

**TAKE-1**

# **Military Family Law**

**XVIII AIRBORNE CORPS LEGAL ASSISTANCE OFFICE**



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## **Family Law Resources and Websites**

[www.divorcesource.com](http://www.divorcesource.com)

[www.divorcesupport.com](http://www.divorcesupport.com)

[www.divorcenet.com](http://www.divorcenet.com)

[www.findlaw.com](http://www.findlaw.com)

[www.supportguidelines.com](http://www.supportguidelines.com)

[www.rosen.com](http://www.rosen.com)

Legal Aid of North Carolina provides child custody and visitation workshops, as well as divorce workshops, on a monthly basis. You **MUST** register in advance to attend. Visit [www.legalaidnc.org/get-help/](http://www.legalaidnc.org/get-help/) for more information.

**WE DO NOT PREPARE SEPARATION  
AGREEMENTS**

**SEPARATION AGREEMENT SURVIVAL GUIDE**  
**FOR SOLDIERS AND SPOUSES**

**1. Q. WHAT IS A SEPARATION AGREEMENT?**

A. A separation agreement is a contract between a husband and wife when they separate from each other in which they resolve such matters as property division, debts, custody and support.

**2. Q. DO I HAVE TO HAVE A SEPARATION AGREEMENT?**

A. No law requires a separating couple to execute a separation agreement, but it is a wise idea if there are debts, children, support claims or property involved and the parties want to settle these matters in writing.

**3. Q. WHO PREPARES A SEPARATION AGREEMENT?**

A. It is best to have your own attorney prepare it for you. This should be a private attorney. A separation agreement is not valid in North Carolina unless both parties have signed and their signatures are notarized. Never try to prepare such a complex and important document yourself - this is a job for a specialist.

**4. Q. CAN WE DIVIDE OUR PROPERTY IN A SEPARATION AGREEMENT?**

A. Yes. A couple that is separating can agree on a division of property in their separation agreement, and that agreement will be binding on them. The property to be divided consists of real property (land and the buildings on it), tangible personal property (cars, jewelry and furniture, for example) and intangible personal property (such as bank accounts, stocks and bonds, pensions and life insurance.)

**5. Q. DOES MY SPOUSE HAVE TO SIGN A SEPARATION AGREEMENT?**

A. No. An "agreement" means that both parties sign voluntarily. You cannot compel your spouse to sign a separation agreement or to agree to the terms you wish to impose on him or her in the agreement.

**6. Q. DOES A SEPARATION AGREEMENT HELP ME TO GET A DIVORCE?**

A. A separation agreement is not "proof" that you have been living separate and apart from your spouse. It does not make divorce in North Carolina easier or more difficult to obtain. Other states may have different provisions in their laws which might make divorce faster or easier if there is a separation agreement.

**7. Q. CAN OUR SEPARATION AGREEMENT SETTLE WHO WILL GET TO CLAIM THE TAX EXEMPTION FOR OUR CHILDREN?**

A. Yes. The 1984 Tax Reform Act allows the parties to agree as to who can claim the children as exemptions for income tax purposes. Without a written agreement, the parent who has physical custody of a child for more than half the year will get the dependency exemption.

**8. Q. WHAT ARE THE FACTORS I SHOULD CONSIDER IN TRANSFERRING THE DEPENDENCY EXEMPTION?**

A. Consider the following issues:

a. Should the exemption be "traded", instead of given, to the other parent--in exchange for an increase in child support? Even a small increase in support would help offset the tax increase that will be paid by the custodial parent, and the other parent can better afford such an increase due to the taxes he or she saves by claiming the exemption on federal and state tax returns.

b. Should you alternate the exemption between parents? For example, the father could claim the exemption in even-numbered years (1990, 1992, 1994, and so on) and the mother could do so in odd-numbered years. Or the father could claim one child and the mother could claim the other. Such alternation would lessen the impact of higher taxes on the custodial parent.

c. Should you condition the transfer on the other parent's regular and full payment of support? Instead of transferring the exemption permanently without regard to payment of child support on time, some custodial parents agree to transfer of the dependency exemption only if the other parent is current (not in arrears) on child support payments by December 31 of each year.

**9. Q. CAN I GET MY SPOUSE FOR CONTEMPT OF COURT IF HE BREAKS THE PROMISES IN THE SEPARATION AGREEMENT?**

A. No. Contempt of court is the failure to obey a court order without legal justification. It is not contempt of court to violate a separation agreement unless the agreement has been made a part of court order. You may, however, sue your spouse for breach of contract if he violates the separation agreement.

**10. Q. WILL A SEPARATION AGREEMENT FREE ME FROM PAYING DEBTS FOR WHICH I HAVE SIGNED ALONG WITH MY SPOUSE?**

A. No. A separation agreement is a contract between spouses. It cannot bind third parties (such as banks or finance companies) that have not signed it. If, however, your spouse promises to pay a bill and then breaks that promise, resulting in your having to pay, you can then sue your spouse for breach of contract for the amount of money you had to pay.

