



Legal Information Paper
Office of the Staff Judge Advocate
19th ESC and Area IV



DIVORCE INFORMATION

Camp Henry Legal Assistance
Building 1805, 763-4423/4628

Are you thinking about getting divorced, or are just curious about how a divorce works? This is intended to give you some background information to prepare you for your meeting with the legal assistance attorney. Please read this carefully in its entirety.

CAN MY JAG LEGAL ASSISTANCE ATTORNEY DIVORCE ME OR REPRESENT ME IN MY DIVORCE?

Only a state court judge can divorce you and in state court. Unfortunately, AR 27-3 does not allow your JAG legal assistance attorney to represent you in a divorce. We will assist with the process by providing information, reviewing paperwork, and answering your questions.

WHERE DO I GET A DIVORCE?

Divorce jurisdiction is based on domicile, i.e. where you or your spouse lives. For those overseas, your domicile may be indicated by factors such as where you file your federal tax return, where you own property, where you vote, etc. The state where you were married does not impact where you get divorced. A different court may have jurisdiction over child custody cases, property disputes, .

TYPES OF DIVORCE:

There are many ways to end a marriage and each state has its own terms and processes. Here are some general terms for divorce:

- *Annulment* – the marriage was never valid due to fraud, bigamy, consanguinity, etc. The court will ‘undo’ the marriage if one of these bases are met. Note: issues like adultery don’t count!
- *Dissolution* – another term for divorce in many states.
- *Contested Divorce* – this is when one or both spouses want a divorce, but they disagree on the terms of it (or whether to get one at all). You’ll need a private civilian attorneys for these. This process can be expensive and complex.
- *Uncontested Divorce* – both spouses want a divorce, they agree on the all matters such as division of property, child support, child custody, etc. Many states will let you do this “pro se,” i.e. without an attorney.

FAULT VS. NO-FAULT DIVORCE:

All states have the option for a no-fault divorce, in which one spouse files a petition with the court asserting that the marriage is “irretrievably broken” or the marriage has broken down due to “irreconcilable differences” (courts generally don’t second-guess these claims). Fault-based divorce can be due to issues such as adultery, abuse, desertion, fraud, conviction of a felony, failure to support, insanity, and others. Both of these actions can be filed unilaterally.

DIVORCE TIMING:

Generally, divorces are not a fast process. They can take months due to the time to prepare the paperwork, decide on the terms, file the paperwork with the court and have it processed, and any additional waiting time required by the state’s law.

LEGAL SEPARATION:

This is when both spouses have decided to pursue a divorce and are no longer living under the same roof. Some states require this for a divorce, and some states are very strict regarding what constitutes a legal separation. Consult your JAG legal assistance attorney for more information.

SEPARATION AGREEMENTS:

A separation agreement is a contract signed by both spouses to set the terms for the legal separation. These terms often become the basis of the divorce decree as well. Separation agreements are not always required by state courts, but they can be an important document to decide how a couple can move forward as they pursue divorce.

DO JAG LEGAL ASSISTANCE ATTORNEYS DRAFT SEPARATION AGREEMENTS?

The Camp Henry Legal Assistance Office will draft most separation agreements, unless they are complicated or the couple is unable to agree on the terms. You can pick up a separation agreement worksheet at the Camp Henry Legal Assistance Office.

CHILD CUSTODY AND SUPPORT:

This can be determined by the divorce decree, an agreement between the parties, or in a child custody action before a court. Jurisdiction over a child custody dispute is generally based on the child's location. Other factors may impact this as well. Please see your JAG Legal Assistance attorney for more information.

FAMILY SUPPORT:

This can be determined by a court order, an agreement between the two parties, or by AR 608-99 if you or your spouse is a Soldier. AR 608-99 will govern if the divorce is not final, there is no court order, nor is there an agreement for support between the parties. Non-compliance is a violation of the regulation. Your JAG Legal Assistance Attorney can provide more information on this.

WANT MORE INFORMATION?

Call the Camp Henry Legal Assistance Office to schedule an appointment with your JAG Legal Assistance attorney. Bring in this worksheet with the following filled in:

1. Name: _____
2. Rank (or Civilian): _____
3. Home state in US: _____
4. Number of Children: _____
5. Do you own a house/apartment: (Y) (N)
6. If Yes to #5, where? _____
7. Do you live off-post? (Y) (N)
8. Do you and your spouse still live together? (Y) (N)
9. Do you have a separation agreement? (Y) (N)
10. Are you paying/receiving spousal support? (Y) (N)
11. If yes to #10, how much? \$_____/mo