502 FSG/JA Most Common Topics for Legal Assistance



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Legal Assistance Overview



Since 1943, the United States Armed Forces has provided its members with legal assistance in connection with personal civil legal matters. The Legal Assistance Office on Joint Base San Antonio (JBSA) carry on this legacy by serving military members, their spouses and dependents, and certain civilian employees.

Individuals Eligible for Legal Assistance

Below is a non-inclusive list of individuals who are entitled to legal assistance:

- Active duty military personnel, including reservist and guardsmen on federal active duty under Title 10 of the U.S. Code, and their dependents entitled to an ID card
- Retirees and their dependents entitled to an ID Card (includes retired reserve who are receiving retired pay)
- Air Reserve component members performing Active Guard/ Reserve (AGR) tours
- Civilian employees stationed outside the U.S. and its territories
- Reservists and National Guard not on Title 10 status, but subject to federal mobilization in an inactive status (mobility/deployment related assistance only)
- DOD civilian employees and contractors deploying to or in a theater of operations for contingencies or emergencies
- Certain foreign military personnel assigned to the U.S.

Legal Assistance Provided

Attorneys in our office can provide free legal advice and counseling in the areas listed below but generally cannot represent a client in court.

- Wills, living wills, powers of attorney, and notary service
- Adoptions
- Domestic relations
- Servicemembers Civil Relief Act (SCRA)
- Casualty affairs issues

- Dependent care issues
- Financial responsibilities
- Landlord-tenant and lease issues
- Consumer affairs
- Tax assistance

Areas Not Covered by the Legal Assistance Program

There are several matters our attorneys are prohibited from giving legal advice on due to Air Force regulations. These include:

- Civilian or military criminal matters.
- Official matters in which the Air Force has an interest such as discharges, pay problems or complaints about medical care
- Personal commercial ventures and private business activities
- Drafting and reviewing real estate sales and closing documents
- Drafting and reviewing separation agreements, divorce decrees, or living trusts
- Law of Armed Conflict, Standards of Conduct and ethics questions (reviewed by the legal office through coordination with the unit commander as necessary.)
- Any legal matter in which a civilian attorney has been retained

How to Use the Program

Legal assistance counseling is done primarily by appointment, although limited walk-in hours may be offered. To speak with an attorney, call the base legal office to ask how set up an appointment. You must bring your military ID card with you, along with any documents or other materials related to your issue.

Production of Documents

Our office will create and notarize powers of attorney on a walk-in basis, free of charge. Wills and other estate planning documents require a legal assistance appointment.



Notary Services

The JBSA Legal Office has several Texas notary publics on staff, as well as qualified military personnel who can serve as notaries. Notary services require your military ID card, a proper document and personal appearance before the notary. Please do not sign any documents before bringing them in to be notarized. Notary services are free and offered on a walk-in basis.

Other Services

JBSA Fort Sam Houston also offers additional services which include:

Pro se Divorce, Pro se Name Change, and Probate services. Please contact the legal office for more information regarding these programs.

Texas Divorce Law



General Information

To discuss options, a JBSA Legal Office can provide general information about the divorce process but DoD attorneys cannot represent either spouse-military or not--in a divorce proceeding.

Residency Requirements

Before you or your spouse can file for divorce in Texas, one of you must have lived in Texas for at least the last six months and in the county where the divorce will be filed for the last 90 days. One spouse can file for divorce in Texas even if the other spouse is not a Texas resident. If you are a Texas resident who is in the military, the time you have spent outside the state is still counted toward residency in Texas, and your home county remains the same for divorce filing purposes. These residency requirements cannot be waived, so if you or your spouse have note lived here long enough, you'll have to wait to file for divorce until the residency requirements are met or consider filing in another state in which residency requirements can be met.

Grounds for Divorce

The most common ground for divorce in Texas is the no fault basis. This states that the marriage has become insupportable because of discord or conflict between the spouses that destroys the legitimate ends of the marriage relationship and prevents any expectation reasonable of reconciliation. Alternatively, there are other "fault" grounds that may be used. These include cruelty, adultery, conviction of a felony, abandonment for at least a year, living apart without cohabitation for at least three years, or confinement in a mental hospital for at least three years; however, unlike no-fault, these grounds must be proven.

