

Unique Resources and Protections for Clients with a “Military Connection”

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Screen Clients for Military Connection

- Screen for
 - Legal Assistance Eligibility
 - Veteran Benefits Eligibility
 - VA Pension Eligibility
 - VA Surviving Spouse Eligibility
 - Dependency & Indemnity Compensation Eligibility
- Value? Needed services and \$\$ for clients

Clients with Military Connection

- Connection Could be :
 - Active Duty, Reserve or Guard (ARG)
 - Qualify for Legal Assistance – Free Legal Help
 - And certain VA Benefits – Like GI Bill
 - Discharged or Retired – VET
 - Discharged but not Retired – No Legal Assistance, BUT SHOULD qualify for Certain VA Benefits
 - Discharged AND Retired from ARG – Free legal help AND MAY qualify various VA Benefits
 - Widows of ARG or VET
 - Normally - Same Entitlements re Legal Assistance

Clients with Military Connection

- Connection Could be :
 - Spouses and Children of ARG & VETS
 - Normally Have Same Entitlements re Legal Assistance (and many other benefits)
 - Former Spouses of ARG or Retired ARG Above
 - May Be Entitled to Free Legal Help – If Meet 20/20/20 Rule
 - Married for at least 20 years, in Military for at least 20 years, Overlap of at least 20 years

SOURCES OF INFO – ARG & VET

- Military, Veterans and Family Members – Legal
 - <http://statesidelegal.org/> - LSC Funded Initiative
 - Up and running, but still “growing”
- “Helping Clients with a Military Connection”, Cornerstone (NLADA), Jan-Apr 2009, Vol 30, No. 3
- “Legal Needs of Military Veterans, Servicemembers and Their Families”, Clearinghouse Review, Sep-Oct 2009, Vol 43, Numbers 5-6

SOURCES OF INFO & HELP- ARG

- Military Benefits – Including Legal
 - Military One Source - www.militaryonesource.com
- Unique Military Laws and Guides
 - ABA Legal Assistance for Military Personnel (LAMP)
 - www.abanet.org/legalservices/lamp
- Military Legal Assistance Offices
 - Armed Forces Legal Assistance – Locator
 - legalassistance.law.af.mil/index.php

SOURCES OF INFO & HELP - ARG

- Military Pro Bono Project – ABA LAMP
 - From LA attorneys to private bar – See ABA Dialogue, Fall 08
 - www.militaryprobono.net
- The Military Divorce Handbook by Mark Sullivan
 - Published by ABA – 2006 (new edition due this year)
 - 600+ Pages plus CD with sample forms
- Military Divorce & Retirement Benefits
 - http://www.willicklawgroup.com/military_retirement_benefits

SOURCES OF INFO & HELP - VETS

- Veterans Benefits - Federal Benefits for Veterans, Dependents and Survivors
 - Primer on benefits available to veterans
 - http://www1.va.gov/opa/vadocs/current_benefits.asp
- VA Benefits Worksheets
 - Summary of benefits – Less detailed than site listed above
 - <http://www.vba.va.gov/VBA/benefits/factsheets/#BM1>

Legal Assistance – Statutory Basis

- 10 U.S.C. Section 1044
 - “May” provide legal assistance in connection with personal civil legal affairs for military personnel and dependents
 - Authority for multi-jurisdictional practice
 - Certain Documents – Special Protection
 - Military notaries (1044a)
 - Military powers of attorney (1044b)
 - Military advanced medical directives (1044c)
 - Military testamentary instruments (1044d)

Terminology - Military Status

- Military can mean:
 - Active Duty - Army, AF, Navy, Marines, Coast Guard
 - Reserve
 - Active (Title 10)
 - Training
 - Inactive
 - National Guard
 - Active or in “Federal Status” (Title 10)
 - Mobilized for emergency (Title 32)
 - Training
 - Veteran – Someone who served in the military
 - Retiree – Someone who is now drawing or entitled at some later date to draw military retired pay (e.g., retirees from active duty draw retired pay immediately upon retirement while reservists must wait until a certain age (currently 60) to draw their \$\$)
 - Dependents of same

