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Military Divorce and Separation

Child/Spouse Support and Garnishment Issues

By Rod Powers

Each of the military services have regulations which require members to "provide adequate support" to family members. However, here's the rub: The military has absolutely no authority (without a court order) to *force* an individual to pay such support against his/her will. If a military member fails to provide support, the military can (and does) punish an individual, but such punishment is usually covered under the Privacy Act of 1974, and the military is not allowed to discuss the punishment with anyone. Obviously, this upsets a lot of spouses who claim nonsupport, and feel that the military is not doing anything to help them. Unfortunately, the military's hands are tied by law in this area.

Exactly what constitutes "adequate support" differs from service-to-service. For example, [Army Regulation 608-99](#), "FAMILY SUPPORT, CHILD CUSTODY, AND PATERNITY", requires a soldier to provide an amount equal to [BAH Type II](#), at the "With Dependent Rate," at the with dependent rate, unless there is a court order or written agreement providing for a different amount. If the soldier has more than one support obligation, that amount is divided equally among the supported parties. For example, if the BAH Type II with dependent rate for a soldier's rank is \$400 per month, and he separates from a wife and child, he must pay \$200 per month each, unless there is a court order or written agreement stating otherwise. This is not an "absolute" requirement, however -- the regulation contains provisions which allow the commander to waive requirements in certain cases, such as when the spouse makes more money than the soldier, or the soldier is a victim of abuse, or the family member is in jail.

[Air Force Instruction 36-2906](#), *PERSONAL FINANCIAL RESPONSIBILITY*, on the other hand does not specify a specific amount for "adequate support." Instead, "adequate support" is determined by the individual commander, based on the circumstances, in the absence of a written agreement or court order.

As with the other services, the Navy is reluctant to become involved with support disputes, as they feel this is a matter best resolved by the courts. However, in the event of a non-support complaint, where there is no court-ordered amount, nor written agreement, The Naval Personnel Manual (Section 1754-030) provides the following guidance to commanders for determining "adequate support:"

- Spouse only -- 1/3 of gross pay
- Spouse and one minor child -- 1/2 of gross pay
- Spouse and two or more children -- 3/5 of gross pay
- One minor child -- 1/6 of gross pay
- Two minor children -- 1/4 of gross pay
- Three minor children -- 1/3 of gross pay

Gross pay includes base pay and basic allowance for housing (if entitled), but does not include hazardous duty pay, sea or foreign duty pay, incentive pay, or subsistence allowance.

It bears repeating: Unless there is a garnishment or involuntary allotment order issued by a civil court, the military has no authority to force a member to pay support against their will. In other words, the commander cannot order the individual to make an allotment, nor can the commander even order the individual to pay. The commander can punish (nonjudicial punishment, reduction in rank, reprimand, denial of promotion, even discharge) a member who continually refuses to provide "adequate support," but cannot involuntarily take money away from the member and give it to the spouse/child.

If the commander does elect to punish the member, any such administrative sanctions are protected by the Privacy Act of 1974. Therefore, the commander cannot even (legally) inform the complainant that the member has been punished.

In addition to individual service regulations, The Department of Defense [Financial Management Regulation](#), prohibits payment of BAH (at the with dependent rate) to members who refuse to provide adequate support to their dependents. The regulation also contains provisions to recoup any BAH payments already made for periods involving nonsupport.

Making a Complaint. The best way of ensuring you receive spouse/child support from a military member is by obtaining a court-order. This includes "temporary support orders," that a court can issue pending resolution of the divorce. In that case, if the member still fails to pay, you can return to court and obtain a garnishment or involuntary allotment order (see below). This allows you to have the support payments taken directly out of the member's pay, through the Defense Finance and Accounting Service (DFAS), completely by-passing the military chain of command.

Keep in mind, however, that servicemembers have certain legal protections under the [Servicemember's Civil Relief Act](#). For example, under the act, if a servicemember cannot appear in court due to military necessity (such as the member is deployed or assigned overseas), and the commander certifies that leave is not possible, the court must grant a 90-day stay (delay) in any court action. And, upon application to the court, the member can request that such stays be extended (the court doesn't have to grant extensions, however).

If obtaining a court-order is not possible, you should contact the member's commander, executive officer, or first sergeant. Don't waste time with the member's supervisor, section chief, flight chief, etc. These individuals are generally not trained in the military's requirements for support, and -- because they work "side-by-side" with the member, their sympathies will generally lean toward the military member's side.

It's best to make your complaint in writing. While a phone call is okay, commanders, execs, and first sergeants are busy animals, and it can be hard to find them at their desk. Additionally, a written complaint allows them an opportunity to investigate the matter before they need to respond.

If you don't know where the member is stationed, you may have to use one of the military's [locator services](#). If you know the member's unit and base of assignment, simply address the letter to the commander of that unit (you don't need to know the commander's name). For example, if you know the military member is assigned to Boondocks Army Base, in the 5th Transportation Company, address the letter as:

Commanding Officer
5th Transportation Company
Boondocks Army Base, CA 12345-6789

If you don't know the member's unit, but know what base they are stationed at, address the letter this way:

Commanding Officer of
Airman John P. Doe
Boondocks AFB, CA 12345-6789

In the latter case, the letter will be routed to the base personnel folks, who will look up the member's unit address, and forward the letter to the appropriate commander (this may take longer).

