

PARENTING ISSUES & THE MILITARY

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I. JURISDICTION.

- A. **Child Support.** UIFSA, C.R.S. 14-5-201, *et seq*, confers jurisdiction if:
1. Personal service in CO
 2. Consent
 3. Previously lived in CO with child
 4. Previously lived in CO & paid support or prenatal expenses
 5. Child lives in CO as result of obligor's acts
 6. Child conceived as result of intercourse in CO.
- B. **Parenting.** UCCJEA, C.R.S. 14-13-101, *et seq*, confers jurisdiction if CO is child's home state, or emergency, regardless of where respondent served.

II. UNDERSTANDING MILITARY PAY

- A. **Regulations.**
1. DOD Financial Management Regulation, chapter 7A, DOD Instruction 7000.14-R (Hereinafter "FMR"). All pay issues except for housing allowances, COLA & Per Diem.
www.defenselink.mil/comptroller/fmr/.
 2. Joint Federal Travel Regulations, Volume 1 (Uniformed Service Members) for housing allowances, COLA & Per Diem.
[http://perdiem.hqda.pentagon.mil/perdiem/jftr\(ch1-ch10\).pdf](http://perdiem.hqda.pentagon.mil/perdiem/jftr(ch1-ch10).pdf).
- B. **Leave & Earnings Statement (LES)** (Attachment 1, Entitlements Section).

1. Base Pay. Affected by pay grade (i.e. rank) & years of service. See current & former (back to 1949) pay tables (Attachment 2) at: www.dfas.mil/militarypay/militarypaytables.html
2. BAH (Basic Allowance for Housing). Eligible if not in military housing. Affected by pay grade, marital status, and locality. See <http://perdiem.hqda.pentagon.mil/perdiem/bah.html> for BAH Lookup. Types of BAH:
 - a. BAH-With. When married or 50% or more custody of child.
 - b. BAH-Without. Single and no child.
 - c. BAH-Diff. When paying court-ordered child support. (JTF, para U10008).
3. BAS (Basic Allowance for Subsistence). 2008 Rates: Officers \$202.76, Enlisted \$294.43.
4. Overseas (“OCONUS”) Allowances (Includes AK & HI)
 - a. COLA, Overseas Housing Allowance (OHA) & Per Diem. See: <http://perdiem.hqda.pentagon.mil/perdiem/>.
 - b. Hardship Duty Pay (HDP). FMR, Chapter 17. Typically \$50 - \$150, depending upon location.
5. Deployments.
 - a. Hostile Fire Pay \$225.
 - b. Family Separation Allowance. \$250 if away from family at least 30 days.
 - c. HDP. \$100 Iraq/Afghanistan
 - d. Per Diem (Incidental per diem rate is \$3.50/day).
6. Other. Jump pay, flight pay, professional pay, annual bonuses, reenlistment bonuses, etc. See FMR or Pay Table.

C. Colorado Law.

1. Gross income per C.R.S. 14-10-115 includes all pay & allowances, even if not taxable.
2. Impute Income for in-kind benefits. E.g. if servicemember lives in military housing, impute BAH. Marriage of Long, 921 P.2d 67 (Colo. 1996).

III. TEMPORARY FAMILY SUPPORT.

A. **Applicability.** Physical separation without court order or agreement. Important if servicemember deploys before support order enters.

B. **Army**

1. Army Regulation 608-99.
www.army.mil/usapa/epubs/pdf/r608_99.pdf
2. Amounts (para. 2-6):

Civilian spouse/children not in military housing: BAH-II-WITH.

Spouse/children in military housing: None.

Civilian spouse/children not in military housing living separately: Pro rata share of BAH-II-WITH to each.

Military spouse, no children: None

Military spouse, split custody of children: None.

Military spouse with children: BAH-II-Diff.

3. No in-kind payments, with limited exceptions (e.g. rent/mortgage or essential utilities). Para. 2-9.
4. Relief. Battalion/Squadron commander may relieve soldier of spousal obligation (not children) if civilian spouse has higher income, is in jail, has committed physical abuse against soldier, or soldier has already paid support per regulation for 18 months. Para. 2-14.

C. **Air Force.**

1. Air Force Instruction 36-2906, Personal Financial Responsibility.
www.e-publishing.af.mil/shared/media/epubs/AFI36-2906.pdf.
2. Servicemembers "are expected to provide adequate financial support to family members."
 1. In-kind payments are allowed.

D. **Navy**

1. MILPERSMAN 1754-030, Chapter 15, Support of Family Members.

http://buperscd.technology.navy.mil/bup_updt/upd_CD/BUPERS/MILPERS/Articles/1754-030.PDF.

2. Amounts. Support is fraction of sailor's "gross pay" (defined as base pay plus BAH, if entitled, but excludes all other allowances, such as BAS, hostile fire pay, etc).

Spouse only: 1/3

Spouse & 1 minor child: 1/2

Spouse & 2 or more children: 3/5

1 minor child: 1/6

2 minor children: 1/4

3 minor children: 1/3

3. Relief. Servicemember may request waiver of spousal portion only (not children) on grounds of desertion without cause, physical abuse or adultery.

E. Marine Corps.

1. MCO P5800.16A, Marine Corps Manual for Legal Administration, Chapter 15. <http://sja.hqmc.usmc.mil/Pubs/P5800/15.pdf>.

2. Amount. Greater of specific dollar amount or a pro rata share of BAH/OHA, up to maximum of 1/3 full gross pay:

1 family member: 1/2 BAH/OHA, minimum \$350 each.

2 family members: 1/3 BAH/OHA, minimum \$286 each.

3 family members: 1/4 BAH/OHA, minimum \$233 each.

4 family members: 1/5 BAH/OHA, minimum \$200 each.

5 family members: 1/6 BAH/OHA, minimum \$174 each.

6 or more family members: 1/7 BAH/OHA, minimum \$152 each.

3. Relief: Commanding officer may relieve marine of obligation where marine cannot determine "whereabouts and welfare of the child concerned", civilian spouse committed documented physical abuse against marine, or is in jail.

F. Coast Guard

1. COMDINST M1000.6A, Personnel Manual, Chapter 8M. www.uscg.mil/directives/cim/1000-1999/CIM_1000_6A.pdf. (Takes forever to load 8MB file).

2. Amounts (para 3.M.3.c.):

Spouse only: BAH-Diff, plus 20% of base pay.
Spouse & 1 child: BAH-Diff, plus 25% of base pay.
Spouse & 2 or more children: BAH-Diff, plus 30% of base pay.
1 child: 1/6 of base pay.
2 children: 1/4 of base pay.
3 or more children: 1/3 of base pay.

G. Enforcement

1. Violation of Lawful General Regulation is UCMJ Article 92 offense.
2. No ability to divert money, just disgorge it.
3. Fort Carson
 - a. Legal Assistance: 526-0490
 - b. Inspector General: 526-3900
4. Peterson AFB
 - a. Legal Assistance: 556-4500
 - b. Inspector General: 556-2104
5. Air Force Academy
 - a. Legal Assistance: 333-3940
 - b. Inspector General: 333-3490

IV. GARNISHMENT FOR CHILD SUPPORT/MAINTENANCE

- A. Active Duty.** Send court order via certified mail to:

DFAS-GAG/CL
PO Box 998002
Cleveland, Ohio 44199-8002

Fax: (216) 522-6960

- B. Retiree.** Utilize DD Form 2293 (Attachment 3) & certified copy of support order.

C. Percentages subject to garnishment. 5 CFR § 581.402

- 50% if providing support to dependents not covered by order.
- 55% if providing support to other dependents, but has arrearage.
- 60% if not providing support to other dependents.
- 65% if no support to other dependents, and has arrearage.

D. More Information. www.dfas.mil/garnishment/military.html.

E. VA Disability.

1. Subject to garnishment for support/maintenance. 42 U.S.C. § 659(h)(1)(A)(v), Rose v. Rose, 107 S.Ct. 2029 (1987).
2. Not simple process – contact VA Regional Office for apportionment application, then complete VA Form 21-4138, Statement in Support of Claim, and send it in with a copy of the current support order and any other pertinent documents.
3. Call (800) 527-1000 to determine appropriate regional office. In Colorado, contact:

VA Regional Office
155 Van Gordon St.
Lakewood CO 80228
Tel. (800) 827-1000
Fax (303) 914-5879

(Mailing Address)
VA Regional Office
Box 25126
Denver CO 80225

4. More information: Information Memorandum from the federal Office of Child Support Enforcement.
www.acf.hhs.gov/programs/cse/pol/IM/1998/im-9803.htm

V. PARENTING & CUSTODY

- A. Family Care Plans.** Applies to single parents, dual military with children. Must have plan in place for care of children if deploy.

