time of initial eligibility (normally upon receipt of NOE) and eligible dependents were listed on DEERS, then Option C, at maximum amount, is automatically elected under law. This automatic election became effective 1 January 2001.

Annuity Amount – normally would be based on the age of surviving spouse, but a recent change in law now makes both age of surviving spouse and year of member's death elements in the annuity amount. Currently, an annuitant under age 62 will receive 55 percent of the insured amount; age 62 and over will receive 40 percent of insured amount. On each 1 April of 2006, 2007, and 2008, those annuitants 62 and over will receive 5 percent more in their annuity payments until finally reaching 55 percent on 1 April 2008. This will end the Social Security Offset or so-called Widows Tax. Annuities and premiums increase annually by the cost-of-living adjustment (COLA) applied to military retired pay. The RCSBP premium remains to be paid by the annuitant for life, unlike the SBP premium which ceases upon death of member.

SBP Open Season – will begin 1 October 2005 and end 30 September 2006. For those who did not elect RCSBP or SBP when initially eligible, the open season is an opportunity to join the program. Additionally, for those who elected to insure an amount less than maximum, the open season will allow you to increase the base amount insured up to the maximum (total amount of monthly retired pay). However, joining the program late comes with a penalty cost. You will be required to pay all back premiums and interest in a single payment or in equal installments over 24 months. You must live for two years following election for the coverage to become fully effective.

Social Security Administration (SSA) Notification and Benefits

The death of an individual, whether a Social Security recipient or wage earner, has implications regarding the Social Security Administration. The death should be promptly reported by calling SSA toll free at 1-800-772-1213. This initial call will start the process of information and filing guidance for benefits. Additional information can be found at the SSA Web site at www.ssa.gov.

If the death involves a Social Security recipient, notify your financial institution (bank) and request that any deposit made after death and thereafter be returned to SSA. If benefits are paid by check, do not cash any checks received after death. Call the local SSA office about return of checks.

A Lump Sum Death Benefit of \$255 is payable, upon filing, to the surviving spouse or eligible child. No payment is made to adult children.

Department of Veteran's Affairs (VA) Benefits

The VA provides an array of benefits for deceased veterans and eligible surviving family members. Insofar as entitlement to VA benefits is concerned, most Navy retirees are veterans. VA benefits are exempt from federal income taxation. Certain burial-related benefits are provided, such as burial flags, government-issued markers, and memorial certificates. Additionally, VA operates a system of national cemeteries in which eligible veterans may be interred, inurned, or have a marker placed as a memorial. A DD214, retirement orders, or discharge paper is required to obtain any VA benefit.

Burial In National Cemeteries

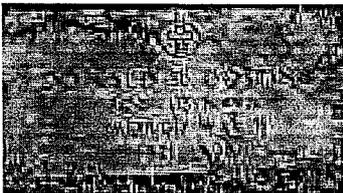
Burial in a national cemetery is an entitlement for veteran retirees, and includes opening and closing of the grave and perpetual care. The only other casketed burials that can be accommodated at some national cemeteries are those of spouses or dependent children of veterans already buried in the cemetery. If an eligible family member dies first, the member must sign an agreement to be buried in the same grave eventually. Grave sites cannot be reserved. Most cemeteries can accommodate burials of cremated remains. Contact the Director of the national cemetery where burial is desired. The local VA office has a list of national cemeteries or go to www.va.gov or call 1-800-827-1000.

NOTE: Arlington National Cemetery has stricter eligibility requirements than other national cemeteries.

Burial Flags

An American flag is available to drape the casket of a veteran who was discharged under conditions other than dishonorable. Commonly, funeral directors obtain the flag on behalf of the survivors if the deceased is an eligible veteran. A flag may also be issued for memorial purposes to close relatives other than widow(er) or child(ren). After the funeral service, the flag may be given to the next of kin or a close friend of the deceased. Flags are issued after a claim is filed with any VA regional office, VA national cemetery, or most local post offices.