Another option is to call the base locator. Each military base operates a locator service, who can release (non-privacy act) information about military members assigned to that base. You can call the base operator and ask to be connected to the base locator service. Give the locator the military member's name, and they should be able to tell you their unit mailing address. Then address your letter to the Commanding Officer of that unit.

Whether you elect to write or call, keep your communication unemotional and to the point. Military commanders, execs, and first sergeants are not divorce court judges, and don't want the history of everything you think your spouse has done wrong during your marriage. Simply state that your spouse is failing to make support payments as required by (agreement, court order, etc., if applicable), military regulations, and you're requesting assistance to obtain the required support. Include all facts related to the support (date of separation, date member stopped providing support, etc).

Garnishment and Involuntary Allotments

There are only two ways to involuntarily take money from a service person's pay for spousal support (alimony) or child support, and both methods require legal action:

Garnishment of Military Pay, (42 U.S.C. 659-662; 5 C.F.R. Part 581): Federal law authorizes legal process (garnishment) against the pay of military members to enforce child support and alimony in accordance with state law. Garnishments may be placed against the pay of active duty, Reserve, Guard and retired military members.

Legal process is defined as any writ, order, summons, or other process in the nature of garnishment directed to the military which is issued by:

- a court of competent jurisdiction within any state, territory or possession of the US;
- a court of competent jurisdiction in any foreign country with which the US has entered into an agreement that requires the US to honor such process; or
- an authorized official pursuant to an order of such court of competent jurisdiction or pursuant to state or local law.

The procedure to obtain a garnishment order is determined by state law. However, federal law determines how the garnishment order is applied to military pay, i.e., how service or process is accomplished, the type of pay subject to garnishment, etc.

Unless state law specifies a lesser amount, federal law provides a limit of 50 percent of the member's aggregate disposable earnings for any workweek if the member is currently supporting a second family (spouse or child) and 60 percent if the member is not supporting a second family. The percentage may be increased by 5 percent if the arrearage is 12 weeks or more.

The legal documents must clearly show that the garnishment order was issued for child support or alimony or both. Garnishment orders will not be honored for payments or transfers of property by one spouse to another for purposes of a marital property settlement or for the division of retired pay resulting from divorce or legal separation.

Sufficient identifying information must accompany the legal process in order for the Defense Finance & Accounting Service to implement the order. At a minimum, the information must include the following: the member's full name, date of birth, SSN, current military status and, if known, the member's current assignment.

Enforcement of garnishment order may be accomplished by sending a request for involuntary allotment via certified or registered mail, return receipt requested to:

Garnishment Operations Directorate,
Code L-Last 4 digits of member's SSN,
DFAS, Cleveland Center,
P.O. Box 998002,
Cleveland, OH 44199-8002

Requests may also be faxed to the following commercial fax numbers indicated by the last 4 digits of the member's SSN-NOTE: You will not receive a return receipt if you fax the order: Last 4 digits: 0000 - 1249: (216) 522-6819, 1250 - 2499, (216) 522-6951, 2500 - 3749, (216) 522-6821, 3750 - 5000: (216) 522-5372; 5001 - 6250, (216) 522-5371, 6251 - 7500: (216) 522-6817, 7501 - 8750: (216) 522-5958, 8751 - 9999: (216) 522-6819.

Call commercial (216) 522-5301 or DSN 580-5301 for additional information.

Statutory Allotments for Child Support and Alimony, (42 U.S.C. 665, 32 C.F.R. Part 54):

Federal law authorizes allotments from active duty military pay in order to satisfy child support and alimony obligations. Alimony alone will not qualify under this law. These statutory allotments may only be paid from active duty pay.

A statutory allotment may be initiated when child support and alimony payments are at least 2 months in arrears. The allotment is initiated by furnishing the DFAS Center a written notice from a court or state agency administering the child support program under Title IV-D of the Social Security Act. The notice must be signed by an authorized official and must contain the following information:

- A statement that the person signing the request is an agent or attorney of a state that has a Title IV-D plan with authority under the plan to collect money owed by a military member as child support or child support and alimony. The request may also be signed by an agent of the court issuing the order.
- The statement must include the military member's full name, SSN, the dates that the current support terminates for each child, and the exact name and address of the allotment payee. The statement must also show the total amount of the allotment to be taken and specify the amount to be paid each month for current support and the arrearage.
- The statement must be supported by a recently certified copy of the original court order awarding support and a court order which specifies the amount of the arrears and that payments be made to liquidate such arrears.

Allotments cannot exceed 50 percent of a member's pay and allowances if the member is supporting a second family. If the member is not supporting a second family, the allotment may not exceed 60 percent. The percentage may be increased by 5 percent if the arrearage is 12 weeks or more.

After DFAS receives the request, DFAS notifies the member's commander. The commander will then notify and counsel the member. The member will have 30 days to cure the arrearage or to submit evidence that the arrearage is an error. If not, DFAS will ordinarily implement the allotment 30 days after the member's notification. Payments will begin at the end of the month in which the allotment is to be effective.