



FROM COUNSEL

A Preventive Law Service of the Fort Riley Legal Assistance Office
Keeping You Informed On Personal Legal Affairs

Kansas Separation & Divorce Options

PURPOSE: To provide information about Kansas separation and divorce laws.

a. WHAT ARE MY OPTIONS IF MY SPOUSE AND I ARE NOT GETTING ALONG?

Your first option is to seek counseling. Counseling is provided on post by the chaplains and at Family Advocacy. To be seen at Family Advocacy, either spouse can call 239-9435 or 240-1794 to make an appointment. The service member can also seek help at the Department of Behavioral Health (DBH) located next to Irwin Army Community Hospital. DBH can be reached at 239-7208 or 239-7291. The service member can move into the barracks for a limited time for a “cooling off” period, and the rest of the family can remain in government quarters. If marital problems continue, you may seek a divorce immediately, provided you meet certain state requirements (See Paragraph d, below), or you may live separately from your spouse indefinitely.

b. WHAT IS “SEPARATION?” If you voluntarily live apart from your spouse, you are separated. The term “legal separation” refers to a court imposed separation that may include support provisions.

c. WHAT ARE MY OBLIGATIONS IF MY SPOUSE AND I HAVE SEPARATED? If you are the service member, you have a specific obligation under Army regulations. Army Regulation 608-99 requires you to provide a certain amount of support to your family members. The amount depends on your rank. For dual military couples, special rules apply regarding support. See From Counsel: AR 608-99 discussing these issues. While separated, military spouses and dependents remain eligible for all military benefits and entitlements.

(1) **Medical.** During a period of separation, spouses continue to be legally married, and the non-military spouse remains entitled to any military benefits. If the spouse moves out of the local area, he or she should call Tricare to enroll in the new location’s region. For assistance, find your Tricare region’s contact information at <http://www.tricare.mil/>. For out of area care, please contact your TRICARE Regional Contractor or your current Military Treatment facility (MTF) for guidance on how to properly receive care to help minimize your out of pocket costs.

(2) **Transportation.** Divorcing spouses do not have an entitlement to ship household goods at government expense. However, if the service member is entitled to ship household goods (e.g., PCS move) the spouse may be able to coordinate a shipment as well. Dependents who are victims may also be entitled to a shipment of

household goods in their own right. Contact the passenger service section, 239-3087, for specific entitlements.

(3) **Other Benefits.** Military spouses may continue to use Commissary and Post Exchange privileges on any military installation while separated. Spouses may also seek Legal Assistance at any military installation.

(4) **Criminal Issues.** Military personnel are subject to prosecution for adultery under the UCMJ. If you are the non-military spouse, adultery is also a crime under Kansas state law. Failure to provide support to family members under AR 608-99 is also punishable under the UCMJ.

d. **HOW DOES DIVORCE WORK?** Kansas does not require a period of separation before one of the parties is permitted to file for divorce. If you file a divorce action in Kansas state court, the end result will be that the court will issue an order declaring the marriage terminated, dividing all property of the parties, and setting an amount of parenting time (child support) and/or spousal maintenance. To file for divorce in Kansas state court, you must have resided in Kansas or have been at Fort Riley for at least 60 days. Once the divorce petition has been filed, a mandatory 60-day period must pass before the divorce can become final. Divorce laws may be different in other states.

(1) **WHO WILL GET CUSTODY?** Kansas has a preference for joint custody. Normally, the child or children will have a primary residence with one of the parents. The other parent will be granted parental visitation (called “parenting time” in Kansas). Under a joint custody arrangement, both parents are equally responsible for raising the children and making decisions about them. In some instances, one parent will receive sole custody. The court will ultimately order the custody arrangement that is in the “best interests” of the children. If child custody is an issue and you are filing in either Geary or Riley County district court, you are required to attempt to settle any issues through mandatory mediation prior to the final divorce hearing. The court will presume that any parenting plan agreed to during mediation is in the children’s best interest.

(2) **WHAT ABOUT SUPPORT?** The court can set an amount for child support based upon who has primary custody and the parties’ respective incomes. These amounts are contained in child support guidelines. See <http://www.kscourts.org/Rules-procedures-forms/Child-Support-Guidelines/2012-guidelines.asp>. The court may award spousal maintenance (alimony)—based on a fair, just, and equitable standard—to either party based on a number of factors.

