

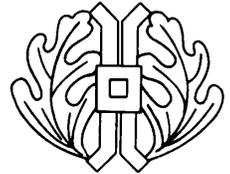
PREVENTIVE LAW SERIES

DISSOLUTION/LEGAL SEPARATION

SEMINAR I



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Legal Assistance offers assistance on divorce and legal separation issues. However, normally attendance at each of two divorce seminars is required before scheduling an appointment with a lawyer unless you have been served with divorce papers, in which case you may schedule an appointment. Please keep in mind that North Island Legal Assistance can only advise and assist one party to the divorce. Ethical rules prohibit representation of both husband and wife. The other party is free to consult with attorneys at MCRD, Camp Pendleton, or Miramar.

DISSOLUTION SEMINAR OUTLINE

I. DEFINITIONS

Petitioner: The party who files the petition for the dissolution of the marriage.

Respondent: The party who responds to the petition.

Separation Date: The day when one of the spouses "leaves the marital bedroom" and decides to live separate and apart from the other. The separation date could be nullified if the couple gets back together.

Uncontested Dissolution: A dissolution where the parties agree on all terms, such as: property and debt distribution; legal and physical custody and support of any children of the marriage; and ongoing spousal support. To complete the uncontested dissolution the parties must execute a "Marital Settlement Agreement."

Marital Settlement Agreement (MSA): A formal legal document that sets forth the terms of the parties' agreements concerning the division of their property, child custody, visitation, child support, spousal support, and various other stipulations.

Child Custody: In an uncontested dissolution, child custody issues should be determined by agreement between the parties and included in the MSA. If the parties are unable to agree, the court will determine custody based on the best interests of the child.

a) Physical Custody: The right to have the child maintain a primary/permanent residence with that party. In a typical agreement, one party will maintain primary physical custody while the other party is granted visitation rights.

b) Legal Custody: The right to make decisions concerning the health, welfare, and education of your child. In most cases, the parties will share legal custody.

Jurisdiction (residency requirements): The power of a court to hear and decide your case. For a California court to have jurisdiction over your dissolution, one spouse must have resided in California for at least six months (and possess an intent to remain) and in the county where you are filing for at least three months immediately prior to filing. It makes no difference where the marriage ceremony occurred and once the case is filed, it does not matter if one or both spouses move out of California.

II. WAYS TO END YOUR MARRIAGE

A divorce may be granted based on "irreconcilable differences" between the parties or incurable insanity of one party. California is a "No Fault" state and does not require any showing of wrongdoing on the part of either spouse. If one spouse wants a divorce, there is nothing the other one can do to prevent it. Fault, however, may be a factor for child custody determination. Each dissolution proceeding, as discussed below, requires a six-month waiting period before the dissolution will become final.

A. Summary Dissolution: requires much less paperwork and no court appearance when both parties join together in the request. Filing fee is \$191.00 total for both parties. This type of dissolution is limited to couples who meet all of the following requirements:

- 1) married less than five years
- 2) no children, and wife is not pregnant
- 3) own no real estate
- 4) less than \$5,000 in community debts (not counting car loans)
- 5) less than \$25,000 in separate assets (not counting cars)
- 6) less than \$25,000 in community assets (not counting cars)

During the six-month waiting period either party can revoke the summary dissolution and insist on a regular dissolution. Spousal support is not permitted in a Summary Dissolution.

Note: The paperwork Seminar, the second seminar, is designed for a Regular Dissolution only. You need not attend if you are filing for a Summary Dissolution.

B. Regular Dissolution: Designed for those who do not fall into the Summary Dissolution category. A regular dissolution can be handled by mail in some cases, but sometimes requires a court appearance and additional paperwork. The divorce will not be final until at least six months from the date the court gained jurisdiction over the Respondent spouse. The filing fee is \$191.00 per party. If the Respondent is active duty military and waives certain rights under the Soldiers' and Sailors' Civil Relief Act, along with certain other rights as required by the Court, the Respondent's filing fee may be waived upon application. Filing fees may be waived in cases of financial hardship. Ask the clerk at the Family Court for an "Application for Waiver of Court Fees and Costs."

C. Annulment: "Nullity of Marriage" is a legal proceeding to end a marriage and treat it as though it had never happened. Circumstances under which an annulment can be granted are extremely limited and the process will require a court hearing. There is no six-month waiting period for a nullity, but one of the causes below must be proved in court and this will usually require hiring a civilian attorney. Reasons for an annulment:

- 1) a spouse was under 18 and entered into the marriage without parental permission
- 2) a spouse was already married
- 3) a spouse entered into the marriage as a result of fraud or force
- 4) a spouse was of unsound mind when entering into the marriage (including intoxication)
- 5) a spouse, at the time of marriage, was legally impotent, or physically unable to consummate the marriage by coition. The ability to engage in partial, unnatural, or painful copulation is considered to be inability.

