

**OFFICE OF THE STAFF JUDGE ADVOCATE
48TH FIGHTER WING, RAF LAKENHEATH, UK
Building 1082, DSN 226-3553**



Divorce/Child Support Issues

1. Can I get a divorce through the military?

No, the military court system only has military justice (criminal) power. It cannot grant you a divorce.

2. Can I ask a JAG to represent me during my divorce?

No. A JAG cannot represent you in civilian court nor can he or she draw up legal documents for you. However, a JAG can advise you and help you understand the divorce process. Additionally, the legal office can notarize documents that require a notary.

3. Should I hire a civilian attorney?

This decision should be made by you. Many states now have online forms that you can download and fill out to represent yourself in court. However, if you do not want to fill out the paperwork yourself or if you and your spouse cannot agree on terms, you should consider hiring an attorney. Hiring an attorney should also be considered if there are children or significant property or debt.

4. Can my spouse and I hire one lawyer if we agree on everything?

Generally, an attorney will represent only one person in the divorce lawsuit. This is because often times the interests of the parties may conflict. For example, one may not believe he or she is responsible for debts of the marriage, or both may want custody of the children. These conflicts may not arise until you begin to work through issues within the divorce. Nonetheless, it is possible to have one attorney if the attorney agrees or only one party needs to be represented by a lawyer.

5. What if my spouse and I cannot agree on the terms of the divorce?

You should consider having a civilian attorney represent each of you. Remember, your spouse's attorney is obligated to represent your spouse, not you. If you want someone to represent your interests, you'll need an attorney who is working for you.

6. How do I find a good lawyer?

Word of mouth from friends or family in the area is a good way to check the reputation of lawyers. Generally, the state or local bar association (an organizations of attorneys) will be able to refer you to competent attorneys in your area who specialize in divorce matters or any other area needed. If that is not possible, the American Bar Association can provide a Lawyer Referral Service.

7. How much will a divorce cost me?

You will always have to pay court filing fees, which are generally several hundred dollars. The biggest upfront expense of the divorce itself is usually attorneys' fees. Some lawyers charge a flat rate fee for divorces, while others charge by the hour. The more complex your divorce, the more you should expect to pay. Many attorneys charge an upfront retainer fee of \$3,000 or more. Therefore, if you are contemplating a divorce it would be best to start identifying financial means of payment. This is not to exclude the significant costs of a divorce in property settlement at the time of the divorce, spousal maintenance, and child support.

8. Do I have to give my spouse any money while we are separated?

In the absence of a court order, AFI 36-2906, *Personal Financial Responsibility*, dated 30 July 2018, Chapter 4 sets out a formula and rules for providing support to spouses, children, and other dependents while going through the divorce process (*see attached*).

9. What about once the divorce is final?

Spousal support and child support amounts are set by the court. The Air Force will expect Airmen to pay whatever the court orders them to pay.

10. Can my spouse and kids keep their ID cards?

Until your divorce is final, your spouse and children are entitled to retain their ID cards. After the divorce, your spouse may no longer be entitled to an ID card (unless he or she is also a military member or otherwise entitled). Your natural or adopted children will remain military dependents as long as you remain in the military or until they reach an age where they no longer qualify as dependents.

CHILD SUPPORT

1. How much child support should I receive if I'm separated from my spouse?

When we mention "child support," we are referring to a court awarded amount, typically after a divorce has taken place, that is determined by a formula set by state law or regulation. However, before a divorce is final and child support entered, active duty members are under a continuing obligation to provide support to their dependents. AFI 36-2906, *Personal Financial Responsibility*, dated 30 July 2018, Chapter 4 sets out a formula and rules for providing support to spouses, children, and other dependents while going through the divorce process (*see attached*). Adequate support varies according to the needs of the child or children, the incomes of the parents, the parents' reasonable needs.

2. Where can I file for child support?

The original child support order is generally entered in conjunction with the divorce decree. Therefore, wherever you filed for divorce is most likely where you would file a motion for child support. If child support is being sought separate from divorce proceedings, for example, a child born outside of marriage, then you must first establish paternity. You would file a paternity suit in the state where the child lives or in the state of legal residence of either parent if the child lives in the UK. The paternity suit determines who are the parents of the child and settles child support and visitation rights. Most states have residency requirements, or time limits, that determine when a state court may hear a support issue. Filing for child support in the U.K. is possible, but remember that the Department of Finance and Accounting Services (DFAS) will not recognize a foreign court order, which may make later enforcement difficult.