Military Status - Determination

- Eligibility for legal assistance depends on “Status”
- How to determine status?
 - Ask to see “ID Card”
 - Ask to see a copy of member’s “orders”
- Active, Reserve, National Guard Personnel, Military Retirees & dependents all are issued identification cards
- Military personnel on active duty are all issued “orders”
 - Piece of paper describing member’s name, status, unit of assignment and location of unit (sometimes location of unit is very general due to operational security) and often dates of assignment
- Someone without orders and identification card can still have a “military” connection – in most cases this is a military veteran who is NOT on active duty and who is NOT a military retiree
- Military Status Determines Eligibility for Legal Assistance

Veterans

- Veterans Not Eligible for Military Legal Assistance Can Seek Help for Certain VA related problems and benefits from:
 - VA
 - VA Social Workers, VA Inspector General, Others
 - Veterans Service Organization
 - E.g., AMVETS, VFW, American Legion
 - Chartered vs. Non-chartered
 - Sample List -
<http://www1.va.gov/VSO/index.cfm?template=view>

Veterans

- Some States have Veteran Affairs Dept
 - E.g., Ohio - <http://dvs.ohio.gov/>
- Other Sources of Help
 - Some States have County Veterans Service Agents
 - E.g., Each county in Ohio has a Veteran Service Commission,
<http://vsc.cuyahogacounty.us/>
- NOTE: Benefits may be lost if VET received dishonorable discharge or commits a felony

Legal Assistance - Basic Services for ARGs and Dependents

- Counsel – attorney-client privileged
 - Understand the military bureaucracy
 - Resources and culture
- Document Preparation
 - Wills, Separation Agreements, POAs, AMDs
- Advocacy
 - Letters, Phone Calls, E-mails
 - Negotiation
 - Administrative
 - In-court? Normally not, but ... Expanded Legal Assistance Program (ELAP)

Legal Assistance – Attorneys

- Base installation
 - Often a primary LA attorney and paralegal
 - Other as available & needed
 - Attorneys may be civilian or military (JAG)
 - Civilians – often experienced & not transferred
 - JAGs – often inexperienced, subject to frequent rotation and deployment, LA is one of several legal duties
 - JAGs are licensed attorneys
 - Often not licensed where stationed

Legal Assistance – Resources

- Local and Regional
 - Every state with large installation
 - Reserve JAGs in every state
 - National Guard units – most have SJA
 - May provide legal assistance to members
 - State – National Guard Headquarters
 - Senior JAG and staff

Legal Assistance Services

- Estate Planning
- Family Law
- Consumer Law
- Housing and Real Estate
- Immigration
- Insurance

Legal Assistance Services

- Landlord Tenant
- Military Matters
- Servicemembers Civil Relief Act
- Tax
- Voting

Estate Planning - Unique

- Survivors Benefit Plan
 - Surviving Spouse - Percentage of military retirement pension – need to elect. One year time limit
 - <http://www.defenselink.mil/militarypay/survivor/sbp/>
- Servicemen's Group Life Insurance
 - \$400K for active duty member
 - Dependents also insurable
 - Spouse - \$100K
 - <http://www.insurance.va.gov/>

Family Law

- Child & Family Support
 - Minimum support guidelines for each service
 - BAH WITH – Basic Allowance for Housing with Dependents Rate – See -
<http://perdiem.hqda.pentagon.mil/perdiem/>
 - Military Guidelines – See *Army Family Support, Child Custody, and Paternity, AR 608-99*
 - Often enforceable through chain of command
 - LA Attorneys – Can help push for enforcement

Family Law

- Custody – “Hot” Issue
 - No “Federal” Law – as yet
 - Military parents have no federal guarantee that their custody arrangements will be preserved while called away on deployments
 - Currently, states individually determine custody protections
 - Michigan and West Virginia – Protect deployed personnel from permanent change of custody due to military service.
 - See MCL 722.27 & W. Va. Code 48-9-404
 - Ohio allows for consideration of military service to change allocation of parental rights
 - See ORC 3109.04(I)

