

STARTING A FAMILY LAW CASE INVOLVING A SERVICE MEMBER

INTRODUCTION

Service Members face all the conflicts that arise in any marriage with the additional conflicts that arise with absence and loneliness that comes from the required mobility that leaves families separated, traveling to foreign lands and facing international conflict face to face.

These factors can even increase the abuse one may face in a marriage as the result of living in war and conflict. Though the law applied typically is a state's law, parties also face foreign countries laws, national agreements between nations, UCCJEA, UCCJA, and parental kidnapping Prevention Act (PKPA), 28 U.S.C. 1738A, the Hague convention when adopted by both countries and many other agreements between countries affecting the parties who serve or are married to a spouse in the United States Military. These complexities compound all family law matters from a military separation or divorce to child custody, visitation and support together with spousal support (alimony) and family support to real property and personal property located in different states and nations and finally to retirements and pensions, which may include both parties with different employers not part of the military as well as a United States Military Retirement.

When one of the parties, and in this day and age it only takes one, wishes to end a lawful marriage, both parties must now deal with all these issues in light of their venue, the various jurisdictions, their actual "chosen domicile" and, of course, the InRem and InPersonam Jurisdiction necessary for a Court to act.

Divorce is a state issue where the service member or spouse must obey and follow substantive state and procedural laws of a particular state to address the family law issues of a family subject to that states jurisdiction.

I. CHOOSING A VENUE

As California Attorneys, one often hears "Simply put, venue is the place of residence for at least three months prior to the filing of the family law action and jurisdiction is the place of residence six months prior to the filing of the same action." With venue, we are looking at the county and with jurisdiction we are looking at the state. In a Service Members case, it is not so simple.

A. INREM AND INPERSONAM JURISDICTION

The Court must have jurisdiction in order to grant this divorce. Typically, this will be a particular state, perhaps the "home of record" or another state or venue within a state.

What is INREM JURISDICTION AND INPERSONAM JURISDICTION?

1. **INREM JURISDICTION** gives the Court the power to grant a divorce.
2. **INPERSONAM JURISDICTION** allows the Court to issue personal orders over a party not seeking a divorce.

The best and simplest question regarding jurisdiction is: where are both of the parties, their children, their assets and debts located within the state borders of a particular state and county, the actual place of the parties domicile? They are both within the same jurisdiction.

Obviously, since jurisdiction is the key to a courts ability to act, problems arise when one party seeks a divorce in a jurisdiction where the other spouse is not subject to that courts personal jurisdiction and that party does not submit to that court's jurisdiction.

B. DOMICILE

In a proceeding where a service member is seeking a divorce, the party or the spouse must be domiciled in the state. The U.S Supreme Court in "Williams v. North Carolina" stated "Under our system of law, judicial power to grant a divorce – jurisdiction, strictly speaking, is founded on domicile. The founders of the constitution were familiar with this jurisdictional prerequisite, and since 1789, neither this court nor any other court of the English speaking world has questioned it. Domicile implies a nexus between person and place of such permanence as to control the creation of legal relations and responsibilities of the utmost significance. The domicile of one spouse within a state gives power to the state we have held to dissolve a marriage where so ever contracted." **WILLIAMS V. NORTH CAROLINA, 326 US 226, 230**

In a military divorce, first domicile and residence must be addressed. "That place where a man has his true, fixed and permanent home and principle place of residence established and, to which whenever he is absent, he has the intention of returning"

"As "domicile" and "residence" are usually the same place, they are frequently used as if they had the same meaning; however, they are not identical terms. A person may have two places of residence as in the city and county, but only one domicile. Residence means living in a particular locality but domicile means living in that locality with intent to make it a fixed and permanent home. Residence simply requires bodily presence as an inhabitant in any given place while domicile requires bodily presence in that place and also, an intention to make it one's domicile, one's permanent home." In re: Riley's Will, 266 N.Y.S. 209, 148 misc. 588 "**BLACK'S LAW DICTIONARY**" 572 (5TH ed. Rev. 1979).

