

A Farewell to Arms: Mediating Military Divorces

By Pete Desrochers and Ron Iddins

Some divorces clearly transcend the parameters of family mediation, where traditional dispute resolution techniques may not work, where past training may fall short, and where mediators need a few unconventional tools in their proverbial bag of tricks. Military divorces often inject into the alternative dispute resolution process an intricate maze of complex legal and jurisdictional issues that may be unfamiliar even to experienced mediators and lawyers. The issues, themselves, are not really so different from those in other divorces: custody, child support, fair division of assets, responsibility for liabilities, and so forth. However, the current plights of men and women defending our country can make the quest for reasonable solutions that are fair to both parties and in the best interests of the children a daunting task. The human component alone can be emotionally overwhelming to the most experienced of mediators.

The recent U.S. surge, primarily in Iraq, means that troops are expected to do more while serving longer tours of service. Many soldiers are receiving “Dear John” letters containing divorce notices, reminiscent of the Vietnam era. They are often devastated, and some openly suggest that throwing themselves in the line of fire might be the easiest way of dealing with



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their grief. Some spouses get to tell their mates in person that the marriage is over when the soldiers return home on leave. While seemingly less heartless, it still puts the service people in the position of learning that their world is about to fall apart on the domestic front, as they prepare to return to war on the international front.

When they are initiating the break-up, it is easy to envision non-serving spouses as villains, when our brave service people are fighting and dying in a hostile land. But that notion is not necessarily fair, either. In some cases, soldiers return home on furlough, knowing they will soon

return to war. They are incapable of letting down their guard, which can be devastating to domestic relations. One can also not discount the extreme loneliness and pervasive despair of the spouse left behind. Some newlyweds have spent only a few months together in the preceding three or four years. We’ve all seen newscasts featuring soldiers who have yet to meet their infant children.

It is one thing to say they knew what they were getting into when they joined the Armed Forces; but the truth is, many did not. Consider the reservists who, seeking a

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meaningful part-time job, ended up in an unimaginable nightmare. While it may be possible for stateside spouses to ease some of their loneliness in the arms of another, the military looks very harshly upon adulterous liaisons involving its personnel. This leads to interesting dilemmas for mediators and lawyers. “Dependents” of service personnel are provided for financially. So, the military spouse must provide dependent support as long as the marriage legally endures, giving the non-military spouse allotments, health care benefits and PX/Commissary privileges from remaining married, even when there is marital separation. Thus, the mediator may have to deal with a non-military spouse who enjoys the continuing marital benefits so long as the marriage itself imposes no checks on the behavior or actions of the non-military spouse. Further, the mediator must remain circumspect, since adultery in the military can result in severe penalties.

As with any case of divorce mediation, the parenting plan for the children will be a key issue. Obviously the children are not going to be shipped off to Baghdad every other weekend if one parent is in Iraq. So, immediate physical custody of children to the non-military spouse would seemingly be a foregone conclusion. Not necessarily. What if both parties are military? Will the Service arbitrarily defer, delay, or otherwise alter one party’s assignment in deference to a divorce? What if the family is stationed abroad and living on base in a more stable part of the world? Does a non-military spouse who wants to pick up the kids and return

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to the States have the right to do so? Would that spouse actually be taking the kids out of their jurisdiction? What if the natural environment of the children has always been a military one? What constitutes uprooting them? What about legal questions like the state in which the children were born, where the couple got married, or whether they simply live on or off the base?

Immediate concerns are often so paramount that long-term ramifications may seem almost trivial. Does the mediator point to the long-term consequences of educating a child, still in diapers, who will one day apply to college? Can the mediator speculate about military benefits when the military spouse may or may not remain in the Armed Forces? Should the development of a comprehensive plan contemplating such long-term consequences be raised? Is this the mediator’s place, or should the mediator be concerned only with issues raised by the parties and their counsel?

Looking beyond the kids when one or both spouses are in active military duty, the conflicts affecting marriages vary according to their circumstances. Many “military” marriages are of short duration, in which the spouses are young adults and both parties are so anxious to move forward that they treat divorce issues in a highly cavalier manner.

Retirement benefits may well be unaffected by remarriage or by the “live-in-lover” situation. Because of the relative youth of military retirees, the sums of such retirement benefits can be substantial. Some states (e.g. Missouri) mandate that retirement benefits be awarded to a non-military spouse based on each year of marriage, while the military spouse qualifies for retirement after a minimum career of 20 years. Other states use the “equitable” standard, where the matter is not automatic or decided by a set formula. Either way, military pensions are the cornerstone asset of many military families, and invariably one of the most hotly contested issues.

Benefits and military perks are feverishly debated, since medical and drug plans are usually, although not exclusively, federal government plans. Some state and private plans offer attractive benefits, with their own criteria for military personnel. Some military perks have to do with preferred mortgage rates or special credit cards. State and federal taxes, as they apply to military families, have been the subject of copious publications.

Many military divorces are quiet and cordial, and the mediation of them may be no less intense. A

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Pushing the Envelope

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viewed as the mediator's alone, with varying levels of professional accountability. Keeping this in mind, let us consider the elements that go into any decision to push the envelope.

Any effective decision begins with an assessment of the circumstances that one faces. Experience is key in deciding whether to go forward with a particular intervention or strategy that is laden with risk. With greater experience, the professional can draw upon more information. Assessment yields to the development of options. Options can range from facilitative to evaluative, as gauged by one scale, and from conservatively safe to genuinely risky, by another. Choices necessitate consideration of the individual consequences that are attendant to each option. The evaluation of the consequences that are the by-product of each choice, coupled with the desire for the best outcome, lead to the resulting decision.

Critical to the success of that choice is the degree to which the mediator has established rapport with each client and gained their trust regarding both the process and the mediator. There is an inverse relationship between the degree of risk attached to a particular intervention and the depth of client trust needed if one were to take the risk. Plumbing the depth of that trust in the face of the constantly changing tides of emotion is an art that is enormously enhanced by experience.

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Regardless of our individual comfort zones, each of us is confronted by the challenges of discretion, beginning with our very first mediation. These challenges are universal and ever-present. However, the difference between the strategic decisions made when one is simply hoping not to screw up and the intervention decisions described by the examples described above, is the combination of intuitive instincts, awareness of the professional ethical norms, and one's willingness to push the envelope in circumstances that make it the right decision. **FMN**

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resigned sense of inevitability can pervade the room, coupled with unceasing despair. Other military divorce mediations can peak to a very high emotional intensity. As family mediators, we are trained to outwardly display our neutrality and impartiality, emotionally distancing ourselves from the individual issues which our clients dispute so passionately. We endeavor not to take sides or empathize with one party over another. But, it is not easy when the intensity of negotiations melts away our dispassionate neutrality and hurls us into a legal, jurisdictional and emotional avalanche. The apprehension of both mediators and lawyers at the beginnings of such mediations can be almost as strong as the sense of relief once they are over. Still, there is also the immense satisfaction of knowing we really can make a difference.

Anyone interested in military divorce mediation might want to pick up a copy of *Tax Deductions A to Z for Military and Reservists* (Tax Deductions A to Z series) by Anne Skalka, or *The Military Divorce Handbook*, posted by the Montana Law Library.

Perhaps the easiest starting point is to download *Publication 3, Armed Forces' Tax Guide*, from the IRS website. It addresses a wide range of issues that specifically affect the military. **FMN**