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In military divorces, sometimes the battleground is at home

Life in the military can be extremely stressful on a marriage. Deployments can keep a spouse away for months at a time, periodic relocations at unpredictable intervals can be very disruptive to family life, and the psychological stress of serving in a combat zone can cause problems even after a spouse returns from active duty.

It's no surprise that, according to a Defense Department survey, military divorces have increased dramatically in the years since September 11, 2001.

Like a military marriage, a military divorce can be very complicated. It can create logistical, geographical and legal issues that wouldn't even occur to most civilians.

For instance, how do you serve divorce papers on someone who is stationed overseas, perhaps in a war zone? Serving papers is a critical step in the process, but an agent who would normally serve the papers might not be allowed on a military base for security reasons.



The rules in foreign countries often depend on treaties and military agreements with the specific country, so they'll vary from place to place and are subject to frequent changes. In some cases, divorce papers even have to be translated into the official language of the foreign country – even though they're being

served on someone who speaks English!

There's also a federal law that says that lawsuits (including divorces) can be put on hold if a service member's duties prevent him or her from fully participating in the suit. If a military spouse is stationed overseas, it's

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Frankie Valli wins divorce dispute over life insurance



"Frankie Valli 2013" by Louise Palanker. ©wikipedia.com

The California Supreme Court recently handed a big victory to Frankie Valli, the lead singer of The Four Seasons, in a dispute over life insurance with his ex-wife Randy.

While they were married, Frankie bought a life insurance policy and named Randy as the sole owner and beneficiary. A year later, the couple divorced. Randy claimed that since she was the sole owner, she should get to keep the entire policy, which was worth \$365,000.

But Frankie argued that even though Randy was named as the sole owner, the policy was purchased with joint funds, so half of it belonged to him.

The California high court sided with Frankie. It said Frankie could have the entire policy, as long as he paid Randy \$182,500 for her one-half share.

After the court victory, it's not clear whether Frankie warned Randy that "Big Girls Don't Cry."

Gambling winnings may be withheld for child support

Ohio has become the latest state to withhold child support from gambling winnings.

Under a new law, anyone who wins \$600 or more in the state lottery or at one of the state's racetrack casinos will be cross-checked against a database of people who have unpaid child support obligations. Any money owed will be taken out of the person's prize.

People who win at least \$5,000 will also be screened for back taxes and unpaid student loan obligations.

Colorado, Indiana and a number of other states have recently put similar programs in place.



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Divorce can't be delegated with a 'power of attorney'

When 80-year-old Beverly Marsico decided to divorce her 84-year-old husband Louis, Louis had no interest in participating in the proceedings. He asked his daughter by a previous marriage, whom he had designated as having power of attorney, to appear in court on his behalf.

But Beverly objected, and a New Jersey judge ruled that Louis had no right to avoid participating in his own divorce proceedings, even if he wanted to.

The judge said that the participation of the actual parties in a divorce is critical for determining the facts and resolving all issues equitably.

Also, allowing spouses to avoid participating would enable them to avoid disclosure of key information and shield themselves from cross-examination, the judge added. Leaving everything to a third party who doesn't necessarily know the real truth about the matters in dispute would prevent the other spouse from receiving a fair hearing.

Of course, a power of attorney might be appropriate if a spouse were physically or mentally incompetent to take part in the proceedings – but that wasn't the case here.

Man who claims he's the father cannot obtain a genetic test

A Maryland woman had a baby that was conceived when she was still married, but wasn't born until after she got divorced.

After the baby was born, a man she knew claimed that he was actually the father of the child – and not the woman's ex-husband. He demanded a genetic test to prove his paternity. The woman refused, and the case went to court.

The result? The man lost. The Maryland Supreme Court decided that whether the man was entitled to a paternity test depended on what was in the best interests of the child. And in this case, the man was unable to prove that it was in the child's best interests to possibly be declared illegitimate.

While the man's parental rights are important, the court said, they're not as important as the child's rights.

Parent with custody may have to pay child support

When most people think of child support, they think of a parent who doesn't have custody paying money to the parent who has custody to help meet the child's needs.

But a recent case in Illinois shows that child support can work the other way around as well.

When Steven and Iris Turk divorced, he earned about \$150,000 a year and she earned less than \$10,000 a year. Iris got custody of their two children, and Steven was ordered to pay child support.

Seven years later, Steven was given custody of the children, but was ordered to keep paying child support because his income was much higher than Iris's.

Steven complained, but the Illinois Supreme Court sided with Iris, and said ordering a parent with custody to pay child support could make sense in some circumstances.

The point of child support is to provide for the needs the children, the court said. If a parent who doesn't have custody nevertheless has a great deal of visitation, but can't afford to care for the children during visitation periods, then the needs of the children aren't being met, and the wealthier parent can be ordered to help out.



In military divorces, sometimes the battleground is at home

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possible that a divorce may have to be delayed until he or she returns.

Military families typically move around a lot, so there might be several different states in which a spouse could legally file for divorce. Sometimes a big question is which state's law will apply to the divorce, which could end up having a significant effect on the spouses' rights.

For instance, different states have different laws on how to divide a pension, especially if it hasn't "vested" yet. Military pensions are unusual in that they typically don't vest until the service member has been in the military for 20 years. So which state's law applies could make a big difference in how military retirement pay is split.

Military members can also contribute to a thrift savings plan, which is similar to a 401(k) plan. But there are special rules for dividing assets in a thrift savings plan that are different from those for 401(k) plans.

In addition, military members are allowed to contribute to a survivor benefit plan, which provides an annuity to a deceased member's spouse. Sometimes a divorce court will require a service member to continue this coverage, and convert



it from a "spouse annuity" to a "former spouse annuity." If this happens, there are additional rules for what happens if either the service member or the spouse remarries.

Health insurance is also different in the military. A divorced spouse may be entitled to military health benefits if the couple were married for a 20-year period during which the other spouse was on duty. Some spouses who are near the 20-year mark have been known to delay their divorce in order to take advantage of this benefit.

Former spouses who don't qualify can still often buy low-cost health insurance from the military for three years after the divorce, and longer in some circumstances.

Finally, there's the issue of child custody and visitation when one parent may be suddenly deployed far away. Whatever agreement a couple reaches must take this possibility into account, and contingency plans need to be in place if a parent is deployed with little or no notice.

In the past, it was often difficult for spouses in the military to obtain custody of minor children, simply because of the unpredictability of military life. But times are changing, and now that many military bases have good schools and recreational facilities and free day care, it's gotten easier for many service members to argue that they should be awarded custody.

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What happens if a spouse simply ignores a divorce case?

What happens if one spouse files for divorce, and the other spouse just ignores it – doesn't respond, doesn't show up in court, etc.?

This actually happens more often than you might think.

In legal terms, if someone brings a lawsuit and the person who's being sued doesn't respond at all, that's called a "default." Most of the time, if someone defaults, they simply lose the case.

Divorce, however, is a little different.

Recently, a wife in New Jersey filed for divorce and asked to be given sole ownership of the couple's home, which was worth about \$200,000. The husband never responded. As a result, the wife was given a "default judgment" granting the divorce.

The wife next argued that, since the husband had defaulted, she should get the home all to herself.

But the court disagreed. Under state law, when a divorce is granted, the couple's property must be split between them according to principles of

It's not unheard of for spouses to pay no attention to divorce papers.

fairness. Since the husband had never said he was willing to let the wife have the house (and in fact, he never said anything at all, period), the fairness rule still applied.

Therefore, even though the husband defaulted, if the wife wants the house to herself, she must still convince the court that giving it to her would be a fair thing to do.



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