**11. Q. WILL A SEPARATION AGREEMENT STOP MY SPOUSE FROM HASSLING ME?**

A. While separation agreements usually have a non-harassment clause in them, you should understand that no piece of paper - be it agreement or court order--is going to stop a person from doing something he or she wants to do. If the problem is one of the physical violence, a court order would be better than a separation agreement and could be used to punish the wrongdoer if he or she violated the order. If there is only an agreement, a lawsuit for breach of contract is one possible remedy for breaking the promise of not bothering each other, but it probably isn't a very effective remedy.

**12. Q. IS A COURT BOUND BY WHAT WE PUT IN THE SEPARATION AGREEMENT ABOUT OUR CHILDREN?**

A. No. The terms you include for child support, custody and visitation can always be modified by the court in the best interest of the children. In the absence of proof to the contrary, however, there is a presumption that the terms concerning the children in your agreement are fair, reasonable and necessary for the best interest and welfare of the children.

**13. Q. CAN THE COURT MODIFY THE TERMS WE INCLUDE IN A SEPARATION AGREEMENT CONCERNING OURSELVES?**

A. Unlike the terms concerning children, which are always modifiable by the court, the terms that pertain to adults cannot be modified by the court except in very limited circumstances. For example, if the separation agreement has been incorporated into a court decree, the court has the power in North Carolina to modify the support terms (alimony or child support) based on a substantial change of circumstances. If the terms involve property division and the agreement has been incorporated, the court can only modify an executory promise (i.e., one that has not yet been completed, such as the transfer next year of a car title to a spouse), as opposed to a promise which has already been executed by the parties (such as the deed to the house that was signed over to a spouse at the same time as the execution of the separation agreement). The court can overturn a separation agreement if it was signed due to fraud, coercion, or lack of mental capacity. In most cases, however, this is a hard case to prove.

**14. Q. CAN WE PROVIDE FOR COLLEGE EDUCATION OF OUR CHILDREN IN A SEPARATION AGREEMENT?**

A. Although a North Carolina judge cannot order you to pay child support for your child in college, you may make provision for college expenses in a separation agreement and it will become a binding, enforceable contract which the court can require each of you to perform. Since college is less of a luxury and more of a necessity these days, it would be a good idea to consider whether you want to provide in writing for college expenses in your separation agreement.

**15. Q. WHAT POINTS SHOULD WE REMEMBER DECIDING ABOUT COLLEGE EXPENSES?**

A. Here are some of that items that a good separation agreement will address:

- How long should the obligation last? 4 years? 8 semesters? Until the child attains age 23? Some termination point or date should be set.
- What costs will be covered? The usual ones are room and board, books, tuition and fees. Some parents also agree on a modest monthly allowance for spending money for the child, or for travel to and from home, or for summer expenses.
- What are the expenditure limits? Few parents want to agree to finance a college education for a child at any college or university. The cost of some private colleges and universities would bankrupt the average parent. Consider putting a ceiling or "cap" on the college expenses, such as by specifying that the maximum shall be "the then-prevailing rate for in-state tuition at N.C. State University" or some other nearby public institution. Such a provision is fair to everyone and does not force either parent to go broke financing a college education.
- What other limits should be set? For example, some agreements state that the child must attend an accredited institution, in pursuit of a generally recognized undergraduate degree, on a full-time basis, while maintaining at least a "C" average.
- What part of the college costs will each parent pay? Be sure to set some specific percent or amount so that it will be enforceable in court if you need help in the future. Clauses that provide for the other side to pay "a reasonable share of the child's college expenses" are worthless since they don't say exactly what the other parent has to pay and a judge is not going to guess what the parents meant by this

language. When in doubt, **spell it out!** Even if you just divide the college costs 50-50 between both parents, it's still better than a vague and unenforceable clause.

#### **16. Q. SHOULD WE PROVIDE FOR ALIMONY IN OUR SEPARATION AGREEMENT?**

A. Alimony is spousal support - it is money paid by one spouse to the other to help with food, shelter, transportation, clothing and other living expenses. It is not the same thing as child support. If the two of you have agreed on some measure of temporary or permanent alimony, you should definitely put that in the separation agreement. Such a provision might state, for example, that the husband shall pay the wife alimony of \$500.00 per month until he or she dies or until she remarries, or it could state that the wife shall pay the husband alimony of \$100 per month for a total of four years, at which time it will terminate forever. These are just examples - your attorney can advise you about the applicability of alimony in your particular case.

#### **17. Q. IS ALIMONY TAX-DEDUCTIBLE?**

A. For payments required under divorce or separation instruments that are executed after Dec. 31, 2018, the new tax law eliminates the deduction for alimony payments. Recipients of affected alimony payments will no longer have to include them in taxable income.