3. Before a court order is entered, how do I know how much child support I'm entitled?

Generally, a state will determine child support by considering both parties income in reaching a fair amount, or by simply taking a flat percentage of the non-custodial parent's wages. Using the joint income approach, courts examine both incomes and establish a percentage of support. A flat percentage approach is much less arbitrary – there is little argument for more or less support. In most states, the flat percentage approach is determined after things like taxes and social security are removed. However, in both approaches, income can be anything. For example, even though a military members OHA is not considered income for purposes of the IRS, courts will generally consider this amount, including BAH and COLA.

4. When my child is visiting my ex-spouse, can my ex-spouse unilaterally reduce the child support paid to me?

No. Unless the court order or separation agreement specifically provides for a reduction, the child support payment should remain the same.

5. If I cannot see my child for visitation, can I stop paying child support?

Under most state law, denial of visitation is not a legal justification for withholding child support. On the flip side, the lack of child support is not a legal excuse for refusing the other parent visitation rights. Note, however, that some states recognize refusal to provide child support as a basis for terminating parental rights. In short, the denial of visitation or child support payments must be dealt with through the courts.

6. When does child support stop?

Child support ends when the court order says it ends. This varies by state statute, but typically most states allow child support to cease upon the child turning the age of majority (18 to 21 years of age). However, most states provide that support will continue beyond the age of majority if the child is still in high school.

7. Can the other parent's paycheck be garnished for child support?

It depends. Garnishment is a court proceeding that requires a lawyer or the help of the state child support enforcement office. Garnishment is allowed only if a *court order* for child support is violated; it does not apply if there is only a separation agreement.

8. What if I need more child support in the future?

No child support order is ever unchangeable. If the child support is set out in a court order, you may petition the court to increase child support. However, it is likely that a showing of substantial change of circumstances since the date the order was signed will be required. Such a change may consist of increased living expenses, inflation or an increase in the earnings of the other parent. Sometimes the parents can agree between themselves on a regular increase in child support. If they wish, they can enter into an agreement that adjusts child support annually on the basis of, say, the Consumer Price Index or the wage increases of the noncustodial parent. When the parents cannot agree, the court must resolve the matter and the custodial parent must prove that present child support is inadequate.

9. Can child support also be reduced?

Yes. The court has the power to modify child support upwards or downwards, so long as there has been a substantial change of circumstances since the entry of the original order. Thus, for example, a parent who just lost his/her job or has had a substantial pay cut could petition the court to reduce the child support payments that they are making.

10. Can child support be paid through the court?

Yes. If the court order says so, the child support may be made payable through the court. Payment in this manner is the preferred method and in fact, is the growing trend among state enforcement agencies. This allows parents to be sure that payments are properly recorded and avoids problems of payments made in cash directly to the custodial parent with no receipt given. If child support is paid through the clerk's office, the clerk will also help enforce the order through contempt proceedings if the payor is in arrears. Payment through a state agency is usually accomplished by setting up an allotment. The people at finance can assist you with this.

11. How does the court decide medical expenses?

State statutes vary on who pays and maintains medical insurance. If one of the parents has medical insurance, that parent is usually required to keep it in place for the minor child or children. The remaining costs -- *uncovered health care expenses* -- are divided by the judge between the parents in a way that is fair. Often this means that the parents divide these expenses equally or in proportion to their incomes.

12. What if I need more child support than the guidelines show I should get?

You may ask for a variance in child support so long as you provide written advance notice to the other side before the hearing. A variance could be needed because of unusually high needs of a child, extremely high or low income of a parent, or several other reasons (daycare, after school activities, and private school are a few examples). It is very important to document the reasons for a variance so that they can be shown clearly to the court in testimony or written evidence.

