



U.S. AIR FORCE

DIVORCE



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I. My marriage isn't going well. What can I do?

Married life is difficult in the modern world. There are many stresses on a couple, and sometimes the rigors of military lifestyle can make married life even more difficult than it would be otherwise. In response to these stresses, the Air Force has established a number of support programs that can ease the pressure on married couples, and perhaps help save your marriage.

II. What are some Air Force resources to help married couples?

Difficulties can arise in a marriage due to financial problems, spiritual problems, or just differences in personalities between the spouses. The Air Force has agencies that can help with any of these problems. They are all free, and all are willing to provide you the help you need to improve your marriage and adapt more comfortably to a military lifestyle.

The organizations located on Cannon Air Force Base that are ready and willing to provide free counseling services for couples experiencing marital difficulties are:

1. The Base Chapel
 - 4-2507 (after hours call 4-2253; offer general marital counseling)
2. Family Support Center
 - 4-4228 (offers financial counseling only)
3. Life Skills
 - 4-1108 (life skills offers counseling for problems such as stress management and anger control for active duty military members and their spouses)

III. What if my spouse doesn't cooperate, or these things don't help?

Sometimes marital problems are so great that spouses need time apart from one another to work out their differences. It may even be that the personalities involved are so different that the best thing is to dissolve the marriage. Sometimes the best thing for both spouses is to go their separate ways, and each get on with life. However, if you are contemplating either separation or divorce, you should know that you and your spouse's legal rights will be affected by such actions. You may want to talk to a legal assistance attorney before taking any such action.

IV. Separations

A separation is when both spouses agree to live apart, but have not actually divorced. A separation is sometimes done while you are in the process of trying to work out problems, and sometimes it is a temporary measure until a divorce is finalized. Separations can be categorized as informal and formal.

1. Informal Separation

An informal separation is when spouses agree to live apart. They will usually agree among themselves as to relative obligations for financial and child support. They usually don't consult attorneys and do not make a written agreement.

It is wise to consult an attorney before taking such a step. There are a number of unforeseen legal problems that can arise in this situation. For example, failure to supply adequate support for a child or an estranged spouse is a crime. Also, such an arrangement could hurt your chances to get child custody or certain property in the event that you and your spouse do end up getting a divorce.

2. Formal Separation

Formal Separations are separations in which the obligations of the spouses are governed by a written agreement or court order.

(a) Agreements

Agreements are often drafted by attorneys and set out the legal rights and obligations of the separated spouses. They may also become part of your divorce decree if you and your spouse divorce. These agreements can cover a wide range of subjects, such as division of property, support obligations, and child custody arrangements. You may prepare these documents yourself based on publicly-available forms. Once you complete these forms, you can bring them in to the legal office during legal assistance hours and one of our attorneys will look them over for you. It's a free service, and it's better to get it right the first time. If you own real estate or have children, we recommend you hire a civilian attorney to draft the agreement.

(b) Court Decrees

If you and your spouse cannot agree on the terms of the separation, one of you may petition a court for separation, support and maintenance. There will be a hearing and the court will be able to impose separation obligations on a spouse who does not agree to them. This could include obligations as to property division, payment of support, child custody and the like. The court can also order interim payments from one spouse to another between the time of the filing and the final order, and order one spouse to pay the other's attorney's fees.

V. Divorces

1. Grounds for divorce/dissolution

You can get a divorce (or dissolution, as it is called here) in New Mexico on the grounds of incompatibility, cruel and inhumane treatment, adultery, or abandonment. Incompatibility exists when discord or conflict of personalities prevent any reasonable expectation of reconciliation. As a practical matter, almost all divorces are granted on the grounds of

incompatibility. The testimony of either party is sufficient to establish incompatibility. In effect, either party may get a divorce without the consent of the other party.

2. Effects of divorce on property

New Mexico is a community property state, which means generally that any property acquired by one spouse belongs 50% to the other spouse. This includes military pay and pension rights. Under New Mexico law certain property is separate property, such as property owned by one spouse before the marriage, or inherited property. The court will typically divide community property equally and allocate separate property to the spouse that owns it.

Courts, however, are not bound to do this and as a practical matter they may split up the property in any way they deem fair and equitable. This is particularly true among military families, who move often, and thus may have very little community property. How a particular piece of property is titled is usually irrelevant in a divorce proceeding.

3. Effect of divorce on support obligations

Married people are legally obligated to support their spouses and their children. How they do so is largely up to them, and courts will not usually step in unless a spouse is grossly neglecting this obligation. In divorce cases, however, courts will set very clear guidelines for obligations to ex-spouses and children. Support to a former spouse is called alimony or spousal support. Support to a child is called child support. Support is usually paid by one spouse to another, but under some circumstances can be enforced through the Air Force.