Family Law

- Custody

- Turner Amendment – H.R. 4469: Would prohibit courts from permanently altering custody orders during a parent's deployment and requires pre-deployment custody to be reinstated unless that is not in the best interest of the child. Additionally, the language prohibits state court judges from using deployment or possibility of deployment as a factor in determining the best interests of the child
- DoD and lots of VSOs oppose
- Legislative wrestling match continues

Family Law

- Divorce - Issues
 - Uniformed Spouses Former Spouses Protection Act (USFSPA, 10 U.S.C. §1408)
 - Allows for division of military retired pay
 - Decree/Agreement must comply with DFAS Guidance re division order - See www.dfas.mil – search “USFSPA”
 - Standard QDRO Language Often Does Not Suffice
 - 10/10 Year Rule for Automatic Deductions
 - 20/20/20 Year Rule for Lifetime Benefits
 - Medical, Commissary, Legal Assistance, etc ...

Family Law

- Divorce - Issues
 - Survivor Benefit Plan – Annuity
 - Share of retired pay to EITHER current OR former spouse – NOT BOTH
 - Coverage requires signed election request from retiree or former spouse – 1 Year Rule
 - Retired Pay May Be Reduced By Disability Pay
 - Beware order dividing “Disposable Retired Pay”
 - Try instead “Gross retired pay” and include indemnification clause

Family Law

- Divorce – Issues
 - New Issue – Educational Benefits (GI Bill)
 - May be transferrable to Spouse and Children
 - Depends on certain factors
 - http://www.gibill.va.gov/gi_bill_info/ch33/transfer.htm

Family Law

- Adoption
 - Some LA offices – prepare court filings for uncontested step parent adoptions
 - DoD Reimbursement \$2000 per child (non step-parent)
 - <http://www.dfas.mil/militarypay/adoptionreimbursement.html>
- Guardianship
- Name Change
- Paternity

Insurance Coverage – Life & Medical

- Active Duty & Dependents
 - Servicemen's Group Life Insurance
 - \$400K
 - Spouse –Up to \$100K
 - Children – \$10K
 - Medical – Tricare
 - “Free” medical care for active duty and dependents
 - www.tricare.mil
 - Issue – Coverage upon separation and divorce

Insurance – Life & Medical

- Retirees

- Medical – Tricare

- “Free” for retiree and dependents with minimal co-pays

- Survivor Benefit Plan

- Pays survivors (spouse & children) an inflation adjusted monthly income based on a percentage (35% - 55%) of retired pay
 - <http://www.defenselink.mil/militarypay/survivor/sbp/>

Landlord Tenant

- Lease review
- Military termination clause
- Contractual or statutory
- Return of security deposits
- Servicemembers Civil Relief Act
 - 50 U.S.C. App. §501 et seq.
 - Early termination due to military moves on orders
 - Protection re eviction & distress – need court order
 - Other protections

Servicemembers Civil Relief Act

- Special Protections re Certain Civil Matters
 - Judicial Process – Stays due to military service
 - Protection against default judgments
 - Early termination of vehicle and residential leases due to military orders
 - Pre-service interest rate on debts capped at 6%
 - Statute of Limitations – S/Ls are tolled during the period of military service – applicable to state and municipal governments, probate, administrative proceedings ... but not the IRS
 - Appointment of Counsel
 - Applicable to Dependents – In some cases

Servicemembers Civil Relief Act

- 50 USC App. §§ 501-596
- Formerly Soldiers and Sailors Civil Relief Act
- Renamed Servicemembers Civil Relief Act in 2003
- Many protections subject to showing by member of “Material Effect”
 - E.g. – SM may be required to get letter from commander stating that leave will not be approved in order to allow appearance – See 50 USC App §522 (b)(2) for stay of proceeding beyond 90 days
- Good References
 - <http://www.abanet.org/legalservices/lamp/resources.html>

