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## **The Servicemembers Civil Relief Act and Your Family Law Case**

The Servicemembers Civil Relief Act was enacted by Congress to protect members of the armed forces from having to defend against civil suits while on active duty. Given that it is a federal law, the Relief Act applies across the country, but it affects many New Mexico divorce and family cases due to the many service members stationed at Kirtland Air Force Base or Sandia National Laboratory in Albuquerque as well the other military installations across New Mexico.

The Relief Act applies to members of the Army, Navy, Air Force, Marine Corps, Coast Guard and some members of the National Guard and other government agencies. As you might imagine, the Relief Act, which can be found at 50 U.S.C. App. §§ 501-596, is lengthy and addresses a very wide scope of issues facing servicemembers. Its primary affect on divorce and family law cases comes in Sections 521 and 522, which allow the courts to stay any civil proceeding against a service member for at least 90 days and sometimes longer.

A stay means that the Court essentially puts a case on hold and takes no action for the length of the stay. This means that the Court will place a hold on divorce cases including the division of property and debt, alimony, child custody determinations and awards of child support until the stay is lifted.

For example, two parties to a divorce action live in Albuquerque with their children and the mother is an active duty with the air force and stationed at Kirtland. The parties have decided to get a divorce, but before they file any action, the mother is deployed to serve in Iraq. While mother is serving in Iraq, the father is the primary caregiver for the children, but mother is not paying any of the family bills or child support. Further, when the mother returns from Iraq, she is being transferred to another base outside of New Mexico and threatens that she is taking the children with her. What can the father do in this situation? The answer is that his options are limited by the Relief Act.

Normally, the father would file for divorce by filing a petition for dissolution of marriage to get the divorce case started and ask the court to award interim support and temporary custody. The father can still file the petition, however, it is very difficult to personally serve the mother with the divorce paperwork while she is serving in Iraq. Further, even if the mother does get proper notice, she can request a stay and the court will not order any support or custody for at least 90 days, leaving the father without any interim financial support or child custody.

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The Relief Act and its effect on a family law case can be very complicated. Whether you are a service member involved in a divorce and/or custody dispute or a civilian, it is very important that you contact an attorney as soon as possible after such a dispute begins in order to discuss your rights and limitations under the Relief Act and other relevant laws.

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