

MILITARY
DIVORCE
GUIDE



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22 Main Street, Los Angeles, CA 90025

(310) 123-4567

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Neil James Dan Johnson Martha Smith Chris English

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Will deployment affect my custody or visitation rights with my children? How does the military respond to domestic violence? Can the military force my ex to pay child or spousal support?

These are a few of the many questions that couples with one or both spouses in the military struggle with during and after divorce. This special **Military Divorce Guide** provides you with useful articles and guidance about the unique issues you're facing; understanding these issues will allow you to make more informed decisions for you and your family.



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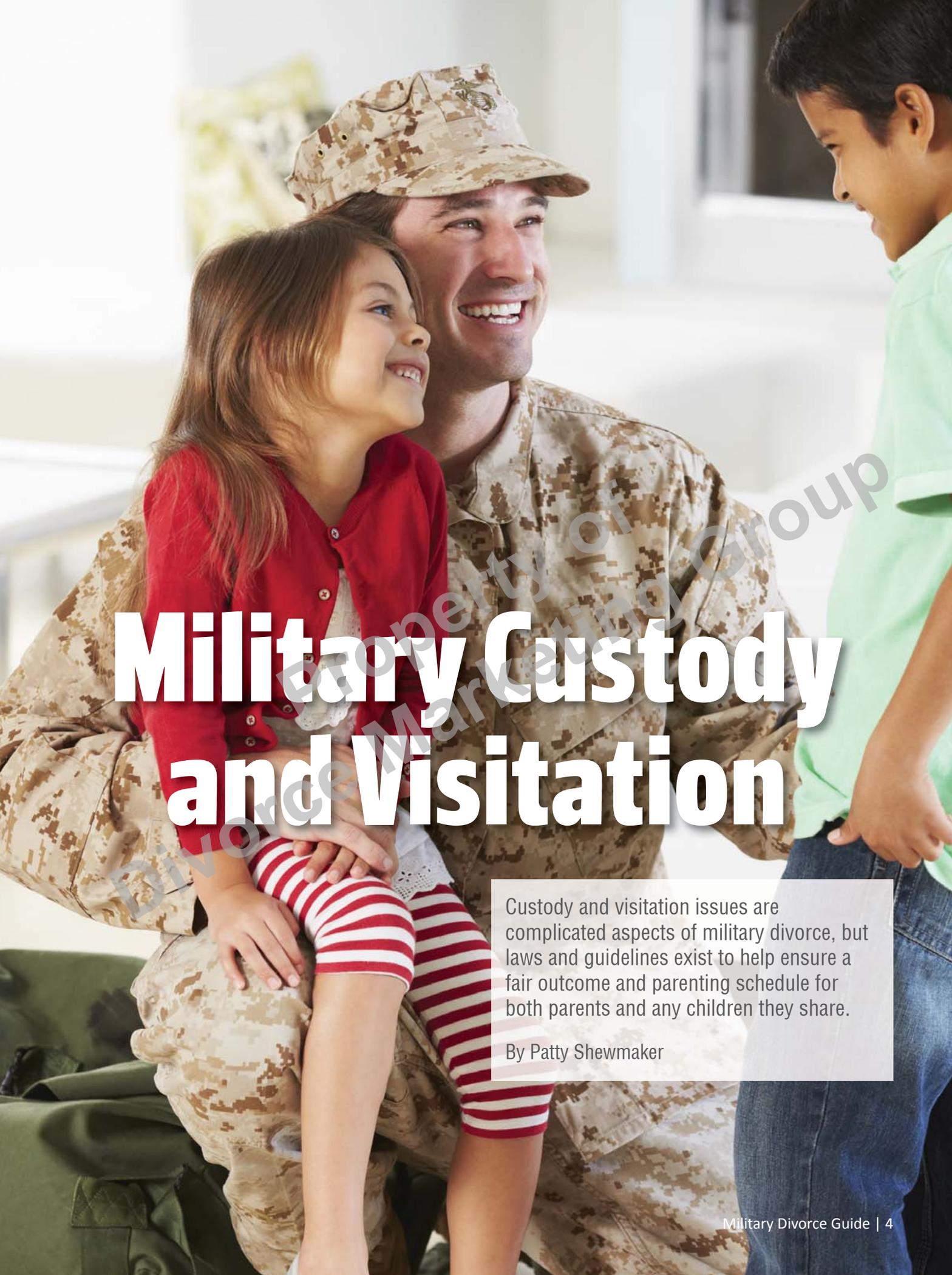
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Military Custody and Visitation

Custody and visitation issues are complicated aspects of military divorce, but laws and guidelines exist to help ensure a fair outcome and parenting schedule for both parents and any children they share.