13. If I’m ordered to pay child support, will I get visitation rights?

The noncustodial parent is usually entitled to reasonable visitation rights with a minor child except in extraordinary situations, such as when the noncustodial parent has a history of abusing the child. Some states allow a noncustodial parent to completely relinquish their parental rights to the child in exchange for not paying support. This is a very extreme and limited procedure. The parent relinquishing rights forfeits all rights to the child, including visitation. It basically means that the parent is removed from the birth certificate as if they never existed. This should never be considered without first talking to an attorney who specializes in family law.

RAF Lakenheath Legal Assistance App

For a copy of this pamphlet, as well as other helpful pamphlets, please go to the 48 FW Phone App, click on “J.A.G.” at the bottom, and then click on “forms and documents.”

AF Legal Assistance Website

For more information about the topics above, go to <https://aflegalassistance.law.af.mil>, select select Legal Information, then “Family Law” and then “Dependent Support” or “Divorce and Separation.”

Additionally, you can call or email us to schedule an appointment to meet with an attorney at the RAF Lakenheath legal office.

RAF Lakenheath Legal Office Hours

Legal Assistance/Wills (**By appointment only**)

Tuesday 0900-1100 and Thursday 1300-1500

Call **0163852-3553 (226-3553)** or email 48fw.ja@us.af.mil

Powers of Attorney/Notary Service (No appointment necessary).

Monday-Wednesday & Friday 0830 – 1530; Thursday 0930-1530

Attachment

AFI 36-2906, *Personal Financial Responsibility*, dated 30 July 2018, Chapter 4.

Current as of April 2020

Chapter 4

GUIDANCE TO MEMBERS FOR SUPPORT IN THE ABSENCE OF AN AGREEMENT OR COURT ORDER

4.1. Members will provide financial support to a spouse or child or any other relative for which the member receives additional allowances for support (T-1). Members also comply with the financial support provisions of a court order or written support agreement **(T-0)**. In the absence of a financial support agreement or a court order containing a financial support provision and until such an agreement is signed or such an order is issued, military members will provide financial using the following provisions **(T-3)**:

4.1.1. Pro-rata share. When the term “pro-rata share” is used with regard to Basic Allowance for Housing non-locality with dependents, the amount of each such share of Non-Locality Basic Allowance for Housing – with dependents is calculated using the equation in Figure 1.1.

Figure 1.1. Pro-rata Share.

$\text{Pro-rata share} = \frac{1}{\text{Total number of supported family members}} \times \text{Applicable Non-Locality Basic Allowance for Housing – with Dependent Rate}$

4.1.2. Calculation. The “total number of supported family members” in the denominator of the fraction of figure 1.1 includes all family members (regardless of residence) except the following:

4.1.2.1. A member’s former spouse, regardless of whether the member is providing financial support to the former spouse.

4.1.2.2. A member’s present spouse who is on active duty in one of the military services, unless financial support is required by a court order or written financial support agreement.

4.1.2.3. A family member for whom the military member is not required to provide financial support under this Instruction or for whom the military member has been released by his or her squadron commander from the requirement to provide financial support. A squadron commander may release a member under his or her command from the requirement to provide support only in the following situations **(T-3)**:

4.1.2.3.1. An order issued by a court without jurisdiction. With regard to the requirement to comply with a court order establishing paternity or regarding child custody, a squadron commander may release a member from either of these requirements if the court issuing the order clearly was without jurisdiction to do so. A squadron commander may release a member from the requirement to comply with a court order regarding the financial support of family members if **(T-3)**:

4.1.2.3.1.1. The court issuing the order clearly was without jurisdiction to do so;
and

4.1.2.3.1.2. The member, with regard to those supported family members, at all times has been complying with any of the following: the financial support provisions of another court order; the financial support provisions of a written financial support agreement; or the financial support provisions of paragraph 4.1. of this instruction.

4.1.2.3.2. A court order without a financial support provision. A court order without a financial support provision is one that contains no language directing or suggesting that the member provide financial support to family members on a periodic or other continuing basis. An order that directs only nominal financial support to family members on a periodic or other continuing basis is not silent. An order that directs financial support on a periodic or other continuing basis, but does not mention an amount, is not silent. Where financial support is directed, but an amount is not indicated in a court order, the member will provide financial support in accordance with paragraph 4.1. of this instruction. If, however, a court order is silent as to the obligation of a member to provide financial support to his or her family members, the squadron commander may release a member from the requirement to provide financial support for those family members if each of the following is true:

4.1.2.3.2.1. A judicial proceeding concerning the marriage (for example, legal separation, divorce, annulment), or a child, or the children from that marriage (for example, for financial support, child custody, visitation) has been initiated.