Grave Markers



When a veteran is buried in a national, state, or military cemetery, a marker is erected, without cost to the family, upon completion of an application by any surviving family member. The permanent monument may be an upright headstone, flat bronze, granite, or marble marker, or a bronze niche marker. Standard inscriptions include name, branch of service, year of birth and death. Optional inscriptions include rank or rate, month and day of dates of birth and death, valor awards (Purple Heart, Distinguished Service Cross, Navy Cross, Air Force Cross, and Silver Star) if applicable, religious emblem, and war service (World War II, etc.). For specific information, call 1-800-697-6947 or write:

**Office of Memorial Programs (402E)
National Cemetery System
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420**

Inscriptions listed above are free, but additional inscriptions are at personal expense. When burial is in a private cemetery and a marker is desired, VA Form 40-1330 (obtained from any VA office) must be filled out completely by the spouse or closest relative and mailed to the address in this paragraph. The marker will be shipped free to a designated cemetery. It should be noted that the only inscription for the Navy is "US NAVY." There is no "USNR" inscription authorized.

A memorial marker to be placed in a veteran's national, state, military, or private cemetery to commemorate a veteran whose remains were buried at sea (by own choice) or scattered without interment may be requested via VA Form 40-1330.

Presidential Memorial Certificate

This long-standing program provides a certificate, prepared by the VA, bearing the President's signature and expressing the country's grateful recognition of the veteran's service. Those eligible to receive the certificate include next of kin, relative, or friend. Certificates may be issued to more than one eligible person, up to ten (10) certificates.

Request a Presidential Memorial Certificate, in person or through the mail, from any VA Regional Office. Retirement orders or a DD214 provide the best documentation to establish honorable service.

Plot/Interment Allowance

A \$150 plot or interment allowance is available in cases involving the payment of the \$300 non-service-connected allowance specified below.

Non-Service-Connected Death

Eligibility provisions exist for a \$300 burial allowance to be paid if the veteran, prior to death, was receiving a VA disability

pension or compensation payments, or died while hospitalized in a VA facility.

Service-Connected Death

If a veteran dies as a result of a disability related to military service, up to \$1,500 may be paid to assist with burial expenses.

Dependency and Indemnity Compensation (DIC)

DIC is administrated by the Department of Veteran's Affairs and payable to surviving spouses who did not remarry by age 57, certain children, and low-income parents of Reservists or retirees who die from:

- A disease or injury incurred or aggravated while on active duty or active duty for training.
- An injury incurred or aggravated in line of duty while on inactive duty training.
- A disability compensated by the Department of Veteran's Affairs.

DIC payments to a surviving spouse are payable for life (provided spouse does not remarry before age 57). To apply for DIC, the claim form VA Form 21-534 must be submitted. Documentation to support your request for DIC payments would, at a minimum, be military medical record and any VA disability documentation. DIC payments are excluded from taxation.

Burial at Sea

Navy retirees and their dependents are entitled to burial at sea. A burial at sea decision should be in writing. If burial at sea preference was not put in writing by the retired member, the individual responsible for disposition of the remains may authorize burial at sea. Timely contact should be established with:

**Office of Medical/Dental Affairs
(MEDDEN Affairs)
Mortuary Affairs, Bldg. 38H
Great Lakes, IL 60088-5200
Tel: 1-800-647-6676, Select option 4**

Specific documents must be submitted to the commanding officer of the vessel/aircraft that will conduct the burial at sea: (1) certificate of cremation or a transit permit issued by the appropriate civil authorities at the place of death or civil death certificate; and (2) a signed authorization for committal from the primary next of kin or executor of the estate.

This authorization should include the decedent's full name, grade, Social Security number, branch of service; date of retirement or dates of service and date of death; type of religious service desired; whether scattering of cremains or committal of casketed remains is desired from a vessel; and the body of water in which the cremains/remains should be committed.

Alternatives to burial at sea from a naval vessel/aircraft are burial at sea from a United States Coast Guard (USCG) vessel or a private yacht service.

Accelerated Benefits for Terminally Ill

Servicemen's Group Life Insurance (SGLI) and Veterans Group Life Insurance (VGLI), as with certain commercial insurance policies, offer accelerated benefits to the terminally ill. Terminally ill is a written medical prognosis of nine (9) months or less to live. For SGLI and VGLI, up to 50 percent of

the policy coverage may be paid out in a lump sum to the insured. This payment is not taxable. The insured must submit the Servicemember/Veteran Accelerated Benefit Option Form 8284A. The form and information can be obtained at www.insurance.va.gov or by calling toll free 1-800-419-1473.