#### **18. Q. WHEN DOES ALIMONY END?**

A. Alimony usually ends at the death of either party or the remarriage of the payee/recipient (usually the wife). Sometimes clients have a provision added to the alimony terms in a separation agreement that alimony will also end at such time as the recipient starts living with an unrelated person of the opposite sex on a regular basis as if they were husband and wife.

#### **19. Q. WHAT SHOULD WE DO IF WE HAVE AGREED THAT NO ALIMONY WILL BE PAID?**

A. It is always best to set out such a term clearly in the agreement. Don't just leave it out or let the agreement be silent on this issue. A waiver of alimony is such an important term that it should be clearly spelled out in the agreement so that there is no misunderstanding.

#### **20. Q. HOW DO I KNOW IF I AM ENTITLED TO ALIMONY?**

A. Your attorney who prepares the separation agreement will explain alimony and postseparation support to you. In North Carolina, alimony is only granted by the court if:

- a) You file a lawsuit requesting alimony or postseparation support;
- b) You are the **dependent spouse** -- you are financially dependent on the other party or in need of support from him or her;
- c) Your spouse is the **supporting spouse**; and
- d) An award of alimony is equitable under the circumstances after considering numerous **factors** set out in the statute (or, in the case of postseparation support, your financial resources aren't enough to meet your reasonable monthly needs and personal living expenses).

An absolute defense to alimony exists when the parties have waived alimony in a separation agreement or premarital agreement, when a divorce has been granted before an alimony claim is filed, or when only the dependent spouse has committed adultery or some other form of "illicit sexual behavior."

## **21. Q. HOW MUCH ALIMONY SHOULD I GET?**

A. This question is impossible to answer. There are no guidelines for alimony in North Carolina, so there is no way of predicting what the court would have done to set an alimony award if the case had gone to court. Alimony awards of \$300-500 per month are not uncommon, and some spouses who make a great deal of money could pay as much as \$1,000 per month or more. Amounts above this figure are relatively rare. The best way to figure how much alimony a client needs is to calculate the difference between her reasonable monthly needs and her current net income, and then to compare this figure to the difference between her spouse's income and his reasonable monthly expenses. Her gap is "unmet needs" and should be equivalent (under ideal circumstances) to the "extra" money he has left over from his paycheck after he pays for his own reasonable monthly expenses. Since these "gaps" seldom exist in reality and everyone is usually spending a lot more than he or she is making, it is often a question of haggling, discussion, bargaining and horse-trading as to how much alimony should be paid in any individual case.

## **22. Q. HOW SHOULD WE DIVIDE OUR PROPERTY IN THE SEPARATION AGREEMENT?**

A. In North Carolina there is a presumption that all property acquired during the marriage is equally divisible. This is presumed to be fair. Other divisions, such as 60-40 or 75-25 are certainly legal if the parties agree that the division is fair and equitable, or if the judge makes findings in the property division order that justify an unequal division. The property that is divisible in North Carolina is called marital property. With certain exceptions, this is anything acquired during the marriage and before the separation. The exceptions are separate property, that is, property which cannot be divided by the court and belongs to only one party as his or her exclusive property. Examples of separate property are:

- a) Pre-marriage property
- b) Gifts or inherited property
- c) Business or professional licenses

Except for these items, everything else owned by either or both of the parties is marital property if it was acquired during the marriage. The title to the property - that is, whose name is on the deed or title - does not matter so long as it was acquired during the marriage and does not fit into one of the above exceptions.

## **23. Q. WHAT ABOUT PENSIONS AND RETIREMENT BENEFITS - ARE THEY DIVISIBLE?**

A. Pensions and retirement rights can also be considered marital property. This type of property is often very valuable. It is an important aspect of equitable distribution. As of October 1, 1997, all pensions may be considered marital property and divided, whether they are vested or unvested. Often a spouse's pension is the most valuable asset of the entire marriage, and this should certainly be considered in doing a separation agreement. If there is to be no division, the agreement should say so. If the decision on pension division is to be put off or deferred until the divorce because there is no present agreement, then that also should be stated clearly. Make sure your agreement is very specific and plain in this area as to your intent on dividing the pension - a poorly worded agreement may be challenged in court as vague and unenforceable, or it may result in a loss of any rights to pension division because they weren't preserved properly in the agreement.

**24. Q. HOW CAN A PENSION BE DIVIDED?**

A. The division of pension rights in a separation agreement can be done in two ways: a present-value offset, or a future percentage of payments. The former of these involves calculating the present value of the pension right now and setting it off (or trading it) against the value of another asset, such as the other spouse's pension or the marital residence. The second approach would postpone the division until whenever the employed spouse starts receiving pension payments, at which time the nonpensioned spouse would receive a share of each check equal to one-half (or some other percentage) of the portion accrued during the marriage divided by the entire number of years of pension service.