Property Division and Settlement

This may be one of the most important reasons you need an attorney. When you and your spouse have few possessions, the property settlement may not seem very important, but for military couples, it can have far-reaching consequences--including affecting retirement pay.

Texas is a community property state, which means each spouse has an interest in property acquired by either spouse during marriage. All property owned by either or both spouses is classified as either:

- 1. Separate: All property you or your spouse acquired <u>before</u> marriage and any property acquired separately <u>after</u> marriage by gift or by inheritance. To prove separate property, a spouse must meet a higher burden of proof, and depending on its nature, may be subject to certain reimbursement claims. Generally, each spouse is entitled to keep all of their separate property.
- 2. Community: All property acquired by either spouse during marriage that is not awarded to one spouse as separate property. Upon divorce, the court will divide community property in a "just and right" manner, taking into account the rights of each party and any children. Nothing obligates the court to divide the property equally, especially if it isn't feasible or practical to split property in half.

Conservatorship of Children

If there are any children who were born during the marriage, the court must also make orders regarding decision-making, periods of possession and access, and child support. The court's primary consideration is the best interests of the child, and courts are strongly guided by several statutory presumptions. For example, it is presumptively in the best interests of the children that both parent be named joint managing conservators, meaning each will have similar decision-making authority in every area except for the right to designate the children's primary residence

Further, the parent not awarded the right to designate the children's residence is presumptively entitled to certain minimum periods of possession, referred to as a Standard Possession Order, and obligated to pay a certain amount of child support, called guideline child support. Child support is an amount determined based on a percentage of the supporting parent's net monthly resources, which generally starts at 20% for one child, and rises by 5% for each additional child up to five.

Child Support



Both parents have a legal duty to support their children, so the court can order either or both parents to pay child support, depending on the circumstances.

Amount

Texas has a statutory schedule for child support, based on the obligor's (the supporting parent) monthly net resources (usually, all income, including non-taxable income like BAH and BAS, minus federal taxes based on standard deduction at single rate, state taxes, and a few other expenses) of less than \$9,200:

- 1. One child—20% of the net resources
- 2. Two children—25%
- 3. Three children—30%
- 4. Four children—35%
- 5. Five or more children—at least 40%

These guidelines are considered presumptively reasonable, which means they're to be used unless there are good reasons not to do so. The court may determine the statutory guidelines are inappropriate based on factors such as the child's needs, the parents' ability to contribute to the child's support, and the amount of possession of and access to the child.

Relation to visitation

Support cannot be contingent on visitation rights. If you're the obligor, you can't stop payment even though your former spouse wrongfully denies you visitation. Your remedy is to ask the court to force your former spouse to obey the visitation order.

Duration

Unless otherwise agreed in writing or provided in the order, child support terminates on:

- 1. The marriage of the child;
- 2. The removal of the child's disabilities for general purposes;
- 3. A finding by the court the child is 18 years of age or older, and has failed to comply with high school education requirements; or
- 4. The child's enlistment in the U.S. Armed Forces.

Changing the amount

The managing conservator can petition the court to increase child support if the circumstances have "materially and substantially" changed. However, an increase in the needs, standard of living, or lifestyle of the managing conservator does not warrant an increase in child support. The obligor also has a right to request a modification to decrease payments under the same standard. The birth of a new child by the obligor is also a factor to be considered in determining ability to pay, but remarriage and the support of step-children cannot be considered to increase or decrease support.

Method of payment

Unless you and your former spouse agree otherwise, Texas law requires the judge to order that child support payments be made through a local registry, and except for good reason, order that support payments be withheld from the obligor's (paying parent's) earnings. For military members, the automatic withholding can be accomplished by using the appropriate forms and submitting to your finance office.

Heroes program

The HEROES program is designed to help either parent. The Child Support Division of the Office of the Attorney General of Texas has developed the Help Establishing Responsive Orders and Ensuring Support (HEROES) for Children in Military Families program. The HEROES program partners military families with specialized attorneys to work through their child support needs. For more information or to speak with a HEROES team member, visit their website at TexasAttorneyGeneral.gov/child-support or call (512) 460-6400.

Rules for Air Force Support to AF Dependents



Active Duty Air Force members have a responsibility to support their dependents. This is true even if a couple is separated or divorcing.