1. Army Regulation 600-20, para 5-5. Example at Attachment 4.
 2. Air Force Instruction 36-2908.
- B. Pending Servicemembers Civil Relief Act** change (Section 584 of the 2008 National Defense Authorization Act for FY 2008) would explicitly include custody hearings under stay & relief from default judgment protections. Currently stalled, as President vetoed bill.
- C. Colorado Protection for Reserve Component Parents.** HB 08-1176. Attachment 5. Applies to reserve component parents called up for federal service, not active component.
1. Creates C.R.S. 14-10-131.3, providing that parenting time modification due to deployment or active federal service is only interim – *status quo ante* springs back into effect automatically upon completion. Also, servicemember’s consent to other parent raising children during service not constitute consent to integration into other’s household for purposes of filing motion to modify primary residential parent.
 2. Modifies UCCJEA by adding C.R.S. 14-13-102(7)(b) which states that “home state does not mean a state in which a child lived with a parent or a person acting as a parent on a temporary basis as the result of an interim order entered pursuant to section 14-10-131.3.”
- D. In re: Marriage of DePalma**, 06CA1478 (Colo. App. 2007). Attachment 6. Allows fit parent to delegate parenting time to third party, notwithstanding first right of refusal.
- E. Relocation Issues.** Spahmer v. Gullette, 113 P.3d 158 (Colo. 2005) and In re: Marriage of Ciesluk, 113 P.3d 135 (Colo. 2005).
- F. Passports.** Both parents’ consent, or court order, required for child under 16 to obtain passport. See State Department web site for more information. http://travel.state.gov/passport/get/minors/minors_834.html.
- G. Military ID Cards & Benefits.** Available to unmarried children & stepchildren under the age of 22.
- H. Paternity.**
1. Paternity must be judicially-determined before child has access to military benefits. DOD Instruction 1000.13.

2. Absent court adjudication of paternity, no obligation to pay support if servicemember denies paternity. AR 608-99, para 2-2, and AFI 36-2907, para. 3.3.2.
3. Army will require support per interim support regulation if paternity judicially determined, but no support order. AR 608-99, para. 2-2.

VI. MISC ISSUES

- A. **Enforcing Civilian Orders through the Military.** AR 608-99 – must comply with civilian support orders (para. 2-4a) and custody orders (para. 2-10b).
- B. **Stay of Proceedings When Notice. 50 U.S.C. App. § 202.**
 1. Court **may**, on own motion, and **shall**, upon application by a servicemember which meets these criteria, stay the proceedings for at least 90 days:
 - a. Applicant is in military service, or within 90 days after it ended,
 - b. Applicant has actual notice of the proceeding,
 - c. Application is written, and includes facts stating (i) how service materially affects ability to appear, and (ii) date when servicemember may appear, and
 - d. Application includes communication from commander that military duty prevents appearance, and military leave not authorized.
 2. Initial 90-day stay is mandatory. Thereafter, servicemember may apply for additional stay, using same criteria. Court must grant application unless appoints attorney to represent servicemember.
 3. Simply being stationed overseas, thereby making it harder to appear, does not materially affect ability to appear. Telephonic testimony, 30 days annual leave, cooperative military.
 4. If request for stay denied, servicemember cannot then invoke §201 to set aside default judgment.
 5. Sample language for motion at Attachment 7.

BASIC PAY—EFFECTIVE JANUARY 1, 2008

Pay Grade	<i>in</i>																					
	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
O-10 ²												14,137.20	14,206.20	14,501.70	15,016.50	15,016.50	15,767.10	15,767.10	16,555.50	16,555.50	17,383.20	17,383.20
O-9												12,364.80	12,542.70	12,800.10	13,249.20	13,249.20	13,911.90	13,911.90	14,607.60	14,607.60	15,337.80	15,337.80
O-8	8,748.90	9,035.10	9,225.60	9,278.70	9,516.00	9,912.30	10,004.70	10,381.20	10,488.90	10,813.50	11,282.40	11,715.30	12,004.20	12,004.20	12,004.20	12,004.20	12,304.50	12,304.50	12,612.30	12,612.30	12,612.30	12,612.30
O-7	7,269.60	7,607.40	7,763.70	7,887.90	8,112.60	8,334.90	8,591.70	8,847.90	9,105.00	9,912.30	10,594.20	10,594.20	10,594.20	10,594.20	10,647.90	10,647.90	10,860.90	10,860.90	10,860.90	10,860.90	10,860.90	10,860.90
O-6	5,388.30	5,919.30	6,307.80	6,307.80	6,331.80	6,603.30	6,639.00	6,639.00	7,016.40	7,683.60	8,075.10	8,466.30	8,688.90	8,914.50	9,351.90	9,351.90	9,538.80	9,538.80	9,538.80	9,538.80	9,538.80	9,538.80
O-5	4,491.60	5,059.80	5,410.50	5,476.20	5,694.60	5,825.70	6,113.10	6,324.00	6,596.40	7,013.70	7,212.00	7,408.50	7,631.10	7,631.10	7,631.10	7,631.10	7,631.10	7,631.10	7,631.10	7,631.10	7,631.10	7,631.10
O-4	3,875.70	4,486.50	4,785.60	4,852.50	5,130.30	5,428.20	5,799.00	6,088.20	6,288.90	6,404.10	6,471.00	6,471.00	6,471.00	6,471.00	6,471.00	6,471.00	6,471.00	6,471.00	6,471.00	6,471.00	6,471.00	6,471.00
O-3	3,407.40	3,862.80	4,169.40	4,545.60	4,763.10	5,002.20	5,157.00	5,411.40	5,543.40	5,543.40	5,543.40	5,543.40	5,543.40	5,543.40	5,543.40	5,543.40	5,543.40	5,543.40	5,543.40	5,543.40	5,543.40	5,543.40
O-2	2,943.90	3,353.10	3,861.90	3,992.40	4,074.30	4,074.30	4,074.30	4,074.30	4,074.30	4,074.30	4,074.30	4,074.30	4,074.30	4,074.30	4,074.30	4,074.30	4,074.30	4,074.30	4,074.30	4,074.30	4,074.30	4,074.30
O-1	2,555.70	2,659.80	3,215.10	3,215.10	3,215.10	3,215.10	3,215.10	3,215.10	3,215.10	3,215.10	3,215.10	3,215.10	3,215.10	3,215.10	3,215.10	3,215.10	3,215.10	3,215.10	3,215.10	3,215.10	3,215.10	3,215.10
O-3 ³				4,545.60	4,763.10	5,002.20	5,157.00	5,411.40	5,625.60	5,748.60	5,916.00	5,916.00	5,916.00	5,916.00	5,916.00	5,916.00	5,916.00	5,916.00	5,916.00	5,916.00	5,916.00	5,916.00
O-2 ³				3,992.40	4,074.30	4,204.20	4,423.20	4,592.40	4,718.40	4,718.40	4,718.40	4,718.40	4,718.40	4,718.40	4,718.40	4,718.40	4,718.40	4,718.40	4,718.40	4,718.40	4,718.40	4,718.40
O-1 ³				3,215.10	3,433.80	3,560.40	3,690.30	3,817.80	3,992.40	3,992.40	3,992.40	3,992.40	3,992.40	3,992.40	3,992.40	3,992.40	3,992.40	3,992.40	3,992.40	3,992.40	3,992.40	3,992.40
W-5												6,261.30	6,579.00	6,815.40	7,077.60	7,077.60	7,431.60	7,431.60	7,803.30	7,803.30	8,193.60	8,193.60
W-4	3,521.10	3,788.10	3,896.70	4,003.80	4,188.00	4,370.10	4,554.60	4,832.70	5,076.00	5,307.60	5,496.90	5,681.70	5,953.50	6,176.40	6,431.10	6,431.10	6,559.50	6,559.50	6,559.50	6,559.50	6,559.50	6,559.50
W-3	3,215.40	3,349.80	3,486.90	3,532.20	3,676.20	3,959.70	4,254.90	4,393.80	4,554.30	4,719.90	5,017.50	5,218.80	5,339.10	5,466.90	5,640.90	5,640.90	5,640.90	5,640.90	5,640.90	5,640.90	5,640.90	5,640.90
W-2	2,845.50	3,114.60	3,197.40	3,254.70	3,439.20	3,726.00	3,867.90	4,008.00	4,179.00	4,312.50	4,434.00	4,578.60	4,674.00	4,749.90	4,749.90	4,749.90	4,749.90	4,749.90	4,749.90	4,749.90	4,749.90	4,749.90
W-1	2,497.80	2,766.00	2,838.90	2,991.60	3,172.50	3,438.60	3,562.80	3,736.50	3,907.50	4,041.90	4,165.50	4,316.10	4,316.10	4,316.10	4,316.10	4,316.10	4,316.10	4,316.10	4,316.10	4,316.10	4,316.10	4,316.10
E-9 ⁴							4,254.60	4,350.90	4,472.40	4,615.50	4,759.20	4,990.50	5,185.80	5,391.60	5,705.70	5,705.70	5,991.00	5,991.00	6,290.70	6,290.70	6,605.40	6,605.40
E-8						3,482.70	3,636.90	3,732.30	3,846.60	3,970.20	4,193.70	4,306.80	4,499.40	4,606.20	4,869.60	4,869.60	4,967.10	4,967.10	4,967.10	4,967.10	4,967.10	4,967.10
E-7	2,421.00	2,642.40	2,743.50	2,877.90	2,982.30	3,162.00	3,263.10	3,443.10	3,592.50	3,694.50	3,803.10	3,845.40	3,986.70	4,062.60	4,351.20	4,351.20	4,351.20	4,351.20	4,351.20	4,351.20	4,351.20	4,351.20
E-6	2,094.00	2,304.00	2,405.70	2,504.40	2,607.60	2,840.10	2,930.40	3,105.00	3,158.70	3,197.70	3,243.30	3,243.30	3,243.30	3,243.30	3,243.30	3,243.30	3,243.30	3,243.30	3,243.30	3,243.30	3,243.30	3,243.30
E-5	1,918.80	2,047.20	2,145.90	2,247.30	2,405.10	2,570.70	2,705.40	2,722.20	2,722.20	2,722.20	2,722.20	2,722.20	2,722.20	2,722.20	2,722.20	2,722.20	2,722.20	2,722.20	2,722.20	2,722.20	2,722.20	2,722.20
E-4	1,758.90	1,848.90	1,949.10	2,047.80	2,135.10	2,135.10	2,135.10	2,135.10	2,135.10	2,135.10	2,135.10	2,135.10	2,135.10	2,135.10	2,135.10	2,135.10	2,135.10	2,135.10	2,135.10	2,135.10	2,135.10	2,135.10
E-3	1,587.90	1,687.80	1,789.80	1,789.80	1,789.80	1,789.80	1,789.80	1,789.80	1,789.80	1,789.80	1,789.80	1,789.80	1,789.80	1,789.80	1,789.80	1,789.80	1,789.80	1,789.80	1,789.80	1,789.80	1,789.80	1,789.80
E-2	1,509.90	1,509.90	1,509.90	1,509.90	1,509.90	1,509.90	1,509.90	1,509.90	1,509.90	1,509.90	1,509.90	1,509.90	1,509.90	1,509.90	1,509.90	1,509.90	1,509.90	1,509.90	1,509.90	1,509.90	1,509.90	1,509.90
E-1 ⁵	1,347.00	0.00																				