**25. Q. DO WE ALSO DIVIDE OUR DEBTS IN THE AGREEMENT?**

A. You should set out a schedule for who pays what debt in your separation agreement, including the creditor's name, account number, purpose of the debt, approximate balance and monthly payment amount. This will not stop the creditor from suing both of you if payments are not made by spouse and both of your names are on the obligation, but it allows you to ask the court to hold your spouse (and not you) accountable for the debt as set out in the agreement.

**26. Q. HOW SHOULD WE DIVIDE OUR DEBTS?**

A. There is no "right" answer to this question. In one case, the husband may take on payment for all the debts because his is the sole source of income in the family or because he created the debts in the first place. In another case, the wife may take over certain debt payments for things she charged or purchased or for things that she is being given in the property division. For example, if the husband is getting the station wagon and the wife is getting the washer and clothes dryer, it might seem fair that each should assume the debt payment for the items he or she is receiving.

**27. Q. I WANT TO MAKE SURE I CAN DATE AFTER WE OUR AGREEMENT IS SIGNED. CAN I HAVE MY ATTORNEY PUT IN A DATING CLAUSE?**

A. There is no such thing as a "dating clause" in separation agreements that allows adultery. Any sexual relations with a person who is not your spouse is adultery, and so no "dating clause" will serve to make legal something that is illegal. Most separation agreements do, however, contain a clause that allows each spouse to be left alone as if single and unmarried, and forbids each spouse from harassing, molesting or interfering with the other.

**28. Q. SHOULD WE ALSO PROVIDE FOR HOW WE FILE FOR TAXES IN THE AGREEMENT?**

A. Yes. This is a very important provision which can save you and your spouse a lot of money in taxes if prepared properly. A good example would be a clause that required the parties to file jointly so long as they are eligible to do so (usually up until the year they are divorced) and to divide the refund or liability for taxes in a specified way, such as 50-50, or 75-25, depending on the incomes of the parties.

**29. Q. CAN A SINGLE ATTORNEY DO THE SEPARATION AGREEMENT FOR ME AND MY SPOUSE?**

A. No single attorney can represent both Husband and Wife in a separation agreement. It is best to have two attorneys involved, one to advise each partner. In this way, the husband and the wife both know that



they have received independent legal advice for their individual situation from a lawyer who does not have a conflict of interest in trying to represent two clients with different goals and needs.

**30. Q. IF I HAVE OTHER QUESTIONS ABOUT SEPARATION AGREEMENTS, WHAT SHOULD I DO?**

A. Please consult a legal assistance attorney or private attorney of your choice as soon as possible. Your lawyer can answer the many questions about separation agreements and help you to make a fair and intelligent decision about your choices, options and alternatives. Our legal assistance office stands ready, willing and able to help you in these matters.

**GUIDELINES FOR ARMY REGULATION 608-99**

**1. WHAT IS AR 608-99?**

Army Regulation 608-99 explains the Department of the Army's policy, guidance and procedures concerning financial support of family members, paternity claims, and paternity related adoption proceedings.

**2. WHAT IS A SOLDIER'S OBLIGATION UNDER THE REGULATION?**

A soldier's obligation includes:

- a) Providing adequate and continuous support for family members.
- b) Complying with separation agreements, court orders and judicial orders or decrees.
- c) Meeting financial obligations promptly.

**3. WHO IS RESPONSIBLE FOR ENSURING THAT SOLDIERS ARE INFORMED OF THE ARMY POLICY ON SUPPORT OF FAMILY MEMBERS AND ENFORCING IT?**

Commanders are responsible for ensuring that soldiers know about the policy and comply.

**4. IF A SOLDIER FAILS TO MEET THE REQUIREMENTS, WHAT CAN THE COMMANDER DO?**

The commander can consider:

- a) Making it a part of the soldier's permanent record.
- b) Denial of reenlistment.
- c) Punitive or other administrative action including elimination from the service.
- d) A criminal charge under the Uniform Code of Military Justice (UCMJ).

**5. IF THE SOLDIER FAILS TO MEET THE REQUIREMENTS, CAN THE ARMY DEDUCT MONEY FROM THE SOLDIER'S PAY?**

No. The Army has no legal authority to deduct money from a soldier's pay without his consent unless garnishment or involuntary allotment has been ordered by a civilian court.

**6. HOW DOES THE COMMANDER DETERMINE ADEQUATE SUPPORT FOR FAMILY MEMBERS?**

The Army will require that soldiers comply with any court-ordered support. If there is no court order, the Army prefers that a separated soldier and spouse enter into a written separation agreement that specifies an agreed-upon level of support.

