

# **Military Divorce and Ancillary Issues**

**Military Service**, and the inevitable and often prolonged involuntary absences required of such service, has a profound impact on the modern military family. Since 2001, more than 600,000 military reservists have been called to serve in the U.S. Central Command area, which includes Iraq and Afghanistan.<sup>1</sup> Hundreds of thousands of other active duty service members and civilian contractors of the military serve at more than 820 installations in at least 39 countries around the world.<sup>2</sup> Service members deployed in a combat zone, or overseas, as well as the families left behind, can face enormous stress. Some military units report that one in ten first-time deployed soldiers and over one-third of service members on their second deployment experience legal separation or divorce proceedings during their deployment.<sup>3</sup>

## **What are issues that service members or their spouses should be especially concerned with?**

The best way to avoid problems during military service is to prevent them. Whether the problem involves divorce or post-divorce issues, ignoring the problem or failing to discuss it with the other party will not make it go away. Every branch of the military spends an extraordinary amount of time and effort with pre-deployment planning, briefings family gatherings, and informative fairs.<sup>4</sup>

## **Military Family Care Plans**

Generally each military branch will assist each military couple with dependents or single member parents with custody of children in drafting family care plans.<sup>5</sup> These plans outline how the service member plans to care for the child or children during their absence, as well as setting out the location of important documents such as the child's birth certificate, powers of attorney, and wills that are in place to carry out the service member's plans.<sup>6</sup>

The competent representation of an attorney may be necessary in completing a family care plan. Often, in completing their family care plans, service members do not account for issues that may later arise such as: prolonged deployments, visitation with grandparents or other relatives, or changes in finances caused by increased time with one parent, child support issues, access to the child via telephone calls, webcams, or e-mail, visits during leave, and reconciliation with the child upon return from deployment.

## **Divorce or Legal Separation Proceedings**

Service members who are aware of a looming divorce or legal separation proceeding, or who are in the middle of a divorce or legal separation proceeding during their deployment, should take steps to protect themselves from action during their absence. Of particular importance in divorce proceedings involving military members are custody and parenting time arrangements, as well as division of military benefits.

In an all too common scenario, a service member who learns that he or she will be deployed entrusts the care of a child to a grandparent or stepparent, rather than the child's other legal parent. While the service member is away on active duty, the other parent seeks custody of the child. If the custody arrangement is altered, the service member often faces a complicated legal battle to regain custody upon their return, despite having a previous role as primary caregiver.

## **Servicemembers Civil Relief Act**

Active duty service members who are faced with an unplanned family law proceeding do receive certain protections under the federal [Servicemembers Civil Relief Act](#) (SCRA).<sup>7</sup> Congress enacted the SCRA to protect the legal interests of service men and women from lawsuits including divorce proceedings to enable them "to devote their entire energy to the military needs of the nation." If a service member cannot appear or participate in a divorce or legal separation proceeding, the service member may request a stay of proceedings under this act. In the discretion of the court, the legal proceeding may be delayed for the time the service member is on active duty and for 60 days thereafter. However, as in all areas of family law, the issue of obtaining a stay of proceedings is never that simple.

The stay for the divorce proceeding is discretionary with the court. Sooner or later, even if a stay is granted, you will have to deal with the divorce proceedings. If a divorce between you and your spouse is inevitable, it may be in your best interest to obtain the divorce as soon as possible. For instance, the portion of your military retirement that your spouse could claim will only increase with time.

## **Uniformed Services Former Spouses Protection Act**

The spouses of military service men and women may be entitled to certain benefits that civilians going through the dissolution or legal separation process may not otherwise be able to obtain. The Uniformed Services Former Spouses' Protection Act (USFSPA)<sup>8</sup> recognizes the right of state courts to distribute military retired pay to a spouse or former spouse and provides a method of enforcing these orders through the Department of Defense. Former spouses can, with the assistance of an attorney, retain an interest in their former spouse's retired pay as well as their former spouse's military retirement benefits, including disability and pension pay, as well as post-exchange privileges.

Often, the military retired pay can be the largest asset held in a military family's divisible "marital estate." Jason P. Hopper has experience in representing the spouses of service men and women in obtaining and securing their interest in their former spouses' military retirement benefits.

## **Tri-Care and the Continued Health Care Benefit Program**

Not all former military spouses are treated the same in terms of their eligibility for postdivorce health care. Many former spouses of servicemen and servicewomen may be eligible for continued health care coverage via the military's two available postdissolution health care programs: Tricare, and the Continued Health Care Benefit Program (CHCBP).

Tricare brings together the health care resources of the uniformed services and supplements them with a broad network of civilian health care professionals, hospitals, clinics, and pharmacies to provide access to high-quality health care services while maintaining the capability to support military operations.<sup>9</sup> Other than quarterly premiums, co-pays, and deductibles, those eligible former spouses who enroll in Tricare Prime and utilize a military medical facility and pharmacy can obtain essentially all of their health care with very minimal out-of-pocket expenses. Considering the high cost of alternative private health care insurance, including the CHCBP, continued Tricare eligibility should generally be sought by the former, eligible spouse. The length of marriage to the service member, and the former spouses' present marital status are the two main criteria in determining Tricare eligibility.

The Continued Health Care Benefit Program (CHCBP) is a premium-based health care program administered by [Humana Military Health Care Services, Inc.](#) (Humana Military). CHCBP offers temporary transitional health coverage (18-36 months) to service members, and certain former spouses of service members after **TRICARE eligibility** ends. If you qualify, you can purchase CHCBP within 60 days of loss of eligibility for either regular TRICARE or **Transitional Assistance Management Program** (TAMP) coverage.<sup>10</sup> CHCBP acts as a bridge between military health benefits and your new civilian health plan.

## **Hiring a Skilled Divorce Attorney Can Benefit You**

Jason P. Hopper has come to understand that even significant geographic distance between him and his military clients is now largely irrelevant. Mr. Hopper has worked successfully with military clients in all parts of the World. Mr. Hopper has represented members of the armed forces or their spouses abroad in:

- Saudi Arabia
- Iraq
- Kuwait

- Germany
- Afghanistan
- Japan
- South Korea
- Guam

Jason P. Hopper is dedicated to providing outstanding legal services to our military clients. Mr. Hopper can serve your needs whether you currently reside in the United States or anywhere else in the World. We know how daunting family law problems can sometimes be and will do whatever we can to make sure that your experience with us is a positive and successful one.