Notes:

- Basic pay for an O-7 to O-10 is limited by Level II of the Executive Schedule which is **\$14,349.90**. Basic pay for O-6 and below is limited by Level V of the Executive Schedule which is **\$11,633.33**.
- While serving as Chairman, Joint Chief of Staff/Vice Chairman, Joint Chief of Staff, Chief of Navy Operations, Commandant of the Marine Corps, Army/Air Force Chief of Staff, Commander of a unified or specified combatant command, basic pay is **\$18,601.20** (*See note 1 above*).
- Applicable to O-1 to O-3 with at least 4 years and 1 day of active duty or more than 1460 points as a warrant and/or enlisted member. See Department of Defense Financial Management Regulations for more detailed explanation on who is eligible for this special basic pay rate.
- For the Master Chief Petty Officer of the Navy, Chief Master Sergeant of the AF, Sergeant Major of the Army or Marine Corps or Senior Enlisted Advisor of the JCS, basic pay is **\$6,875.10**. Combat Zone Tax Exclusion for O-1 and above is based on this basic pay rate plus Hostile Fire Pay/Imminent Danger Pay which is \$225.00.
- Applicable to E-1 with 4 months or more of active duty. Basic pay for an E-1 with less than 4 months of active duty is \$1,245.90.

ALLOWANCES

Basic Allowance for Housing RC/Transient					Family Separation Allowance								
Pay Grade	Partial	Without Dependent	With Dependent	Differential	All Pay Grades: \$250								
0-10	\$ 50.70	\$ 1,290.30	\$ 1,587.30	\$ 293.40	Basic Allowance for Subsistence (Effective January 1, 2008)								
0-9	\$ 50.70	\$ 1,290.30	\$ 1,587.30	\$ 293.40									
0-8	\$ 50.70	\$ 1,290.30	\$ 1,587.30	\$ 293.40									
0-7	\$ 50.70	\$ 1,290.30	\$ 1,587.30	\$ 293.40	Officers: \$202.76 Enlisted: \$294.43								
0-6	\$ 39.60	\$ 1,183.20	\$ 1,428.90	\$ 243.00	Clothing Allowances (Effective October 1, 2007)								
0-5	\$ 33.00	\$ 1,139.40	\$ 1,377.30	\$ 234.60									
0-4	\$ 26.70	\$ 1,055.70	\$ 1,214.10	\$ 156.30	Standard Initial Clothing Allowance (Enlisted Members Only)								
0-3	\$ 22.20	\$ 846.60	\$ 1,004.70	\$ 156.00	Army		Navy		Air Force		Marine Corps		
0-2	\$ 17.70	\$ 670.80	\$ 857.10	\$ 183.90	Male	Female	Male	Female	Male	Female	Male	Female	
0-1	\$ 13.20	\$ 565.50	\$ 767.40	\$ 199.20	1330.70	1,622.36	1,203.64	1,432.15	1,292.89	1,499.21	1,596.43	1,879.05	
03E	\$ 22.20	\$ 913.80	\$ 1,079.70	\$ 163.80	Cash Clothing Replacement Allowance (Enlisted Members Only)								
02E	\$ 17.70	\$ 776.70	\$ 974.10	\$ 195.90	Army		Navy		Air Force		Marine Corps		
OIE	\$ 13.20	\$ 668.40	\$ 900.60	\$ 229.50	Male	Female	Male	Female	Male	Female	Male	Female	
W-5	\$ 25.20	\$ 1,072.50	\$ 1,172.40	\$ 97.50	Basic	370.80	432.00	464.40	475.20	316.80	349.20	360.00	385.20
W-4	\$ 25.20	\$ 952.50	\$ 1,074.60	\$ 120.00	Standard	529.20	619.20	662.40	680.40	453.60	496.80	514.80	550.80
W-3	\$ 20.70	\$ 801.00	\$ 984.90	\$ 181.50	Special	0	0	871.20	939.60	0	0	0	0
W-2	\$ 15.90	\$ 710.70	\$ 905.10	\$ 191.70	Civilian Clothing Allowance								
W-1	\$ 13.80	\$ 595.80	\$ 783.30	\$ 185.70	Type of Duty	Initial	Replacement	15 days in 30 days period		30 days in 36 month period			
E-9	\$ 18.60	\$ 782.10	\$ 1,031.10	\$ 245.40	Permanent	902.52	300.90	0		0			
E-8	\$ 15.30	\$ 718.20	\$ 951.30	\$ 229.80	Temporary	0	0	300.90		601.70			
E-7	\$ 12.00	\$ 613.20	\$ 882.90	\$ 266.10	Personal Money Allowance (Monthly Amount)								
E-6	\$ 9.90	\$ 555.00	\$ 815.70	\$ 257.10	1. While serving as Chairman or Vice Chairman of the JCS, or Army or Air Force CS, CNO, or CMC							\$333.33	
E-5	\$ 8.70	\$ 512.10	\$ 733.80	\$ 218.70	2. Senior Member of the Military Staff Committee of the U.N.							\$225.00	
E-4	\$ 8.10	\$ 445.20	\$ 637.80	\$ 189.30	3. General or Admiral							\$183.33	
E-3	\$ 7.80	\$ 436.80	\$ 593.40	\$ 154.80	4. Lieutenant General Vice Admiral							\$41.67	
E-2	\$ 7.20	\$ 354.60	\$ 565.50	\$ 207.30	5. Senior Enlisted Member of a Military Service							\$166.67	
E-1	\$ 6.90	\$ 316.80	\$ 565.50	\$ 245.40									

For other pays or specific requirements for the pay cited in this table, go to the web at:

<http://www.dtic.mil/comptroller/fmr/07a/index.html>

INCENTIVE AND SPECIAL PAYS

Aviation Career Incentive Pay

Years of Aviation Service

2 or less	Over 2	Over 3	Over 4	Over 6	Over 14	Over 22	Over 23	Over 24	Over 25
125.00	156.00	188.00	206.00	650.00	840.00	585.00	495.00	385.00	250.00

Career Enlisted Flyer Incentive Pay

Years of Aviation Service

4 or less	Over 4	Over 8	Over 14
150.00	225.00	350.00	400.00

Hazardous Duty Incentive Pay (Crew Member- Non-AWAC)

Pay Grade	Amount	Pay Grade	Amount	Pay Grade	Amount	Pay Grade	Amount	Pay Grade	Amount
O-10	150.00	O-5	250.00	W-5	250.00	E-9	240.00	E-4	165.00
O-9	150.00	O-4	225.00	W-4	250.00	E-8	240.00	E-3	150.00
O-8	150.00	O-3	175.00	W-3	175.00	E-7	240.00	E-2	150.00
O-7	150.00	O-2	150.00	W-2	150.00	E-6	215.00	E-1	150.00
O-6	250.00	O-1	150.00	W-1	150.00	E-5	190.00		

Hazardous Duty Incentive Pay (Non-Crew Member)

ALL GRADES – 150.00

Imminent Danger Pay/Hostile Fire Pay

ALL GRADES – 225.00

Diving Pay

Officers – 240.00 (Max) **Enlisted – 340.00 (Max)**

HDIP (Parachute, Flight Deck, Demolition, & Others)

All Grades – 150.00 (Member qualified for HALO pay 225.00).