**7. IN THE ABSENCE OF A COURT ORDER OR AGREEMENT, HOW IS ADEQUATE SUPPORT FOR FAMILY MEMBERS DETERMINED?**

If there is no court order or written separation agreement, the Army has established interim support for single and multiple family units. This support is due on the 1st of every month for the previous month. This support must also be pro-rated if the soldier is required to pay support for a partial month. The payment *should* be made by allotment or direct deposit to a non-joint bank account, but it can also be paid by money order or check. Any money order or check that is mailed must be mailed directly to the recipient and must be post-marked no later than the 1st of the month. Save receipts!

**8. IF I AM THE SPOUSE OF A SOLDIER IN A SINGLE FAMILY UNIT [HUSBAND AND WIFE/HUSBAND, WIFE, AND CHILD(REN)] AND LIVING OFF POST, WHAT IS THE MINIMUM SUPPORT THAT I CAN RECEIVE?**

The soldier will provide support of an amount that is based on a "non-locality BAH" chart. The Soldier will pay the "with dependents" rate based on his/her rank. This rate is a standard rate the Army determines regardless of where the soldier resides. It is NOT the soldier's specific BAH amount. A current non-locality BAH rate list is attached to this information paper.

**9. WHAT HAPPENS IF THE SUPPORTED FAMILY MEMBERS MOVE OFF POST?**

When the supported family members move off post, support will be provided in an amount equal to BAH-II at the "with dependents" rate (see paragraph 8). This is true even if the quarters were not properly cleared and even if the soldier is not receiving BAH from finance.

**11. IF THE SOLDIER'S RANK INCREASES AND IT RESULTS IN AN INCREASED AMOUNT FOR BAH, WILL I RECEIVE AN INCREASE IN SUPPORT?**

Yes. If the BAH entitlements increase so should your payments as long as the soldier has not remarried or become obligated to support another family member (for example, has another child).

**12. WHEN A SOLDIER HAS REMARRIED AND HAS TO SUPPORT MULTIPLE FAMILY UNITS (2 FAMILIES OR SETS OF DEPENDENTS), HOW IS THE AMOUNT OF SUPPORT DETERMINED?**

Each supported family member is entitled to receive an equal share of the amount taken from the BAH-II chart attached. First, any court-ordered support will be paid as stated. No support is required to be paid for family members currently living in government housing. However, they will be calculated in determining total number of supported family members. Any remaining family members will receive a pro rata share of the BAH-II amount regardless of the amount of support paid to other family members. Absent a court order, supported family members do not include non-biological dependents, such as stepchildren, unless they are adopted.

**13. (DUAL MILITARY COUPLE) IF MY SPOUSE AND I ARE SERVICEMEMBERS, WE HAVE NO CHILDREN TOGETHER, AND THERE IS NOT A COURT ORDER OR SEPARATION AGREEMENT, CAN I GET AR 608-99 SUPPORT?**

No. Any Army service member is not required to provide a minimum amount of support to a spouse on active duty in the armed services.

**14. (DUAL MILITARY COUPLE) IF I AM A SOLDIER AND I HAVE CUSTODY OF OUR CHILDREN AND LIVE OFF POST, WILL I RECEIVE A MINIMUM AMOUNT OF SUPPORT FOR CHILD SUPPORT FROM MY SOLDIER SPOUSE?**

Yes. A soldier, whether or not receiving BAH based on the marriage to another soldier, will pay, at a minimum, his or her own BAH-DIFF rate to the soldier having custody of the biological or adopted child(ren) of that marriage if the family is residing off post.

**15. (DUAL MILITARY COUPLE) WHAT IF THE CHILDREN ARE LIVING IN GOVERNMENT HOUSING?**

In the absence of a court order or written agreement to the contrary, if the children are living in government housing, no support is required.

**16. CAN THE AMOUNTS OF SUPPORT PROVIDED BY AR 608-99 BE INCREASED?**

Yes. Remember these guidelines were established to make sure that some support is received for the family members while you and your spouse obtain separation agreement, court order, or divorce decree stating the proper amount of support to be paid by the soldier. Once an agreement, court order or decree is obtained, it is the controlling document.

**17. ARE IN-KIND PAYMENTS ACCEPTABLE FOR SUPPORT UNDER AR 608-99?**

AR 608-99, paragraph 2-9, allows for the soldier to directly pay non-government housing expenses on behalf of family members if the family members are living in that home. Non-Government housing expenses are limited to (1) rent, (2) mortgage, and (3) essential utilities such as gas, electricity, and water. Non-Government housing expenses do NOT include telephone and cable television charges, or any other charges for which the soldier is not legally responsible by reason of contract, lease, or loan agreement.