4.1.2.3.2.2. The court has jurisdiction over the member and the spouse or other person having custody of the children and the authority to order financial support of the family members concerned.

4.1.2.3.2.3. The court has issued one or more orders, none of which contains a financial support provision.

4.1.2.3.2.4. There is no written financial support agreement or other court order requiring financial support of the family members concerned.

4.1.2.3.2.5. The member is not receiving Basic Allowance for Housing – with dependents based solely on the financial support of the family members concerned or agrees to terminate such Basic Allowance for Housing – with dependents effective upon the date released from the support obligation.

4.1.2.3.3. The income of the spouse exceeds the military pay of the member. This subparagraph authorizes a squadron commander to release a member from the requirement to provide financial support to his or her spouse but not from the requirement to provide financial support to the children from that marriage. This provision does not give the squadron commander authority to release a member from the requirement to provide support required by a court order or a written financial support agreement. The squadron commander may release a member from this requirement if both of the following paragraphs apply (**T-3**):

4.1.2.3.3.1. The monthly income of the supported spouse exceeds the monthly military pay of the member; and

4.1.2.3.3.2. The member is not receiving Basic Allowance for Housing – with dependents solely on the basis of providing financial support to that spouse or agrees to terminate such Basic Allowance for Housing – with dependents effective upon the date released from the support obligation.

4.1.2.3.3.3. For purposes of determining whether a commander should release a member from this Instruction's requirement to provide financial support to his or her spouse, a member's military pay refers to the basic pay authorized under the law for a member based on his or her pay grade and time in service before deductions are taken for taxes, voluntary and involuntary allotments, garnishment, and other such matters. Military pay does not include military allowances or wages from off-duty employment. The income of the non-service member spouse will be based on his or her wages before deductions are taken for taxes, voluntary allotments, and garnishments, together with income from all other sources, such as interest, dividends, and profits derived from property in that spouse's possession.

4.1.2.3.4. This member has been the victim of substantial abuse. This subparagraph authorizes a squadron commander to release a member from the requirement to provide financial support to his or her spouse but not from the requirement to provide financial support to the children from that marriage. This does not give the squadron commander authority to release a member from the requirement to provide support required by a court order or a written financial support agreement. With regard to the requirement to provide financial support for a spouse, a squadron commander may release a member from this requirement if all of the following provisions apply:

4.1.2.3.4.1. An instance of abuse committed by the supported spouse against the member has been substantiated by either of the following: a family advocacy case management team; or a court as evidenced by a judgment amounting to a conviction or by the issuance of a permanent restraining order (or a temporary restraining order then in effect) against the supported spouse;

4.1.2.3.4.2. The instance of abuse did not involve a mutual affray or an act of physical abuse by the member against his or her spouse (substantiated by a family advocacy case management team or court judgement or order); and

4.1.2.3.4.3. The member is not receiving Basic Allowance for Housing – with dependents based solely on the basis of providing financial support to that spouse or agrees to terminate such Basic Allowance for Housing – with dependents effective upon the date released from the support agreement.

4.1.2.3.5. The supported family member is in jail. This subparagraph authorizes a squadron commander to release a member from the requirement to provide financial support to a family member who is incarcerated in any penal institution, regardless of the reason for his or her incarceration. This does not give the squadron commander authority to release a member from the requirement to provide support required by a court order or a written financial support agreement. With regard to the requirement to provide financial support for a spouse, a squadron commander may release a member from this requirement if both of the following provisions apply **(T-3)**:

4.1.2.3.5.1. The family member presently is in jail; and

4.1.2.3.5.2. The member is not receiving Basic Allowance for Housing – with dependents based solely on the basis of providing financial support to that spouse or agrees to terminate such Basic Allowance for Housing – with dependents effective upon the date released from the support agreement.

