


**CHILD CUSTODY AND VISITATION ISSUES**

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## Custody & the Military

- Single parents enlisting?



## Custody & the Military

- Can a military parent gain custody?
  - Settlement and consent order?
  - Trial



## **MILITARY FACTORS**

- [IRREGULAR CHILD CARE SCHEDULES](#)
- [“FULL-TIME DUTY”](#)
- [PCS MOVES](#)
- [ALERTS](#)
- [DEPLOYMENTS](#)

## **MILITARY FACTORS**

- [IRREGULAR CH. CARE SCHEDULES, “FULL-TIME DUTY,” PCS MOVES, ALERTS, DEPLOYMENTS](#) -vs.-
- **QUALITY OF SCHOOLS ON BASE**
- **RECREATIONAL FACILITIES**
- **DEPENDENT YOUTH ACTIVITIES**
- **DAY CARE FACILITIES**
- **TRAVEL TO OTHER STATES & COUNTRIES -- “ENRICHMENT”**

## Custody & the Military

- Involvement of DoD and the military service branch?
- Family Care Plan... for those with dependent children
  - Designated caregiver
  - POA
- Intended to cover absence due to
  - Deployment
  - Mobilization (for Guard/Reserve)
  - TDY

### Custody & the Military

- FCP isn't a court order
- Giving custody to a non-parent -
- ...when the other parent is not disqualified
  - Abandonment
  - Abuse
  - Neglect
  - Other "unfit" conduct
- ...or hasn't relinquished custody or waived rights

### Preventive Approach

- Initial Custody Order should contain:
  - PLAN A ["garrison" option]
  - PLAN B [if deployment...]

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- Initial Custody Order should contain:
  - PLAN A ["garrison" option]
  - PLAN B [if deployment...]
- **Prompt Notice re Deployment**
- **Prompt Notice re Address Change**

### Preventive Approach

- Initial Custody Order should contain:
  - PLAN A ["garrison" option]
  - PLAN B [if deployment...]
- Reasonable Access via Phone, Internet
- Access during Mid-Tour Leave

### Preventive Approach

- Initial Custody Order should contain:
  - PLAN A ["garrison" option]
  - PLAN B [if deployment...]
- Prompt Return at End of Deployment
- Notice to Court re End of Deployment

### Typical Scenario

- Jane Doe prepares her FCP
- Does not refer to the dad
- She receives orders
  - Deployment
  - Mobilization for Guard/Reserve
  - TDY
  - Unaccompanied tour
- She departs
- Johnny left with her new husband
- Johnny's dad, John Doe, finds out!

## Typical Scenario

### WHAT HAPPENS NEXT?

- Dad gets a lawyer
- Dad files in court for return of Johnny to him [or “civil habeas” or self-help]
- Locating mom?
- Service on mom?
- Mom files for a stay of proceedings...

## Typical Scenario (cont’d)

- When Johnny’s with dad – what next?
- Child support –
  - Locating mom
  - Serving mom
  - SCRA

## Typical Scenario (cont’d)

- Mom files for SCRA relief, asks for a stay
- What’s the judge to do - - grant the stay???
  - renders the whole case moot
  - by the time the stay is lifted mom will be back home and the need for dad’s motion is gone...
- Deny the stay, which violates federal law?

## Typical Scenario (cont’d)

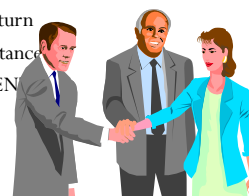
- Diffin v. Towne, 3 Misc. 3d 1107A (2004) (unpub.)
- “SWORD and SHIELD” issue
- Bradley case – importance of doing SCRA motion right!

## Typical Scenario (cont’d)

- Mom returns, asks for dad to return Johnny
- Dad asks for “permanent custody” (Crouch case, KY)
- Diffin v. Towne, 47 A.D.3d 988 (2008) 849 N.Y.S.2d 687

## Representing the Military Parent

- Temporary consent order
- Deadline and mandated return
- Detail the present circumstances
- “Satisfactory” or EXCELLENCE
- Example in the Ms.



What If Other Parent Moves Away?