By Patty Shewmaker

According to the *2012 Demographics Report* published by the U.S. Department of Defense (DoD), “The total number of military personnel is over 3.6 million strong.” This includes DoD Active Duty military personnel (1,388,028) and Selected Reserve Force (848,302). The *2012 Report* states that: “Approximately five percent (5.2% or 72,471) of Active Duty members are single parents” and “9.4 percent, or 79,321, of Selected Reserve members are single parents.” (You can read the full *Report* at www.militaryonesource.mil/12038/MOS/Reports/2012_Demographics_Report.pdf.)

The operational tempo (“optempo”) of the Armed Forces – including the repeated mobilizations, deployments, and frequent changes of duty stations – is a significant challenge to custody and visitation arrangements. The optempo also places additional stress on the family unit leading to higher incidents of divorce and the custody issues resulting from divorce.

Here are a few examples of issues I’ve seen involving servicemembers and child custody.

Scenario #1

Vince and his wife get a divorce. They have two minor children, and they agree to a joint legal and physical custody arrangement. Vince has parenting time with his children approximately 40% of the time. Vince is also a Sergeant in the Army National Guard. In 2014, Vince gets called to active duty overseas. While he is deployed, his ex-wife doesn’t allow him to call the children, and she doesn’t allow him to see the children when he comes home on mid-tour leave. What should he do?

Scenario #2

Crystal is a divorced mother of her son. She has primary physical custody, and her ex-husband has “standard” visitation. Crystal is in the Reserves, and she has remarried since the divorce. Crystal gets mobilized and is scheduled to deploy in ten days. She wants to leave her child with her new husband; however, her ex-husband thinks the child should stay with him and says he is going to file a modification of custody and get primary physical custody of the child. What should she do?

Scenario #3

Connie was married to Alex, an active duty Marine, and they had a son. They subsequently divorced and Alex had primary custody of their son. Alex deployed and left their

son with his new wife, Sally, which is in accordance with the family care plan that Alex put together and submitted to the Marine Corps. Connie thinks that their son should be with her. What should she do?

These are just three examples, and the possibilities are endless. Custody issues between parents can be difficult and complex; adding the challenges of military life can dramatically exacerbate the difficulty and complexity of custody issues.

The Servicemembers Civil Relief Act

Any discussion of civil actions and servicemembers must start with and include a discussion about the *Servicemembers Civil Relief Act (SCRA)*. This was formerly the *Soldiers’ and Sailors’ Civil Relief Act of 1940 (SSCRA)*, but was updated and amended in 2003. One of the purposes of the *Act* is “to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.” Title III of the *SCRA* provides procedural protections for the servicemember, including a stay of civil proceedings. The *SCRA* provides that “at any stage before a final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met.”

The stay proceedings of the *SCRA* are intended to protect servicemembers from worrying about possible litigation and having to deal with civil litigation when deployed. Soldiers who are distracted by things going on at home are often and understandably unable to focus on their mission and can be a danger to themselves and their comrades. The *SCRA* provides specific guidelines that a servicemember must follow to apply for a stay of proceedings – and even then, there is no guarantee that the court will grant the stay. If there is

an issue regarding child custody or related matters in which the servicemember is not materially affected, a court has the discretion to enter temporary orders even while the servicemember is deployed.

Parenting Plans

Any time there is a custody case involving a servicemember, whether on active duty or part of the reserve component, the parenting plan or visitation schedule should contemplate

Not only does the military provide a great service to this nation, but it also provides great opportunities for servicemembers and their families. Servicemembers should not have to choose between serving their country and taking care of their children.

Parenting plans should contemplate what happens in the event of a deployment... some states require that these issues be contemplated when a parent is also a servicemember.

the military service of that parent. A servicemember on active duty changes his/her station every few years, so even though the servicemember and the other parent may be in close proximity at the time of the custody order, it is reasonably foreseeable that the servicemember will be moving while the order is still in place. What will the parenting time schedule look like when the servicemember moves? Every other weekend may no longer work if the parents reside in different cities or states. Addressing these issues in a parenting plan can help to alleviate the need for the parents to return to court for a modification. In some jurisdictions, it is standard practice to include provisions in a parenting plan for when the parents live within 100 or 150 miles of each other, and provisions for when they live more than 100 or 150 miles apart.

Parenting plans should also contemplate what happens in the event of a deployment. Does the deployed parent get parenting time during pre-deployment leave and/or mid-tour leave? Does the deployed parent have contact with the child(ren) while he or she is deployed via telephone or Skype? Does the deployed parent's family get parenting time with the child(ren) during the deployment? When does the original parenting schedule resume? Contemplating these things in the parenting plan can reduce problems and litigation as well as reduce the stress of a deployment on a family; some states even require that these issues be contemplated when a parent is also a servicemember.