Servicemembers Civil Relief Act

- Domicile
 - Not lost or gained due to military orders
 - “Home” state – not necessarily where stationed and not necessarily where entered service (Home of Record)
 - Home state retains jurisdiction
 - In many cases concurrent with members duty station
 - Some states – extend “protection” to spouse and children

Servicemembers Civil Relief Act

- Domicile
 - Impacts
 - State income tax – military income - subject to “home” state, not necessarily duty station
 - Driver’s license and vehicle registration
 - Voting
 - “In-state” tuition
 - Other benefits – e.g., Alaska Permanent Fund
- Military Spouses Now Receive Same Protection
 - Military Spouses Residency Relief Act (MSRRA) (Public Law 111-97) was signed into law on November 11, 2009

Taxes

- Military - Tax Assistance Centers
 - Specialized legal and volunteer help
 - Managed by legal assistance office
- Significant non-taxed allowances
 - E.g., housing, rations, uniform, special duty, hazardous duty, sea duty, language
 - Normally included in eligibility calculus for legal aid
 - Factor into child/spousal support equation

Veterans

- Special benefits
 - Medical care
 - Loans
 - Education
 - Reemployment
 - Employment priority
- See - www.va.gov/

Local Office Organization & Priorities

- Staff Judge Advocate (SJA)
 - Think - General Counsel & Prosecutor
 - Main sections – Army, AF & Marines:
 - Administrative and Civil Law
 - Claims
 - Legal Assistance
 - Military Justice
 - Navy – Navy Legal Services Office (NLSO)

Local Office Organization & Priorities

- Local SJA Sets Priorities for Legal Asst.
 - Assignment Policy
 - Rotation Policy
 - Hours and Resources (paralegals & training)
 - Expanded Legal Assistance Program
 - Emphasis (or de-emphasis) on Legal Assistance

Legal Assistance – Hidden Resources

- Congress - Congressional complaint
 - Military or Veteran Affairs Staffer
- Inspector General
 - IG complaint – Get attention
- Local U.S. Attorney
- State AG's Office
- Veterans Service Organization (VSOs)

Legal Assistance - Hidden Resources

- Reserve and National Guard JAGs
 - Local Attorneys and Judges
 - Check – U.S. Attorney and States Attorney, federal agency legal offices
- Referral Sources
 - Reservists may work for “points” – credit toward promotion and retirement
 - For reserve or guard pay
 - Pro bono
- Military Clinics – George Mason and Marquette

Web Resources

- Military Web Sites

- Army - www.jagcnet.army.mil/Legal
 - Summaries of law and referrals to LA offices
- Navy - http://www.jag.navy.mil/legal_services.htm
 - Look at mid-center bottom of home page for link
- Marines - sja.hqmc.usmc.mil/jal/default_JAL.htm
- Air Force & Coast Guard
 - <http://legalassistance.law.af.mil/>
 - Individual unit/base sites
 - E.g., <http://www.uscg.mil/d9/D9Legal/> (my office web site)

Web Resources

- State Bar
 - E.g., www.ncbar.com/home/lamp.htm
- ABA – LAMP
 - Legal Assistance to Military Personnel (LAMP)
 - www.abanet.org/legalservices/lamp/
- State AGs
 - Ohio – “Patriot” Program
 - <http://www.ohioattorneygeneral.gov/Services/Military>

Web Resources

- Others

- HHS – Child Support Enforcement

- http://www.acf.hhs.gov/programs/cse/newhire/employer/publication/military_quick_guide.htm

- Good overview of many topics

- Military.com – www.military.com

- U.S. Military - usmilitary.about.com/

Conclusion

- Intros & Networks
- Overview of Legal Assistance
 - People
 - Services
 - Topics
 - Issues
- Questions, Suggestions or Comments?
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Conclusion

- Thank You – Feedback welcome
- Need help on military legal assistance matter?
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