Legal Separation: Although this proceeding is similar to a dissolution, it does not terminate the marriage. You do not need to first get a legal separation in order to get a dissolution of marriage. In a legal separation, the couple divides their property and debts, decides custody and visitation, and arranges child and spousal support -- just as in a dissolution. The parties are not, however, free to marry someone else. The cost to file is \$191.00 per party and all issues that would arise in a dissolution of marriage must be addressed. Legal separation is often used for financial reasons, religious reasons, or to allow the non-military spouse to keep military benefits. A legally separated military member remains subject to UCMJ provisions regarding adultery.

III. PROPERTY

A. Separate Property: Generally, all property and debts acquired before the date of marriage or after the date of separation. Separate property also includes gifts or inheritances that were meant for only one spouse, and education loans and debts.

B. Community Property: Generally, all property, including wages, business revenues, savings and checking accounts, employment benefits and retirement accounts, as well as all debts acquired from the date of marriage to the separation date. Community property is divided **equally**, unless the parties agree otherwise. (There are exceptions to the general rule. For example, personal injury awards are community property but are usually awarded solely to the injured spouse).

IV. SUPPORT

A. Spousal Support

Spousal Support (alimony) is granted in fewer than 20% of divorce cases. The court must consider many factors, including:

- age & health of each spouse
- assets and debts
- the balance of the hardships
- tax consequences
- ability to pay support
- needs of spouse based on pre-separation standard of living
- education, training
- time needed to become trained
- contributions made by one spouse to the education and training of the other
- marketable skills
- ability to work without interfering with the needs of dependent children
- emotional distress resulting from domestic violence

The goal is to have the recipient spouse become self-supporting within a reasonable period of time. A "reasonable period of time" is generally one-half the length of the marriage. The court, however, has broad discretion to order support for a greater or lesser time period, depending on the above factors or any other relevant circumstances.

B. Child Support

1) Parents are legally obligated to support their children until the children turn 18 (19 if still in high school) or are otherwise emancipated.

2) The amount owed is based on the net monthly income of each parent, the amount of time each spends with the children, and the number of children to whom support is owed. The actual figure is determined using an algebraic formula.

3) The California child support guidelines are mandatory if the parties cannot reach an agreement on the amount of support a party should pay.

4) Once child support is established, it can be modified by the court at the request of either party if circumstances change. Modification, however, may require a costly separate hearing.

5) Navy Legal Assistance Attorneys can estimate obligations under the California support guidelines by entering income and other factors into a computer program.

C. Navy Support Guidelines

NOTE: The guidelines are enforced by the military spouse's command. A Legal Assistance Attorney cannot force a spouse to pay support. The guidelines are not related to the State of California child support guidelines. A court will order support based on state guidelines, not military guidelines.

1) Absent a court order or mutual agreement between the parties the Navy has guidelines as to what constitutes appropriate support.

2) These guidelines are not carved in stone but may be increased or decreased depending on the facts of a particular case.

3) Section 1754-030 of the MILPERSMAN provides the following guidelines:

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

* Gross pay includes basic pay and BAH

V. MILITARY RETIREMENT

A. Divisibility of Retired Pay

1) Retirement is not support. The portion of retirement earned during marriage is considered community property (in community property states) and subject to division by the court.

A spouse is eligible to receive a portion of the military spouse's retirement no matter how long they were married, so long as the military spouse was earning retirement benefits while they were married.

2) Formula used by the Family Court to compute distribution of military retirement to the non-military spouse:

$$\frac{\text{Total number of months married during creditable military service (until separation)}}{\text{Total number of months of creditable military service at retirement}} \times \frac{1}{2}$$

3) What may the Court divide? The Court may divide "disposable" retired pay. Disposable retired pay is the "total" or "gross" monthly retired pay minus certain deductions such as forfeitures, disability pay, and annuities.

B. Direct Pay from DFAS to Former Spouse

A former spouse may be eligible for direct payment of retirement benefits from the Defense Finance and Accounting Service (DFAS). In order to be eligible, the military member and former spouse must have been married to each other for at least 10 years during which the member performed at least 10 years of creditable military service (the 10/10 rule).

If you believe you meet this criteria and would like to learn more, ask a Legal Assistance Attorney for information on how to apply.

C. Important Case Law

1) "Gilmore election" 29 Cal. 3d 418 (1981) The non-military spouse can elect to take the share when the military member becomes eligible to retire (usually upon 20 years of service) or wait until the member actually retires. If the election to take the share at the 20 year point is exercised, the non-military spouse will receive no advancement or promotion increases from the military spouse's retirement pay after the 20 year point.