C. KINDS OF DOMICILE

1. A DOMICILE MAY BE OF THREE DIFFERENT KINDS:

a. A domicile may be that acquired by every child at birth from the child's parents – domicile by operation of law. Thus at birth, we acquire the domicile of our parents. This domicile will change as that parent's domicile may change when the parents leave the old home and move to another home by operation of law.

b. A domicile may be the place a person elects and chooses for himself to replace his previous domicile. This is called his domicile of choice. We will discuss later the element of how to choose a domicile.

c. A domicile may be acquired by incapacity. To acquire a domicile where it is assigned to the person, independent of the service member's own intention or action of residence, he acquires a domicile by operation of law. An example of this might be incarceration in a state or federal penitentiary.

2. DOMICILE BY CHOICE HAS TWO FACTORS

In this discussion, it is typically domicile by choice, the voluntary choice as the sole or chief act of selecting a residence with the intention of continuing to reside at that location for an unlimited period of time. A domicile by choice includes two important factors:

a. A domicile must include the establishment of a residence in a particular locality where the person is actually present;

b. The action taken by the service member must be done with the intention to remain in this location for an indefinite period of time and it is the service member's intent to abandon the old domicile. The key is to remove oneself from the old domicile with the intent to actually choose a new home, a new residence, a new permanent place to live in a new locality. Moving across town does not change domiciles for the locations are one and the same. However, just moving from one county to another county does change venue. So on a state basis, a move from one state to another state does change jurisdiction.

Domicile abandonment is not a change of domicile by itself. There must be, in addition an actual change, intent to make a principle and permanent change of residence.

Thus one can see the desire to change is not enough. One must demonstrate actual change that reflects the intent is permanent, not merely for a temporary purpose.

D. HOME OF RECORD

Home of Record is the initial local from which a service member signs up to be a member of the armed forces. The service member typically signs up in his home state at his family's generational residence, which today is most often more the family's legal residence of the more recent past. While this was once determined by the head of the family, the father, to whom all were subject, it has since changed dramatically.

Today, Home of Record can be purely a military administrative term that refers to the place to which the Department of Defense will transport the service member, the family and their household goods upon separation from the service back home to the service member's home of record established at the time the service member originally entered the service. Home of Record is not intended to have legal implications over and above the initial financial consideration of state and county tax and return transportation of the party, his family and personal belonging upon termination of services to that original location. Yet still, Home of Record can still be used as one of the factors to establish Domicile as an ongoing "original domicile".

E. DOMICILE IS A STATE OF MIND

The question asked is "What mental attachment is the party carrying around?" Once you acquire a domicile, it remains your domicile, even though you leave it, unless your state of mind changes while you are in another place. Then you must demonstrate your change in your state of mind. What is the evidence or indications we can draw upon to identify your actual state of mind? We want your real, your honest state of mind as to your intention.

F. DECLARATION TO ESTABLISH STATE OF LEGAL RESIDENCE

Tax is an issue affected by DOMICILE. There is a form, DD form 2058, (see **Exhibit "A"**) a state of Legal Residence certificate, available through the administrative section of the military unit that can be used to help identify your domicile. The form is simply your declaration of fact that a particular state is your residence. Home of Record can be changed at reenlistment time.

Note: Both of the acts, Home of Record and Form 2058, do not establish domicile, however, both might be used as evidence to establish domicile in a divorce.

G. FACTORS TO CONSIDER IN DETERMINING DOMICILE

Here are a series of factors that the attorney could use to clarify the domicile of the

service member:

1. Is there a state the family calls home?
2. Have the children attended preschool, special school, private or public school in the state?
3. Is there a declaration written where the service member claims a particular state as his or her residence?
4. Are there documents such as wills, deeds, mortgages, lease contracts, insurance policies or hospital records demonstrating a location where the service member claims to reside?
5. Are there letters or communications through the years that establish a residence?
6. In what state or county does the party pay taxes?
7. Is the party purchasing land or a home in the state?
8. Did the party lease or own a home in the state?
9. Has the party moved personal property into the state?
10. Does the family vote in the state? In what state is the service member registered to vote? In what county does the family vote?
11. Is the vehicle registered in the state?
12. Is the driver's license from the state?
13. Are there bank or investment accounts within the state? Within the county?
14. Is there family involved in church, civil, professional, service or fraternal organizations at this residence?
15. Did the parties marry in this state? In this community?
16. Is this the state where the parties or their family have burial plots?
17. Are members of the family buried at this location?
18. Does this family show any charitable contributions to this community?
19. Are there business interests in this state invested in or owned by this family?
20. Has the service member filed a DD Form 2058, State of Legal Residence Certificate, with the personnel office (as mentioned above)?
21. Does the current and past income tax returns reflect an address in this state and location?
22. Is there evidence setting forth why a different location is only temporary?
23. Has this family been paying nonresident tuition at the local institution of higher learning?
24. Is nonresident tuition paid for an institution in another state?
25. What is the home of record?
26. Is the party and his assets within the State?