OTHER USEFUL INFORMATION

NON-DUTY STATUS DEATH OF A RESERVIST (WITHOUT NOE)

In the event of an unfortunate, non-duty death of a Reservist, such as an industrial accident at place of employment or automobile accident, the only benefit, beyond those benefits mentioned above in the Death Benefits section, is the payment of elected SGLI policy amount, normally \$400,000.

SPOUSE'S ID CARD MILESTONES

Renewal

- One month prior reaching age 65.
- After age 65, every four (4) years, until age 75 at which time ID card becomes permanent.
- Upon death of sponsor.

Surrender

- Upon remarriage.

EFFECT OF REMARRIAGE ON SURVIVOR BENEFITS

IDENTIFICATION CARD – Upon remarriage, ID card must be surrendered. Therefore, without ID card, no commissary, exchange, or base privileges authorized.

TRICARE – Upon remarriage, TRICARE benefit terminates.

TRICARE FOR LIFE (TFL) – Upon remarriage, TFL benefit terminates.

SOCIAL SECURITY – Remarriage at age 60 or older has no effects on Social Security benefit.

SBP ANNUITY – Remarriage at age 55 or older has no effect on benefit.

DEPENDENCY and INDEMNITY COMPENSATION (DIC) – Remarriage before age 57 will terminate benefit. Subsequent marriage ends, DIC will be reinstated.

TRICARE RETIREE DENTAL PROGRAM – Upon remarriage, eligibility terminates.

WHERE CAN I GET HELP?

Naval Reserve Association
1619 King Street
Alexandria, VA 22314
Tel: 1-866-672-4968
E-mail: admin@navy-reserve.org

Navy Mutual Aid Association
Henderson Hall
29 Carpenter Road
Arlington, VA 22212
Tel: 1-800-629-6011
E-mail: counselor@navymutual.org

Navy/Marine Corps Relief Society
801 North Randolph St.
Room 1228
Arlington, VA 22203-1989
Tel: (703) 696-4904

**Retired Activities Office (RAO) or
Family Service Center (FSC)** in
your local area. Call 1-866-827-5672 or
e-mail mill_retiredactivities@navy.mil
for the nearest location.

DON'T DELAY MAKING CLAIMS

The U.S. Court of Federal Claims went against the widow of a retired Naval Reservist for SBP payments. The widow filed for SBP nearly 15 years after the death of her husband claiming she was not aware of the SBP agreement executed by her husband. The court did not hear the case because:

- She should have known about the SBP agreement because she signed it.
- The Navy had no legal responsibility to inform her.
- The six-year limitation for filing a federal claim expired.

Moral of the story: maintain a complete personal document folder with an itemized inventory of important papers.

ENDURING ENTITLEMENTS				
ENTITLEMENT FOR ELIGIBLE SURVIVOR(S)	UPON DEATH, IF MEMBER WAS:			
	RETIRED WITH PAY	GRAY AREA RETIREE OR RESERVIST WITH NOE	RESERVIST, DUTY STATUS DEATH	RESERVIST, NO NOE AND DEATH NOT DUTY RELATED
ID CARD	YES DD1173 (TAN)	YES DD1173-1 (RED)	YES DD1173(TAN)	NO
MEDICAL CARE	YES TRICARE TO AGE 65 OR ELIGIBILITY TERMINATION	YES TRICARE STARTS ON 60 TH BIRTHDAY OF MEMBER	YES TRICARE TO AGE 65 OR ELIGIBILITY TERMINATION	NO
UNLIMITED USE OF EXCHANGE	YES	YES	YES	NO
COMMISSARY	YES UNLIMITED	YES UNLIMITED	YES UNLIMITED	NO
TRICARE RETIREE DENTAL PROGRAM	YES PREMIUM-BASED	YES PREMIUM-BASED	YES PREMIUM-BASED	NO
SPACE "A" TRAVEL	NO	NO	NO	NO
RECREATIONAL LODGING	YES	YES	YES	NO
LEGAL ASSISTANCE (LIMITED)	YES	YES	YES	NO

NOTE: Medicare begins at age 65 with TRICARE as second payee.

