

Divorcing Someone in the Military: Basic Questions and Answers

Who is this Publication for?

Service members who are divorcing have additional protections under the law. This publication briefly describes those protections. This publication is for both the service member and the non-service member.

Some expressions you should know:

- In Washington State, we use the term “dissolution” instead of “divorce.”
- A “petitioner” (also called a “plaintiff”) is the person starting the court action.
- A “respondent” (also called a “defendant”) is the person being served with court papers, or being sued.
- A “waiver” is when you agree to give up something that you’re otherwise entitled to. We use the term “waive your right” often in the law.

Generally, the law protects a respondent spouse in a dissolution case who is currently or will soon be on active duty in the military. This protection includes reservists and members of the National Guard who are on active duty. Sometimes court hearings are postponed or suspended until the service member can participate. The purpose of the law is to help service members devote full attention to their duties. The laws may limit the court’s ability to make any orders permanently adversely affecting the rights of the service member.

◆ Both state and federal laws give service members this additional protection. The state law is the Service Members Civil Relief Act, [RCW \(Revised Code of Washington\) Ch. 38.42](#). The federal law is the Service Members Civil Relief Act of March 4, 1918, as amended, [50 U.S.C. App., 501 et.seq.](#) (federal law).

Under the law, if the service member’s military service “materially affects” his/her ability to either defend or pursue a court matter, the court must wait until the service member is available. So if a spouse can’t attend a hearing due to military service, and the outcome will depend on his/her participation, the hearing may be postponed. Under normal circumstances, however, temporary decisions regarding parental rights and responsibilities and child support will be decided in the absence of the service member spouse in order to protect the best interest of the children involved.

My spouse and I have been separated and out of touch with each other for a long time. I don’t know if s/he’s on active duty or not. Do I have to find out if s/he is?

Yes. The law requires you to make an effort to find out before or at the time you file for dissolution. You can do so by:

- o Checking the following website:
<https://www.dmdc.osd.mil/scra/owa/home> or
- o Contacting the Defense Manpower Data Center, 1600 Wilson Blvd., Suite 400, Attn: Military Verification, Arlington, VA 22209-2593; Telephone (703) 696-6762 or 5790, fax (703) 696-4156. (If you mail a request for information, include a stamped, self-addressed return envelope.)

If you try but you can't find out if your spouse is on active duty, you have to file an affidavit with the court explaining this.

I'm the petitioner. My spouse is currently on active duty overseas. What happens if my spouse doesn't respond at all to the dissolution case?

Normally in a court case where the respondent hasn't filed any papers by the given deadline to respond, the petitioner can seek what's called a "default judgment." That means the petitioner can ask for final orders that give the petitioner everything s/he asked for in the original court papers. A judge will usually grant a default judgment with only the petitioner's side of the story to go on if the respondent has failed to respond by the deadline.

However, before a judge can enter a default judgment against a military member, the judge must appoint an attorney to represent the defendant's interests. Often the final divorce will be delayed until the service member can get a leave and come to court.

If the other party is, or may soon be, on active duty in the military, when you serve him/her with your dissolution papers, you should include a special Waiver form for your spouse to sign. If your spouse is willing to give up his/her special protections

under the law, s/he must sign the form and either return it to you or file it with the court. **If s/he won't agree to do this, see a lawyer.**

I'm the respondent. I'm in agreement with everything my spouse is asking for in the dissolution. Is there some easy way for us to finalize our dissolution so that I don't have to come to court?

A service member who wants to be divorced quickly and who agrees on all the issues can waive his/her rights to delays in the proceeding by signing a written waiver in front of a notary public. The waiver form must be filed with the court. If you think this is what you want to do, see a private attorney who specializes in military law, or a JAG attorney for more information. This locator can help you find your nearest local military legal assistance office:

<http://legalassistance.law.af.mil/content/locator.php>.

◆ Remember: If you sign the waiver form, you're giving up protections under this law.

Is my spouse excused from paying child support because s/he's on active military duty?

All military personnel have an obligation to support their children. Even without a court order, you may contact the commanding officer of your military spouse to help arrange for voluntary payments. If you don't know where your spouse is, the military has an online locator service:

<https://www.dmdc.osd.mil/scra/owa/home>.

Enter as much information as you can for a better match. You can also find your spouse

by mail or by phone:

**(Army)
Commander**

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

**(Navy) World Wide
Locator**

Bureau of Naval
Personnel
PERS 312F
5720 Integrity Drive
Millington, TN
38055-3120

Marines:

Headquarters U S
Marine Corps
Personnel
Management
Support Branch
(Mmsb-17)
2008 Elliot Road
Quantico, VA
22134-5030
1-703-784-3941 or
1-703-784-3942/43

Air Force: HQ

AFPC/DPDXIDL
550 C Street, West,
Suite 50
Randolph AFB, TX
78150-4752
1-210-565-2660

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