Thus, the more consistent the client is in acting consistently to validate his choice of domicile, the more likely it will be the one he selects as his selected , permanent domicile.

H. MILITARY SPOUSES RESIDENCY RELIEF ACT (MSRRA)

A spouse no longer needs to accept the domicile of the spouse who is a service member. Now, both spouses can maintain separate domiciles if they choose.

FROM THE PRESIDENT

1. “Today I have signed into law S. 475, the “Military Spouses Residency Relief Act”. This Act, among other things, would provide that when a service member leaves his or her home State in accord with military or naval orders, the service member’s spouse may retain residency in his or her home State for voting and tax purposes, after relocating from that State to accompany the service member.

When the military orders service members to move, spouses who move with them often have to pay taxes in a new State or locality and lose the right to vote in the place considered to be home. This legislation will alleviate these and other burdens on our military families. As the Congress has recognized, and as the legislative history reflects, this legislation is an important means of maintaining the morale and readiness of our Armed Forces and significantly enhances the ability of our military to effectively recruit and retain these highly valued service personnel.”

BARACK OBAMA

THE WHITE HOUSE,
November 11, 2009.

DEPARTMENT OF DEFENSE

2. Important Tax Information From DOD to Married Service Members and Spouses

“In November 2009, the Military Spouses Residency Relief Act (MSRRA) became law. This new law changes some basic rules of taxation that could affect you and your spouse. Now, a military spouse who is present with a Service member (SM) in a particular State under military orders does not have to pay State income tax on wages earned in that State as long as that State is NOT the spouse’s domicile (permanent home). However, the spouse would have to pay taxes to the State of domicile, if the laws of that State required such payments. Some States, of course, don’t have State income taxes.

The MSRRA does not allow a spouse to pick or choose a domicile in just any State. Domicile is established, not arbitrarily chosen. The spouse must have actually been present in the State, established it as his or her domicile, and maintained it by forming and maintaining the necessary contacts, such as registering to vote, owning property, registering vehicles, holding professional licenses, declaring a homestead, or indicating a

State of probate in a last will and testament. Similarly, the MSRRA does not allow a spouse to “inherit” or assume the SM’s domicile upon marriage without the necessary contacts with the State.”

DON’T WAIT TO GET HELP! The law is complicated, and because its effect will depend on the interpretations of each State, SM’s and their spouses are encouraged to seek free, confidential advice from a military legal assistance office. Legal assistance offices can be found at: <http://www.legalassistance.law.af.mil/content/locator.php>.

For members of the Coast Guard, more information is available at: http://www.uscg.mil/legal/la/Legal_Assistance_Home.asp

For all other Service members, more information is available from Military OneSource at: www.militaryonesource.com/taxfilingservices under the heading “Find out about the Military Spouses Residency Relief Act.”

Classification: UNCLASSIFIED
Caveats: FOUO

II. LOCATING THE SERVICE MEMBER

To start the service member’s or spouse’s case, a state requires both parties to be before the court having jurisdiction to address the issues raised by the Petitioning party. The Responding party must be properly served with the actual papers required to be served; the Summons and Petition, in the case of a new action, or, if post-decree, the motion requesting the court to address the concerns of the moving party.