2) "In re Marriage of Tucker" 226 Cal App. 3d 1249 (1991) If a military member is **not a resident of California** and is present in California only due to military assignment, with no intent to

remain indefinitely in California, **California does not have jurisdiction to divide military retirement unless the military member consents.**

VI. ISSUES UNIQUE TO THE MILITARY

A. The Navy will **not** pay to move former spouses or family members and their household goods within the United States upon divorce.

B. A child remains a military dependent and will be entitled to the benefits associated with this privilege (until the child reaches the age of 18 or longer if the child goes to college).

C. A former spouse who was married for **20 years** or more to a military member during **20 years** of creditable service (**20/20/20 spouse**) will maintain significant military benefits, so long as the former spouse does not re-marry. These benefits include commissary and exchange privileges, and health care.

D. A former spouse who was married for **20 years** or more to a military member which overlapped **15 years** of creditable service (**20/20/15 spouse**) will maintain health care benefits for one year, so long as the former spouse does not re-marry. After the one-year period, a former spouse has the option to enroll in a government sponsored health insurance plan (former spouse is responsible for paying premiums). No other benefits are authorized for a 20/20/15 spouse.

E. If your family is currently living in base housing, the military member must continue to reside at that home in order for the nonmilitary spouse to maintain residency privileges. If at any time during a separation or prior to the **final** divorce decree the military member moves out of base housing, the non-military spouse will receive a 30 day notice of eviction. On occasion, the transition period may be extended to 90 days. See your Housing Manager for more information.

F. Survivors' Benefit Plan (SBP): A court can order a retiring service member to designate a former spouse as a SBP beneficiary. The designation is **not** automatic -- the former spouse must send a request to the appropriate military finance center not later than one year after the date of the court order.

G. REMEMBER, all divorces, division of property, custody and support orders are governed by the **state** courts, not the military. **The military does not divide retirement or establish amounts for support.** Do not try to enforce Navy support guidelines within the state courts.

VII. SERVICES PROVIDED AT THE LEGAL ASSISTANCE OFFICE

A. We provide practical information to eligible individuals seeking a divorce or separation. In addition, we assist in the preparation and filing of the necessary documents for regular dissolution, summary dissolution, legal separations and various other family law proceedings. If your case is **contested**, our assistance will be limited, since the parties will have to go to court and **NAVY ATTORNEYS ARE GENERALLY NOT PERMITTED TO APPEAR IN CIVILIAN COURT** as legal representatives. We also provide general advice in family law matters, including explaining a party's rights and responsibilities under California law.

B. We are not marriage counselors. We are licensed attorneys who are available to assist you with the formalities and legalities of your dissolution or separation. Personal counseling is available through the Family Service Center, the Command Chaplain and at various private agencies. We urge you to take advantage of these services should the need arise.

C. Prior to scheduling an appointment with a legal assistance attorney for dissolution matters, you must complete the following steps: 1) attend the Dissolution Seminar; 2) attend the Paperwork Seminar; 3) both parties must complete the Marital Settlement Agreement (MSA) worksheet; 4) one of the parties must sign the **ACKNOWLEDGMENT** form found at the back of the MSA worksheet in front of a Notary.

D. Due to state bar associations' and Navy rules of ethics and conflict of interest regulations, our Legal Assistance Office can advise only one of the spouses. The other spouse may seek legal assistance at the **Marine Corps Recruit Depot (MCRD), (524-4110)** or from other legal professionals outside the Navy-Marine Corps organization.

E. If you need legal assistance beyond our capabilities, our administrative office can provide you with a list of local lawyer referral services, legal aid programs, and other legal assistance organizations to help you in obtaining civilian legal counsel. One such referral service is the **Lawyer Referral & Information Service (LRIS)**, a non-profit organization sponsored by the San Diego County Bar Association. The LRIS is a public service, which provides an initial 30 minute consultation with an LRIS-referred attorney **FREE OF CHARGE** from over 500 lawyers who are experienced in more than 20 major fields of law. If further legal services are needed, arrangements for fees are made directly between the client and the lawyer. The LRIS telephone number is **231-8585**.

F. If you and your spouse are absolutely unable to agree on a provision of your MSA, you may be able to resolve the dispute through Mediation Services. Mediation Services are offered through our office on a limited basis. An appointment is

required for this service.

VIII. COURT FORMS

Make sure the packages you pick up from court contain the following forms:

1. Family Law Certificate of Assignment
2. Summons
3. Petition
4. Declaration Under the Uniform Child Custody Jurisdiction Act
5. Appearance Stipulation and Waives
6. Income and Expense Declaration
7. Schedule of Assets and Debts
8. Declaration of Disclosure
9. Declaration Regarding Service of Declaration of Disclosure
10. Declaration For Default or Uncontested Dissolution or Legal Separation
11. Notice of Entry of Judgment
12. Judgment
13. Child Support Case Registry Form
14. Wage and Earnings Assignment Order
15. Order/Notice to Withhold Income for Child Support