APPENDIX P

USEFUL MILITARY AND MILITARY RELATED WEBSITES

<http://www.moaa.org> – Military Officers Association of America. Formerly The Retired Officers Association, this organization is composed of both active duty and reserve members, predominantly retirees. This site provides a great deal of useful information on retirement, active duty and pending Congressional legislative issues.

<http://www.navy-reserve.org> – Naval Reserve Association, a Navy Reserve related organization whose membership consists mainly of Navy Reserve officers, but is open to all. Has good general military reserve information, mostly directed to Navy Reserve officers.

<http://www.roa.org> – Reserve Officers Association serves U.S. military Reserve officers of all branches of service. Junior officer members are automatically members of the CIOR – an international community of junior military officer member of Reserve officer organizations from NATO states around the world.

www.ssa.gov -- Social Security website.

<http://www.militaryconnection.com> – Web site started in 1999 by a woman-owned business group in California. It is the most complete site for all U.S. military services that you will find. This site really brings it all together in one place

<http://www.militaryonesource.com> – Military One Source. A relatively new on in presence, Military One Source provides you with around-the-clock, toll-free information and referral telephone service on an incredible variety of topics. This site seems to represent the long-overdue consolidation of a number of resources and should certainly be one that you explore and one whose address you share with other spouses.

<http://www.militaryhomefront.dod.mil> – DoD's Military Homefront. Excellent site that specifically caters to both families and leadership of our Armed Forces. It is the official DoD Web site tasked with providing quality of life (QoL) information and it succeeds admirably. In addition, to providing links to a number of QoL resources, it also provides users with easy access to service specific information.

<http://www.nmfa.org> – National Military Family Association (NMFA). A staunch supporter of military families since 1969, the NMFA Web site offers links to a number of subjects, including deployment, education, family life, benefits, health care, and finance.

<http://www.militarymoney.com> – Military Money. Created as a result of DoD's Financial Readiness Campaign via a partnership between the NMFA and INCharge Institute of America, Inc., Military Money provides its Web site users with an interesting array of topics from which to choose. Whether you want to learn about common tax deductions or have a refresher course on military spouse employment preference, Military Money strives to fill the financial niche.

<http://www.cinchouse.com> – CinchHouse. This site bills itself as the nonprofit community of military wives and women. It is clearly much more than that. Full of unbiased news, advice, and humor, it is a must-mark site for any military spouse. Message boards, chat rooms, book clubs, deployment tips, and inspiration advice that doubles as sanity depending on where you mouse sits.

<http://www.firstgov.gov> – This should be your first stop in finding anything related to the U.S. government.

<http://www.afvclub.com> – This Web site offers opportunities for military members to get vacation packages on the cheap. The SM can even send gift certificates for \$299/wk vacation condos to civilian friends and family.

<http://www.navyonesource.com> – Provides you with useful information and resources to help balance work and family life. As Aristotle once said, "Balance or moderation is the key to a healthy life."

<http://navyreserve.navy.mil> – Home site of Commander, Navy Reserve Force. Important information and links for all Navy Reservists.

<http://www.dod.mil/dfas> - Home to the Defense Finance and Accounting Service. The *myPay* link contains the SM's monthly Leave and Earnings Statements (LES), as well as Travel Advice of Payment (AOP) where one will see reimbursed travel claims.

<http://www.nko.navy.mil> – Navy Knowledge Online (NKO), also known as the Sea Warrior Portal, is the place for a Navy member to check on his/her career and engage with teams in a knowledge-sharing environment, including chat rooms.

<https://www.bol.navy.mil> – Bureau of Naval Personnel (BUPERS). The place for the Navy SM to check his/her service record ARPR/ASOSH, fitrep/ eval history, advancements, and more.

<https://nows.cnr.navy.mil/nrows> - Navy Reserve Order Writing System (NROWS) is where Sailors input requests or all types of order such as AT, ADT, IDTT.

<http://at-awareness.org> – Antiterrorism training on-line.

<https://awards.navy.mil> – A Chief of Naval Operations (CNO) sponsored Web site. Everthing you ever wanted to know about Navy awards. Listings of latest NAVADMINS regarding awards.