Since 9/11, the Department of Defense (DOD) has made locating a service member more difficult. Its guidelines are intended to protect a member of the service, thus, the member locator services will not give the actual location of the service member’s residence. Still, there are a number of websites that are helpful for locating service members. They are as follows:

http://www.einvestigator.com/links/military_locator.htm

<http://www.defense.gov/faq/pis/PC04MLTR.html>

<http://www.afpc.randolph.af.mil/library/airforcelocator.asp>

A. ASSISTANCE LOCALLY AND IN THE STATE OF CALIFORNIA

Locally, the military has evaporated from the San Francisco bay area. Military bases in the bay area have been reduced to the United States Coast Guard Command on Coast

Guard Island and nearby bases like Travis Air Force Base in Fairfield, California.

1. Mike Marken, at the Coast Guards Legal Service Command, is one of few Legal Service Attorneys serving the Family Law Sector for service members. His information for our assistance in serving service members is set forth below for professional contact.

Michael J. Marken, Legal Assistance Attorney
Legal Service Command
Coast Guard Island, Bldg 54-A
Alameda, CA 94501-5100
Ph: 510-437-5891 Fax: 510-437-3906
Email: Michael.J.Marken@uscg.mil

Travis Air Force Base is probably the closest Air Force Base. It is located in the Legal Office at Building #383 on the Air Force Base.

2. In Southern California the Marine Corp has a legal office at Camp Pendleton, where Jim Kent is the person to see. His information is as follows:

James A. Kent
Joint Legal Assistant Office
Bldg. 22161
P.O. Box 555023
Camp Pendleton, Ca 92055
Ph: 760-725-5432 Fax: 760-468-7748
Email: James.A.Kent@usms.mil

Base Commanders ask Service Members “do you want to be served?” Civil – No, Criminal or Corporate – Yes

3. San Diego has a number of legal contacts. MCRD, the Marine Corp Recruit Depot is probably a good one. Attorney Angela B. Anderson is the Civilian Legal Assistance Attorney and can be located at:

Angela B. Anderson
Civilian Legal Assistance
3700 Chosin Ave., Bldg. 12
San Diego, CA 92140-5197
Ph: 619-524-4105
Email: Angela.B.Andersonesq@usmc.mil

B. PRACTICAL STEPS TO LOCATING A SERVICE MEMBER

Obtain the service members Social Security number or the military serial number. The Serial Number has been replaced by the Social Security number as of about 30 years ago. The Social Security number, if not possessed by the client, can usually be found on a joint tax return, on a leave and earnings statement of the service member, on his or her orders, past or present or on some other military document.

1. Army Knowledge Online (AKO) may have the party with an email address. The email is, of course, “the name”@usarmy.mil.
2. Another tool is to contact the “house locator” at the last base where the service member was stationed. Perhaps someone who knows the service member is still at the office or location where the service member was stationed. Maybe the operator will put you through to the old number

Always remember to use the service member’s full name, rank and social security number. Your purpose is to locate his place of work. For your own reasons, you may want to be careful to whom you are giving this information.

3. Still another source is the Military Legal Assistance Attorney (LAA) who is responsible for assisting the service member, spouse and legitimate children or acknowledged or adjudicated illegitimate children with assistance in the action. These services are available in any branch of the service.
4. Another source for service is the American Red Cross and its local website. A few others are the Army Emergency Relief, Army Community Services, the Navy Marine Corps Relief Society or the Air Forces Aid Society.
5. If there is doubt contacting the service member, the commanding office may be helpful. Through them, they may accommodate your request for the service members forwarding address from the old command.
6. If children are involved, perhaps you should check with “Federal Parent Locator Service.” Even the local Department of Child Support Services may be helpful in giving you sources to check. There are a number of books written on locating a service member. Online you may wish to use the words: “Locate a Service Member”.

