

CLASP

CENTER FOR LAW AND SOCIAL POLICY

MEMORANDUM

TO: Child Support Advocates

FROM: Paula Roberts

DATE: September 13, 2004

RE: Establishment of Paternity and Enforcement of Support Orders
When a Member of the Military Is Involved

OVERVIEW

The federal government is the nation's largest employer. Within the federal government, the Department of Defense (DoD) is the largest agency. It employs approximately 1.4 million active duty military personnel, 1.4 million reservists, 2 million retirees, and 800 thousand civilian employees. Many of these employees and retirees are non-custodial parents, so it is very important for child support advocates to know how to deal with the military in establishing and enforcing support orders.

Basic information about military personnel can be obtained through the Federal Parent Locator Service (FPLS) and the National Directory of New Hires (NDNH). If a paternity and support have already been established, then an FPLS match can verify employment and wages. An income withholding order can then be submitted and will be processed by the Cleveland office of the Defense Finance and Accounting Service (DFAS). The address is:

DFAS Cleveland Center
DFAS-GAG/CL
PO Box 998002
Cleveland, Ohio 44199-8002

Both public entities and private attorneys can send income withholding orders to this address. DFAS informs the servicemember or civilian employee that the income withholding order has been received and gives the person 30 days to challenge the order by providing proof that the order has been amended, suspended, or set aside. In the absence of such proof, the order will be enforced. The entire process takes about 45 days.

However, if an order does not yet exist or needs to be modified, then it will be necessary to obtain a current address (for service of process) and historic wage information. DoD—through DFAS—will provide this information about active duty personnel if requested to do so by a state child support (IV-D) agency. There are separate DFAS offices for each branch of the military, and it is important to contact the correct branch.

If the custodial parent has the non-custodial parent's name and social security number, and knows which branch of the military he/she serves in, the IV-D worker files the request. With the same information, a IV-D worker can also obtain address and wage information about military retirees and civilian employees of the military. A list of the various DFAS offices is contained in a recent publication by the federal Office of Child Support Enforcement (OCSE) titled *Working With the Military as an Employer: A Quick Guide 2003*.¹

Once this information is obtained and the provisions of the new Servicemembers Civil Relief Act (described below) are followed, a court or administrative agency will likely issue an order establishing both cash support and health care coverage for the servicemember's child or children. The cash portion of the order may be enforced in one of three ways:

- Income withholding pursuant to 42 USC § 659.
- Voluntary allotment. This method requires the servicemember to request that the support be withheld from his/her pay. Payment can be stopped, started, or amended at will by the servicemember. This method pre-dates income withholding and is not often used today. However, there are still some old voluntary allotments in play.
- Involuntary allotment pursuant to 42 USC § 665. This is an income withholding method available against *active duty military* personnel. There must be an existing order and an amount greater than two months of arrears owed for this method to be used. Moreover, the amount must have been payable through a government entity such as a clerk of court or state disbursement unit. Involuntary allotment can involve withholding an amount in excess of the amount that could be withheld through regular income withholding. See 32 CFR Part 54 for details on this method of enforcement.

If the non-custodial parent is on active duty or is retired from the military, health care coverage will usually be provided through TRICARE (formerly CHAMPUS). To enroll the children in this coverage, the IV-D agency can send a National Medical Support Notice (NMSN) to:

¹ The DoD military services include the Army, Navy, Marine Corps, and Air Force. The Coast Guard is not part of DoD: it has been transferred to the Department of Homeland Security. This Department will provide similar information about Coast Guard members. The address is also listed in the *Quick Guide*.

DMDC Support Office
Attn: CA 99
400 Gigling Road
Seaside, CA 93955-6771

If the non-custodial parent is a DoD civilian employee, then the NMSN will be sent to the human services department of the employing agency.

The custodial parent of a service member's children can also directly enroll the children in TRICARE/CHAMPUS. To do this, the parent must go through a system called the Defense Enrollment Eligibility Reporting System or DEERS. Enrollment can be done in person at a military installation or by mail. If the child is a non-marital child, the custodial parent must provide DEERS with a copy of the child's birth certificate or the court order establishing paternity. Whether the child is marital or non-marital, the parent must provide a copy of the support order. The military will first attempt to have the service member voluntarily enroll the children in coverage. The military will document these efforts. If the servicemember declines to voluntarily enroll the child/children, then a military official will enroll them.

If there is a question about whether a child has been enrolled in TRICARE/CHAMPUS—voluntarily, through an NMSN or the parent's efforts—a IV-D worker can request verification from the Seaside, California, address above. The request must include the service member's name and social security number as well as the name, social security number, and birth date of the dependent child or children.

