

Legal Assistance Practice Points: Military Separation and Divorce Maryland Style: Part 2

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In the last issue, I discussed some of the initial considerations regarding Separation and Divorce for military families. This issue is a conclusion of the discussion.

With regard to support obligations, in the absence of a separation agreement or a court order that determines child and spousal support obligations, each of the military services has its own regulation that dictates the level of support a service-member is obligated to provide for the civilian spouse. The determination depends upon the service, the rank of the service-member, how many children the service-member is supporting and with whom these children reside. Adult children (usually older than 18) and stepchildren who are not legally adopted by the service-member are typically not the legal obligation of the service-member upon separation or divorce, unless the service-member consents to supporting these children. Moreover, if the service-member has primary custody of the children, then the civilian spouse will receive a smaller share of support. Another factor is whether the civilian spouse resides in post-housing. If this is the case, the civilian spouse will receive a significantly smaller amount of support. Commanders also have some limited discretion to waive a support obligation if, for example, the civilian spouse has a higher income than the service-member or the service-member has been the victim of substantiated abuse. If you are the service-member or civilian dependent and want to know how the regulations are relevant to your separation, it is best to consult a Legal Assistance Attorney.

If the couple is able to divide up their property and assets and come up with a reasonable set of ground-rules for custody, visitation and child and spousal support, all the better. Often, in the interest of reaching an expeditious agreement, more contentious matters can be deferred until the parties appear before the judge at the time of final divorce. Common examples include the sale of a house owned jointly or a division of military retirement pay, other retirement plans or enrollment in the Survivor Benefits Plan.

Separation agreements can also include important clauses such as visitation rights for grandparents, or that the parties should strive to not disparage each other in front of the children. Divorce is difficult enough for children, particularly young ones. There is little benefit to subjecting one's children to negative comments about the other parent: the children should feel and receive love and emotional support equally from both parents, even if the parents are separated. The wounds to the psyches of the children will be much deeper and long-lasting if the parents attempt to use the children as pawns in their dispute.

Moreover, the parties should carefully consider in which state they will file for divorce. The rules may vary and often there are residency requirements. Maryland requires at least one party reside in-state for at least 12 months when the grounds for divorce occurred out of state. Thus, if one party committed adultery in Virginia, the other spouse has to reside in Maryland at least 12 months before filing for divorce on the grounds of adultery, whereas if the adultery occurred within Maryland, the other spouse can file immediately. One other thing to keep in mind: if there are children from the marriage whose custody must be decided, typically, it makes the most sense to file for divorce in the state where the children reside. If a non-custodial spouse files in his/her state, the judge may grant a divorce but may decline to issue findings regarding custody, visitation and child support because the judge may decide she/he does not have jurisdiction over the children who reside out-of-state with the custodial parent. Military deployments, TDYs or advanced schooling can potentially interrupt a party's efforts to comply with a residency requirement prior to filing for divorce. Again, consultation with an attorney can help you anticipate and address these complications.

In sum, there are many factors to consider when someone separates from his/her spouse in contemplation of divorce. If the parties do not plan and negotiate correctly, they could waste time, waive important rights or claims to assets that cannot be recaptured, agree to pay debts that could have been more equitably divided or end up duplicating legal filings and expenses.

If you are contemplating separation from your spouse, strongly consider making an appointment with a Legal Assistance Attorney to discuss your family situation, objectives and priorities. To schedule an appointment with the Fort Meade Office of Legal Assistance, call: 301-677-9762.