C. WORLDWIDE MILITARY LOCATORS

Military personnel are in the departments of the military branch services under the Department of Defense. While these branches will not provide a home address or home phone number, they will provide other locating information. In all requests for locating, you will need as much identifying information as you can obtain. The service is free to

immediate family members. Other family member's not so immediate, civilian friends and others must pay a fee of \$3.50 to the US Treasury. This fee is not refundable. Following are the addresses for each branch:

1. UNITED STATES ARMY

Commander
U.S. Army Enlisted Records & Evaluation Center
ATTN: Locator
8899 East 56th Street
Fort Benjamin Harrison, IN 46249-5301

2. UNITED STATE NAVY

World Wide Locator
Bureau of Naval Personnel
PERS 312F
5720 Integrity Drive
Millington, TN 38055-3120
Ph: 1-901-874-3388

3. UNITED STATES MARINE CORPS

Commandant of the Marine Corps
Headquarters, USMC
Code MMSB-10
Quantico, VA 22134-5030
Ph: 1-703-640-3942/43

4. UNITED STATES AIR FORCE

HQ AFMPC/RMIQL
550 C Street, West, Suite 50
Randolph AFB, TX 78150-4752
Ph: 1-210-652-5774

D. CHILD SUPPORT UNDER EXECUTIVE ORDER 12953

If the action is for child support, Executive Order 12953 under Section 302 provides for legal process assistance in service of process to enforce or establish support orders or to establish paternity.

E. LOCATOR ASSISTANCE FROM THE TOP

Each service has its own address and phone number for its service member's active, reserve or retired as well as Federal civilian employees. Listed below are significant sources with the relevant entity, its address and phone number;

1. FOR THE ARMY:

Office of the Judge Advocate General,
ATTN: DAJA-LA
2200 Army Pentagon
Washington, DC 20310-2200
Ph: 703-697-3170

2. FOR FEDERAL CIVILIAN EMPLOYEES:

Deputy Assistance Secretary
(Civilian Personnel Policy/Director of Civilian Personnel)
111 Army Pentagon
Washington, DC 20310-0111
Ph: 703-695-4237

**3. ACTIVE DUTY, RESERVE, APPROPRIATED FUND AND NON-
APPROPRIATED FUND EMPLOYEES:**

Deputy Chief of Staff for Resource Management,
U.S Army Southern Command, Finance & Accounting Office,
Civilian Personnel Section,
ATTN: Unit 7153, SORM-FA-C
APO AA 34004

4. FOR THE NAVY:

Bureau of naval Personnel
Worldwide Locator (Pers 324D)
2 Navy Annex
Washington, DC 20370-3000
Ph: 703-614-3155-5011

5. BUREAU OF NAVAL PERSONNEL:

Office of Legal Counsel (Pers 06)
2 Navy Annex
Washington, DC 20370-5006
Ph: 703-614-4110

6. FOR THE MARINES:

Paralegal Specialist
Headquarters, U.S. Marine Corps (JAR)
2 Navy Annex
Washington, DC 20380-1775
Ph: 703-614-2510

7. FOR THE AIR FORCE:
AFLSA/JACA
1420 Air Force Pentagon
Washington, DC 20330-1420
Ph: 703-695-2450

III. OBTAINING SERVICE OF PROCESS

The Federal statutes provide for no Service of Process that can be done by military personnel. This is because Service of Process is a state responsibility and not the Federal military. Why? Our form of Federal government leaves state issues to states and their enforcement. The military exists to defend us from foreign aggression and cannot act to enforce internal domestic laws. Life and property are state issues and local issues.

After the civil war, the Federal Constitution found itself being violated in a number of ways. To solve the problem, the congress in 1878 passed a new law to prevent Federal troops from executing domestic laws. To this day, the Posse Comitatus Act (18USC1385) remains effective to prevent the military from being used within the states to enforce the laws of a state.

In other words, congress will have to pass a new law if it wants Federal troops to act within the state for service on the service member for a state issue. It could happen. Our United States Constitution under the Commerce Clause, etc. does not seem to be limited any longer to just coining money and National defense against a foreign power. Change? Still, at least for the time being, the Posse Comitatus Act remains. Logically, our Defense team must focus on our defense, our protection, our security without the personal problems of our men and women being interfered with or frustrated by civil process of a State Court. However, if we are to maintain order within the scope of our Constitution and, to maintain order conflicts between our service members and their family or within their family, cannot be ignored. Thus the policies of our military accommodate legal Service of Process in such a way as to not interfere with the military objective of our military.

A. WITHIN THE UNITED STATES

The Service of Process of State Courts, where the party is under federal jurisdiction, can and will occur but in a supervised fashion to insure no interference with the command.