**18. AS A SOLDIER, CAN I BE EXCUSED FROM MY REGULATORY OBLIGATIONS UNDER AR 608-99?**

Yes, a battalion commander or a Special Court-Martial Convening Authority (usually your brigade-level commander) can excuse a soldier from this support requirement under extremely limited circumstances. Before excusing a soldier from his requirement, the commander's legal advisor must first review the action. Some bases for excusal of a soldier's support requirement may be that (1) the soldier has supported the spouse for 18 months after separation (but note that this provision for excusal does not apply to child support), (2) the income of the spouse exceeds the income of the soldier, (3) the soldier is a victim of substantiated spouse abuse, (4) the spouse is incarcerated, (5) a court issued an order without jurisdiction to do so, (6) a court order does not require financial support, or (7) the child(ren) resides with someone who is not the lawful custodian. Any excusal from support requirements under AR 608-99 does not excuse a soldier from following valid court orders.

**19. WHAT IF I HAVE OTHER QUESTIONS OR SPECIFIC PROBLEMS I WANT HELP IN SOLVING?**

Consult a legal assistance attorney or private attorney as soon as possible. Your lawyer can answer questions and help you to make a fair and intelligent decision about your choices, options and alternatives. Our legal assistance office numbers are (910) 396-6113/0396.

Family law matters such as support under AR 608-99 are seen on a walk-in basis on Thursdays. Prior to seeing an attorney, you must attend a briefing held at 0900 or 1300 hours. Only one of the parties may be seen by our office. The other spouse must go to the 82d Airborne Division Legal Assistance Office (432-0195) for assistance.

**CHILD SUPPORT**

**1. HOW MUCH CHILD SUPPORT SHOULD I RECEIVE IF I'M SEPARATED FROM MY SPOUSE?**

There is no set amount that is "enough child support" in any given case. In North Carolina, child support varies according to the reasonable needs of the children, the incomes of the parents and their ability to

pay, and the standard of living of the children, among other things. This is set out as the standards for determining child support under NC General Statutes §50-13.4(c).

## **2. WHO DECIDES HOW MUCH IS ENOUGH? WHAT IF THE PARENTS CANNOT AGREE ON THE AMOUNT OF CHILD SUPPORT?**

If the two parents are able to reach agreement on an amount, that amount should be set out in a separation agreement. If the separation agreement sets out a specific amount, the court will enforce that amount, unless the court determines it is “unreasonable.” If the parties *cannot* agree, you may petition the court to set the amount of child support that will be required.

## **3. WHAT COURT DECIDES CHILD SUPPORT?**

In North Carolina, the district court hears child support cases. A child support case is usually heard in the county where the child is living. If the other parent lives in another state, you *may* need to have the case heard there, instead of here. Each set of circumstances is different.

## **4. CAN THE CHILD SUPPORT ENFORCEMENT OFFICE HELP ME?**

Yes -- the county Child Support Enforcement Office can help you establish or enforce child support. This can also be done with a private attorney.

## **5. WHAT IF I NEED MORE CHILD SUPPORT AFTER AN AMOUNT IS SET?**

The child support guidelines are flexible and allow for a child's special needs, extremely high or low income, and other factors the court finds to be important. Make a list of all monthly expenses for your household. Then, determine which expenses are just for you, and which are for the children. Be sure to set aside a certain portion of the rent, utilities and food for each child. You should also consider whether to apportion such expenses as car payments, gasoline and medical bills for each child. You are also a parent, and so *you* must support the children as well and *you* are the one who best knows the facts, needs and expenses. The judge *can* go outside the guidelines, but if you are the parent petitioning the court for a change, it is up to you to prove the need for a change.

## **6. WHEN MY CHILD IS VISITING THEIR OTHER PARENT, CAN HE/SHE REDUCE THE CHILD SUPPORT PAID TO ME?**

No. Unless the court order or separation agreement specifically provides for a reduction, the child support payment remains the same.

## **7. IF I CANNOT SEE MY CHILD FOR VISITATION, CAN I STOP PAYING CHILD SUPPORT?**

Under North Carolina law, denial of visitation is **not** legal justification for withholding child support. Also, lack of child support is **not** a legal excuse for preventing the other parent from exercising their legal visitation rights. Even if a parent is not paying any child support, he/she may still visit their children. Even if a parent is not allowing visitation, the children are still entitled to child support.

## **8. WHEN DOES CHILD SUPPORT STOP?**

Child support, without an agreement or court order, usually ends on the child's eighteenth birthday, although it will continue beyond then if the child is still in high school, so long as the child is not over twenty years old. A separation agreement or court order by consent may set a higher age, such as upon graduation from college or at age twenty-one. Child support may end earlier than the above if the child is emancipated, such as by joining the military, moving away from home or getting married.

