

# Divorcing Someone in the Military: Basic Questions and Answers

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## Should I read this?

Service members who are divorcing have extra protection under the law. This explains those protections.

This is for both service members and non-service members.

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Some expressions you should know:

- ❖ “Petitioner” (or “Plaintiff”) is the person starting the court case.
  - ❖ “Respondent” (or “Defendant”) is the person being served with court papers (being sued).
  - ❖ A “waiver” is when you agree to give up something you are otherwise entitled to. You are “waiving your right” to something.
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Generally, the law protects a respondent spouse in any civil case **who is or will soon be on active military duty**. This includes reservists and National Guard members on active duty. The court can postpone (put off) or suspend (stop) hearings until the service member can take part.

The law aims to help service members give full attention to their duties. It may limit the court’s ability to make orders permanently adversely affecting the service member’s rights.

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- ❖ State and federal laws give service members this extra 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).
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If the service member’s military service “materially affects” their ability to take part in a court case, the court must wait until the service member is available. If a spouse cannot get to a hearing due to military service, and the outcome depends on their participation, the court can postpone the hearing. Usually, the court will still make temporary decisions about parental rights and responsibilities, and child support, without the service member, to protect the children’s best interest.

## My spouse and I separated a long time ago. We are out of touch. Do I have to find out if my spouse is on active duty?

**Yes.** You must try to find out before when filing for divorce. You can:

- Check <https://scra.dmdc.osd.mil/>.
- Contact the Defense Manpower Data Center, 1600 Wilson Blvd., Suite 400, Attn: Military Verification, Arlington, VA 22209-2593  
Phone (703) 696-6762 or 5790, fax (703) 696-4156. (include a stamped, self-addressed return envelope)

If you tried, but cannot find out if your spouse is on active duty, you must file an affidavit with the court explaining this.

**I am the petitioner. My spouse is currently on active duty overseas. What if my spouse does not respond at all to the divorce case?**

Normally if Respondent has not filed anything by the deadline to respond, you can seek a “default judgment.” You ask for final orders giving you everything your original court papers asked for. A judge will usually grant a default judgment if Respondent has not responded by the deadline.

**Before a judge can enter a default judgment against a Respondent on active duty**, the judge must appoint a lawyer to represent Respondent’s interests. Often the judge will delay granting final divorce orders until the service member can get leave and come to court.

If the other party is, or may soon be, on active military duty, when you serve them with your divorce papers, ask them to sign a special Waiver form. If your spouse is willing to give up their special legal protections, your spouse must sign the form and return it to you or file it with the court. **If your spouse will not do this, see a lawyer.**

**I am the respondent. I agree with everything my spouse is asking for in the divorce. Do I have to go to court?**

No. If you agree on all the issues, you can waive your rights to delays in the case by signing a written waiver in front of a notary public. You must have the waiver form filed with the court. If you think you want this, see a lawyer specializing in military law or a JAG attorney for more info. This locator can help you find the nearest local military legal assistance office:

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

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- ❖ If you sign the waiver form, you are giving up protections under this law.
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**My spouse is on active military duty. Does my spouse still have to pay child support?**

**Yes.** All military personnel have a responsibility to support their children. Even without a court order, you can contact your military spouse’s commanding officer to help arrange payments. Use this military online locator service to find your spouse: <https://scra.dmdc.osd.mil/>. The more info you enter, the better your chances of finding your spouse. You can also find your spouse by mail or by phone:

<p><b>(Army) Commander</b>  U.S. Army Enlisted Records &amp; Evaluation  Center  ATTN: Locator  8899 East 56th St.  Fort Benjamin Harrison, IN 46249-5301  1-866-771-6357</p>	<p><b>(Navy) World Wide Locator</b>  Bureau of Naval Personnel  PERS 312F  5720 Integrity Drive  Millington, TN 38055-3120</p>
<p><b>Marines:</b>  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</p>	<p><b>Air Force:</b> HQ AFPC/DP1ORM  550 C Street, West, Suite 50  Joint Base San Antonio - Randolph, TX  78150-4752  1-210-565-2660</p>

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