B. HOW SERVICE OF PROCESS MAY OCCUR

1. First, if the United States Military, through its command, is asked to assist in a Service of Process in an area where there is exclusive Federal jurisdiction, the military authority

will contact the service member and explain to the party that a civil action in a state apparently has been filed involving the service member. The party is then asked if the member will accept service. If the member accepts, arrangements will be made for the Service of Process to occur. If the member refuses, the party seeking to serve the member will be advised and no further assistance will be offered. In this case, the process server will be advised to pursue applicable state law, returning the papers to the attorney.

Practically speaking, the military may also impose reasonable restrictions to prevent interference with the mission and to preserve good order and discipline. A location may be selected and the military may order the party to appear at that location if the party will accept service.

2. Second, without military personnel involvement, Service of Process can occur by mailing the papers to the member with a brief letter advising the service member of the subject of the legal action and directing the party to sign the State form “Notice and Acknowledgment of Receipt for Acceptance of the Service of Process”. This is then signed and dated by the service member and returned by him to the attorney so that the original may then be filed with the Court, demonstrating that the party has been given proper notice of the proceeding.

3. Third, in some state jurisdictions, Service of Process may be obtained by forwarding to the other party, a registered letter with restricted delivery required. Only the person named can sign for the documents. If received and signed for by the party desired to be served, the actual card may be used to effect service.

The problem with such a service is refusal of the registered letter by the member or a signature by a third person who is not a party to the action. In both cases, the service did not occur and now the party may now have legal documents without the moving party being able to proceed.

4. Fourth, many military institutions have procedures where as a practical matter, the service can occur. The most obvious is the relationship that often exists between the local sheriff and the Base where a weekly meeting occurs. Members are ordered to report to a location and the services for that week are served by the sheriff. This may even occur, for instance, on the quarter deck of a ship. The officer on duty may direct his messenger to get the member to report to the quarter deck. There, the member is then served on the quarter deck. Still this is not typical but it sometimes works.

5. Fifth, in legal proceeding, specifically a family law matter, serving a party off base at their residence or by a family friend of the party seeking the service, can certainly occur and does work. The problem remains it must be done properly.

C. HOW SERVICE OF PROCESS MAY OCCUR OUTSIDE THE UNITED STATES

1. First, Service of Process may still occur on base by registered mail or, by signing the Notice and Acknowledgment of Receipt for Service of the service member. Additionally, both of these methods can easily occur on ship. However, the possibility of a third person signing for a registered letter with restricted delivery can be affected by shipmates. Privacy is something not so much a part of life aboard ship. Still, it can work. Is the Service Member on ship or shore?

2. Second, on base army, navy, air force, marine corp., the military authorities may still assist in voluntary acceptance of service, acting as the actual physical conduit for the service to occur if the service member voluntarily agrees to the service. Additionally, the military may offer the service member a legal consultation before the actual service takes place. If then the service member refuses, the internal laws of both nations or international treaties may limit military assistance for the actual Service of Process to occur. This tends to prolong the time, creating barriers to affect child support enforcement.

If there is a refusal of Service, the service member may relent on issues based on increased legal fees or retroactive support orders that may result in possible arrears from a displeased Judge, who learns the member is avoiding service of the state action.

3. Third, Substituted service at the location where the member resides still remains a method of service that will be effective so long as, weather in state or outside the USA, the person with whom the papers are left is of a suitable age and discretion to be given the papers with instructions to deliver them to the party. Notice, due diligence must first be shown that the service has already been attempted unsuccessfully, several times before the substituted service is tried.

D. SERVICE OF PROCESS UNDER THE HAGUE CONVENTION

Service abroad of judicial documents in a civil matter (a divorce) through this treaty establishes procedures involving foreign nations. The Hague Convention does not restrict sending these documents through the post offices of different nations. Litigants may accept service of process but most occur through a central authority for service of process.

Under the treaty, a state under the Hague service convention establishes a central authority to receive documents for service of process. This authority acts under the laws of the particular state. If the authority receives a request for service of process, the central authority typically forwards the documents to the party to be served by delivering it to the addressee who voluntarily accepts it. This is called "Remise Simple". This method is the most common.