Representing the Military Parent

- Preventing a “move-away”
- Scenario: Mom deploys; Dad gets kid, then moves to Fresno.
- Then asks Calif. to accept jurisdiction back in the original state any longer.
- Brandt decision, 1/26/2012, Colo. S.C.
- Example of clause to use in the Ms.



Deployment and Change of Custody

QUESTIONS FOR THE CLIENT:

- *How long will deployment last?*
- *Who takes care of child?*
- *What effect on child?*
- *State statute to protect the SM?*
- *Consent order to protect SM?*

Deployment and Change of Custody

OPTIONS FOR THE CLIENT:

- SCRA = FALSE SOLUTION?
- GET CONSENT TO TEMPORARY CUSTODY ARRANGEMENT
- TRANSFER CUSTODY TO OTHER PARENT (PERMANENTLY?)

N.C. Gen. Stat. 50-13.7A

- Absence not held against mil. parent
- ... in motion to change custody
- Temp. order ends within 10 days of return

Visitation protections

- Delegation of vist. rts.
  - to family member
  - with close and substantial rel'nship
  - if in best interest of child

Military orders, material effect on p'pation in court

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**PEREMPTORY SETTING!!**


Military orders, material effect on p'pation in court

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**Electronic Testimony & Evidence**


N.C.G.S. 50-13.7A, part 1

- § 50-13.7A. Custody and visitation upon military temporary duty, deployment, or mobilization.
- (a) Purpose. — It is the purpose of this section to provide a means by which to facilitate a fair, efficient, and swift process to resolve matters regarding custody and visitation when a parent receives temporary duty, deployment, or mobilization orders from the military.
- (b) Definitions. — As used in this section:
  - (1) The term "deployment" means the temporary transfer of a service member serving in an active-duty status to another location in support of combat or some other military operation.
  - (2) The term "mobilization" means the call up of a National Guard or Reserve service member to extended active-duty status. For purposes of this definition, "mobilization" does not include National Guard or Reserve annual training.
  - (3) The term "temporary duty" means the transfer of a service member from one military base to a different location, usually another base, for a limited period of time to accomplish training or to assist in the performance of a noncombat mission.



N.C.G.S. 50-13.7A, part 2

- (c) Custody. — When a parent who has custody, or has joint custody with primary physical custody, receives temporary duty, deployment, or mobilization orders from the military that involve moving a substantial distance from the parent's residence or otherwise have a material effect on the parent's ability to exercise custody responsibilities:
  - (1) Any temporary custody order for the child during the parent's absence shall not be later than 10 days after the parent returns, but shall not impair the discretion of the court to conduct a hearing for emergency custody upon return of the parent and within 10 days of the filing of a verified motion for emergency custody alleging an immediate danger of irreparable harm to the child; and
  - (2) The temporary duty, mobilization, or deployment and the temporary disruption to the child's schedule shall not be a factor in a determination of change of circumstances if a motion is filed to transfer custody from the service member.
- (d) Visitation. — If the parent with visitation rights receives military temporary duty, deployment, or mobilization orders that involve moving a substantial distance from the parent's residence or otherwise have a material effect on the parent's ability to exercise visitation rights, the court may delegate the parent's visitation rights, or a portion thereof, to a family member with a close and substantial relationship to the minor child for the duration of the parent's absence, if delegating visitation rights is in the child's best interest.



N.C.G.S. 50-13.7A, part 3

- (e) Expedited Hearings. — Upon motion of a parent who has received military temporary duty, deployment, or mobilization orders, the court shall, for good cause shown, hold an expedited hearing in custody and visitation matters instituted under this section when the military duties of the parent have a material effect on the parent's ability, or anticipated ability, to appear in person at a regularly scheduled hearing.
- (f) Electronic Communications. — Upon motion of a parent who has received military temporary duty, deployment, or mobilization orders, the court shall, upon reasonable advance notice and for good cause shown, allow the parent to present testimony and evidence by electronic means in custody and visitation matters instituted under this section when the military duties of the parent have a material effect on the parent's ability to appear in person at a regularly scheduled hearing. The phrase "electronic means" includes communication by telephone, video teleconference, or the Internet.
- (g) Best Interest of the Child. — Nothing in this section shall alter the duty of the court to consider the best interest of the child in deciding custody or visitation matters. (2007-175, s. 2.)

