**GETTING DIVORCED**

Many Soldiers, family members and retirees request information on the divorce process from the SJA Legal Assistance Office. This article answers many of your questions by providing a broad overview of the divorce process. Knowing the nuts and bolts of the process can help ease the anxiety of an inherently difficult time in your life.

## **Initiating the process**

In order to file in Kansas, either spouse must have been a resident of Kansas for at least 60 days prior to filing for divorce. To initiate the divorce, you must first file a petition with the appropriate court. The petition is the document setting forth the grounds for divorce.

Kansas is a no-fault state, which means you won’t have to prove the unfitness of your spouse. The petition must simply state that you are incompatible with your spouse.

If you live in the Fort Leavenworth community, the petition is filed at the District Court, 601 S. 3rd St., Suite 3051, Leavenworth, KS 66048, tel: (913) 684-0700. The filing fee is currently $195.00 (filing fees are re-assessed every July and subject to change). An uncontested divorce typically takes 2-3 months. At least one in-court hearing is required. Only one spouse needs to testify as to the facts in the divorce.

Uncontested divorces with no kids involved tend to require the least amount of time, especially when there is a prior agreement as to the division of marital assets. A contested divorce can take much longer, depending on how contentious the parties are and how many issues must be resolved (e.g., spousal maintenance, property division, child custody, child support).

If you are going to PCS soon, the court may allow you to file a motion for an emergency divorce, which will speed up the process significantly.

In most cases, you will eventually have to hire a civilian attorney to represent you through the divorce process. Legal assistance attorneys cannot represent you in civilian court. You and your spouse should NOT go to the same attorney because of the inherent conflict of interest. Some soldiers choose to represent themselves, but it is recommended that you hire an attorney. Your attorney will know how to draft the petition, how to expedite the process, and what arguments to make in court. The more issues to be resolved and the more contentious the parties, the longer, nastier, and more expensive a divorce can be. Attorney’s fees for a simple, uncontested divorce can cost as little as $500. A contested, drawn out divorce can cost thousands. In any case, hiring an attorney will help to ensure that all issues are properly addressed which should prevent potential costly and burdensome mistakes.

**Resolving Important Issues**

Many times the divorcing parties are parents of minor children. Accordingly, issues affecting the minor children are paramount, and the court is focused on what is best for these children. Usually, one parent will be determined to be the primary residential custodian of the children (the parent the children will live with the majority of the time). The noncustodial parent will typically be awarded visitation rights. It is strongly recommended to make the visitation rights specific, rather than general in nature. It is important, when preparing a visitation schedule, to include specific dates of visitation and the required minimum notice, if necessary, to exercise visitation rights or request changes (rather than using terms like “reasonable visitation”). It is also important to address the issue of visitation expenses. Who is to pay for the cost of the visit (transportation expenses)?

The noncustodial parent will typically be ordered to pay a set amount of child support per month. This amount is primarily income driven, based on the parents' combined gross monthly income. It is subject to subsequent modification by the court on the motion of either parent. Child support is usually paid through the Clerk of the Court's Office.

Another type of support that the court may order is commonly referred to as spousal maintenance or alimony. Spousal maintenance is not automatic. The longer the marriage, the greater the likelihood that spousal maintenance will be awarded. It is typically awarded for a certain period of time, depending on the specific facts of the marriage and state guidelines. In Kansas, the maximum length of time spousal maintenance that can be awarded is 10 years.

Another common issue that often arises concerns the division of pensions, specifically military retirement pay. Kansas courts treat military pensions as marital property. This means that the nonmilitary member of the relationship may be entitled to a percentage of the pension. The recipient's subsequent remarriage is irrelevant to the continued receipt of his/her portion of the retirement pay. The division of the military pension is not a right that is written in stone. The parties are free to negotiate this issue so long as it is not inherently unfair to one of the parties. Generally, the more the marriage overlaps with active duty service, the greater the likelihood that the pension will be divided (and the larger the percentage that will be awarded to the nonmilitary spouse).

Other issues commonly addressed in a divorce action include the division of marital property (property acquired during the marriage other than gifts and inheritances); the apportionment of debts incurred during the marriage; health insurance coverage; life insurance beneficiary designation; income tax issues; attorney's fees; cost of relocation for the family; and the possible name change of a spouse. Every situation is unique. Hopefully this handout has answered many, if not all, of your questions concerning divorce. If you have specific questions related to your situation that were not addressed in this handout, you can request to schedule an appointment with the Legal Assistance Office at 913-684-4944 or view our divorce video on our website at http://usacac.army.mil/about-cac/staff/sja/legal-assistance.