Upon completion of the service, the central authority fills out a form which may be obtained from Martindale-Hubbell setting forth a method of service, the place and the date of service, together with the name of the person served. Certainly a party desiring to serve another party under a particular state may make requests for alternative methods of service. However, there is some question as to whether or not any of those other methods will occur.

The central authority has the power and the authority. Various foreign civil process applications for us armed forces can provide personal service of process. The request and summary form is available through Martindale-Hubble in the form to transmit the documents to the central authority. There are internationally agreed means for giving notice in various countries. Service of Process does exist in the following countries under the Hague Service Convention.

Germany has signed the Hague Service Convention. Multiple Central Authority locations exist in Germany. The German authority is empowered to have request for Service complied with directly by postal channels. Details are available for Germany, Italy, the United Kingdom and Japan. Information on these services, together with other countries like South Korea is available in “**The Military Divorce Handbook**”, written by Mark E. Sullivan. This is “the practical guide to representing military personnel and their families” available through the American Bar Association and is the key volume you should obtain if you are going to practice military divorce.

STATE OF LEGAL RESIDENCE CERTIFICATE (DD FORM 2058)**STATE OF LEGAL RESIDENCE CERTIFICATE****DATA REQUIRED BY THE PRIVACY ACT OF 1974**

AUTHORITY: Tax Reform Act of 1976, Public Law 94-455.
PURPOSE: Information is required for determining the correct State of legal residence for purposes of withholding State income taxes from military pay.
ROUTINE USES: Information herein will be furnished State authorities and to Members of Congress.
MANDATORY OR VOLUNTARY DISCLOSURE: Disclosure is voluntary. If not provided, State income taxes will be withheld based on the tax laws of the State previously certified as your legal residence, or in the absence of a prior certification, the tax laws of the applicable State based on your home of record.

NAME (Last, first, middle initial)

SOCIAL SECURITY NUMBER (SSN)

LEGAL RESIDENCE/DOMICILE (City or county and State)

INSTRUCTIONS FOR CERTIFICATION OF STATE OF LEGAL RESIDENCE

The purpose of this certificate is to obtain information with respect to your legal residence/domicile for the purpose of determining the State for which income taxes are to be withheld from your "wages" as defined by Section 3401(a) of the Internal Revenue Code of 1954. PLEASE READ INSTRUCTIONS CAREFULLY BEFORE SIGNING.

The terms "legal residence" and "domicile" are essentially interchangeable. In brief, they are used to denote that place where you have your permanent home and to which, whenever you are absent, you have the intention of returning. The Soldiers' and Sailors' Civil Relief Act protects your military pay from the income taxes of the State in which you reside by reason of military orders unless that is also your legal residence/domicile. The Act further provides that no change in your State of legal residence/domicile will occur solely as a result of your being ordered to a new duty station.

You should not confuse the State which is your "home of record" with your State of legal residence/domicile. Your "home of record" is used for fixing travel and transportation allowances. A "home of record" must be changed if it was erroneously or fraudulently recorded initially.

Enlisted members may change their "home of record" at the time they sign a new enlistment contract. Officers may not change their "home of record" except to correct an error, or after a break in service. The State which is your "home of record" may be your State of legal residence/domicile only if it meets certain criteria.

The formula for changing your State of legal residence/domicile is simply stated as follows: physical presence in the new State with the simultaneous intent of making it your permanent home and abandonment of the old State of legal residence/domicile. In most cases, you must actually reside in the new State at the time you form the intent to make it your permanent home. Such intent must be clearly indicated. Your intent to make the new State your permanent home may be indicated by certain actions such as: (1) registering to vote; (2) purchasing residential property or an unimproved residential lot; (3) titling and registering your automobile(s); (4) notifying the State of your previous legal residence/domicile of the change in your State of legal residence/domicile; and (5) preparing a new last will and testament which indicates your new State of legal residence/domicile. Finally, you must comply with the applicable tax laws of the State which is your new legal residence/domicile.