COMBAT ZONE TAX EXCLUSION

Basic pay for the MCPO of the Navy, CMSgt of the AF, Sergeant Major of the Army or Marine Corps, basic pay is \$6,642.60. Combat Zone Tax Exclusion for O-1 and above is based on this basic pay rate plus HFP/IDP (\$225).

For other pays or specific requirements for the pays cited in this table, go to the web at: <http://www.dtic.mil/comptroller/fmr/07a/index.html>

Submarine Duty Incentive Pay *(Effective October 1, 2004)*

Cumulative Years of Service

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 14	Over 16	Over 18	Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8
O-6	595.00									835.00	E-9	425.00					
O-5	595.00							790.00	835.00		E-8	415.00					
O-4	365.00			525.00	595.00	705.00		790.00			E-7	405.00					
O-3	355.00			510.00	595.00	705.00					E-6	155.00	170.00	175.00	300.00	325.00	375.00
O-2	305.00						425.00				E-5	140.00	155.00		250.00	275.00	
O-1	230.00						425.00				E-4	80.00	95.00	100.00	245.00		
W-5	285.00	375.00	425.00								E-3	80.00	90.00	95.00		90.00	
W-4	285.00	375.00	425.00								E-2	75.00	90.00				
W-3	305.00							425.00			E-1	75.00					
W-2	230.00							425.00			Submarine Duty Incentive Pay for O-7 through O-10 is \$355						
W-1	285.00	375.00	425.00														

SPECIAL PAYS FOR HEALTH PROFESSIONAL OFFICERS

Variable Special Pay (Medical Officers)

Pay Grade	Under 3	3 But Less Than 6	6 But Less Than 8	8 But Less Than 10	10 But Less Than 12	12 But Less Than 14	14 But Less Than 18	18 But Less Than 22	22 and Over
Intern	100.00								
Thru O-6		416.66	1,000.00	958.33	916.66	833.33	750.00	666.66	583.33
Above O-6	583.33	<i>For specific requirements for the pay cited in this table, go to the web at: http://www.dtic.mil/comptroller/fmr/07a/index.html</i>							

Variable Special Pay (VSP) (Dental Officers)

Pay Grade	Under 3	3 But Less Than 6	6 But Less Than 8	8 But Less Than 12	12 But Less Than 14	14 But Less Than 18	18 & Over
Intern	250.00						
Thru O-6 (583.33	583.33	1,000.00	833.33	750.00	666.67
Above O-6	583.33						

Board Certified Pay Special Pay (Medical and Dental Officers)

Additional Special Pay (ASP) (Dental Officers)

Pay Grade	Under 10	10 But Less Than 12	12 But Less Than 14	14 But Less Than 18	18 & Over	Pay Grade	Under 3	3 But Less Than 10	10 & Over
All Grades	208.33	291.66	333.33	416.66	500.00	All Grades	4,000.00	6,000.00	15,000.00

Incentive Special Pay (Medical Officers)

Specialty	Annual Amt	Specialty	Annual Amt	Specialty	Annual Amt	Specialty	Annual Amt
Anesthesiology	\$36,000.00	Internal medicine	14,000.00	Otolaryngology	30,000.00	Subspecialty Category I	36,000.00
Dermatology	18,000.00	Neurology	14,000.00	Pathology	16,000.00	Subspecialty Category II	28,000.00
Emergency medicine	26,000.00	Neurosurgery	36,000.00	Pediatrics	12,000.00	Subspecialty Category III	23,000.00
Family practice	13,000.00	OB/GYN	31,000.00	Prev/Occ/Phys Med & Aero Med	13,000.00	Subspecialty Category IV	14,000.00
Gastroenterology	26,000.00	Ophthalmology	28,000.00	Psychiatry	15,000.00	Urology	28,000.00
General surgery	29,000.00	Orthopedics	36,000.00	Radiology	36,000.00		

Multiyear Retention Bonus (Dental Officers)

	Level 1	Level 2	Level 3	Level 4
4 Year Agreement	50,000.00	40,000.00	35,000.00	25,000.00
3 Year Agreement	38,000.00	30,000.00	27,000.00	19,000.00
2 Year Agreement	25,000.00	20,000.00	18,000.00	13,000.00



APPLICATION FOR FORMER SPOUSE PAYMENTS FROM RETIRED PAY*(Please read instructions on back and the Privacy Act Statement before completing this form.)*OMB No. 0730-0008
OMB approval expires
Dec 31, 2007

The public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Executive Services Directorate (0704-0008). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

FOR OFFICIAL USE**PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ORGANIZATION. RETURN COMPLETED FORM TO THE APPROPRIATE SERVICE ADDRESS LISTED ON BACK.****PRIVACY ACT STATEMENT**

AUTHORITY: Title 10 USC 1408; EO 9397.

PRINCIPAL PURPOSE(S): To request direct payment through a Uniformed Service designated agent of court ordered child support, alimony, or division of property to a former spouse from the retired pay of a Uniformed Service member.

ROUTINE USE(S): In addition to those disclosures generally permitted under 5 U.S.C. Section 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. Section 552a(b)(3) as follows:

Records are provided to the Internal Revenue Service for normal wage and tax withholding purposes. The "Blanket Routine Uses" published at the beginning of the DFAS compilation of systems of records notices also apply.

DISCLOSURE: Voluntary; however, failure to provide requested information may delay or make impossible processing this direct payment request.

1. APPLICANT IDENTIFICATION	2. SERVICE MEMBER IDENTIFICATION
a. NAME (As appears on court order) (Last, First, Middle Initial)	a. NAME (Last, First, Middle Initial)
b. CURRENT NAME (Last, First, Middle Initial)	b. SOCIAL SECURITY NUMBER
c. SOCIAL SECURITY NUMBER	c. BRANCH OF SERVICE
d. ADDRESS (Street, City, State, ZIP Code)	d. ADDRESS (Street, City, State, ZIP Code) (If known)

3. REQUEST STATEMENT

I request direct payment from the retired pay of the above named Uniformed Service member based on the enclosed court order.

I request payment of:

(1) Child support in the amount of \$ _____ per month.

(2) Alimony, spousal support or maintenance in the amount of \$ _____, or _____ percent of disposable retired pay per month.

(3) A division of property in the amount of \$ _____, or _____ percent of disposable retired pay per month.

I certify that any request for current child and/or spousal support is not being collected under any other wage withholding or garnishment procedure authorized by statute. Furthermore, I certify that the court order has not been amended, superseded or set aside and is not subject to appeal. As a condition precedent to payment, I agree to refund all overpayments and that they are otherwise recoverable and subject to involuntary collection from me or my estate, and I will notify the appropriate agent (as listed on back) if the operative court order, upon which payment is based, is vacated, modified, or set aside. I also agree to notify the appropriate agent (as listed on back) of a change in eligibility for payments. This includes notice of my remarriage, if under the terms of the court order or the laws of the jurisdiction where it was issued, remarriage causes the payments to be reduced or terminated; or notice of a change in eligibility for child support payments by reason of the death, emancipation, adoption, or attainment of majority of a child whose support is provided through direct payments from retired pay. I hereby acknowledge that any payment to me must be paid from disposable retired pay as defined by the statute and implementing regulations.

4. I HAVE ENCLOSED ALL PERTINENT DOCUMENTATION TO INCLUDE: (X as applicable)

a. A copy of the operative court order and other accompanying documents that provide for payment of child support, alimony or a division of retired pay as property, containing a certification dated by the clerk of the court within 90 days preceding the date the application is received by the designated agent.

b. Evidence of the date(s) of my marriage to the member if the application is for the direct payment of a division of the member's disposable retired pay as property. Give **MARRIAGE DATE (YYYYMMDD)** in this block unless stated in court order.

c. If payment request includes child support, give name(s) and birth date(s) of child(ren):

(1) **NAME OF CHILD (Last, First, Middle Initial)**

(2) **DATE OF BIRTH (YYYYMMDD)**

(1) NAME OF CHILD (Last, First, Middle Initial)	(2) DATE OF BIRTH (YYYYMMDD)

d. Other information (please identify) or remarks.

5a. **APPLICANT'S SIGNATURE**

b. **DATE SIGNED**

INSTRUCTIONS FOR COMPLETION OF DD FORM 2293

GENERAL. These instructions govern an application for direct payment from retired pay of a Uniformed Service member in response to court ordered child support, alimony, or a division of property, under the authority of 10 USC 1408.