(3) **WHAT ABOUT OUR PROPERTY?** Any property owned prior to the marriage by either party or acquired during the marriage is subject to division by the court. The court can divide this property, and it need not be split equally. Kansas law merely requires that the property division be just and reasonable. The court can also divide the parties’ debts. Creditors, however, can still pursue either spouse on joint debts that become delinquent.

(4) **WHAT ABOUT OUR DEBTS?** In addition to the property during the marriage, the debt incurred during the marriage is divided upon divorce. Debt incurred prior to the marriage belongs to the person in whose name the debts were acquired. If both spouses co-signed for a debt, both spouses will be held to "joint and several liability" for the debt. "Joint and several liability" means that each spouse is responsible for the entire debt, but also the spouses are jointly responsible for the debt. Often, one spouse is made responsible for the entire amount of the debt. This is generally offset by an "equalization" payment; that is, the spouse who pays the debt receives more property in the settlement than the spouse who is left free from the debt.

(5) **WHAT ABOUT MILITARY BENEFITS?** After the divorce is finalized, the children will retain some military benefits, including PX and health care. The non-military spouse will not retain any military benefits. However, if the marriage lasted at least twenty years, the Soldier served at least twenty years on active duty, and twenty years of active duty military service overlap with twenty years of marriage, then the spouse can retain full military benefits. For more information, see From Counsel: Uniformed Services Former Spouses' Protection Act. Any children will need to obtain an ID card to be able to receive their benefits. Check with the ID Card Section (Building 212, phone number 239-3654) to inquire about the procedure to obtain an ID card.

(6) **CAN I SUE FOR DIVORCE IN A STATE OTHER THAN KANSAS?** That depends. Each state has its own divorce laws regarding who can or cannot file for divorce there. Before trying to file in another state, you should check that state's divorce laws. Be aware that some states may have longer residency requirements than Kansas does.

(7) **IF MY SPOUSE SUES ME FOR DIVORCE, DO I NEED AN ATTORNEY?** You are not required to hire a civilian attorney, and it may be tempting to avoid having to pay an attorney. If you do appear in court without an attorney, however, be prepared to lose every issue. Appearing without an attorney will probably hurt you badly in the long run.

e. **WHAT SERVICES DOES THE LEGAL ASSISTANCE OFFICE PROVIDE?** We can provide you with general advice about divorce and separation, referrals to civilian attorneys, and prepare a voluntary separation agreement for you. ***Except for extremely limited circumstances, our office cannot represent you in the divorce. You will need a civilian attorney who can represent you in Kansas state court.*** The Legal Assistance office can only see whichever spouse seeks advice from our office first. Other attorneys are available to provide legal advice to the other spouse. All appointments are made by calling 239-3117.

(1) **WHAT IS A SEPARATION AGREEMENT?** A separation agreement is a contract signed by you and your spouse. The separation agreement can be prepared free of charge in the Legal Assistance Office. The separation agreement can divide your property and debts, determine how child custody will be arranged, set child support and maintenance (alimony), and arrange for tax preparation and responsibility. A

separation agreement will not work unless you and your spouse can agree on all of these issues.

(2) **WHAT CAN A SEPARATION AGREEMENT DO FOR ME?** The separation agreement can alter the support requirements set by Army Regulation 608-99 and it may be incorporated into your divorce decree if you are subsequently divorced.

(3) **WHAT ARE THE DOWNSIDES TO A SEPARATION AGREEMENT?** Because the separation agreement is a contract, both you and your spouse must sign it. Once signed, enforcement of the agreement is similar to any other contract. Also, a court is not obligated to incorporate every aspect of the agreement into a divorce decree.

(4) **IS THE SEPARATION AGREEMENT A LEGAL SEPARATION?** No. A separation agreement is a contract. You do have some legal remedies if the other spouse breaches this contract. A legal separation (“separate maintenance”) involves getting a court order, which can be more easily enforced than a separation agreement. Legal Assistance Attorneys cannot help you get separate maintenance. You must seek assistance from civilian counsel.

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FROM COUNSEL is distributed by the Fort Riley Office of the Staff Judge Advocate, Legal Assistance Office, located in Bldg 216, Clausen Hall. **Consult an attorney for specific legal advice for your particular situation.** Our office hours are: 0900 – 1600, Mon – Thur, and 0900 – 1500 on Fri. Call 239-3117 for an appointment. See <http://www.riley.army.mil/Units/Staff/StaffJudgeAdvocate/LegalAssistance.aspx>.