Amount of Support: AFI 36-2906, Personal Financial Responsibility, sets the default amount of support as the With Dependents rate of Non-Locality BAH for the member's rank. (San Antonio cost of living means that most members actual Basic Allowance for Housing is roughly 50% higher than the non-locality rate.)

This default governs in the absence of a court order or written support agreement. If a member wants to pay less or a dependent wants more, they can agree--or ask a court to order a different amount.

Exceptions: A commander can relieve the member of supporting their spouse in very limited circumstances:

- Both spouses are active duty military.
- The dependent spouse's income is greater than the member's military pay.
- The member is the victim of substantiated abuse by the dependent spouse.
- The dependent spouse is in jail.
- The couple has been separated for 18 months and the member has supported the dependent spouse for those 18 months.
- The dependent spouse continues to live in base housing. The member continues to pay their BAH as rent for the government family housing unit, so they receive complete credit for support.

These exceptions have specific requirements, so commanders, members, and dependents spouses will need to review the circumstances of each case and should consult a local legal office.

Note that a court order or written agreement will also trump these exceptions. In other words, the member must follow the order or agreementeven if one of the instruction's exceptions would otherwise release them from their basic obligation to support their dependents.

Pro-Rata Share: If children will be staying with the military member-or if the member has support obligations to children from another relationship--the member is still obligated to support their dependent spouse until the divorce is final. In such a case, though, the spouse receives a *pro-rata* share of the Non-Locality BAH With Dependents.

For example, a dependent spouse moves out and leaves member with the couple's two children. If Non-Locality the member's BAH With Dependents is \$900 per month, then the share is divided to three shares--one share for the spouse and one share for each child. The member keeps both shares of the two dependent children, because the member will be caring for the children. The member must provide the third share--\$300--to their spouse until their support obligation is terminated.

Consequences: A military member failing to provide the required financial support to dependents is subject to administrative discipline, non-judicial punishment, and prosecution under the Uniform Code of Military Justice.

Pay chart on following page:





2020 Non-Locality BAH Rates Effective 1 January 2020

1	
With Dependents	
\$2,108.10	
\$2,108.10	
\$2,108.10	
\$2,108.10	
\$1,897.50	
\$1,829.40	
\$1,612.20	
\$1,334.10	
\$1,138.50	
\$1,019.10	
\$1,434.00	
\$1,293.90	
\$1,196.10	
\$1,369.50	
\$1,263.30	
\$1,172.10	
\$1,083.00	
\$975.00	
\$847.20	
\$787.80	
\$750.90	
\$750.90	

Rules for Army Support to Army Dependents



Active Duty Army members have a responsibility to support their dependents. This is true even if a couple is separated or divorcing.

Amount of Support. AR 608-99, Family Support, Child Custody, and Paternity, sets the default amount of support as the With Dependents rate of Non-Locality BAH (also known as BAH-II) for the member's rank. (San Antonio cost of living means that most members actual Basic Allowance for Housing is roughly 50% higher than the non-locality rate.)

This default governs in the absence of a court order or written support agreement. If a member wants to pay less or a dependent wants more, they can agree--or ask a court to order a different amount.

If the dependents continue to live in base housing, then the member need not pay anything more than the full BAH they normally pay as rent. If the member pays the rent or mortgage, and/or essential utilities, for off-base housing occupied by the dependents, the amount paid is credited toward the default amount.

Exceptions. A battalion commander can relieve the member of supporting their spouse (not children) in very limited circumstances:

- Both spouses are active duty military.
- The dependent spouse's income is greater than the member's military pay.
- The member is the victim of substantiated abuse by the dependent spouse.
- The dependent spouse is in jail.
- The couple has been separated for 18 months and the member has supported the dependent spouse for those 18 months.

These exceptions have specific requirements, so commanders, members, and dependent spouses will need to review the circumstances of each case and should consult a local legal office.

Note that a court order or written agreement will also trump these exceptions. In other words, the member must follow the order or agreement-even if one of the regulation's exceptions would otherwise release them from their basic obligation to support their dependents.

Pro-Rata Shares. If the member has dependents residing in two or more different places (for example, if the children will be staying with the military member but the spouse has moved out -- or if the member has support obligations to children from another relationship) the dependents receive a *pro-rata* share of the Non-Locality BAH With Dependents.

