

IMMIGRATION AND TEXAS FAMILY LAW

Overview: Soldiers and their Family members sometimes seek legal assistance with questions and concerns regarding immigration and Texas Family Law. Most often, this comes into play when a Soldier or spouse plan to divorce, and the spouse is either in the United States and plans to return to his/her country of origin or is already in his/her country of origin. What can the Soldier do? This information paper is designed to give that Soldier and the Fort Bliss community some ideas on how to proceed.

Waiver of Service: There are two parties to every divorce in Texas: the Petitioner (who files for the divorce) and the Respondent. If both parties are in agreement to the divorce and if there are no children, no property, and there has been no family violence, then the Respondent should be willing to sign a Waiver of Citation after receiving a file-stamped copy of the divorce Petition. This document allows the Respondent to waive his or her right to be served with papers by a process server, and in most cases, allows the judge to finalize the divorce without further notice to the Respondent. Under Texas law, the Respondent can only sign a Waiver of Citation after he or she has been provided a file-stamped copy of the Divorce Petition. The Waiver must be signed in front of, and notarized by, a notary public.

In a case involving a Respondent who has been deported to Mexico, the parties may meet at the bridge, or the Petitioner may pay a notary to meet the Respondent at the bridge, to have the documents notarized. Fort Bliss Standing Order 05, dated 9 June 2016, prohibits Fort Bliss Soldiers from traveling into any border town near El Paso without approval from the Commanding General.

If the Respondent has been deported to another country, and the divorce is agreed, then the Petitioner should mail or e-mail the documents to the Respondent for signature in front of a notary public. Otherwise, the Petitioner will need to have the Respondent served with citation. Because Texas law prohibits a party to the suit from serving papers on another party to the same suit, it is imperative to speak with a knowledgeable attorney on the proper method of service, not a “notario”. This is important – especially to those of Latin-American descent. In many Latin-American countries, notarios are highly trained individuals akin to attorneys. This is not the case in the United States where notary publics are individuals who have been issued a piece of paper authorizing them to witness signatures in limited situations. Many individuals in the United States have been defrauded by persons claiming to be notarios, so choose an attorney, not a notario, to assist you.

If the Petitioner does not know where the Respondent is, then the Petitioner will need to log all steps taken to try to find the Respondent. For example, on a sheet of paper, the Petitioner should have two columns. One labeled “date”, the other “event.” Then, identify when and what steps the Petitioner has taken to locate the Respondent. (i.e., March 29, 2018, Searched Facebook for Respondent’s name and family members which yielded no results. April 1, 2018, called X who was Respondent’s friend and asked for contact information. X refused to provide information.) Once the Petitioner has made at least 10 efforts to try and locate Respondent, then the Petitioner should see a Texas attorney for further guidance and support. By doing their own search before meeting with an attorney, Petitioners can save considerable time and money.

Children: If there are children of the marriage, it is imperative to hire an attorney for the divorce to ensure compliance with the law. If not, and if a parent gives up one of the bundle of rights a parent has, it will be difficult, if not impossible to re-acquire that right in the future. If the children still reside in the United States, then one parent may want to consider having a geographical restriction in place for the children. This is because until a court order is in place, each parent has 100% right and access to the children. If the other spouse flees the United States with the children, it will be difficult, if not impossible, to bring the children back. If the spouse has already fled the United States with the children, the Petitioner should not delay in seeking legal advice from an attorney who has handled similar cases.

Agreements: Texas courts want parties to attempt to resolve their own issues, and, when appropriate, the parties should resolve their own issues; however, not all agreements should be considered. Such is the case when a non-resident spouse requests a divorce based on cruelty or abuse when no cruelty or abuse existed in the marriage. In this situation, the non-resident spouse likely seeks protection under the Violence Against Women Act (VAWA), which would allow the non-resident spouse to remain in a lawful status in the United States. On the other hand, agreeing to a divorce based on cruelty or abuse when it did not exist in the marriage is fraud. This fraudulent agreement could cause the Soldier to face UCMJ action, could end the Soldier's career, could result in a criminal conviction with jail time, fines, or both, could lead to deportation, or all of the above. While it is unethical for any attorney to provide legal advice on an issue you are already working with an attorney on, if you question whether an agreement will affect your military career in any way, do not hesitate to ask to see an attorney at the Fort Bliss Legal Assistance Office (LAO). To schedule an appointment to speak with an attorney at the Fort Bliss LAO, call (915) 568-7141.