4.1.2.3.6. Require support has been provided to the spouse for 18 months. This subparagraph authorizes a squadron commander to release a member from the requirement to provide financial support to his or her spouse but not from the requirement to provide financial support to the children from that marriage. This does not give the squadron commander authority to release a member from the requirement to provide support required by a court order or a written financial support agreement. With regard to the requirement to provide financial support for a spouse, a squadron commander may release a member from this requirement if all of the following provisions apply (T-3):

4.1.2.3.6.1. The member and spouse have been separated for 18 months.

4.1.2.3.6.2. The member has made financial support required by this Instruction for the entire 18 months.

4.1.2.3.6.3. Civilian courts are available and would have jurisdiction to order financial support. A foreign court will meet this requirement only if its judgment would have continuing effect even if the soldier leaves the jurisdiction.

4.1.2.3.6.4. The member has not acted in any manner to avoid service of process or otherwise to prevent a court from ruling on the issue of support.

4.1.2.3.6.5. The member is not receiving Basic Allowance for Housing – with dependents based solely on the basis of providing financial support to that spouse or agrees to terminate such Basic Allowance for Housing – with dependents effective upon the date released from the support agreement.

4.1.2.3.6.6. The supported child is in custody of another who is not the lawful custodian. This subparagraph authorizes a squadron commander to release a member from the requirement to provide financial support to his or her child if the child is in custody of another person who is not the lawful custodian of the child. With regard to the requirement to provide financial support for family members, a squadron commander may release a member from this requirement regarding a particular child if:

4.1.2.3.6.6.1. The member is the lawful custodian of the child;

4.1.2.3.6.6.2. The child, without the member's consent, is in the custody of another person who is not then the lawful custodian of the child; and

4.1.2.3.6.6.3. The member is diligently pursuing legal means to obtain physical custody of the child.

4.1.3. Single-family units:

4.1.3.1. Family unit not residing in Government family housing. The member will provide a pro-rata share of Non-Locality Basic Allowance for Housing-with dependents to the family unit.

4.1.3.2. Family unit residing in Government family housing. While the member's family members are residing in Government family housing, the member is not required to provide additional financial support. When the supported family member(s) move(s) out of Government family housing, the member will provide a pro-rata share of Non-Locality Basic Allowance for Housing-with dependents.

4.1.3.3. Family members within the family unit residing at different locations. The member will provide a pro-rata share of Non-Locality Basic Allowance for Housing - with dependents to each family member not residing in Government family housing. The member is not required to provide additional support for family members residing in Government family housing.

4.1.3.4. Member married to another person on active duty in one of the military services. In the absence of a written financial support agreement or a court order containing a financial support provision, a member is not required to provide financial support to a spouse on active duty in one of the military services. With regard to the member's child or children (from that marriage or a prior marriage), a member will provide the following financial support in the absence of a written financial support agreement or a court order containing a financial support provision:

4.1.3.4.1. If the member does not have custody of any children, and the children do not reside in Government quarters, the member will provide a pro-rata share of Non-Locality Basic Allowance for Housing-with dependents to the military member having custody of the child or children.

4.1.3.4.2. If the member does not have custody of any children, and the children reside in Government quarters, the member is not required to provide financial support to the military member having custody of the child or children.

4.1.3.4.3. If the member has custody of one or more children, the member is not required to provide financial support for a child or the children in the custody of the other military member.

4.1.4. . Multiple family units:

4.1.4.1. A member will provide financial support for each family unit and family member in the following manner **(T-3)**:

4.1.4.1.1. Family members covered by court orders will be provided financial support in accordance with those court orders **(T-3)**.

4.1.4.1.2. Family members covered by financial support agreements will be provided financial support according to those agreements **(T-3)**.

4.1.4.1.3. Family members residing in Government family housing who are not covered by either a court order or a financial support agreement will not be provided additional financial support **(T-3)**.

4.1.4.1.4. Each family member not residing in Government family housing and who is not covered by a court-order or a financial support agreement will be provided a pro-rata share of Non-Locality Basic Allowance for Housing – with dependents **(T-3)**.

4.1.4.1.5. If the member's present spouse is on active duty in one of the military services, the requirements of paragraph 4.1.3.4. of this instruction apply **(T-3)**.

4.2. The amount of financial support provided pursuant to a financial support agreement or a court order covering one or more family units or members does not affect the calculation of the pro-rata financial support required under this Instruction for the financial support of any other family units or members not covered by such agreement or order.

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