Enhanced Interim Financial Support Soldiers must pay an additional amount equal to BAH-DIFF, even if their dependents are in government housing or they are providing in-kind support such as paying rent or utilities directly. For most this is a one-time payment, paid during the first 30 days of interim support. However, EIFS may continue on a monthly basis if the dependents do not have access to a US state court with jurisdiction to order support. Some exceptions apply.

Consequences. A military member failing to provide the required financial support to dependents is subject to administrative discipline, non-judicial punishment, and prosecution under the Uniform Code of Military Justice.





2020 Non-Locality BAH Rates Effective 1 January 2020			
Pay Grade	With Dependents	BAH-Diff	
O-10	\$2,108.10	\$368.70	
O-9	\$2,108.10	\$368.70	
O-8	\$2,108.10	\$368.70	
O-7	\$2,108.10	\$368.70	
O-6	\$1,897.50	\$313.50	
O-5	\$1,829.40	\$303.00	
O-4	\$1,612.20	\$201.90	
O-3	\$1,334.10	\$201.60	
O-2	\$1,138.50	\$237.60	
O-1	\$1,019.10	\$256.80	
O-3E	\$1,434.00	\$210.90	
O-2E	\$1,293.90	\$252.60	
O-1E	\$1,196.10	\$296.10	
E-9	\$1,369.50	\$316.20	
E-8	\$1,263.30	\$296.40	
E-7	\$1,172.10	\$342.90	
E-6	\$1,083.00	\$331.80	
E-5	\$975.00	\$282.30	
E-4	\$847.20	\$243.60	
E-3	\$787.80	\$200.10	
E-2	\$750.90	\$267.30	
E-1	\$750.90	\$316.20	

SCRA Residential Lease Termination



TERMINATION OF LEASE Possible for ACTIVATED RESERVISTS, NEW SERVICE MEMBERS, CURRENT ACTIVE DUTY DEPLOYING OR ON PCS ORDERS.

A lease for property may be terminated by a servicemember if one of the following conditions are met:

- The lease was entered into by the member before he or she started active duty; or
- The lease was entered into by the reserve or guard member before he or she was recalled to active duty; or
- The servicemember occupying the premises under lease receives military orders for permanent change of station; or
- The servicemember occupying the premises under lease receives military orders for deployment for 90 days or more.

To terminate the lease, the member must deliver written notice to the landlord at any time after call to active duty or receipt of orders. Oral notice is **not** sufficient.

For month-to-month rentals, the termination becomes effective 30 days after the first date on which the next rental payment is due subsequent to the date when the notice of termination is delivered. For example, if the rent is due on the first day of each month, and notice is mailed on August 1st, then the next rental payment is due and payable on September 1st. Thirty days after that date would be October 1st, the effective date of termination.

For all other leases, termination becomes effective on the last day of the month following the month in which proper notice is delivered. For example, if the lease requires a yearly rental and proper notice of termination is given on July 20th, the effective date of termination would be August 31st.

The servicemember is required to pay rent for only those months before the lease is terminated. If rent has been paid in advance, the landlord must prorate and refund the unearned portion within 30 days of the date of termination of the lease.

If you are unsure of whether you qualify for the SCRA lease termination, visit your nearest legal office to speak with a legal assistance attorney. If you are confident that you do qualify for lease termination, see reverse side of this paper for a sample letter to your landlord requesting lease termination. If you landlord refuses to agree to termination of your lease, or withholds any portion of your security deposit, please contact your nearest legal office immediately.

What to Do After the Death of a Loved One



The death of a loved one may place a number of burdens upon surviving family members, both in the short and long term. Here are some immediate tasks that should be attended to after a loved one's death.

For deaths that occur at home. If your loved one is a hospice patient, call the hospice agency to report the death. A hospice nurse will come to the home and pronounce the death. The nurse might also call a mortuary or funeral home for you and arrange for pickup of the body. If your loved one is not a hospice patient, you should call emergency services (911) to notify the local police or sheriff of the death.

Make Arrangements With a Funeral Home. Whether a hospice nurse makes the call or you call yourself, you'll need to work with a funeral home to arrange for pickup of the deceased's body. If funeral arrangements have been made in advance of the death, all you'll need to do is confirm the arrangements with the funeral director. If no funeral arrangements were made in advance, you will need to begin planning a funeral or arrange for cremation services.