SERVICE OF APPLICATION. You may serve the application by mail on the appropriate Uniformed Service designated agent. The Uniformed Services' designated agents are:

(1) **ARMY, NAVY, AIR FORCE, AND MARINE CORPS:** Attn: DFAS-CL/GAG, Assistant General Counsel for Garnishment Operations, DEFENSE FINANCE AND ACCOUNTING SERVICE - CLEVELAND, P.O. Box 998002, Cleveland, OH 44199-8002;

(2) **COAST GUARD:** Commanding Officer (LGL), United States Coast Guard, Human Resources Service and Information Center, 444 S.E. Quincy Street, Topeka, KS 66683-3591;

(3) **PUBLIC HEALTH SERVICE:** Attn: Retired Pay Section, CB, Division of Commissioned Personnel, PUBLIC HEALTH SERVICE, Room 4-50, 5600 Fishers Lane, Rockville, MD 20857-0001;

(4) **NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION:** Same as U.S. Coast Guard.

IMPORTANT NOTE: Making a false statement or claim against the United States Government is punishable. The penalty for willfully making a false claim or false statement is a maximum fine of \$10,000 or maximum imprisonment of 5 years or both (18 USC 287 and 1001).

ITEM 1.

- a. Enter full name as it appears on the court order.
- b. Enter current name if different than it appears on court order.
- c. Enter Social Security Number.
- d. Enter current address.

ITEM 2.

- a. Enter former spouse's full name as it appears on the court order.
- b. Enter former spouse's Social Security Number.
- c. Enter former spouse's branch of service.
- d. Enter former spouse's current address, if known.

ITEM 3. Read the Request Statement carefully.

ITEM 4. A certified copy of a court order can be obtained from the court that issued the court order. Other documents include, but are not limited to, final divorce decree, property settlement order, and any appellate court orders. If the court order does not state that the former spouse was married to the member for ten years or more while the member performed ten years creditable service and the request is for payment of a division of property, the applicant must provide evidence to substantiate the ten years' marriage condition. Additional evidence must show that the ten years' requirement has been met, including: Uniformed Service orders, marriage certificate, and other documents that establish the period of marriage. Other information or documents included with the request should be clearly identified by the document's title and date. Remarks may be provided to clarify specific points.

ITEM 5. Self-explanatory.

FAMILY CARE PLAN

For use of this form, see AR 600-20; the proponent agency is DCS, G-1.

PRIVACY ACT STATEMENT

AUTHORITY: 10 U.S.C. Section 3013, Secretary of the Army: Army Regulation 600-20, Army Command Policy and E.O. 9397 (SSN)

PRINCIPAL PURPOSE: To emphasize to soldiers the significance of their responsibilities to the military service and their family members while performing required military duties.

ROUTINE USES: None

DISCLOSURE: Mandatory; Failure to maintain a Family Care Plan could subject the soldier to separation, administrative action, or disciplinary action under the UCMJ.

PART I - SOLDIER'S FAMILY CARE

<p>A. I was counseled on _____ (date), and fully understand the policy on family member care responsibilities. I understand that I must arrange for care of my family members, remain available for deployment and training, and report for duty as required without interference of responsibility for family members. I assume responsibility for all obligations for such things as child care, food, adequate housing, transportation, and emergency needs of my family members regardless of age.</p>	INITIALS															
<p>B. I have made and will maintain arrangements for the care of my family members during all the following:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">1. Duty</td> <td style="width: 33%;">6. Temporary Duty</td> <td style="width: 33%;">11. Deployment</td> </tr> <tr> <td>2. Exercises/field duty</td> <td>7. Unit Training Assembly</td> <td>12. Other Military Duty</td> </tr> <tr> <td>3. Permanent Change of Station</td> <td>8. Active Duty Training</td> <td>13. Emergencies</td> </tr> <tr> <td>4. Alerts</td> <td>9. Unaccompanied Tours</td> <td>14. Leave/non-duty Time</td> </tr> <tr> <td>5. Annual Training</td> <td>10. Mobilization</td> <td></td> </tr> </table>	1. Duty	6. Temporary Duty	11. Deployment	2. Exercises/field duty	7. Unit Training Assembly	12. Other Military Duty	3. Permanent Change of Station	8. Active Duty Training	13. Emergencies	4. Alerts	9. Unaccompanied Tours	14. Leave/non-duty Time	5. Annual Training	10. Mobilization		
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4. Alerts	9. Unaccompanied Tours	14. Leave/non-duty Time														
5. Annual Training	10. Mobilization															
<p>C. I understand the importance of ensuring the proper care for my family members, and ensuring my own readiness and deployability as well. I further understand that in light of the critical nature of both these requirements:</p>																
<p>1. Failure to make and maintain adequate family member care arrangements in accordance with the Army's policy is grounds for disciplinary action or separation.</p>																
<p>2. Nonavailability for worldwide assignment and/or unit deployment may lead to my separation from the Army.</p>																
<p>3. If arrangements for the care of my family members fail to work, I am not automatically excused from prescribed duties, unit deployment, or reassignment.</p>																
<p>4. If I fail to maintain a Family Care Plan or provide false information regarding my plan, I am subject to separation, administrative action, or disciplinary action under UCMJ.</p>																
<p>5. I must maintain an up-to-date Family Care Plan and revise my Plan when circumstances change. I understand that Family Care Plans may be tested at the discretion of the commander.</p>																
<p>6. I will receive no special consideration in duty assignments or duty stations based on my responsibilities for my family members unless enrolled in the Exceptional Family Member Program (EFMP) in accordance with AR 600-75.</p>																
<p>D. I have made all necessary arrangements (legal, educational, financial, religious, special, etc.) to ensure a smooth, rapid turnover of family member care responsibilities in case this plan is implemented.</p>																
<p>E. I have arranged for necessary travel required to transfer my family members to a designated person. If my principal designee is not in the local area, I have arranged with a nonmilitary person in the local area to assume temporary guardianship of my family members until they are transferred to my principal care designee, or that designee arrives to assume responsibility for their care.</p>																
<p>F. A copy of DA Form 5841 (Power of Attorney) or equivalent documents and a copy of DA Form 5840 (Certificate of Acceptance as Guardian) for each escort or guardian whether temporary or long-term is attached to this plan.</p>																
<p>G. The following additional required documents are completed, included in this plan, and will be put into effect as part of my Family Care Plan.</p>																
<p>1. DD Form 1172 (Application for Uniformed Services Identification Card) for each family member whether they have a currently valid ID card or not.</p>																
<p>2. DD Form 2558 (Authorization to Start, Stop or Change an Allotment for Active Duty or Retired Personnel) or other proof of financial support for expenses incurred by guardian and family members.</p>																
<p>3. Copies of Letters of Instruction (which have been forwarded to designated escorts or guardians along with powers of attorney and other pertinent documents), outlining all special instructions concerning the care of my family members have also been included in my Family Care Plan.</p>																
<p>H. I have thoroughly briefed escorts and guardians on the full extent of their responsibilities and on procedures for gaining access to military/civilian facilities, services, entitlements and benefits on behalf of my family members.</p>																
<p>I. I am confident that my Family Care Plan is workable, and to the best of my knowledge, the guardian(s) and escort(s) I have designated will be both willing and able to carry out the responsibilities of caring for my family members.</p>																

PART II - DESIGNATION OF GUARDIANS/ESCORTS

<p>A. I (We) have designated the following temporary guardian to care for my (our) family member (s) until responsibility is transferred to escort or principal (long-term) guardian.</p>	
<p>1. TYPED OR PRINTED NAME</p>	<p>2a. COMPLETE ADDRESS (Including Street, Apartment Number, P.O. Box Number, Rural Route Number, City, State, and ZIP + 4 where applicable)</p>
<p>3. TELEPHONE NUMBER (Include Area Code)</p>	<p>2b. E-MAIL ADDRESS</p>

B. I (We) have designated the following individual(s) as principal long-term guardian(s) for my(our) family member(s). The designated guardian(s) reside in the continental United States or United States territories.

1. TYPED OR PRINTED NAME	2a. COMPLETE ADDRESS (Including Street, Apartment Number, P.O. Box Number, Rural Route Number, City, State, and ZIP + 4 where applicable)
3. TELEPHONE NUMBER (Include Area Code)	2b. E-MAIL ADDRESS

C. I (We) have designated the following individual(s) as escort for my(our) family member(s) if evacuation from OCONUS becomes necessary (applies only to persons assigned OCONUS):

1. TYPED OR PRINTED NAME	2a. COMPLETE ADDRESS (Including Street, Apartment Number, P.O. Box Number, Rural Route Number, City, State, and ZIP + 4 where applicable)
3. TELEPHONE NUMBER (Include Area Code)	2b. E-MAIL ADDRESS

**PART III - DUAL MILITARY COUPLES ONLY
MILITARY SPOUSE AND COMMANDER CERTIFICATION**

A. Spouse: We have made arrangements and will maintain arrangements for the care of our family member(s) in all circumstances required by our commitment to the military and our family.

