

**OFFICE OF THE STAFF JUDGE ADVOCATE
CLIENT SERVICES DIVISION**

DIVORCE FACT SHEET

The following is general information about divorce in South Carolina, especially as it relates to military personnel. Divorce issues are complex, so do not rely exclusively on this handout. If you have more specific questions or need further information, you may request an appointment with a Client Services attorney. Please be aware that the attorneys in this office will not be able to represent you in court and you will need to retain a civilian attorney for that purpose.

Residency requirements: If both parties are residents of South Carolina, then the party filing the action (the plaintiff) must have lived here for the three months immediately preceding the filing. If only the plaintiff is a resident, then the plaintiff must have resided in the state for one year. If the plaintiff is not a resident of South Carolina then the party being taken to court (the defendant) must have resided in the state for one year.

Grounds for divorce: South Carolina has four grounds of divorce which are fault grounds, and each requires that a party prove his or her spouse did something wrong. These grounds are adultery, physical cruelty, habitual drunkenness or drug abuse, and desertion. If one spouse leaves the other without any reason and without the consent of the spouse who is left behind, then he or she is guilty of desertion. The length of time required is one year. South Carolina also has a no-fault ground, which is continuous separation for a period of one year.

If you desire a divorce, you must prove at least one of the above grounds with legal evidence (your testimony, photographs, letters, private investigators, for example). Usually, if you testify to the grounds, you must corroborate or back up your testimony with that of someone else or with some document.

Length of time to get a divorce: Once a divorce complaint is filed with the Clerk of the Family Court and served on the defendant, the length of time before a final divorce decree is entered depends on the grounds for the divorce and the backlog of cases in that family court. A final hearing on the fault grounds, with the exception of desertion, may not be held until two months have passed since the filing of the complaint. For the grounds of desertion and separation for one year, there is no mandatory waiting period before the hearing date may be set. Many times however, the problem is the number of other cases ahead of yours that are also waiting for final hearings.

COMMON QUESTIONS

If the ground is a one year's separation, do I need to have a "legal separation"? what should I do during the separation? In South Carolina it is not necessary to have a written agreement or a "legal separation" to establish the one-year period of separation. It is simply necessary that the two parties reside in different places and do not cohabit at all during the period of separation.

However, you may choose to reach a written agreement with your spouse, in which you would settle, at least on a temporary basis, issues of child support and custody, spousal support, property distribution, and other matters of concern. This may be done by an informal agreement, signed by each of you. You may also choose to have this done in a more formal manner, either by having your agreement presented by an attorney to the court to become a part of a court order, or by requesting a temporary hearing during which a judge will decide matters in dispute. Usually a temporary hearing (known as a pendente lite hearing) is held shortly after the complaint is served. At the hearing, the judge attempts to set forth the ground rules under which you, your spouse, and your children will operate until a divorce is granted or a final order issued. Usually no live testimony is given at these hearings, and instead written documents are used to establish each party's position.

Who will get custody of the children? If the parties cannot agree on who will be the custodial parent, the court will make the decision at a hearing. The court will consider the "best interests" of the child or children in making this decision. There is no set rule as to who will get custody. There is, however, a tendency on the part of the judges to grant custody of young children, under five years old, to their mother unless she is shown and proven to be unfit.

How is child support determined? South Carolina, like most other states, uses standard child support guidelines in determining the amount of child support to be set. The incomes of both parents are the main criteria; however other issues such as child care costs and medical coverage are factored in. Generally, if the parents agree to an amount of child support, a court will go along with that amount unless it appears to be unfair to the child. It is also important to understand that courts retain jurisdiction over child support amounts, so that there is always the possibility of a change in the amount of child support, providing there is a showing of a substantial change of circumstances.

Will the court divide military retired pay? In South Carolina, military retirement is considered to be a part of the marital estate, and thus is subject to division by the court. In addition, there is no minimum length of time the parties must be married before the retired pay is subject to division.

SELECTING AN ATTORNEY

The South Carolina Bar Association operates a lawyer referral program which you may use to locate a lawyer in your area. The telephone number for the program is 1-800-868-2284 or 803-799-7100. Lawyers who participate in the program agree to charge no more than \$25.00 for an initial consultation of at least thirty minutes. If you elect to use this program, make sure and request a lawyer who practices domestic or family law. If you feel you cannot afford a lawyer, you should contact your local legal services office to determine if it can assist you in obtaining a divorce.