The *Quick Guide* mentioned previously provides some additional information on this basic system and may be helpful to those working with custodial parents whose partner is employed by DoD.

In addition, family members with support issues may contact the service member's local Legal Assistance Office for free advice. Service members are required to meet their support obligations and can be disciplined for failing to do so. See, for example, Army regulation 608-99. In addition, families may contact the Inspector General's Office for assistance by calling 800-752-9747.

THE SERVICEMEMBER'S CIVIL RELIEF ACT (SCRA)

For many years, members of the armed forces who were sued in a civil court were entitled to certain protections under the Soldier's and Sailor's Civil Relief Act. Covered individuals could use the provisions of the act to delay court proceedings until they had a chance to appear in person and defend themselves. Attorneys prosecuting or defending an action to establish paternity and/or a child support order where the defendant was in the military had to be familiar with the provisions of this law. Attorneys also needed to be familiar with federal guidance on enforcing child support orders in order to properly handle these cases. Recently, there have been substantial changes in both the law and federal guidance, and these are described below.

Effective December 19, 2003, Congress replaced the Soldier's and Sailor's Civil Relief Act with the Servicemembers Civil Relief Act (SCRA), 50 USC App. §§ 501 to 596. The new law makes substantial changes in how paternity and child support cases involving a member of the armed forces are to be handled by private attorneys and state child support (IV-D) agencies. Among the major changes are:

- *Coverage.* In addition to members of the traditional armed forces, reservists and members of the National Guard who are called to active duty for more than 30 days are now covered by the SCRA. Also covered are American citizens who are serving in the armed forces of another country if that nation is allied with the United States in the prosecution of a war or military action.
- *Scope.* The old law applied only to court proceedings. The new law covers administrative proceedings as well. It does this by defining a court as “a court or an administrative agency of the United States or of any State.”
- *Stay of proceedings.* At any stage before final judgment, the court (on its own motion) can grant a stay of the proceedings. Alternatively, the servicemember can apply for a stay. The application must include: 1) a letter from the servicemember setting forth why his/her current military duties prevent an appearance and stating a date when he/she will be available; and 2) a letter from the servicemember's commanding officer stating that the servicemember's current duties prevent an appearance and that leave is not authorized. If proper documentation is provided, a stay of at least 90 days *must* be granted. In addition, the request for a stay does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense.
- *Continuing Stay.* A servicemember may ask for an additional stay by submitting the same type of documentation required for the initial stay (see above). If the court or administrative agency declines to grant an additional stay, it must appoint an attorney to represent the servicemember's interests.
- *Waiver of Rights.* A servicemember may waive his/her SCRA rights. The waiver must be in writing.
- *Representation.* A service member who cannot appear and does not wish to waive his/her rights can also appear through a representative. This person can be an attorney or an individual possessing the power of attorney.
- *Default judgments.* In any case in which a defendant does not make an appearance, the court or administrative agency must take certain actions before entering a default judgment. These include obtaining an affidavit from the plaintiff stating whether or not the defendant is in the military. If the plaintiff is unable to determine whether or not the person is in the military, the plaintiff must state this.

If it appears that the defendant is in the military, the court or administrative agency must appoint an attorney to represent the defendant's interests. That attorney may request—or the court on its own motion may grant—a stay of the proceedings for a minimum of 90 days if it appears that the defendant may have a defense to the action which cannot be presented without the defendant (e.g., in a paternity case, genetic testing needs to be done). A stay may also be granted if the appointed attorney cannot contact the defendant to determine if a meritorious defense exists.

If it is not possible to determine whether the defaulting defendant is in the military, the court or administrative agency may require the plaintiff to post a bond. If it is later determined that the defendant was in the military, the bond can be used to indemnify him/her against any loss or damage resulting from the default order if that order is later set aside in whole or in part.

- *Interest.* If a servicemember is subject to a judgment which was entered prior to his/her military service, and state law provides for interest on the judgment, the rate cannot exceed 6 percent per year. Any amount in excess of 6 percent is forgiven. A similar provision applies to any credit obligations incurred before military service. So long as the servicemember is on active duty, interest cannot exceed 6 percent per year. To take advantage of this provision, the servicemember must provide the creditor with written notice and a copy of the order calling him/her to service or extending the dates of service. The written notice may be sent at any time after call up and for 180 days after termination or release from the military. A creditor may request a court to grant relief from this limitation. The creditor seeking such relief must show that the servicemember's ability to pay higher interest was not materially affected by his/her military service.
- *Health Insurance.* If a servicemember's personal health insurance was terminated by reason of his/her entry into military service, it must be reinstated when the individual leaves the service. There can be no exclusions or waiting periods. This applies to dependants who are covered by such insurance as well.