#### **9. CAN THE OTHER PARENT'S PAYCHECK BE GARNISHED FOR CHILD SUPPORT?**

Yes. Under North Carolina law, garnishment of a paycheck for child support may be ordered for up to forty percent (40%) of the net available pay. Garnishment is a court proceeding that requires a lawyer or the help of the Child Support Enforcement Office. Garnishment is allowed only if a *court order* for child support is violated; it does not apply if there is only a separation agreement. Wage assignment is also used to take child support directly from a parent's pay if there has been a prior child support order.

#### **10. WHAT IF I NEED MORE CHILD SUPPORT IN THE FUTURE?**

If the child support is set out in a court order, you may petition the court to increase child support if you can show that there has been a substantial change of circumstances since the date the order was signed. Such a change may be increased living expenses (such as when one parent has another child) or an increase in the earnings of the other parent. Sometimes the parents can agree between themselves on a regular increase in child support. If they wish, they can enter into an agreement that adjusts child support annually on the basis of, say, the Consumer Price Index or the wage increases of the noncustodial parent. When the parents cannot agree, the court will resolve the matter and the custodial parent must prove that present child support is inadequate.

#### **11. CAN CHILD SUPPORT ALSO BE REDUCED?**

Yes. The court has the power to modify child support upwards or downwards, so long as there has been a substantial change of circumstances since the entry of the original order. So, for example, a parent who just lost his job or has had a substantial pay cut could petition the court to reduce the child support payments that he is making.

#### **12. CAN CHILD SUPPORT BE PAID THROUGH THE COURT?**

Yes. If the court order says so, the child support may be made payable through the court. Payment in this manner is the preferred method. This allows parents to be sure that payments are properly recorded and avoids problems of payments made in cash directly to the custodial parent with no receipt given. If child support is paid through the clerk's office, the clerk will also help enforce the order through contempt proceedings if the payor is in arrears. This is done at no cost to the custodial parent.

#### **13. ARE THERE ANY OTHER ASPECTS OF CHILD SUPPORT IN ADDITION TO THE MONEY PAID EVERY MONTH?**

Yes. Such matters as medical expenses, tax exemptions and college are also important parts of child support. You should try to reach an agreement on these with the other parent if possible. If you can't agree, then the court can decide the issues of medical expenses and tax exemptions; the expenses for a child's college education are beyond the court's powers.

#### **14. HOW DOES THE COURT DECIDE MEDICAL EXPENSES?**

If one of the parents has medical insurance, that parent is usually required to keep it in place for the minor child or children. The remaining costs -- *uncovered health care expenses* -- are divided by the judge between the parents in a way that is fair. Often this means that the parents divide these expenses equally or in proportion to their incomes.

#### **15. HOW DOES A JUDGE IN NORTH CAROLINA COMPUTE CHILD SUPPORT?**

As of July 1, 1990, North Carolina has been using a child support guideline or formula called the *income shares model*. This approach takes the income of both parents and apportions the child support responsibility between them, according to the ratio of their incomes to each other. The calculations are done on set of preprinted child support worksheets. The income used are gross, pre-tax incomes. So, if the father earns \$3,000 per month and the mother earns \$1,000 per month, the father's child support obligation will be three-fourths (and the mother's will be one-fourth) of the total needs of the child.

#### **16. HOW DOES THE COURT DETERMINE THE "TOTAL NEEDS" OF THE CHILD?**

The total needs of the child will be presumed to be the Basic Child Support Obligation set out on the *child support schedules* available at the clerk's office. These can also be found online. In general, the amount of the Basic Child Support Obligation is directly determined by the combined incomes of both parents. The higher the total income, the higher the obligation.

#### **17. WHAT SPECIAL ITEMS OR EXPENSES CAN BE CONSIDERED BY THE COURT IN SETTING CHILD SUPPORT UNDER THESE GUIDELINES?**

In addition to the Basic Child Support Obligation, the judge should consider:

- a) payments or expenses for the support of other children
- b) medical insurance premiums
- c) day-care expenses necessary to enable a parent to get or keep a job
- d) shared or split custody arrangements
- e) any other extraordinary costs or expenses related to the raising of a child

#### **18. WHAT IS SHARED CUSTODY?**

The definition of shared custody (for child support purposes) is any arrangement where the "noncustodial parent" gets 123 or more overnight visits per year with the child. If this occurs, new rules apply for determining child support and a new worksheet must be completed for *shared custody*, as opposed to sole custody.

#### **19. WHAT IS SPLIT CUSTODY?**

Split custody is a custody arrangement involving each parent having physical custody of at least one child. In a split custody arrangement, an adjustment to child support is made because each parent will incur direct expenses for caring for one or more of the children. In this case, a new child support worksheet must be used. These worksheets are also available at the courthouse and online.

## **20. CAN THE COURT AWARD ATTORNEY'S FEES IN A CHILD SUPPORT CASE?**

Under North Carolina law, if the person asking for attorney's fees is acting in good faith and is unable to afford the legal expenses of the lawsuit, he/she has hired a private attorney, and the other party is not paying adequate child support when the suit is filed, it is *possible* (but not mandatory) for the court to award reasonable attorney's fees as part of the custody order.