(a) Spousal Support

A court may award alimony to a former spouse. Whether the court does so depends on a number of factors, such as the former spouse's age, earning capacity, childcare obligations, and how much property that spouse received in the property settlement. Alimony may be indefinite for long-term marriages, or may be for a short time in order to allow the former spouse to establish him or herself.

(b) Child Support

Both parents are responsible for supporting their children after a divorce. The way this is typically done is that one spouse, the primary custodial spouse, discharges the obligation by actually taking care of the child and providing the child with a home, much like the way the obligation is discharged in a marriage. The spouse that is not awarded primary custody discharges this obligation by payment of money to the other spouse.

New Mexico courts have approved a formula titled "the Income Shares Model" to come up with an amount of child support which is presumptively fair. The amount of child support owed depends on a number of factors, such as the income of the two parents and the number of children needing support.

4. Effect of divorce on military benefits

Military benefits are tied to the military member. Thus, a former spouse of a military member will usually lose his or her military benefits. A former spouse may retain these benefits only if the marriage were a long-term one to a member who has served in the military for a long time. What benefits may be retained depend on the length of the marriage and number of years creditable service the military member has. Children keep their benefits until they are no longer considered dependents for benefit purposes. This depends on such things as the child's age, status as a student, or special needs.

5. Effects of divorce on child custody

In a divorce, primary physical custody of the children will normally be awarded to one parent. The other parent will usually have an obligation to pay child support, and will often have visitation rights. Denial of visitation rights by the custodial parent does not excuse the obligation to pay child support. In such a case, the parent denied visitation must continue to pay child support and file a motion in court to enforce visitation rights.

Primary physical custody usually goes to the primary caretaker of the children. Primary care includes such things as playing with the child, changing diapers, feeding and dressing the child, and other such activities. It does not include outside work to support the family. The theory behind this is that it is better for the child to have continuity and stability, and to continue spending time with the parent he or she is most used to.

Parents (with children under age 18) who divorce in New Mexico must attend a class on parenting called the Custody Education Workshop. This class is given regularly at Clovis Community College and costs \$25. For more information about this class, call 769-2656 or stop by the 9th Judicial District Family Court Services located at 708 Mitchell Street, Clovis, 88101.

6. Filing for divorce

(a) Eligibility

A person is eligible to file for divorce in New Mexico if he or she has resided in the state for at least six months and intends to reside indefinitely. Military service in New Mexico for at least six months is usually sufficient to meet this requirement. In order for the court to determine issues of child custody and support, the court must have jurisdiction over the spouse and children as well.

(b) Filing for divorce yourself

If you and your spouse can agree on all aspects of a divorce, such as child custody, property division, and the amount and form of support payments, then you can file the divorce yourself without hiring an attorney. All of the necessary forms are available online at www.fscll.org, and are also available as a complete packet at the 9th Judicial Curry County Courthouse, 700 N Main Street, for \$10. Copy these forms and fill in the information. You must

type in the requested information and print it out rather than file a photocopied form with the information penned in. Once you've completed the form, a legal assistance attorney would be happy to look it over for you and discuss any issues that may arise. Your spouse may also see an attorney, either a legal assistance officer or a private attorney, with or without your knowledge.

When the forms are finished you can file them with the 9th Judicial District Family Court in Clovis. It will cost you approximately \$137 to do this. This is the fastest and least expensive way to get a divorce. Naturally, this type of divorce is only possible if the two spouses can agree on all the terms. If not, it will be necessary for both spouses to seek outside legal counsel. Also, it goes without saying that both spouses are under an obligation to be completely forthcoming with one another about how much property each owns. Once filed, a judge will ordinarily approve an uncontested divorce within a few days.

(c) Hiring an attorney

If two spouses cannot agree to the terms of a divorce it is necessary for each to seek independent legal counsel. Whatever you tell the attorney will be kept confidential. The attorney's job is to inform a divorcing spouse of their respective rights and obligations, and inform them of the probable consequences of any action they may be considering. Attorneys also represent their clients at negotiations with the other spouse's attorney, and try to get an agreement which is beneficial to his or her client. If the spouses still cannot agree, the matter will go to court and the attorneys will represent the spouses there. The court will then decide the particulars of the divorce. Naturally, this method of divorce is longer, more expensive, and potentially more painful than agreeing early on, but is sometimes necessary when, for whatever reason, the spouses cannot agree.

Legal assistance attorney's can give general advice about divorces, but we cannot represent anyone in a contested divorce. Local civilian attorneys do that. Names of local divorce attorneys are available from the State Bar of New Mexico Lawyer Referral Service at 1-800-876-6227.

IV. Conclusion

The information in this pamphlet is for general informational purposes only. If you are considering separation or divorce, one of our legal assistance attorneys would be pleased to speak with you as it relates to your specific issues.