Generally, unless these steps have been taken, it is doubtful that your State of legal residence/domicile has changed. Failure to resolve any doubts as to your State of legal residence/domicile may adversely impact on certain legal privileges which depend on legal residence/domicile including among others, eligibility for resident tuition rates at State universities, eligibility to vote or be a candidate for public office, and eligibility for various welfare benefits. If you have any doubt with regard to your State of legal residence/domicile, you are advised to see your Legal Assistance Officer (JAG Representative) for advice prior to completing this form.

I certify that to the best of my knowledge and belief, I have met all the requirements for legal residence/domicile in the State claimed above and that the information provided is correct.

I understand that the tax authorities of my former State of legal residence/domicile will be notified of this certificate.

SIGNATURE

CURRENT MAILING ADDRESS (Include ZIP Code)

DATE

STATE OF LEGAL RESIDENCE CERTIFICATE

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY: Tax Reform Act of 1976, Public Law 94-455.

PURPOSE: Information is required for determining the correct State of legal residence for purposes of withholding State income taxes from military pay.

ROUTINE USES: Information herein will be furnished State authorities and to Members of Congress.

MANDATORY OR VOLUNTARY DISCLOSURE: Disclosure is voluntary. If not provided, State income taxes will be withheld based on the tax laws of the State previously certified as your legal residence, or in the absence of a prior certification, the tax laws of the applicable State based on your home of record.

NAME (Last, first, middle initial)

SOCIAL SECURITY NUMBER (SSN)

LEGAL RESIDENCE/DOMICILE (City or county and State)

INSTRUCTIONS FOR CERTIFICATION OF STATE OF LEGAL RESIDENCE

The purpose of this certificate is to obtain information with respect to your legal residence/domicile for the purpose of determining the State for which income taxes are to be withheld from your "wages" as defined by Section 3401(a) of the Internal Revenue Code of 1954. PLEASE READ INSTRUCTIONS CAREFULLY BEFORE SIGNING.

The terms "legal residence" and "domicile" are essentially interchangeable. In brief, they are used to denote that place where you have your permanent home and to which, whenever you are absent, you have the intention of returning. The Soldiers' and Sailors' Civil Relief Act protects your military pay from the income taxes of the State in which you reside by reason of military orders unless that is also your legal residence/domicile. The Act further provides that no change in your State of legal residence/domicile will occur solely as a result of your being ordered to a new duty station.

You should not confuse the State which is your "home of record" with your State of legal residence/domicile. Your "home of record" is used for fixing travel and transportation allowances. A "home of record" must be changed if it was erroneously or fraudulently recorded initially.

Enlisted members may change their "home of record" at the time they sign a new enlistment contract. Officers may not change their "home of record" except to correct an error, or after a break in service. The State which is your "home of record" may be your State of legal residence/domicile only if it meets certain criteria.

The formula for changing your State of legal residence/domicile is simply stated as follows: physical presence in the new State with the simultaneous intent of making it your permanent home and abandonment of the old State of legal residence/domicile. In most cases, you must actually reside in the new State at the time you form the intent to make it your permanent home. Such intent must be clearly indicated. Your intent to make the new State your permanent home may be indicated by certain actions such as: (1) registering to vote; (2) purchasing residential property or an unimproved residential lot; (3) titling and registering your automobile(s); (4) notifying the State of your previous legal residence/domicile of the change in your State of legal residence/domicile; and (5) preparing a new last will and testament which indicates your new State of legal residence/domicile. Finally, you must comply with the applicable tax laws of the State which is your new legal residence/domicile.

Generally, unless these steps have been taken, it is doubtful that your State of legal residence/domicile has changed. Failure to resolve any doubts as to your State of legal residence/domicile may adversely impact on certain legal privileges which depend on legal residence/domicile including among others, eligibility for resident tuition rates at State universities, eligibility to vote or be a candidate for public office, and eligibility for various welfare benefits. If you have any doubt with regard to your State of legal residence/domicile, you are advised to see your Legal Assistance Officer (JAG Representative) for advice prior to completing this form.

I certify that to the best of my knowledge and belief, I have met all the requirements for legal residence/domicile in the State claimed above and that the information provided is correct.

I understand that the tax authorities of my former State of legal residence/domicile will be notified of this certificate.

SIGNATURE

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DATE