## **21. CAN A CHILD SUPPORT ORDER BE CHANGED?**

No child support order is "permanent". However, once a parent is ordered to pay child support, the judge can change the order *only* if there is **substantial** change of circumstances relating to the needs of the child or the ability of the payor to make child support payments.

## **22. IF I'M ORDERED TO PAY CHILD SUPPORT, WILL I GET VISITATION RIGHTS?**

Ordinarily the noncustodial parent is entitled to reasonable visitation rights with a minor child except in extraordinary situations, such as when the noncustodial parent has a history of abuse or incarceration. Visitation isn't related to child support, however, and you **must** file a motion for visitation if you want that awarded by the court.

## **23. CAN I REGISTER A COURT ORDER FROM ANOTHER STATE IN NORTH CAROLINA, SO THAT NORTH CAROLINA CAN ENFORCE IT?**

Yes. You may file and register the other state's decree with the Clerk of Superior Court in the county where you reside under the Uniform Reciprocal Enforcement of Support Act. You may also register a North Carolina decree in the state where the other parent lives for purposes of enforcing child support.

## **24. WILL CHILD SUPPORT BE SETTLED WHEN I OBTAIN A DIVORCE?**

Divorce decrees do not **always** settle child support matters, and a support order can be entered before or after a final decree of divorce in North Carolina.

## **25. IF I HAVE OTHER QUESTIONS, WHAT SHOULD I DO?**

See a legal assistance attorney or private attorney as soon as possible. Your lawyer can answer many questions and help you to make a fair and intelligent decision about your choices, options and alternatives. Our legal assistance office stands ready, willing and able to help you in these matters.

## 2020 Non-Locality BAH Rates

*Effective 1 January 2020*

Pay Grade	Partial	BAH RC/T*		Differential*
		Without Dependents	With Dependents	
O-10	\$ 50.70	\$ 1,756.50	\$ 2,108.10	\$ 359.40
O-9	\$ 50.70	\$ 1,756.50	\$ 2,108.10	\$ 359.40
O-8	\$ 50.70	\$ 1,756.50	\$ 2,108.10	\$ 359.40
O-7	\$ 50.70	\$ 1,756.50	\$ 2,108.10	\$ 359.40
O-6	\$ 39.60	\$ 1,610.40	\$ 1,897.50	\$ 305.70
O-5	\$ 33.00	\$ 1,551.00	\$ 1,829.40	\$ 295.50
O-4	\$ 26.70	\$ 1,437.00	\$ 1,612.20	\$ 196.80
O-3	\$ 22.20	\$ 1,152.30	\$ 1,334.10	\$ 196.50
O-2	\$ 17.70	\$ 912.90	\$ 1,138.50	\$ 231.60
O-1	\$ 13.20	\$ 783.60	\$ 1,019.10	\$ 250.20
O3E	\$ 22.20	\$ 1,243.50	\$ 1,434.00	\$ 205.80
O2E	\$ 17.70	\$ 1,057.80	\$ 1,293.90	\$ 246.30
O1E	\$ 13.20	\$ 920.10	\$ 1,196.10	\$ 288.60
W-5	\$ 25.20	\$ 1,460.70	\$ 1,557.30	\$ 122.70
W-4	\$ 25.20	\$ 1,296.60	\$ 1,427.70	\$ 151.20
W-3	\$ 20.70	\$ 1,090.20	\$ 1,308.60	\$ 228.30
W-2	\$ 15.90	\$ 967.50	\$ 1,202.10	\$ 241.20
W-1	\$ 13.80	\$ 811.50	\$ 1,041.00	\$ 233.40
E-9	\$ 18.60	\$ 1,064.40	\$ 1,369.50	\$ 308.10
E-8	\$ 15.30	\$ 978.30	\$ 1,263.30	\$ 288.90
E-7	\$ 12.00	\$ 901.50	\$ 1,172.10	\$ 334.50
E-6	\$ 9.90	\$ 833.10	\$ 1,083.00	\$ 323.40
E-5	\$ 8.70	\$ 749.40	\$ 975.00	\$ 275.40
E-4	\$ 8.10	\$ 651.90	\$ 847.20	\$ 237.60
E-3	\$ 7.80	\$ 606.00	\$ 787.80	\$ 195.30
E-2	\$ 7.20	\$ 577.80	\$ 750.90	\$ 260.40
E-1 >4	\$ 6.90	\$ 577.80	\$ 750.90	\$ 308.10
E-1 <4	\$ 6.90	\$ 577.80	\$ 750.90	\$ 308.10

\*BAH RC/Transit rates are adjusted by the average change in housing costs; BAH-DIFF rates are adjusted by the amount of the basic pay raise.