Uniform Deployed Parents Custody and Visitation Act

The majority of the states have now passed laws regarding child custody and military servicemembers. However, these laws are not standard and vary greatly from state to state. Some state statutes only apply to National Guardsmen and/or Reservists. Some provide that a deployment alone does not justify a child custody modification, while others do not have this provision. Given the prevalence of the issue and the disparity among the states on dealing with custody and the military, there has been relevant legislation introduced at the federal level. The most recently proposed legislation was H.R. 1898 introduced on May 8, 2013; this legislation would amend the SCRA to include provisions regarding deployments and child custody. While uniformity among the states may be desirable, the introduction of federal legislation regarding child-custody matters has created much concern regarding the involvement of the federal government in areas that have strictly and historically been dealt with by state courts.

In response, the National Conference of Commissioners on Uniform State Laws approved and recommended for

enactment by the states the *Uniform Deployed Parents Custody and Visitation Act (UDPCVA)* at its annual conference in July 2012. The National Conference of Commissioners on Uniform State Laws has previously given us such laws as the *Uniform Commercial Code*, the *Uniform Child Custody Jurisdiction and Enforcement Act*, and the *Uniform Interstate Family Support Act*. The UDPCVA has already been enacted by four states: Colorado, Nevada, North Carolina, and North Dakota.

The UDPCVA addresses issues such as:

1. the entry of temporary orders when a servicemember deploys;
2. contact between the servicemember and his or her child(ren) during deployment;
3. delegation of visitation rights so other family members may see the child(ren) in the servicemember's absence; and
4. returning to the prior visitation/custody upon redeployment.

The UDPCVA also provides that "a court may not consider a parent's past deployment or possible future deployment in itself in determining the best interest of the child."

Not only does the military provide a great service to this nation, but it also provides great opportunities for servicemembers and their families – including children. Servicemembers should not have to choose between serving their country and taking care of their children. ■

Patty Shewmaker is a family law attorney and partner at Shewmaker & Shewmaker, LLC in Atlanta, Georgia. A graduate of the United States Military Academy, Patty spent ten years in the U.S. Army and with the Georgia Army National Guard. Her practice is devoted to family law, and she specializes in military family law matters. www.shewmakerandshewmaker.com

Related Article

Shared Parenting Pros and Cons

By Donald A. Gordon (Ph. D.) and Jack Arbuthnot (Ph. D.)
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www.divorcemag.com/articles/Children_and_Divorce/shared-parenting-pros-and-cons.html



Once the act of infidelity is exposed, the impact on the relationship is typically devastating to both parties.

his emotions, he entered the divorce process with the intent of giving his wife “anything” she wanted. This allowed her to demand “everything” as a means of discharging her anger.

All of the above examples address clients who struggled with deep unresolved emotions resulting from the cause and effects of infidelity. As a consequence, each client entered into an unhealthy divorce process. In the first and third examples, both clients were motivated by rage and a desire to gain revenge against their partners. In the second and fourth examples, the clients were motivated by feelings of extreme inadequacy, shame, and guilt. Such unhealthy sources of motivation typically create the basis for high-conflict and highly problematic divorce processes. *All* family members suffer – including innocent children.

A Healthy Divorce is Possible

Psychotherapy can assist individuals in gaining awareness of their unresolved emotional issues, working these issues through, and developing new skills to cope with the reality of a

dissolved marriage. Upon completion of such work, these individuals will be well-equipped to enter a healthy divorce process. It becomes a win-win situation for all family members.

At this point I must add a cautionary statement. It is tempting for many individuals who are going through the divorce process, especially one that evolves around infidelity, to reach out only to non-professionals for emotional assistance. Friends and family members can act as sounding-boards and sources of support. A trained psychotherapist, however, possesses the professional and objective skills needed to help individuals tackle their emotional obstacles in a deeper and more fundamental way.

The disclosure of infidelity in a marriage is a traumatic event for most individuals. Both the “betrayed” and the “betrayed” are frequently challenged on deep emotional levels. If reconciliation is chosen by both partners, these emotions can be addressed and resolved in couple therapy, and the marriage can be saved. On the other hand, if the choice is to dissolve the marriage and these emotions are left unresolved,

they can easily motivate individuals to pursue unhealthy and high-conflict divorces. All family members will be injured. Seeking professional help through psychotherapy can prevent these painful consequences. ■

Aida Seetner has been working in the field of adult mental health since 1979. As a Registered Marriage and Family Therapist, Aida has helped individuals and couples who are struggling with the challenges and consequences of infidelity. Aida currently has a private practice in Toronto, Canada.
www.leasidetherapycentre.com/therapists/aida-seetner.

Related Article

Frequently Asked Questions about Infidelity

By Steven D. Solomon, Ph.D. and Lorie J. Teagno, Ph.D.

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www.divorcemag.com/articles/Infidelity/infidelityfaqs.html

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