1. SIGNATURE OF SPOUSE	2. DATE (YYYY/MM/DD)										
3. TYPED OR PRINTED NAME OF SPOUSE	4. SSN										
5. Recertification	<table border="1"> <tr> <td>a. INIT.</td> <td>DATE</td> <td>b. INIT.</td> <td>DATE</td> <td>c. INIT.</td> <td>DATE</td> <td>d. INIT.</td> <td>DATE</td> <td>e. INIT.</td> <td>DATE</td> </tr> </table>	a. INIT.	DATE	b. INIT.	DATE	c. INIT.	DATE	d. INIT.	DATE	e. INIT.	DATE
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B. Commander: I have counseled the military spouse assigned to my unit, reviewed the Family Care Plan, and I am satisfied that the members have made adequate family care arrangements.

1. SIGNATURE OF COMMANDER	2. DATE	3. UNIT ADDRESS													
4. TYPED OR PRINTED NAME OF COMMANDER															
5. Recertification	<table border="1"> <tr> <td>a. INIT.</td> <td>DATE</td> <td>b. INIT.</td> <td>DATE</td> <td>c. INIT.</td> <td>DATE</td> <td>d. INIT.</td> <td>DATE</td> <td>e. INIT.</td> <td>DATE</td> </tr> </table>					a. INIT.	DATE	b. INIT.	DATE	c. INIT.	DATE	d. INIT.	DATE	e. INIT.	DATE
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PART IV - SOLDIER AND COMMANDER CERTIFICATION

A. Soldier: I (We) have made arrangements and will maintain arrangements for the care of my(our) family member(s) in all circumstances required by my(our) commitment to the military and my(our) family.

1. SIGNATURE OF SOLDIER	2. DATE (YYYY/MM/DD)										
3. TYPED OR PRINTED NAME OF SOLDIER	4. SSN										
5. Recertification	<table border="1"> <tr> <td>a. INIT.</td> <td>DATE</td> <td>b. INIT.</td> <td>DATE</td> <td>c. INIT.</td> <td>DATE</td> <td>d. INIT.</td> <td>DATE</td> <td>e. INIT.</td> <td>DATE</td> </tr> </table>	a. INIT.	DATE	b. INIT.	DATE	c. INIT.	DATE	d. INIT.	DATE	e. INIT.	DATE
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B. Commander: I have reviewed the Family Care Plan, and I am satisfied that the members have made adequate family care arrangements that will allow for a full range of military duties and for worldwide availability as defined here.

1. SIGNATURE OF COMMANDER	2. DATE	3. UNIT ADDRESS													
4. TYPED OR PRINTED NAME OF COMMANDER															
5. Recertification	<table border="1"> <tr> <td>a. INIT.</td> <td>DATE</td> <td>b. INIT.</td> <td>DATE</td> <td>c. INIT.</td> <td>DATE</td> <td>d. INIT.</td> <td>DATE</td> <td>e. INIT.</td> <td>DATE</td> </tr> </table>					a. INIT.	DATE	b. INIT.	DATE	c. INIT.	DATE	d. INIT.	DATE	e. INIT.	DATE
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NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



HOUSE BILL 08-1176

BY REPRESENTATIVE(S) Labuda, Borodkin, Carroll M., Frangas, Gallegos, Gardner B., Lambert, Looper, Lundberg, Marostica, Massey, Middleton, Mitchell V., Rice, Stafford, and Todd;
also SENATOR(S) Ward, Boyd, Brophy, Cadman, Gibbs, Groff, Isgar, Kester, Kopp, Morse, Penry, Renfro, Romer, Sandoval, Schultheis, Schwartz, Shaffer, Spence, Tapia, Taylor, Tochtrop, Tupa, Wiens, and Williams.

CONCERNING THE MODIFICATION OF THE ALLOCATION OF PARENTAL RESPONSIBILITIES OF CERTAIN DEPLOYED SERVICE MEMBERS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 10 of title 14, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

14-10-131.3. Modification of the allocation of parental responsibilities and parenting time based upon military service - legislative declaration - definitions. (1) (a) THE GENERAL ASSEMBLY HEREBY FINDS THAT:

(I) AN ARMED FORCES RESERVES OR STATE NATIONAL GUARD MEMBER WHO IS CALLED TO ACTIVE DUTY FACES UNIQUE CHALLENGES WITH

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

RESPECT TO PARENTING HIS OR HER CHILD WHILE AT THE SAME TIME MEETING HIS OR HER OBLIGATION TO SERVE IN THE MILITARY;

(II) THE ALLOCATION OF PARENTAL RESPONSIBILITIES AND THE PARENTING PLAN FOR A CHILD IS OFTEN MODIFIED AS A RESULT OF A PARENT BEING DEPLOYED OR CALLED TO FEDERAL ACTIVE DUTY. IT IS IMPORTANT THAT SERVICE MEMBERS, CHILDREN, AND OTHER PARENTS SHARE THE SAME EXPECTATION AS TO WHAT THE PARENTAL RESPONSIBILITIES AND PARENTING TIME ORDERS WILL BE WHEN THE SERVICE MEMBER PARENT RETURNS AND THAT THE RELATIONSHIP BETWEEN A SERVICE MEMBER PARENT AND HIS OR HER CHILD WILL NOT BE UNFAIRLY IMPACTED DUE TO MILITARY SERVICE.

(b) THE GENERAL ASSEMBLY THEREFORE FINDS THAT THE INTERESTS OF THE PARENTS AND THE CHILD ARE BEST SERVED WHEN:

(I) MODIFICATIONS OF PARENTAL RESPONSIBILITIES AND PARENTING TIME THAT ARE BASED SOLELY UPON THE DEPLOYMENT OR FEDERAL ACTIVE DUTY OF RESERVE OR NATIONAL GUARD MEMBERS ARE LIMITED IN DURATION; AND

(II) UPON THE SERVICE MEMBER PARENT'S RETURN FROM DEPLOYMENT OR ACTIVE DUTY, THE ALLOCATION OF PARENTAL RESPONSIBILITIES AND PARENTING TIME REVERTS TO THE ORDERS IN PLACE AT THE TIME THE SERVICE MEMBER WAS DEPLOYED OR CALLED TO FEDERAL ACTIVE DUTY.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ACTIVE DUTY" MEANS FULL-TIME SERVICE IN:

(I) A RESERVE COMPONENT OF THE ARMED FORCES; OR

(II) THE NATIONAL GUARD FOR A PERIOD THAT EXCEEDS THIRTY CONSECUTIVE DAYS IN A CALENDAR YEAR.

(b) "ARMED FORCES" INCLUDES THE RESERVE COMPONENTS OF THE UNITED STATES ARMY, NAVY, MARINE CORPS, AIR FORCE, AND COAST GUARD.

(c) "PARENT" MEANS PARENT, LEGAL GUARDIAN, OR PERSON AWARDED PARENTAL DECISION-MAKING RESPONSIBILITIES OR PARENTING TIME.

(d) "SERVICE MEMBER" MEANS A MEMBER OF A RESERVE COMPONENT OF THE UNITED STATES ARMED FORCES OR A MEMBER OF A STATE NATIONAL GUARD.

(3) (a) IF A MOTION TO MODIFY AN ORDER CONCERNING THE ALLOCATION OF PARENTAL RESPONSIBILITIES OR PARENTING TIME IS FILED EITHER PRIOR TO OR DURING A SERVICE MEMBER PARENT'S ACTIVE DUTY DEPLOYMENT, AND THE COURT FINDS THAT THE SERVICE MEMBER PARENT'S ACTIVE DUTY DEPLOYMENT IS THE SOLE BASIS FOR THE MODIFICATION, ANY RESULTING ORDER SHALL BE AN INTERIM ORDER.

(b) UPON A SERVICE MEMBER PARENT'S FILING OF WRITTEN NOTICE WITH THE COURT OF HIS OR HER RETURN TO COLORADO FROM ACTIVE DUTY DEPLOYMENT, AND SERVICE OF THE NOTICE ON THE OTHER PARENT, THE INTERIM ORDERS ARE VACATED, AND THE ORDERS CONCERNING THE ALLOCATION OF PARENTAL RESPONSIBILITIES AND PARENTING TIME THAT WERE IN EFFECT AT THE TIME THE INTERIM ORDERS WERE ENTERED SHALL BE IMMEDIATELY REINSTATED WITHOUT THE NEED FOR COURT ACTION.

(4) NOTHING IN THIS SECTION RESTRICTS THE RIGHT OF A PARENT TO:

(a) CONSENT TO A MODIFICATION OF THE ALLOCATION OF PARENTAL RESPONSIBILITIES OR PARENTING TIME THAT CONTINUES BEYOND THE END OF THE SERVICE MEMBER PARENT'S ACTIVE DUTY DEPLOYMENT; OR

(b) FILE A MOTION, PURSUANT TO APPLICABLE LAW, SEEKING A MODIFICATION OF THE ALLOCATION OF PARENTAL RESPONSIBILITIES OR PARENTING TIME AFTER THE INTERIM ORDERS ARE VACATED.