Contact the Social Security Administration. In most cases the funeral home will report the death to the Social Security Administration (SSA) in order to stop future payments to the deceased. If not, you may report the death by calling the SSA at 1-800-772-1213. Information about survivors' benefits may be found at https://www.ssa.gov/benefits/survivors/.

Contact Employers. If your loved one was employed, contact the employer's human resources office about any outstanding compensation that might be payable, whether surviving dependents are still eligible for health insurance or other benefits, and whether there is a life insurance policy through the company.

Contact Life Insurance Companies. If your loved one had a life insurance policy other than an employer-sponsored one, be sure to notify the insurance carrier.

Secure Important Documents. Locate and secure such documents as wills or trusts, financial account statements, deeds to real estate, car titles, and (if the deceased was a veteran) the DD Form 214. This will be a great help to the executor of the estate.

Notify Credit Card Companies. Unless it's a joint account you want to continue to use, you should contact the credit card company so the account can be

frozen and fraudulent charges avoided. Don't worry about immediately paying off the cards unless you're the spouse or joint account holder; that is a task for the executor of the estate.

IF THE DECEASED WAS A VETERAN

Contact the Department of Veterans Affairs. The VA may provide death, burial, and memorial benefits, including burial or inurnment in a national cemetery, and a headstone or columbarium niche cover. Most funeral homes are very experienced in working with the VA and military cemeteries and should be able to assist with funeral and burial benefits. You may also contact the VA directly at 800-535-1117. Further information can be found https://www.va.gov/burials-memorials/schedule-aburial/ If the person was receiving disability compensation or Dependency and Indemnity Compensation, or was enrolled in DVA-sponsored insurance such as Veterans' Group Life Insurance, Servicemembers' Group Life Insurance, or the Servicemembers' Group Life Insurance Traumatic Injury Protection Program, notify the VA at (800) 827-1000.

Contact Defense Finance and Accounting Service (**DFAS**). If the deceased was a military retiree, DFAS should be informed to prevent overpayment of retirement pay, and also to apply for survivor's benefits if the retiree was enrolled. 800-321-1080. See

https://www.dfas.mil/retiredmilitary/survivors/Retire e-death.html for further information.

Contact Retirement Services Office. If the deceased was a military retiree, the Retirement Services Office at the nearest military installation can assist with many benefits and entitlements. The phone number at JBSA-Fort Sam Houston is (210) 221-9004.

JBSA's Casualty Assistance Office A base's Casualty Assistance Office can discuss military honors and provide personnel for funeral ceremonies. JBSA's CAO may be reached at (210) 221-1780 or -1702, and has an informative website at: https://home.army.mil/samhouston/index.php/my-ASA-1/services-directory/casualty-assistan

If the deceased was a civil servant or retired civil servant. Notify the Office of Personnel Management at (888) 767-6738.

Retiring/Separating Servicemembers



Legal Issues

Leaving the military is a time of great transition. This pamphlet discusses common legal issues so transiting members can be alert and receive legal guidance at the appropriate time.

Eligibility for Legal Assistance. It is easy to take great military benefits for granted while on active duty. But many benefits change during this transition.

<u>Separating Members and Dependents</u>. Many benefits like legal assistance end when an active duty member separates. That makes it vital to use these benefits before separation.

Retiring Members and Dependents. Members retiring from active duty and their dependents continue to be eligible for legal assistance. However, some offices limit hours and eligibility to for certain programs, for example, income tax assistance. So even when a member is retiring, using legal assistance while still on active duty may be the most convenient option—or the only option for some issues.

Terminating a Lease. If you are renting a home or apartment, then you can terminate the lease when you separate or retire—but, you must do it correctly and on the right timeline.

- It's important to know the Servicemembers Civil Relief Act protection also applies at a military member's Expiration of Term of Service. It covers both types of ETS: retirement and separation. Many landlords and property managers still do not understand this vital protection. The legal office can help educate them on your behalf as part of legal assistance.
- Timing your notice to terminate the lease is vital. Once you provide notice to your landlord, you can terminate a lease as early as 30 days after the date the next rent payment is due. Note that is not the same as 30 days after giving notice! For example, a servicemember's rent is due on the first of the

month, and they give notice on the third of the month. They've "bought" almost a whole second month of paying rent. That's because the SCRA formula moves to the next date rent is due—the first of the next month—and then allows the lease to be terminated 30 days after that date.