(5) A SERVICE MEMBER PARENT'S AGREEMENT TO A MODIFICATION OF PARENTAL RESPONSIBILITIES OR PARENTING TIME ON AN INTERIM BASIS, DUE TO HIS OR HER ACTIVE DUTY DEPLOYMENT, SHALL NOT BE CONSIDERED AGREEMENT TO A MODIFICATION OR CONSENT TO THE INTEGRATION OF THE CHILD INTO THE OTHER PARENT'S HOUSEHOLD FOR THE PURPOSE OF A MOTION FILED PURSUANT TO SECTION 14-10-129 (2) OR 14-10-131 (2).

(6) MODIFICATION OF CHILD SUPPORT MAY BE APPROPRIATE WHEN AN INTERIM ORDER IS ENTERED BASED UPON A SERVICE MEMBER PARENT'S ACTIVE DUTY DEPLOYMENT. IN ANY MOTION FILED PURSUANT TO THIS SECTION, IT IS THE PARTIES' RESPONSIBILITY TO ADDRESS CHILD SUPPORT AT THAT TIME PURSUANT TO SECTIONS 14-10-115 AND 14-10-122.

(7) MOTIONS FILED PURSUANT TO THIS SECTION SHALL NOT QUALIFY AS MOTIONS FILED FOR PURPOSES OF THE TWO-YEAR LIMITATION ON MOTIONS CONTAINED IN SECTIONS 14-10-129 AND 14-10-131.

SECTION 2. 14-13-102 (7), Colorado Revised Statutes, is amended to read:

14-13-102. Definitions. As used in this article, unless the context otherwise requires:

(7) (a) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

(b) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (7), "HOME STATE" DOES NOT MEAN A STATE IN WHICH A CHILD LIVED WITH A PARENT OR A PERSON ACTING AS A PARENT ON A TEMPORARY BASIS AS THE RESULT OF AN INTERIM ORDER ENTERED PURSUANT TO SECTION 14-10-131.3.

SECTION 3. Applicability. This act shall apply to motions filed on or after the effective date of this act.

SECTION 4. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or

part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Peter C. Groff
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO

2007 COCA 06CA1478 - 072607; In re Marriage of DePalma;

IN RE THE MARRIAGE OF P. JON DEPALMA, APPELLEE,
and
MELISSA ANN DEPALMA, APPELLANT.

No. 06CA1478
Court of Appeals of Colorado, Division IV
July 26, 2007

El Paso County District Court No. 0 1DR4394 Honorable Richard V. Hall, Judge,
Honorable Connie L. Peterson, Judge

Willoughby & Eckelberry, L.L.C., Kimberly R. Willoughby, Denver, Colorado, for
Appellee

Baker & Gaithe, LLC, Carla L. BakerSikes, Colorado Springs, Colorado, for Appellant

OPINION

GRAHAM, JUDGE.

In this post dissolution of marriage proceeding, Melissa Ann DePalma (mother) appeals from orders permitting P. Jon DePalma (father) to exercise his parenting time rights during his military deployment by having his current wife care for the children in his home during his parenting time. We affirm.

Father and mother are the parents of two children. In May 2002, they agreed to a parenting plan providing, among other things, that the children would be in father's care two evenings a week and every other weekend, that they would be in mother's care at all other times, and that if either parent was unavailable during his or her designated parenting time, that parent would offer the other parent the right of first refusal for the care of the children. When their marriage was dissolved in June 2002, the parenting plan was incorporated into the decree.

Father is an airline pilot and an Air Force Reserve pilot. Before he remarried in 2004, he and mother coordinated their parenting time each month to take his schedule into account. When he was deployed by the Air Force, mother exercised all parenting time.

After father remarried, he was again deployed to Iraq. During this deployment, the children spent one night and one evening per week in the care of father's new wife

(stepmother). The remainder of the parenting time was exercised by mother. In January 2006, facing another deployment, father requested that parental responsibilities be modified to allow the children to spend equal time with each parent. He also requested that the parenting time schedule remain in effect when he was stationed in Iraq. He asserted that this would be in the children's best interests because it would allow them to maintain their normal schedule and their bonded relationship with stepmother and their stepbrother. Mother opposed this motion, arguing that father was impermissibly attempting to establish parental rights for his new wife that the new wife could not have obtained in her own right, and that mother should not be required to decrease her parenting time in favor of a nonparent.

An initial hearing was held in April 2006, followed by a second hearing in May. After considering the parties' arguments, the court determined that the presumption that a natural parent has the right to control the upbringing of a child is rebuttable; that the best interests of the children must be considered in determining whether the presumption has been rebutted; and that in the case before the court, the court was required to consider the relationship between the children and the stepparent as well as father's rights.

An additional hearing was held in June 2006. After considering the testimony of both parents, the stepmother, and the child and family investigator, the court determined that father could decide to have stepmother care for the children during his parenting time and that in doing so, he was presumed to be acting in the best interests of the children. The court further found that allowing father to designate stepmother as the children's caregiver during his absence did not modify the parties' parenting plan, as the children would remain in mother's care at all times except during father's parenting time, nor did it grant parenting time to stepmother. The court concluded that the right of first refusal set forth in the parenting plan did not require that father offer the children to mother while he was deployed, and that imposing such a requirement would interfere with father's parenting time. Accordingly, the court ordered that the children should be in the care of stepmother during father's parenting time as he had requested.

Mother now appeals from these orders.

I.

Mother contends that the trial court erred in holding that father could choose to delegate his parenting time to stepmother while he is deployed or otherwise unavailable for extended periods of time. Mother argues that the court failed to accord her the presumptions to which she was entitled as the children's natural mother; that the court erred in denying her legal objection to father's motion to modify parenting time; that the court erred in failing to require that stepmother petition for parenting time; and that the

court failed to make the necessary findings regarding the children's best interests before making its decision. We are not persuaded by these arguments.

A.

We first address mother's argument that the trial court failed to accord her the presumption that she had the first and prior right to parenting time of the children, and the presumption that, as a fit natural parent, she acted in the best interests of the children. We are not persuaded that the court failed to accord mother the benefit of any applicable presumption.

In determining a custodial dispute between a parent and a nonparent, Colorado courts recognize a presumption that a biological parent has a first and prior right to the custody of his or her child. *In re Custody of C.C.R.S.*, 892 P.2d 246, 256 (Colo. 1995). Colorado courts also recognize a presumption that a fit parent acts in the best interests of his or her children. *In re Adoption of C.A.*, 137 P.3d 318, 327 (Colo. 2006) (citing *Troxel v. Granville*, 530 U.S. 57, 67, 120 S.Ct. 2054, 2061, 147 L.Ed.2d 49 (2000)).

Here, the court expressly recognized that a parent has "a presumptive right to control the upbringing of a child," and that there is a presumption that a natural parent can make the decisions concerning the children. The court ultimately concluded that father could make the decision to have stepmother care for the children during his parenting time, noting that because parental unfitness had not been alleged, father was presumed to act in the best interests of the children.

We are not persuaded that the trial court failed to accord mother the benefit of the presumptions to which she was entitled as one of the children's biological parents.

We note that from the beginning, the trial court treated this matter as a dispute between two fit parents regarding the arrangements for the care of the children during father's parenting time, rather than a dispute between a nonparent seeking parenting time and a parent opposing it. We are not persuaded that the court erred in doing so. Stepmother never requested parenting time in her own right, and we are aware of no authority for the proposition that a parent's request that a stepparent or other nonparent be permitted to provide care for a child should be imputed to the nonparent and treated as a request by the nonparent for parenting time.

Because the dispute was between mother and father, and not between mother and stepmother, the presumption that a parent has a "first and prior" right to the custody of his or her child was not implicated, and there was no need for the court to comment upon the presumption that a parent's right to custody is superior to that of a nonparent.

Because the dispute was between mother and father, the court did not err in according the presumption that a fit parent acts in the best interests of the children to father as well as to mother. As the courts of several other jurisdictions have found, when two fit parents disagree, the court must weigh the wishes of both to determine what is in the child's best interests. *See, e.g., Thomas v. Nicholas-Jones*, 909 A.2d 595 (Del. 2006) (unpublished table decision) (in a dispute between parents regarding visitation by grandmother, father's determination that visitation was in the child's best interests was entitled to the same weight as mother's contrary determination, and the trial court properly considered the wishes of each parent together with the other best interests factors); *In re Marriage of Sullivan*, 342 Ill.App.3d 560, 565, 795 N.E.2d 392, 396-97 (2003) (a dispute between mother and father regarding father's petition to allow his parents to visit child while he was on military duty overseas requires the court to weigh the wishes of two fit parents to determine the child's best interests); *Yopp v. Hodges*, 43Va.App.427, 43839, 598 S.E.2d 760, 766 (2004) (where one parent supports grandparents' petition for visitation with child, and the other parent opposes it, and both parents are fit, the trial court must presume that both parents are acting in the best interests of the child; thus, faced with a contest in which one parent's fundamental rights are pitted against the other's fundamental rights, the trial court properly resolved the matter by considering the child's best interests).