• Orders sometime take months to publish, but the SCRA now allows your commander to write a letter verifying that you will be separating or retiring. The legal office has a template for this simple one-page memo, and will gladly work with you and your commander to complete it. This important option can give you added flexibility in timing the end of your lease, particularly if you are starting a job or travelling while on terminal leave.

Wills. Getting a will and related estate planning documents through military legal assistance will save a family roughly \$1,000. Wills do not expire, so they will continue to be valid and protect a family long after the member separates. Also consider these other important estate planning documents:

<u>Living Will</u>. This document details the medical care you do and do not want given if you lapse into a coma or are otherwise unable to express your desires.

Medical Power of Attorney. This document appoints someone (and alternates, if you desire) to make medical decisions for you if you are unable to express your wishes.

<u>Durable Power of Attorney</u>. This document allows you to appoint someone (and alternates, if you desire) to perform actions for you like paying bills and registering vehicles. This can be "springing" so that it only takes effect if you are incapacitated, or you can choose to have it take effect immediately.

Start the Process: To begin the process of creating a Will and/or Ancillary documents: Click Here



Post-Government Employment "No Conflict"

Letters. A separating or retiring member or their federal employee spouse will frequently need an ethics review to ensure they can accept a job with a federal contractor. Many employers will ask for this letter early in the interviewing process. Getting this legal review early may help smooth the transition, an Ethics Counselor in the legal office can provide this type of legal review for you even after your separate or retire.

Other Options If you are no longer eligible for military legal assistance, there are other options:

Local Private Attorneys. Our office referral list comes from the Texas State Bar's Military Law Section:

https://www.militarylawsection.com/referral-list/

Texas Rio Grande Legal Aid. Offers free legal help to income-eligible clients: 888-988-9996 and http://www.trla.org/

Beyond Legal Assistance



Where Can You Go From Here? Options for Extended Legal Help

Legal Assistance attorneys can advise you, draft key legal documents, and provide other very valuable help. But we cannot file lawsuits on behalf of clients or represent clients in local courts. Some cases require those additional steps, and this handout discusses some options.

Local Private Attorneys Our office referral list comes from the Texas State Bar's Military Law Section:

https://www.militarylawsection.com/referral-list/

You're not limited to that list, of course. But the attorneys on this list are generally retired JAGs or still military attorneys in the Guard or Reserves.

Also, the lawyers on the list will generally offer an initial consultation with our clients for free, or perhaps \$20 for the first hour. That gives you a low- or no-cost option to learn their assessment of your case. You can also judge whether you'd like to hire them during that time, and discuss an estimate of their fees.

We have another handout that focuses on "Hiring Private Lawyers".

Legal Aid Attorneys You might also talk with local Legal Aid attorneys. Texas Rio Grande Legal Aid, for example, has helped some of our clients at no charge. They receive federal and state funding, along with donations from charities.

The attorneys there can file lawsuits on your behalf and represent you in court.

Their services are income-based. But they reach out to help veterans, and some of our active duty members and retirees have qualified -- even with the income restrictions.

You can reach Texas Rio Grande Legal Aid at: http://www.trla.org/ and 1-888-988-9996.

Law Students St. Mary's School of Law in San Antonio offers a clinical program that can help our clients.

Law school students can take a clinical program for college credit. The clinical gives them the opportunity to take cases to court and throughout the trial process.

While they are still students, attorneys supervise each case through the process. And since they are students, they are excited to have a real case -- and are motivated to get a good grade in the class.

You can find more information on St. Mary's program at:

https://law.stmarytx.edu/academics/special-programs/center-legal-social-justice/clinical-program/

Additional Legal Assistance Topics



Additional legal assistance topics can be found on the Air Force Legal Assistance Website at https://aflegalassistance.law.af.mil or you can scan the QR Code below.



To schedule an appointment with an attorney for further guidance regarding any legal assistance matter, you can schedule an appointment with the Fort Sam Legal office at https://fortsamlegal.setmore.com or you can scan the QR Code below.