Because the dispute concerned father's parenting time and father's determination that it would be in the best interests of the children to allow them to maintain their relationship with their stepmother and stepbrother by maintaining the usual parenting time schedule during his deployment, we conclude that the court did not err by considering first the presumption that father was acting in the best interests of the children, and determining that the issue of stepmother's care of the children was resolved when that presumption was not rebutted by mother. The presumption that mother, too, was acting in the best interests of the children, was addressed by the court when it acknowledged mother's concern that parental rights should not be extended to stepmother, and resolved the issue by stating explicitly that the court did not intend to grant parenting time or parenting responsibility to stepmother. By addressing her concern in this manner, the court acknowledged that her concern was reasonable and that she also was acting in the best interests of the children in bringing it to the court's attention.

B.

We next consider mother's argument that the trial court erred in denying her legal objection to father's motion to modify parenting time. We construe this as an argument that the trial court effectively granted parenting time to stepmother when it granted father's motion, and, thus, entered an order that violated mother's constitutional right to the care, custody, and control of the children. We do not agree with this argument.

We begin our analysis by observing that the trial court expressly stated in its June 8, 2006, order that "[t]he court is not granting any parenting time or parenting responsibility to [stepmother]." Indeed, the orders entered by the court do not grant stepmother any rights at all. Her "right" to parenting time is in reality only a potential obligation, if she chooses to accept it, to care for the children during father's parenting time. It is father's right to ask her to do so, and if he does not, the orders entered by the court do not grant her the right to see the children or care for them. In addition, stepmother has no right to make decisions for the children, as that authority is shared exclusively by mother and father, with day-to-day decision-making allocated to mother during father's deployments.

Because the orders from which mother appeals do not provide stepmother with any legal rights, this case is distinguishable from cases in which a parent has attempted to delegate his or her parental rights to a nonparent, or has requested that the court do so, without regard to the availability of a fit, natural parent who already possesses parental rights and is prepared to assume the responsibility for the child. *Diffin v. Towne*, 3 Misc. 3d 1107(A), 787 N.Y.S.2d 677 (N.Y. Fam. Ct. 2004), an unpublished decision cited by mother in support of her argument that the orders from which she appeals improperly granted parental responsibilities to stepmother, is such a case, and we find it unpersuasive for that reason.

C.

Mother's argument that the trial court erred in extending "special rights" to stepmother and that the court should have required stepmother to petition for parenting time is also unpersuasive.

Stepmother did not seek parental rights, and father did not ask that such rights be extended to her. Rather, father requested only that stepmother be permitted to care for the children in his home during his absence. As mother acknowledges, parents routinely entrust their children to the care of teachers, family, and daycare providers during their parenting time. Although mother suggests that there is a substantive difference between leaving a child with a nonparent on a shortterm basis and doing so for an extended period, she has not cited any authority in support of this proposition or explained why she believes this to be true. Nor has she explained why the entrustment of children to the care of a nonparent over a longer period necessarily requires the extension of parental rights to the nonparent.

The trial court concluded that stepmother could care for the children during father's parenting time without holding parenting time rights in her own name. Mother has cited no authority for the proposition that the court erred in reaching this conclusion, and we are aware of none. Accordingly, we reject it.

D.

Finally, we reject mother's argument that the trial court erred in failing to make specific findings regarding the best interests of the children.

Under § 14-10-129(1)(a)(I), C.R.S. 2006, with certain exceptions not applicable here, a court may make or modify an order granting or denying parenting time rights whenever such order or modification would serve the best interests of the child.

Here, mother did not dispute that it was in the children's best interests to maintain a relationship with their stepmother and stepbrother, and she did not contend that the children's visits with them were harmful. She specifically agreed that father was a fit parent and that he should have joint decision-making responsibility for the children. She testified that she thought that it was "very important" that the children continue to spend time with father's family, including stepmother, and that she felt that "[t]he more people who love them, the better." When asked about the reason for her opposition to father's proposal that stepmother be permitted to care for the children during his deployment, mother stated that she felt that it diminished her rights as a parent, and that it was "not anything against [stepmother] as a person, or as a parent." Thus, the court could reasonably conclude that both parents agreed it was in the best interests of the children to continue their relationship with stepmother and that they disagreed only as to whether father's proposal improperly extended parental rights to stepmother.

While it might have been better practice for the trial court to make explicit findings regarding the best interests of the children, we are not persuaded that the trial court erred in failing to do so where the record indicates that this issue was not disputed. We note that the court found that neither party argued stepmother inadequately cared for the children, and that the parties agreed the children had a good relationship with both stepmother and their stepbrother. In addition, the court acknowledged that it was in the children's best interests to allow stepmother to care for them during father's parenting time and that because parental unfitness had not been alleged, father was presumed to act in the best interests of the children.

II.

Mother contends that the trial court violated the right of first refusal provision of the parties' parenting plan by allowing father to offer time to stepmother before offering it to mother. We do not agree.

Modification of parenting time is governed by § 14-10-129, C.R.S. 2006. A court may modify an order regarding parenting time where such modification serves the best interests of the children. *See In re Marriage of West*, 94 P.3d 1248, 1250 (Colo. App.

2004).

Here, the parenting plan incorporated into the decree dissolving the parties' marriage provides that "[i]n the event either parent is unavailable during their designated time with the children, they will contact the other parent for First Right of Refusal."

Testimony presented at trial showed that the right of first refusal had not been consistently and routinely offered in every case in which it might have applied.

The court ordered that the right of first refusal should be applied only to the parties, and added that father's decision to have stepmother care for the children during his absence did not require that the children be offered first to mother. The court explained that "[u]nder the circumstances and evidence presented, such a requirement would be inconsistent with the parenting plan as a whole and would interfere with [father's] parenting time."

To the extent that the trial court's ruling operated as a modification of the parenting plan incorporated into the decree, it was within the trial court's discretion to make such a modification. In light of the evidence in the record that the parties had operated under a de facto modification of the plan and that the children would be least disrupted by continuing with their current sleepover arrangements, we do not perceive that it was an abuse of discretion to modify the plan to accommodate the best interests of the children.

III.

In her reply brief, mother makes a number of arguments that were not made in her opening brief, and, apparently, were not made to the trial court. We will not consider these arguments. *See In re Marriage of Atencio*, 47 P.3d 718, 722 (Colo. App. 2002) (issue not raised before the trial court will not be addressed on appeal); *In re Marriage of Smith*, 7 P.3d 1012, 1017 (Colo. App. 1999) (issue raised for the first time in appellant's reply brief will not be considered).

The orders are affirmed.

Vogt and Hawthorne, JJ., concur

CO

CO Slip Opinions

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MOTION FOR STAY OF PROCEEDINGS PURSUANT TO SERVICEMEMBERS CIVIL RELIEF ACT

THE PETITIONER, by and through his undersigned attorney, hereby requests a stay of all proceedings in the above-captioned case, pursuant to 50 U.S.C. App. §202, and as grounds, states the following:

1. A Permanent Orders hearing is currently scheduled for *****.
2. The Respondent is on active duty with the U.S. Army / Air Force. On or about *****, he was deployed to *** (Deployment Order attached as Attachment 1). The deployment is open-ended, with no termination date yet set, but is expected to last about a year. Counsel for the movant will advise the Respondent and Court upon learning of a return date.
3. This deployment materially affects the Respondent's ability to participate in the proceedings in that while he is deployed, he is prohibited from taking leave to appear, and his ability to communicate with his attorney is severely curtailed. A letter from his commander is attached as Attachment 2.
4. Section 202 of the Servicemembers Civil Relief Act reads, in pertinent part:

“(a) APPLICABILITY OF SECTION- This section applies to any civil action or proceeding in which the defendant at the time of filing an application under this section--

(1) is in military service or is within 90 days after termination of or release from military service; and

(2) has received notice of the action or proceeding.

(b) STAY OF PROCEEDINGS-

(1) AUTHORITY FOR STAY- At any stage before final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met.

(2) CONDITIONS FOR STAY- An application for a stay under paragraph (1) shall include the following:

(A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.

(B) A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.”

5. The Petitioner has met the SCRA requirements for a mandatory stay: he is on active duty, he submitted this written motion which sets out how his military duties materially affect his ability to appear, and he has attached the required letter from his commanding officer.

6. The undersigned has discussed the issue with counsel for the Respondent, who indicated he would not oppose a stay.

WHEREFORE, the Petitioner requests that the scheduled hearing be vacated, and that all further proceedings in this case stayed until such time that has redeployed back to the United States and his ability to participate in the case is not materially affected.